

Federal Register

OK
Friday
November 19, 1982

Selected Subjects

- Air Carriers**
Civil Aeronautics Board
- Aliens**
Employment and Training Administration
- Animal Drugs**
Food and Drug Administration
- Color Additives**
Food and Drug Administration
- Copyright**
Copyright Royalty Tribunal
- Customs Duties and Inspection**
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- Equal Access to Justice**
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- Food Stamps**
Food and Nutrition Service
- Grant Programs—Education**
Education Department
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Employment and Training Administration
- Household Appliances**
Federal Trade Commission

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Farmers Home Administration
Veterans Administration

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Agricultural Marketing Service

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Agricultural Marketing Service

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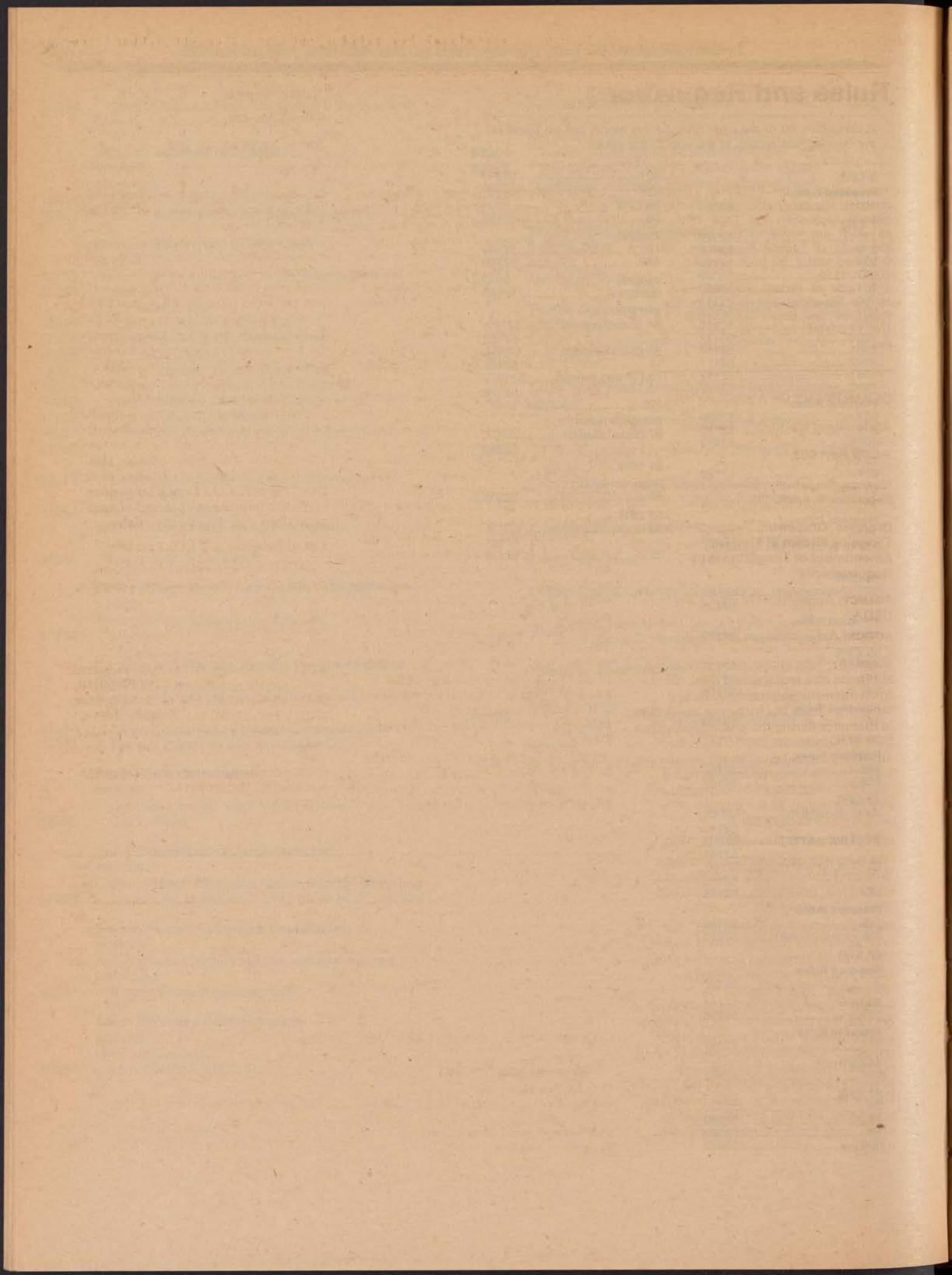
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine and Tangelo Regulation 6, Amdt. 15]

Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida; Amendment of Tangerine Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule

SUMMARY: This amendment lowers the minimum size requirement applicable to fresh domestic shipments of Dancy tangerines from 2 $\frac{1}{8}$ inches to 2 $\frac{3}{8}$ inches in diameter during the period November 15 to November 28, 1982. This action allows an increase in the supply of tangerines in recognition of demand conditions and the size composition of available supply in the interest of growers and consumers.

EFFECTIVE DATE: November 15, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447-5975.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "nonmajor" rule. The Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the Florida Dancy tangerine crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This amendment is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon recommendations and information submitted by the Citrus Administrative Committee, and upon other available information. It is hereby found that the regulation of Florida Dancy tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

This amendment would relax limitations on the handling of Dancy tangerines by permitting each handler, during the period November 15-November 28, 1982, to ship 210 size (2 $\frac{3}{8}$ inches) Dancy tangerines.

The committee reports that the total supply of Dancy tangerines is limited and there is a need to augment the total available supply by permitting shipment of smaller size fruit. Also, the committee reports that demand for such tangerines is likely to increase due to advance Thanksgiving purchases. Thus, relaxation of the regulation is necessary to allow a greater proportion of the available supply to reach the market.

It is anticipated that during subsequent weeks larger supplies of Dancy tangerines will be available for market and such fruit, left on the trees, will likely attain larger sizes. Hence, this action provides for the resumption of the 2 $\frac{3}{8}$ inch minimum size for Dancy

tangerines on and after November 29, 1982, to assure availability of the sizes preferred by consumers.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the amendment at an open meeting. This amendment relieves restrictions on the handling of Florida Dancy tangerines. Handlers have been apprised of such provisions and the effective dates.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

PART 905—[AMENDED]

Accordingly, the provisions of § 905.306 (Orange, Grapefruit, Tangerine and Tangelo Regulation 6 (46 FR 60170; 60411; 61441; 47 FR 589, 5912; 5699; 6248; 7203; 10065; 21755; 25935; 34351; 44538; 44704; 49951)) are amended by revising Table I, paragraph (a) to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (in.)
(1)	(2)	(3)	(4)
Tangerines:	Nov. 15, 1982 to Nov. 28, 1982	U.S. No. 1	2 $\frac{3}{8}$
Dancy	On and after Nov. 29, 1982	U.S. No. 1	2 $\frac{3}{8}$

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: November 16, 1982.

D. S. Kuryloski,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-31825 Filed 11-18-82; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Reg. 552; Navel Orange Reg. 551; Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period November 19-25, 1982, and increases the quantity of such oranges that may be so shipped during the period November 12-18, 1982. Such action is needed to provide for orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective November 19, 1982, and the amendment is effective for the period November 12-18, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202-447-5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. The Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona navel orange crop for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1982-83. The

marketing policy was recommended by the committee following discussion at a public meeting on September 21, 1982. The committee met again publicly on November 16, 1982 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when the information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. Section 907.852 is added as follows:

§ 907.852 Navel Orange Reg. 552.

The quantities of navel oranges grown in Arizona and California which may be handled during the period November 19, 1982, through November 25, 1982, are established as follows:

- (1) District 1: 1,012,000 cartons;
- (2) District 2: Unlimited cartons;
- (3) District 3: 88,000 cartons;
- (4) District 4: Unlimited cartons.

2. Section 907.851 (1) through (4) Navel Orange Regulation 551 (47 FR 51553) are revised to read:

§ 907.851 Navel Orange Reg. 551.

* * * * *

- (1) District 1: 1,175,000 cartons;
- (2) District 2: Unlimited cartons;
- (3) District 3: 125,000 cartons;
- (4) District 4: Unlimited cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: November 17, 1982.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-31873 Filed 11-18-82; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 386; Lemon Reg. 385, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period November 21-27, 1982, and increases the quantity of lemons that may be shipped during the period November 14-20, 1982. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: The regulation becomes effective November 21, 1982, and the amendment is effective for the period November 14-20, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. The Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981-82. The marketing policy was recommended by the committee following discussion at a public meeting on July 6, 1982. The committee met again publicly on November 16, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommend a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons continues good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, an the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.686 is added as follows:

§ 910.686 Lemon Regulation 386.

The quantity of lemons grown in California and Arizona which may be handled during the period November 21, 1982, through November 27, 1982, is established at 200,000 cartons.

2. Section 910.685 Lemon Regulation 385 (47 FR 51347) is revised to read as follows:

§ 910.685 Lemon Regulation 385.

The quantity of lemons grown in California and Arizona which may be handled during the period November 14, 1982, through November 20, 1982, is established at 250,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: November 17, 1982.

D. S. Kuryloski,
*Acting Director, Fruit and Vegetable Division,
Agricultural Marketing Service.*

[FR Doc. 82-32011 Filed 11-18-82; 11:54 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1823, 1861, 1942, 1951, and 1990

Servicing of Community Program Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises and redesignates its regulations pertaining to the servicing of Community Programs Loans and Grants. This action results from an internal reorganization where certain loan and grant servicing functions have been transferred from county to district offices. The intended effects of this action are to clarify certain sections for easier understanding and provide a more effective and efficient method of assisting borrowers and grantees in all servicing functions.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Harry Puffenberger, Loan Officer, Community Facilities Loan Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6304, Washington, DC 20250, telephone: (202) 382-1490.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 which implements Executive Order 12291 and has been determined to be "nonmajor".

This action has been determined "nonmajor" since the annual effect on the economy is less than \$100 million and there will be no increase in costs or prices for individuals, organizations or other government agencies affected. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Charles W. Shuman, Administrator, has determined that this action will not have a significant economic impact on a substantial number of small entities because the changes will have little or no effect on any state or local government receiving grants from the FmHA, since this action

involves the servicing functions of financial assistance previously made.

FmHA is revising and redesignating its regulations concerning servicing of Community Program loans and grants from Subpart F of Part 1861 to a new Subpart E of Part 1951 of Chapter XVIII, Title 7, Code of Federal Regulations.

The present FmHA servicing regulations need to be rearranged, and in some instances clarified, for easier understanding by the Servicing Office. This is being accomplished because of certain servicing functions which have been transferred from the county to district offices. In addition, certain changes in interest rates charged to eligible and ineligible applicants in transfers and assumptions are being made. This will result in uniformity of interest rates charged to both public bodies and non-profit organizations and be consistent with the rates charged to Community Program borrowers.

Other than this action, the alternative would be to take no action. However, to do so would leave the present regulation in a status which would not address the duties transferred from the county to district offices, and leave the regulation format in a less than desirable arrangement.

FmHA has reviewed these changes and determined that they are cost-effective since they will provide for more efficient servicing actions while reducing FmHA administrative costs.

The FmHA programs and projects which are affected by this regulation are subject to State and local clearinghouse review in the manner delineated in FmHA Instruction 1901-H.

This action affects the following programs as listed in the Functional Index of the Catalog of Federal Domestic Assistance: 10.408—Grazing Association Loans, 10.409—Irrigation, Drainage and other Soil and Water Conservation Loans, 10.414—Resource Conservation and Development Loans, 10.418—Water and Waste Disposal Systems for Rural Communities, 10.419—Watershed Protection and Flood Prevention Loans, 10.421—Indian Tribes and Tribal Corporation Loans, 10.423—Community Facilities Loans, 10.424—Industrial Development Grants, 10.430—Energy Impacted Area Development Assistance Program.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy

Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Background

A proposed rule was published in the *Federal Register* (47 FR 11521) on March 17, 1982. That proposed rule provided for a 60-day comment period through May 17, 1982. Six written comments were received and this final rule reflects FmHA's consideration of all of these comments. The following is a discussion of the comments received:

One comment expressed concern that the servicing of Grazing Association Loans, Irrigation, Drainage and other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans should continue to be performed in the County Office. The intent of this regulation is to keep the servicing functions of these loans in the County Office. We believe that the regulation is clear on this item and the term "Servicing Office" is defined in section 1951.203 as the "District or County Office responsible for the immediate servicing functions of the borrower or grantee."

Section 1951.204. One comment from the Department of Justice suggested the inclusion of three additional nondiscrimination statutes in this section. We agree that reference should be made to Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and these are included in the final rule. However, we do not see the need to refer to the Equal Credit Opportunity Act of 1974, as amended (15 U.S.C. 1691 *et seq.*), since this act prohibits discrimination in credit transaction and imposes various requirements on lenders. The purpose of Section 1951.204 is to prohibit discrimination in the use of the security property being conveyed by obtaining the transferee's agreement to abide by the various Federal nondiscrimination requirements.

Section 1951.207(d)(1). One comment stated that we should be more specific concerning what is to be kept in the borrower's file regarding other insurance policies. The final rule has been clarified.

Section 1951.210. One comment was received, stating that we should be "positive" rather than "negative" in indicating what FmHA's policy is in regard to transfers and assumptions. We agree and have reworded this section.

Section 1951.210(b)(2)(ii). In the cases where transfers of security are made

and the transferor is to be relieved of liability, one comment suggested that the County Committee Certification be deleted. Since the Consolidated Farm and Rural Development Act, as amended, contains the requirement for County Committee Certification in the release of liability, the section must remain as written.

Section 1951.211(a)(4). Two comments were received regarding the approvals required by a majority of the members of both organizations involved in proposed mergers. The comments requested that this requirement be relaxed. This section has been revised to require that the membership of each organization need only be made aware of the proposed merger, and that there is compliance with applicable State law.

In addition to these changes FmHA's review of the proposal resulted in the following revisions:

Section 1951.206. This paragraph has been revised to allow the State Director to redelegate authority to the appropriate designee rather than the Program Chief.

Section 1951.207(b)(1)(i). In the distribution of extra payments, a change is made to apply payments to the account secured by the lowest priority of lien. We believe that this change would allow FmHA to maintain a stronger lien position when other lenders are involved.

Section 1951.207(e)(2). This paragraph is revised to include the giving of parity position. Section 1951.207(e)(1)(xi) has been added to indicate that ascertaining the existence and obtaining consent of other security interests are necessary in parity requests.

Section 1951.207(a)(2). This paragraph contains a clarification that FmHA's consent on Form FmHA 465-1 will be signed concurrently with Form FmHA 460-2.

Section 1951.207(h). This paragraph has been revised to permit the State Director to authorize in whole or part, a facility to be operated, maintained or managed, by a third party under contract, management agreement, or written lease. This revision will enable FmHA to work more effectively with borrowers who are not necessarily in a problem situation.

Section 1951.207(i). An addition to this paragraph is made to include a notation on Form FmHA 1905-10, "Management System Card-Association," showing necessary servicing action in membership liability.

Section 1951.209(b)(6). This paragraph is added to require that property which is acquired in whole or part through the

use of grant funds shall be disposed of in accordance with the grant agreement.

Section 1951.210(b)(2)(ii). In instances where transfers are made to eligible applicants, the required determinations are made and the transferor is to be released from liability, a clarification is added to this paragraph to indicate that any balance remaining on the transferor's debt will be charged off.

Section 1951.210(c)(3). This paragraph is revised in respect to the interest rate charged to ineligible transferees of security property. The revision allows for the interest rate specified in the note of the transferor or the market rate for Community Programs, whichever is greater. This revision strengthens the conditions whereby ineligible applicants should not qualify for a lower rate than that charged to eligible applicants.

Section 1951.210(d)(3). In cases where proposed transfers and assumptions are required to be submitted to the National Office, the addition of the reference to § 1951.210(b)(1) is made. The final rule now requires that proposals for transfers and assumptions which are on more liberal terms than those set forth for both eligible and ineligible applicants are to be forwarded to the National Office.

Information collection requirements contained in this regulation (§§ 1951.207(f)(3)(i), 1951.207(f)(3)(ii) and 1951.210(c)(3)(i)) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0575-0066.

List of Subjects in 7 CFR Part 1951

Account servicing, Grant programs—housing and community development, Loan programs—housing and community development, Reporting requirements, Rural areas.

Accordingly, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Subpart B—Association Loans for Shift-in-Land-Use Projects

§ 1823.66 [Amended]

1. Section 1823.66 is amended by changing the reference from "Subpart C of Part 1861" to "Subpart E of Part 1951."

Subpart I—Processing Loans to Associations (Except for Domestic Water and Waste Disposal)

§ 1823.280 [Amended]

2. Section 1823.280 is amended by changing the reference from "Subpart F of Part 1861" to "Subpart E of Part 1951."

Subpart N—Loans to Indian Tribes and Tribal Corporations

§ 1823.415 [Amended]

3. Section 1823.415 is amended by changing the reference in line 4 from "Subpart F of Part 1861" to "Subpart E of Part 1951."

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

§ 1942.13 [Amended]

4. Section 1942.13 is amended by changing the reference from "Subpart F of Part 1861 of this Chapter (FmHA Instruction 451.5)" to "Subpart E of Part 1951 of this Chapter."

§ 1942.17 [Amended]

5. Section 1942.17(r)(5) is amended by changing the reference from "Subpart F of Part 1861 of this Chapter (FmHA Instruction 451.5)" to "Subpart E of Part 1951."

Subpart G—Industrial Development Grants

§ 1942.320 [Amended]

6. Section 1942.320 is amended by changing the reference from "Subpart F of Part 1861 of this Chapter (FmHA Instruction 451.5)" to "Subpart E of Part 1951 of this Chapter."

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

§ 1942.365 [Amended]

7. Section 1942.365 is amended by changing the reference from "Paragraph XIV of FmHA Instruction 451.5" to "§ 1951.215 of Subpart E of Part 1951 of this Chapter."

Subpart I—Resource Conservation and Development (RCD) Loans and Watershed (WS) Loans and Watershed Advances

§ 1942.423 [Amended]

8. Section 1942.423 is amended by changing the reference from "FmHA Instructions 451.5 and 1955-A" to "Subpart E of Part 1951 and Subpart A of Part 1955."

9. Subpart F of Part 1861 is revised and redesignated to a new Subpart E of Part 1951 which reads as follows:

PART 1951—SERVICING AND COLLECTIONS

* * * * *

Subpart E—Servicing of Community Program Loans and Grants

- Sec.
- 1951.201 Purpose.
 - 1951.202 Objectives.
 - 1951.203 Definitions.
 - 1951.204 Nondiscrimination.
 - 1951.205 Present market value determination.
 - 1951.206 Redelegation of authority.
 - 1951.207 General servicing actions.
 - 1951.208 Liquidation of security.
 - 1951.209 Sale or exchange of security property.
 - 1951.210 Transfer of security and assumption of loans.
 - 1951.211 Mergers.
 - 1951.212 Special provisions applicable to Economic Opportunity (EO) Cooperative loans.
 - 1951.213 Care, management and disposal of acquired property.
 - 1951.214 Water and waste disposal systems which have become part of an urban area.
 - 1951.215 Water and waste disposal, industrial development, energy impacted area development assistance and other grants.
 - 1951.216 State Director's Additional authorizations and guidance.
 - 1951.217 Payment in full.
 - 1951.218 State supplements.
 - 1951.219 Forms.
 - 1951.220 Servicing public bodies.
 - 1951.221 1951.250 [Reserved]

Subpart E—Servicing of Community Program Loans and Grants

§ 1951.201 Purpose.

This Subpart prescribes the policies, authorizations, and procedures for servicing Community Water and Waste Disposal System loans and grants, Community Facility Loans, Industrial Development grants, loans for Grazing and other shift-in-land use projects, Association Recreation loans, Association Irrigation and Drainage loans, Watershed loans and advances, Resource Conservation and Development loans, Economic Opportunity Cooperative loans, loans to Indian Tribes and Tribal Corporations, loans to Timber Development Organizations, Rural Renewal loans and Energy Impacted Area Development Assistance Program grants.

§ 1951.202 Objectives.

Loan and grant servicing functions are directed toward assisting recipients to meet the objectives of the loans and grants, repaying loans on schedule, complying with agreements, and protecting the Farmers Home

Administration's (FmHA) financial interest.

§ 1951.203 Definitions.

(a) *Approval official*. An official who has been delegated loan and/or grant approval authorities within applicable programs, subject to the dollar limitations of Exhibits B and C of Part 1901, Subpart A.

(b) *Assumption of debt*. The means by which one party agrees to legally bind itself to pay the debt incurred by another.

(c) *Eligible applicant*. An entity that would be legally qualified for financial assistance under the particular loan or grant program involved in the servicing action.

(d) *Ineligible applicant*. An entity or individual that would be considered not eligible for financial assistance under the particular loan or grant program involved in the servicing action.

(e) *Servicing office*. The District or County Office responsible for the immediate servicing functions of the borrower or grantee.

§ 1951.204 Nondiscrimination.

Each instrument of conveyance required for a servicing action (Transfer, assumption, sale, etc.) under this Subpart will contain the following covenant: "The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, as amended, and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended."

§ 1951.205 Present market value determination.

The value of security to be subordinated, sold, merged or transferred under this Subpart is determined by the approval official as follows:

(a) *Security representing a relatively small portion of the total value of the security property*. The approval official will determine that the real estate and chattels are disposed of at a reasonable price. A current appraisal report may be required.

(b) *Security representing a relatively large portion of the total value of the security property*. The approval official will require a current appraisal report, and the sale prices of the real estate and chattels disposed of will at least equal

the present market value, as determined by this appraisal.

(c) *Appraisal report.* If required, a current appraisal report will be completed in accordance with § 1942.3 of Subpart A of Part 1942. The appraisal will be completed by a qualified FmHA employee or an independent appraiser as determined appropriate by the approval official.

§ 1951.206 Redelegation of authority.

Servicing functions under this Subpart which are specifically assigned to the State Director may be redelegated in writing to the appropriate sufficiently trained designee.

§ 1951.207 General servicing actions.

(a) *Regular payments.* Regular payments for Community Program borrowers are all payments other than extra payments and refunds. Regular payments are usually derived from facility revenues, and do not include proceeds from the sale of basic chattel or real estate security. Regular payments also include payments derived from sources which do not decrease the value of the government's security. Regular payments for Grazing Association, Irrigation, Drainage and Other Soil and Water Conservation, and Indian Tribes and Tribal Corporation loan borrowers are defined in § 1951.8(a) of Subpart A of Part 1951.

(1) *Distribution of regular payments* for the program areas covered by this regulation are made as follows:

(i) *Community Programs.* When a borrower owes one or more FmHA loans, regular payments received from the facility revenue will be distributed in accordance with the following priorities, except as otherwise established by the note or bond.

(A) First, to FmHA loans in proportion to the delinquencies existing on each. If the payment exceeds the amount of the delinquencies on each loan, the excess should be distributed according to § 1951.207(a)(1)(i)(B).

(B) Second, to FmHA loans in proportion to the approximate amounts due on each. If the payment exceeds the amount due on each loan for the year, then the excess should be distributed according to § 1951.207(a)(1)(i)(C).

(C) Third, as advance payments on FmHA loans. In making such distributions, consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(ii) *Grazing Association Loans, Irrigation, Drainage and other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans.*

Distribution of regular payments will be made according to § 1951.9(a) of Subpart A of Part 1951, except as otherwise established by the note or bond.

(2) Except as otherwise established by the note or bond, regular payments will be applied first to the interest accrued on the account as of the date of receipt of the payment. Any excess will be applied to the principal balance.

(b) *Extra payments.* Extra payments for Community Program borrowers are derived from sale of basic chattel or real estate security; refund of unused loan funds; cash proceeds of real property insurance as provided in § 1806.5(b) of Subpart A of Part 1806 (paragraph V B of FmHA Instruction 426.1); and transactions of a similar nature which reduce the value of basic security. Also, at the option of the borrower, regular facility revenue may be used as extra payments when regular payments are current.

(1) Distribution of extra payments for the program areas covered by this regulation are as follows:

(i) *Community Programs* extra payments, except as otherwise established in the note or bond, will be applied to the account secured by the lowest priority of lien on the property from which the extra payment was obtained. When the payment exceeds the unpaid balance of the FmHA lien having the lowest priority, the balance of such payment will be distributed to the FmHA loan having the next highest priority. The amount to be applied to principal will be applied to the final unpaid installment(s).

(ii) *Grazing Association Loans, Irrigation, Drainage and other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans.* Distribution of extra payments will be made according to § 1951.9(b) of Subpart A of Part 1951.

(2) Application of extra payments for the program areas covered by this regulation are as follows:

(i) *Community Programs* extra payments will be applied first to interest accrued to the date of the receipt and second to principal. The amount applied to principal will be applied to the final unpaid installment(s).

(ii) *Grazing Association Loans, Irrigation, Drainage and Other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans.* Extra payments will be applied in accordance with § 1951.11(b)(2) of Subpart A of Part 1951.

(c) *Collections.* Collections are processed according to Subpart B of Part 1951.

(d) *Actions by FmHA for account of borrower, including advances for*

protection of security of lien. (1) Community Program borrowers shall continuously maintain adequate insurance coverage as required by the loan agreement and § 1942.17(j)(3) of Subpart A of Part 1942. Ordinarily, FmHA should be listed as mortgagee on the property insurance policies when FmHA has a lien on the property. Insurance coverage should be monitored to determine that adequate policies and bonds are in force. A copy of the fidelity bond(s) should be maintained in the borrower's case file. Other insurance policies are not required to be maintained in the file. Evidence of adequate insurance must be furnished by the borrower. For all other types of loans covered by this Subpart, property insurance will be serviced according to Subpart A of Part 1806 (FmHA Instruction 426.1) in real estate mortgage cases and according to the loan agreement in other cases.

(2) Borrower's real property taxes are serviced according to Part 1863 (FmHA Instruction 425.1). If State statutes permit a personal property tax lien to have priority over FmHA's lien, personal property taxes are serviced according to § 1863.3 and § 1863.4 of Part 1863 (paragraphs III and IV of FmHA Instruction 425.1).

(3) The State Director is authorized to approve vouchers to pay costs, without regard to any loan or total indebtedness limitation, to preserve and protect the security (including insurance), or the lien, or priority of the lien securing the loan or other indebtedness owing to or insured by FmHA. Vouchers are prepared in an original and two copies using Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal." The name and address of the party to whom payment is due is inserted in the heading. The amount of the vouchered items is inserted in the appropriate spaces. The notation inserted in the space for description of the services includes the purpose of the payment, the location and a simple description of the property, the name and case number of the borrower, and the fact that the amount will be charged to the borrower's account. A sample notation could be as follows:

For payment of water rights of real property in (community), (state), (case no.), (loan type code) for the period of July 15, 19 , through August 19 , to be charged to the borrower's loan account.

After the voucher has been approved by the State Director, the original with any attached reports is sent to the Finance Office. One copy is held in the

borrower's servicing office loan docket and one copy is given to the borrower. After the voucher has been processed in the Finance Office, the U.S. Treasury Check is issued to the appropriate payee and mailed to the servicing office for delivery. The purpose of the payment is stated on each check. Any amount advanced is entered as a recoverable charge on the borrower's account in the Finance Office. The advance bears interest at the rate specified in the most recent debt instrument under which the advance is authorized to be made. After the check is issued, Form FmHA 451-26, "Transaction Record," is prepared by the Finance Office and sent to the appropriate servicing office, showing the amount of the recoverable charge and the applicable rate of interest. Protective advances are not to be used as a replacement for a loan.

(e) *Subordination or giving parity position of security.* (1) *Request for subordination or giving parity position.* When a borrower requests FmHA to subordinate a security instrument so that another creditor or lender can refinance, extend, reamortize, or increase the amount of a prior lien, or be on parity with, or place a lien ahead of the FmHA lien, it will submit a written request to the servicing office which may be Form FmHA 465-1, "Application for Partial Release, Subordination or Consent." This request should contain the purpose of the Subordination, or parity action, exact amount of money or property involved, description of security property involved, type of security instrument, name, address, line of business and other general information pertaining to the party in favor of which the request is made, and other pertinent information which will be of assistance in determining need for the request. Requests for subordination will be submitted to the National Office, except that the approval official is authorized to execute subordination on Form FmHA 460-2, "Subordination by the Government," if all the following requirements and conditions are met:

(i) The amount of the subordination does not exceed the official's loan approval authorizations as set forth in Exhibits B and C of Subpart A of Part 1901.

(ii) The borrower is unable to refinance the FmHA mortgage on terms which the borrower can reasonably be expected to meet.

(iii) The transaction will either further the objectives for which the FmHA loan was made or improve the borrower's debt-paying ability and, in either case, result in the FmHA debt being adequately secured.

(iv) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as all other debts.

(v) Any proposed development work will be planned and performed according to Appendix B of Subpart A of Part 1942 or in a manner directed by the creditor which reasonably attains the objectives of Subpart A of Part 1942.

(vi) All contracts, pay estimates, and change orders will be reviewed and concurred in by the FmHA State Director.

(vii) In case of land purchase, the FmHA will obtain a mortgage on the purchased land.

(viii) When the transaction involves more than \$1,000 and the approval official considers it necessary, a present market value appraisal report will be obtained. However, a current appraisal report need not be obtained if there is an appraisal report not over one year old in the file which will permit the proper determination as to the present market value of the total property after the transaction.

(ix) The subordination is for a specific amount.

(x) The proposed action will not so change the nature of the borrower's activities as to make it ineligible for FmHA loan assistance.

(xi) In requests for parity position, FmHA must ascertain the existence of any other outstanding security interests and the borrower must obtain the necessary consent and subordination of all concerned.

(2) *Processing.* All requests for subordination and giving parity position, including those pertaining to pledges of revenue, but excluding those affecting other chattel liens, will be closed according to Office of General Counsel (OGC) instructions. FmHA's consent on Form FmHA 465-1 will be signed concurrently with Form FmHA 460-2. When National Office approval is required or the State Director desires advice pertaining to the request, the borrower's case file will be sent to the National Office and will include—

(i) Current balance sheet, income statement and budget (budget on Form FmHA 442-2, "Statement of Budget, Income, and Equity", schedules 1 and 2);

(ii) Copy of proposed lien;

(iii) Appraisal report;

(iv) Borrower's written request on Form FmHA 465-1;

(v) OGC opinion on the request;

(vi) Exhibit A (available in any FmHA Office) of this Subpart, appropriately completed, including recommendations and comments by the District Director, Program Chief, and State Director; and

(vii) Any other necessary supporting information.

(f) *Loan reamortization.* (1) The State Director is authorized to approve reamortization of loans for borrowers having a delinquency which cannot be brought current within one year while maintaining a reasonable reserve when all of the following conditions exist:

(i) The debt(s) to be reamortized does not exceed the State Director's loan approval authorization.

(ii) The borrower has demonstrated for at least one year by actual performance or has presented a budget which clearly indicates that it is able to meet the proposed payment schedule.

(iii) There is no extension of the final maturity date.

(2) Proposals for reamortization exceeding the limits set in § 1951.207(f) (1) of this Subpart and those evidenced by notes which are not delinquent, may be reamortized with prior approval of the National Office. Requests forwarded to the National Office will contain the borrower's current case file which includes:

(i) Current budget and cash flow prepared on Form FmHA 442-2, schedules 1 and 2;

(ii) Current balance sheet;

(iii) Current income statement;

(iv) Exhibit A of this Subpart, appropriately completed, including recommendations and comments by the District Director, Program Chief, and State Director.

(v) Form FmHA 451-33, "Reamortization Request;" and

(vi) Any other necessary supporting information.

(3) *Processing.* (i) Borrowers requesting reamortization that have loans secured by notes will complete Form FmHA 451-33. Ordinarily the entire note including principal and interest is reamortized. Reamortization is accomplished through the use of a new evidence of debt unless the OGC recommends that the terms of the existing document be modified through the use of Form FmHA 451-33, or if that is legally inadequate, through the use of another appropriate form. Interest will be at the original rate.

(ii) Borrowers with loans secured by bonds may effect reamortization by procedures which in the opinion of the borrower's counsel and the OGC are legally permissible under State law and acceptable to the State Director. The procedure may include a new debt instrument for the total FmHA indebtedness including the delinquency, or a new debt instrument or agreement whereby the borrower agrees to repay the delinquency plus interest at the

original bond rate over a determined number of years.

(iii) When a new debt instrument or agreement for only the delinquency is used, it will, after execution, be retained by the Finance Office. A new loan number will be assigned to the reamortization of the delinquency. The borrower will be required to pay the amount due on the reamortized loan plus its regular scheduled installments on the loan. Appendix C of Part 1942, Subpart A applies to any necessary new bonds except where precluded by State statutes or where an exception is approved by the National Office. The agreement will contain—

(A) The amount delinquent (which should equal the total of the delinquency of the account, the unpaid principal on the advance from the fund, and the accrued interest on the advance from the fund through the date of reamortization, less interest payments credited on the advance account);

(B) The date of reamortization;

(C) The number of years over which the delinquency will be reamortized;

(D) The repayment schedule; and

(E) The interest rate.

(iv) The properly executed new instrument(s) or endorsement, as appropriate, are handled as follows:

(A) *Notes.* The original new note should be attached to the existing note(s) and filed in the servicing office and retained by FmHA until the respective account is paid in full or otherwise satisfied. A copy of the endorsement will be forwarded to the Finance Office.

(B) *Endorsement.* Any endorsement required by OGC to accomplish reamortization will be attached to the existing note and retained in the servicing office until the respective account is paid in full or otherwise satisfied. A copy of the endorsement will be forwarded to the Finance Office.

(C) *Bonds.* State statutes regarding the reamortization of bonds may vary. Therefore, each State Office will work closely with OGC in the handling of bonds. If the State statutes do not require the release of the existing bonds, these will be held in the Finance Office and the new bond instructions or agreement will be forwarded to the Finance Office, attached to the original bond(s), and retained by FmHA until the respective account is paid in full or otherwise satisfied. If State statutes require the release of the existing bonds, the exchange will be accomplished by the District Director and the new bonds and/or agreement will be forwarded to the Finance Office in the usual manner.

(g) *Consent to borrower's granting lease of security.* (1) *State Director's*

consent. The State Director may consent to the leasing of all or a portion of security property when—

(i) The lease will not adversely affect the repayment of the loan or the Government's rights under the security or other instruments;

(ii) Leasing is not an alternative to, or means of, delaying liquidation action;

(iii) The lease and use of any proceeds from the lease will further the objectives of the loan;

(iv) Rental income is assigned to FmHA in an amount sufficient to make regular payments on the loan, and operate and maintain the facility unless such payments are otherwise adequately secured; and

(v) The lease is advantageous to the borrower and is not disadvantageous to the Government.

(vi) If foreclosure action has been approved and the case has been submitted to OGC, consent to lease and use of proceeds will be granted only with OGC's concurrence.

(vii) The lease shall not exceed a one-year period. The property may not be under lease more than two consecutive years without authorization from the National Office. Refer to § 1951.207(g)(3) of this subpart for processing.

(2) *Mineral leases.* Unless liquidation is pending, the State Director is authorized to approve mineral leases when—

(i) The lessee agrees in the lease or elsewhere, or is liable without any agreement, to pay adequate compensation for any damage to the real estate surface and improvements. Damage compensation will be assigned to the FmHA or the prior lienholder by the use of Form FmHA 443-16, "Assignment of Income from Real Estate Security," or other appropriate instrument;

(ii) Royalty payments are adequate and are assigned to FmHA on Form FmHA 443-16;

(iii) All or a portion of delay rentals and bonus payments may be assigned on Form FmHA 443-16 if needed for protection of the Government's interest;

(iv) The lease, subordination, or consent form is acceptable to the OGC; and

(v) The lease will not interfere with the purposes for which the loan or grant was made.

(3) *Processing.* When FmHA's consent to a lease is required, the borrower will complete and submit Form FmHA 465-1. The form will include the terms of the proposed lease and will specify the use of proceeds including any proceeds to be released to the borrower. When another lienholder's mortgage requires consent to lease, the lienholder's

consent will be obtained. When the approval of the National Office is required or if the State Director wishes a lease transaction reviewed prior to approval, the borrower's case file will be forwarded to the National Office and will include—

(i) A copy of the proposed lease;

(ii) Exhibit A of this Subpart appropriately completed, including recommendations and comments by the District Director, Program Chief, and State Director; and

(iii) Any other necessary supporting information.

(h) *Third party operation, maintenance, and management of all or part of a facility.* The State Director may authorize all or part of a facility to be operated, maintained, or managed by a third party under a contract, management agreement, or written lease in accordance with § 1942.17(b)(3) of Part 1942, Subpart A. In such cases, the borrower shall retain ultimate responsibility for operating, maintaining, and managing the facility, and for its continued availability and use at reasonable rates and terms.

(i) *Membership liability.* As a loan approval requirement, some borrowers may have special agreements with members for the purchase of shares of stock or for the payment of a pro-rata share of the loan in event of default, or they may have in their corporate instruments authority to make special assessments in that event. The agreements may be referred to as individual liability agreements and may be assigned to and held by the FmHA as additional security for the loan. In other cases the borrower's note may be endorsed by individuals. The liability instruments will be serviced in a manner indicated by their contents and the advice of OGC to adequately protect the interest of the FmHA. A notation will be made on Form FmHA 1905-10, "Management System Card-Association," showing necessary servicing action.

(j) *Other security.* Other security such as collateral assignments, water stock certificates, notices of lienholder interest (Bureau of Land Management grazing permits) and waivers of grazing privileges (Forest Service grazing permits) will be serviced to protect the interest of FmHA, and under any special servicing actions developed by the State Director with the OCC's assistance. Evidence of the security will be filed in the loan docket in the servicing office. A notation will be made on Form FmHA 1905-10, showing necessary servicing action.

(k) *Correcting errors in security instruments.* Land, buildings, or chattels included in the mortgage through mutual mistake may be released from the mortgage by the State Director when substantiated by the factual situation. The release is contingent on the State Director, with the advice of the OGC, determining that a mutual error existed at the time the property was included in the Government's mortgage.

§ 1951.208 Liquidation of security.

When the District Director believes that continued servicing will not accomplish the objectives of the loan the District Director will complete a report using the format shown in Exhibit A (available in any FmHA Office) of this Subpart, and submit it along with the District Office file to the State Office. If the State Director determines the account should be liquidated, the State Director will encourage the borrower to voluntarily sell the property and remit the proceeds to FmHA. The State Director will give the borrower a specified period of time, not to exceed 180 days, to accomplish the action. If the voluntary sale cannot be accomplished, the loan will be liquidated according to § 1951.210 of this Subpart or Subpart A or Part 1955.

§ 1951.209 Sale or exchange of security property.

(a) *General.* In cases where a substantial loss to the government will result from the sale or the prospective buyer is a member(s) of the borrower's organization, the State Director will forward all pertinent information regarding the sale to the National Office prior to making any commitment. It is not FmHA's policy to sell security property to a member(s) of the borrower's organization at a price which will result in a loss to the Government. This information will include—

(1) Borrower's case file;
 (2) Exhibit A (available in any FmHA Office) of this Subpart appropriately completed, including recommendations of the District Director, Program Chief, and State Director;

(3) Appraisal report; and
 (4) Name of purchaser, anticipated sale price, terms and conditions.

(b) *Authorities.* Subject to the conditions of this section, the District Director is authorized to approve a cash sale of all or a portion of the borrower's assets or an exchange of security property when only chattels are involved. The State Director is authorized to approve real estate transaction. Approvals may be given when the approval official determines that—

(1) The consideration is adequate;

(2) The release will not prevent carrying out the purpose of the loan;

(3) The remaining property is adequate security for the loan or the transaction will not adversely affect FmHA's security position;

(4) If the property to be sold or exchanged is to be used for the same or similar purposes for which the loan or grant was made, the purchaser will execute Form FmHA 400-4, "Assurance Agreement". This will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan or grant was made; and

(5) The proceeds (after paying any reasonable and necessary selling expenses) are used for one or more of the following purposes:

(i) To pay on FmHA debts according to § 1951.207 (a) and (b) of this Subpart, on debts secured by a prior lien, and on debts secured by a subsequent lien if it is to FmHA's advantage.

(ii) To purchase or to acquire through exchange property more suitable to the borrower's needs, if the FmHA secured debt will be as well secured after the transaction as before.

(iii) To develop or enlarge the facility if the action is necessary to: (A) Improve the borrower's debt-paying ability, (B) place the operation on a sounder basis, and (C) otherwise further the objectives of the loan.

(6) Disposition of property acquired in whole or part through the use of grant funds will be in accordance with the grant agreement.

(7) The FmHA liens will not be released until the appropriate sale proceeds are received for application on the Government's claim. In any State in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The District Director will advise the borrower when it requests a partial release that it must pay these costs. If the borrower is unable to pay the costs from personal funds, the costs may be deducted from the sale proceeds. The amount of the charge will be based on the statement of actual cost furnished by the insured lender.

(c) *Processing partial security release.* When a borrower requests permission to sell or exchange a portion of FmHA's security property, the borrower will complete Form FmHA 465-1, for real estate or Form FmHA 462-2, "Written Consent to Sell and Statement of Conditions on Which Lien Will Be Released," for chattels. For

real estate transactions the District Director will forward (1) Form FmHA 465-1, (2) the appropriate appraisal report, (3) the District Office loan docket including an executed Form FmHA 400-4, (4) the District Director's recommendation, and (5) all other pertinent information to the State Director.

(d) *Releasing security.* (1) Chattel security. The District Director is authorized to satisfy or terminate chattel security instruments when § 1951.209(b) of this Subpart and § 1962.17 of Subpart A of Part 1962 have been complied with. Satisfaction or termination of chattel security instruments will be accomplished according to § 1962.27 of Subpart A of Part 1962. Partial release may be made by using Form FmHA 460-1, "Partial Release," or Form FmHA 462-12, "Statements of Continuation, Partial Release, Assignment, etc." Form FmHA 460-4, "Satisfaction," will be used when a debt has been paid in full or satisfied by debt settlement action.

(2) Real estate. Subject to § 1951.209 (b) of this Subpart, the State Director is authorized to consent to disposition of a part or all of an interest in real estate security by approving Form FmHA 465-1. Partial release of real estate security may be made by use of Form FmHA 460-1 or other form approved by OGC. Form FmHA 460-4, or other form approved by OGC, will be used when a debt has been paid in full or satisfied by debt settlement.

(e) *Release of liability.* (1) When the FmHA debt is paid in full from the sale of proceeds, the borrower will be released from liability by use of Form FmHA 465-8, "Release from Personal Liability."

(2) When sale proceeds are not sufficient to pay the FmHA debt in full and all security property has been disposed of, the remaining debt will be accelerated and the case reclassified to collection only according to FmHA Instruction 404.1 (available in any FmHA Office).

§ 1951.210 Transfer of security and assumption of loans.

(a) *General.* It is the policy of FmHA to approve transfers and assumptions of loans to transferees who will continue the original purpose of the loan.

Transfers and assumptions may be approved subject to the following:

(1) When the transaction is to a member(s) of the borrower's organization at a price which will not result in a loss to the Government.

(2) Transfers to eligible applicants will receive preference over transfers to ineligible applicants if recovery to

FmHA from the sale price is not less than it would be if the transfer were to an ineligible applicant.

(3) The present borrower is unable or unwilling to accomplish the objectives of the loan and the transfer will be to the Government's advantage.

(4) If the debt(s) exceeds the present market value of the security, the transferee will assume an amount at least equal to the present market value.

(5) If the FmHA debt is less than the present market value, the transferee will assume an amount at least equal to the debt owed the FmHA.

(6) The transfer will not adversely affect the FmHA program in the area.

(7) FmHA concurs in the plans for disposition of funds in the transferor's debt service, reserve, and operation and maintenance account.

(b) *Eligible applicants.* (1) The State Director is authorized to approve transfers of security property to and assumptions of FmHA debts by transferees who would be eligible for the type of loan being transferred as follows:

(i) If the terms of the loan are changed, Form FmHA 460-5, "Assumption Agreement (New Terms)", will be executed by a nonpublic body transferee. The new repayment period may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the collateral securing the loan. The interest rate will be that rate specified in the note(s) or bond(s) being assumed.

(ii) If the full debt is assumed and the same interest rate and terms will prevail, the transferee will execute Form FmHA 460-9, "Assumption Agreement (Same Terms—Eligible Transferee)".

(iii) When the property to be transferred is to be used for the same or similar purposes for which the loan or grant was made, to avoid any doubt as to the continuation of the nondiscrimination covenants, the transferee will execute Form FmHA 400-4.

(iv) A loan for which the transferee is eligible may be made in connection with a transfer, subject to the policies and procedures governing the kind of loan being made.

(v) If the transferor is to receive a payment for its equity, the total FmHA debt must be assumed.

(2) Release of transferor from liability. Transferors may be released from personal liability under the following conditions:

(i) When all FmHA security is transferred to an eligible applicant and the total outstanding debt is assumed, it will be the policy to release the transferor from liability.

(ii) In those cases where the security is transferred to an eligible applicant and an amount at least equal to the present market value of the security will be assumed, the transferor may be released from liability if the State Director determines that the transferor does not have reasonable debt-paying ability considering its assets and income at that time of the transfer, and the County Committee certifies that the transferor has cooperated in good faith, used due diligence to maintain the security property against loss, and has otherwise fulfilled the covenants incident to its loan to the best of its ability. If the County Committee recommends a release of liability, the County Committee must execute a memorandum containing the following statement:

"_____ in our opinion does not have reasonable debt-paying ability to pay the balance of the debt not assumed after considering its assets and income at the time of the transfer. The transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the transferor be released of liability upon the transferee's assumption of that portion of the indebtedness equal to the present market value of the security." In such cases the balance remaining on the debt will be charged off.

(c) *Ineligible applicants.* Transfers are considered only when needed as a method for servicing problem cases when an eligible transferee is not available. Transfers should not be considered as a means by which members can obtain an equity or as a method of providing a source of easy credit for purchasers. Transfers are made as follows:

(1) State Directors are authorized to approve all transfers of incorporated Economic Opportunity Cooperative loans to ineligible applicants.

(2) For all other loans covered by this Subpart, the State Director is authorized to approve a transfer of indebtedness to, and assumption of loan by, a transferee who does not meet the eligibility requirements for the kind of loan being assumed when the ineligible applicant will:

(i) Make a significant downpayment.

(ii) Agree to pay the remaining balance within not more than 15 years. Annual installments will be at least equal to the amount amortized over a period not greater than the remaining life of the debt being transferred and the balance will be due the fifteenth year.

(3) Interest rates to ineligible transferees will be the rate specified in the note of the transferor or the market rate for Community Programs, whichever is greater on the date the transfer is approved, and according to the following:

(i) Transferees must have the ability to pay the FmHA debt according to the assumption agreement and must have the legal capacity to enter into the contract. The applicant will submit a current balance sheet and may use Form FmHA 442-3, "Balance Sheet." This information should be supplemented by a credit report from an independent source such as Dun and Bradstreet or verified by an independent certified public accountant. In all transfers, consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(ii) The transferee will execute Form FmHA 465-5, "Transfer of Real Estate Security," modified as appropriate.

(iii) Where the property to be transferred is to be used for the same or similar purposes for which the loan or grant was made, the transferee will execute Form FmHA 400-4.

(iv) This Subpart does not preclude the transferor from receiving equity payments when the full amount of the FmHA debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the FmHA debt will be paid.

(4) Release of transferor from liability may be granted by the State Director as follows:

(i) When the full amount of the debt is assumed; or

(ii) When the transferee assumes that portion of the security indebtedness at least equal to the current market value of the security property on terms not to exceed five annual installments from the date of assumption, and the determinations, certifications, and recommendations of § 1951.210(b)(2)(ii) of this Subpart are made.

(d) *Submissions to National Office.* Under any of the following conditions, a proposed transfer or assumption will be forwarded to the National Office for prior review and approval before making any commitments:

(1) Where a loss to the Government will result;

(2) The prospective transferee is a member(s) of the present borrower's organization;

(3) Proposals for transfer or assumption are made on more liberal terms than set forth in § 1951.210 (b)(1) and (c) of this subpart;

(4) Proposals for a cash downpayment to the present borrower in an amount which exceeds the actual sales expenses; or

(5) Water and Waste Disposal loans representing indebtedness for projects financed in part by FmHA development grants.

(6) All submissions to the National Office will contain:

- (i) Transfer case file.
- (ii) OGC comments on the proposed transfer or assumption.
- (iii) Appropriate forms according to Exhibit D for transferee. When the transferee is a public body, transfer and assumption documents prepared by the transferee will be included.

(iv) Any other necessary supporting information.

(e) *Processing transfers and assumptions.* Refer to Exhibit D (available in any FmHA Office) for a listing of forms to be processed in connection with all transfers and assumptions either to eligible or ineligible applicants. The District Director will submit these forms to the State Director. The following conditions also apply: In cases where the transferee is a public body and Forms FmHA 460-5 and 460-9 are not suitable, the transferee's attorney should prepare the documents necessary to effect the transfer and assumption, and submit these for approval (with OGC concurrence) by FmHA.

(1) *Effective date of transfer* is the actual date the transfer is closed, which is the same date Form FmHA 460-5, Form FmHA 460-9, or other appropriate assumption agreement is signed.

(2) *Accrued interest* entered in Table I of either Forms FmHA 460-5 or 460-9, or other appropriate assumption agreement, is computed on either: Form FmHA 451-11, "Statement of Account," Form FmHA 451-25, "Status of Account," or Form FmHA 451-26.

(3) *Form FmHA 460-5.* If this form is used, the transferee should be informed of the amount needed to be on schedule by the next installment due date.

(4) *Form FmHA 460-9.* If this form is used, the transferee will be informed of the amount of principal and interest owed as shown on the latest "Transaction Record" or "Statement of Account." The transferee will also be advised as to the amount that would be required to place the account on schedule as of the previous installment due date and any amounts that must be paid to bring any payments up to date.

(5) *Title to all assets* will be conveyed from the transferor to the transferee unless other arrangements are agreed upon by all parties concerned, including FmHA.

(6) *Lien judgments or claims.* There must be no lien, judgment, or other claims of parties other than FmHA against the security being transferred unless the transferee is willing to accept the claims and the FmHA approving official determines that the claims will not affect the transferee's ability to repay FmHA's debt, meet all operating and maintenance costs, and maintain the required reserves. The written consent of any other lienholder will be obtained where required.

(7) *If an insured loan is involved,* the Finance Office will have the insured "note" assigned to the fund when the "Assumption Agreement" changes the terms of note or bond.

(8) *The transferee will obtain insurance* according to the requirements for the outstanding loan(s) involved unless the approval official requires additional insurances as a condition of approval. If insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of a new policy by the transferee. When the full amount of the FmHA debt is being assumed and an amount has been advanced for insurance premiums or any other purposes the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(9) *The parties to the transfer* are responsible for obtaining the legal services necessary to accomplish the transfer.

(10) *Transfer closings* are accomplished according to OGC instructions.

(11) *When the transferee will be an eligible applicant,* any development funds not to be refunded remaining in the transferor's supervised bank account will be transferred to the transferee's supervised bank account simultaneously with the closing of the transfer for use in completing planned development. All funds remaining in the supervised bank account will be refunded to FmHA as a condition of transfer to an ineligible applicant.

(12) *Forms transmitted to Finance Office.* The following forms will be sent immediately to the Finance Office:

(i) Forms FmHA 460-5, 460-9 (original and signed copy for insured loan) or other appropriate assumption agreement.

(ii) Form FmHA 451-2, "Schedule of Remittance," when applicable.

(iii) Form FmHA 465-8 when applicable, signed copy.

(13) *If the transfer or assumption is not within the State Director's approval authority under this Subpart,* the docket will be forwarded along with the State

Director's recommendations to OGC for review and comment. Upon receipt of OGC's comments, the file will be sent to the National Office, including the documentation indicated in § 1951.210(d)(6) of this subpart.

(14) *Assumption agreement, release from personal liability, receipts.* Forms FmHA 460-5 or FmHA 460-9, FmHA 451-2 and FmHA 465-8 will be completed and executed simultaneously with the closing transaction, in each case where the full amount of the debt is assumed or a release from personal liability is otherwise approved under this subpart, and all of the security is being transferred.

(f) *Transfers not completed.* If for any reason the transfer is not completed after approval, the Finance Office will be notified to resume servicing of the account in the name of the existing borrower.

§ 1951.211 Mergers.

(a) *General.* State Directors are authorized to approve mergers or consolidations (which are herein referred to as mergers) when the resulting organization will be eligible for an FmHA loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower.

(2) The resulting borrower can meet all required operating and maintenance expenses, debt repayment, and maintain required reserves.

(3) All security property can be legally transferred to the resulting borrower.

(4) The membership of each organization involved is made aware of the proposed merger, and there is compliance with all applicable requirements of State law.

(b) *Distinguished from transfers and assumptions.* Mergers occur when one corporation combines with another corporation in such a way that the first corporation ceases to exist as a separate entity while the other continues. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with the original corporations ceasing to exist. In both mergers and consolidations, the surviving or emerging corporation takes the assets and assumes the liabilities of the corporations which ceased to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor's assets, nor assume all the transferor's

liabilities. Procedures relating to transfers and assumptions appear above at section 1951.210.

(c) *Processing mergers.* Processing is made according to all applicable items of § 1951.210(e) (1) through (14) of this subpart. In addition:

(1) *When reamortization of one or more notes is proposed in connection with the merger, § 1951.207(f) of this subpart will be followed.*

(2) If the loan is held by an insured lender, then the loan will be assigned to FmHA.

(d) *Merger not completed.* If for any reason the merger is not completed after the statement of the account has been received, the Finance Office will be notified to resume servicing of the account in the name of the existing borrower.

§ 1951.212 Special provisions applicable to Economic Opportunity (EO) Cooperative loans.

(a) *Withdrawal of member and transfer to and assumption by new members of Unincorporated Cooperatives.* (1) Withdrawal of a member who is no longer utilizing the services of an association and transfer of withdrawing member interest in the association to a new member who will assume the entire unpaid balance of the indebtedness of the withdrawing member may be permitted, if the remaining members agree to accept the new member and the transfer will not adversely affect the collection of the loan. The Servicing Office will submit to the State Office the borrower case file and the following—

(i) Form FmHA 460-9, executed by the proposed new member;

(ii) Statement of the current amount of the indebtedness involved;

(iii) A description and statement of the value of the security property;

(iv) A memorandum to justify the transaction;

(v) Form FmHA 440-2, "County Committee Certification or Recommendation";

(vi) Form FmHA 450-12, "Bill of Sale (Transfer by Withdrawing Member)," executed by the withdrawing member; and

(vii) Exhibit B of this subpart, "Agreement for New Member (With or Without Withdrawing Member)," (available in any FmHA Office) as executed by remaining members of the association, the proposed new member, and the withdrawing member.

(2) If, after review of the above information, the State Director determines that the proposed new member is an eligible applicant and that the transfer is justified, the State

Director may approve the transfer and assumption by executing Form FmHA 460-9.

(3) Upon completion of the above actions, the State Director may release the outgoing member from personal liability. Form FmHA 465-8 will be used for this purpose.

(4) Form FmHA 460-9 and, if applicable, Form FmHA 465-8 should immediately be forwarded to the Finance Office and the Finance Office advised by memorandum that these forms are intended only to establish liability for a new member and release an old member from liability.

(b) *Withdrawal of members from Unincorporated Cooperatives.* (1) *Withdrawal when new member not available.* Withdrawal of a member who is no longer utilizing the services of an association may be permitted even though a new member is not available, if:

(i) The State Director determines that:

(A) The remaining members have sufficient need for the property, and

(B) The withdrawal of the member will not adversely affect the collection of the loan.

(ii) The remaining members obtain from the outgoing member an agreement conveying the outgoing member's interest in the cooperative property to them. They may also wish to agree to protect the outgoing member against liability on the debt owed to FmHA as well as any other debts. Exhibit C of this Subpart, "Agreement for Withdrawal of Member (Without New Member)," (available in any FmHA Office) may be used by the cooperative for the preparation of the agreement. The agreement will be between the withdrawing member and the remaining members of the cooperative; FmHA will not be a party to it.

(c) *Addition of new members (no withdrawing member or transfer involved) for both Incorporated and Unincorporated Cooperatives.* (1) A new member may be admitted to the association even though there is no withdrawing member, if:

(i) The members of the association agree to accept the proposed new member, and

(ii) The State Director determines that the association owns adequate facilities to provide service to the new member.

(2) The Servicing Office will submit to the State Office the Servicing Office file and the following:

(i) Form FmHA 460-9 executed by the proposed new member;

(ii) Servicing Office statement of the current amount of the indebtedness involved;

(iii) A description and statement of the value of the security property;

(iv) A memorandum to justify the transaction;

(v) Form FmHA 440-2; and

(vi) Exhibit B (available in any FmHA Office) as executed by the members of the association and the proposed new member.

(3) If, after review of the above information, the State Director determines that the proposed new member is an eligible applicant and the transaction is justified, the State Director may approve the transaction by executing Form FmHA 460-9.

(4) Form FmHA 460-9 should immediately be forwarded to the Finance Office and the Finance Office advised by memorandum that the form is intended only to establish liability for a new member.

(d) *Deceased members of Unincorporated Cooperatives.* Paragraph 10 of Form FmHA 442-24, "Operating Agreement," provides that in case of the death of any member, the heirs or personal representative of the deceased member shall take the deceased member's place in the association. This provision also covers sale of the decedent's interest in the association in case the sale is necessary for the payment of the debts of the estate.

(1) If the heirs or personal representative do not wish to continue membership in the association, the remaining members may be permitted to continue to operate the property if FmHA's financial interest will not be jeopardized. The remaining members should obtain from the deceased member's estate an agreement conveying the estate's interest in the cooperative property to them. The remaining members may wish to agree to protect the estate against liability on the debt to FmHA as well as any other debts of the cooperative.

(2) The requirement of § 1962.46 (h) of Subpart A of Part 1962 will also be followed.

(e) *Action which affects individual members of Unincorporated EO Cooperative security.* The borrower will be expected to protect the borrower's own interest in condemnation, trespass, quiet title, and other cases affecting the security. The Servicing Office will immediately furnish the complete facts concerning any action taken against individual members of Unincorporated Cooperatives to the State Director together with the Servicing Office case file.

§ 1951.213 Care, management and disposal of acquired property.

Property acquired by FmHA will be handled according to Subparts B and C of Part 1955.

§ 1951.214 Water and waste disposal systems which have become part of an urban area.

(a) *Servicing.* Water and/or waste disposal systems serving what were formerly rural areas, but which have become part of an urban area due to the growth of an urban community are serviced as follows:

(1) Service may not be curtailed or limited by the inclusion of a system within an urban area;

(2) The borrower may continue to operate the system; or

(3) The borrower may agree to transfer the system to the urban community, provided that:

(i) The urban community will purchase the facility and immediately pay the FmHA debt in full; or

(ii) The urban community will accept a transfer of the FmHA debt on an ineligible applicant basis; or

(iii) If (a)(3)(i) and (ii) of this section are not practical, and with the prior approval of the National Office, the urban community will operate and maintain the system on the basis of a lease-purchase arrangement with the FmHA borrower whereby:

(A) The urban community will:

(1) Assume responsibility for operation and maintenance of the facility, subject to nondiscrimination requirements and other requirements to be specified in the agreement between the parties which are applicable to the borrower, and

(2) Pay the association annually an amount necessary to enable it to meet all its obligations including reserve account requirements.

(B) The FmHA borrower will:

(1) Retain its corporate existence until FmHA has been paid in full, and if the parties desire,

(2) Convey title of the facility to the urban community when the FmHA debt has been paid in full.

(C) The provisions of § 1951.207(g)(1)(vii) of this subpart are not applicable to such lease-purchase arrangements.

(b) *Processing.* The State Director, with advice and guidance of OGC, will review the proposed agreement drafted by the borrower or the urban community. This draft agreement with the docket, any additional pertinent information, the State Director's recommendation, and OGC's comments will be forwarded to the National Office for review and approval authorization.

§ 1951.215 Water and waste disposal, industrial development, energy impacted area development assistance and other grants.

All grants are to be supervised and serviced to assure that the terms and conditions of the grant are met. In any case where it appears that the terms or conditions of the grant may have been violated, the State Director will forward the docket to OGC for review and comments. After receipt of OGC's comments, the State Director will forward the docket, together with a copy of OGC's comments, statement of the essential facts, and the State Director's recommendations, to the National Office for further action.

§ 1951.216 State Director's additional authorizations and guidance.

(a) *Promote financing purposes and improve or maintain collectibility.* State Directors are authorized to perform the following functions when they determine that the action is likely to promote the loan or grant purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan:

(1) Approve requests for permission to make changes in rules and regulations of recipients whether included in bylaws or resolutions or ordinances including changes in rate schedules and fees.

(2) Give approval for recipient to incur additional indebtedness subject to applicable FmHA instructions.

(3) Renew existing security instruments.

(4) Approve, with OGC's concurrence, changes in a recipient's legal organization including revisions of articles of incorporation or charter and bylaws.

(5) Approve the extension of facilities and services.

(6) Require additional security when (i) existing security is inadequate and the loan or security instruments obligate the borrower to give security or (ii) in cases where the loan is in default and additional security is acceptable in lieu of other servicing actions.

(7) Release from mortgages securing Rural Renewal loans properties being sold by the borrower, if the notes and mortgages given by the purchaser to the borrower are equal to the present market value and are assigned and pledged to the FmHA, and any money payable to the borrower is applied as an extra payment on the Rural Renewal loan.

(8) Approve requests for rights-of-way, easements, and for any necessary

subordination connected with rights-of-way or easements.

(b) *Referrals to National Office.* All proposed servicing actions which the State Director is not authorized by this Subpart to approve will be referred to the National Office.

§ 1951.217 Payment in full.

Payment in full of a loan is handled according to Part 1866 (FmHA Instruction 451.4). The District Director will notify the bonding company in writing that the Government no longer has an interest in the fidelity bond. The District Director will release the FmHA's interest in insurance policies according to the applicable provisions of Subpart A of Part 1806 (FmHA Instruction 426.1). The District Director will release the FmHA interest in any other security in the manner prescribed by the State Director.

§ 1951.218 State supplements.

State Supplements will be prepared with the advice and guidance of OGC, as necessary, to carry out this Subpart. Each State Supplement will include all particular information necessary to comply with appropriate State laws and regulations.

§ 1951.219 Forms.

Forms referred to in this Subpart may need to be modified in instances where the forms were designed for application to individuals rather than for corporate execution.

§ 1951.220 Servicing public bodies.

Servicing actions involving public bodies will be processed if feasible, according to the provisions of this Subpart. The State Director is authorized to vary from the provisions to any extent that the State Director, with the advice and concurrence of OGC, determines reasonably appropriate to accomplish the servicing action.

§§ 1951.221—1951.250 [Reserved]**PART 1990—BIOMASS ENERGY AND ALCOHOL FUELS LOANS AND GUARANTEES****Subpart B—Biomass Energy Project Insured Loans****§ 1990.115 [Amended]**

10. Section 1990.115, undesignated first paragraph is amended by revising the reference from "Subpart F of Part 1861 (FmHA Instruction 451.5)" to "Subpart E of Part 1951."

(7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23;

delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.70)

Dated: October 4, 1982.

Charles W. Shuman,
Administrator, Farmers Home
Administration.

[FR Doc. 82-31696 Filed 11-18-82; 8:45 am]

BILLING CODE 3410-07-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule effective date; correction.

SUMMARY: On November 3, 1982, the Farm Credit Administration published a final regulation implementing approval requirements for certain types of loans and specifying which Farm Credit System bank is responsible for approving loans to directors, officers, and employees of System institutions (47 FR 49831). This document corrects the effective date of the final regulation.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza, SW., Washington, DC 20578, (202) 755-2181. Donald E. Wilkinson, Governor, Farm Credit Administration.

The effective date of this regulation is subject to a statutory requirement that no final regulation of the Farm Credit Administration (except in cases of emergency) shall be effective prior to the expiration of 30 calendar days after publication in the Federal Register during which either or both Houses of Congress are in session. At the time this final regulation was published neither House was in session. It is anticipated that Congress will not have been in session for 30 days until sometime during January 1983, however the exact date cannot be determined at this time. In order to avoid the need for a second notice specifying the exact date by which the 30-day period will have expired, the effective date of this regulation will be February 1, 1983.

Accordingly, the Farm Credit Administration is correcting the effective date for 12 CFR 614.4460 as follows:

EFFECTIVE DATE: February 1, 1983.

[FR Doc. 82-31779 Filed 11-18-82; 8:45 am]

BILLING CODE 6705-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 253

[Economic Regs. Issuance of Part 253, Dockets 40772, 38021, 38348; Reg. ER-1302]

Notice of Terms of Contract of Carriage

AGENCY: Civil Aeronautics Board.

ACTION: Final rule; issuance of part.

SUMMARY: The CAB sets requirements for airlines operating in domestic transportation to notify passengers of any incorporation by reference of terms in the contract of carriage. The rules preempt the States from regulating the subject of the notice of contract terms to be given on passengers' tickets. They require carriers to ensure that information on specified terms is available wherever their tickets are sold. The rules clarify the law applicable to notice of airline passenger contract terms after the expiration of domestic tariffs on January 1, 1983.

DATED: Effective: January 1, 1983. (In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the notice requirements in § 253.5 have been submitted to the Office of Management and Budget for approval. They are not effective until OMB approval has been obtained.)

Adopted: September 27, 1982.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Associate General Counsel, Rules & Legislation, or Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION: By a notice of proposed rulemaking (EDR-444, 47 FR 28681, July 1, 1982), the Board asked for comment on the issue of what, if any, rules there should be concerning notice of contract terms in interstate and overseas air transportation after tariffs are eliminated. The Airline Deregulation Act (Pub. L. 95-504) states that domestic tariffs will cease to exist on January 1, 1983. Carriers will no longer be required or permitted to file domestic tariffs for any purpose after that date, and those on file as of that date shall have no force or effect.

Representatives of domestic and foreign air carriers had expressed to the Board their concern and uncertainty over what form their domestic ticketing should take after 1982. Contracts of carriage, as now contained in the tariffs, are long and complex—too much so, in their opinion, to practicably be contained within the size constraints of

the short-form ticket generally used today for passenger air travel. Not only would the actual contracts be impracticably bulky, containing large amounts of verbiage of no interest to the typical passenger, but the differences in the contracts of the different air carriers would make it impossible for travel agents, who ticket all carriers, to use uniform ticket stock as they do now. Travel agent representatives maintained that stocking the contracts of each carrier would be a vast and unjustifiable burden.

The solution they proposed was rules or legislation to allow carriers to continue to "incorporate by reference" on the tickets the contract terms governing carriage, while providing a means for interested persons to learn what any of those terms are. Uniform Federal rules for this inherently interstate activity were necessary, they maintained, because otherwise the State laws governing such matters as contract formation and limitations on liability could present a maze of differing and possibly even conflicting directives.

The Board responded by proposing rules concerning the form of the notice to passengers of the terms of the contract of carriage, including some categories of information it should contain. The proposed rules would require that the passenger be told that contract terms are being incorporated into the contract (that is, the passenger is being bound by terms in another document that is not given with the ticket), and require that those terms be available to the passenger if requested. As proposed, the rule also would have required the highlights of specific terms to be given to the passenger when the contract was made.

The Board has decided to adopt a rule with certain modifications suggested by the commenters. The rule specifically preempts State law with respect to notice about incorporated contract terms. It applies to all operations with large aircraft, including small-aircraft trip segments that are included on the same ticket with a large-aircraft segment. The rule requires notice, to be given with each ticket, that terms are incorporated by reference and that the passenger may obtain a free copy. It further requires that the notice set out certain key subjects that may be of specific interest to the passenger, and that the passenger be able to obtain more information about those terms from any location in the United States where the carrier's tickets are sold.

Comments were received from: the Air Transport Association of America (on behalf of Air California, Air Florida,

Alaska Airlines, Aloha Airlines, American Airlines, Continental Airlines, Delta Air Lines, Eastern Air Lines, Frontier Airlines, Hawaiian Airlines, Midway Airlines, Northwest Airlines, Ozark Air Lines, Pan American World Airways, Piedmont Airlines, Republic Airlines, Trans World Airlines, United Airlines, USAir, Western Airlines, and Wien Air Alaska), the International Air Transport Association, the Regional Airline Association, American Airlines, Atlantic Express Airlines, Empire Airlines, Kodiak Western Alaska Airlines, Midway Airlines, People Express Airlines, Reeve Aleutian Airways, Southwest Airlines, Southcentral Air, Transamerica Airlines, United Air Lines, the State of California Department of Transportation and Department of Consumer Affairs, the Territory of Guam Attorney General, the State of Hawaii Division of Consumer Advocacy, the State of Iowa Department of Aeronautics, the State of Massachusetts Attorney General, the State of Minnesota Attorney General, the State of Nebraska Department of Aeronautics, the State of New Mexico Department of Aeronautics, the State of New York Department of Transportation, the American Automobiles Association, American Express Company, Association of Retail Travel Agents, the American Society of Travel Agents, the Aviation Consumer Action Project, Ms. Patricia Kennedy Butler, and numerous individual commenters.

In general, most of the industry commenters (trade associations and airlines) supported the need and authority for the rule. Many of them suggested changes in the rule, some technical and some involving substantive policy. The technical comments are discussed in the context of the language of the rule, and the substantive comments are discussed in greater detail below. In summary, some of the industry commenters asked that the Board not require travel agents to have on hand copies of the contract of carriage for distribution or copies of the text of the key terms that are listed in the rule. They also suggested that the text of the key terms of the contract be distributed not at the time the ticket is purchased as proposed, but instead be given prior to boarding the aircraft. Some commenters suggested that the requirement for distribution of the key terms be eliminated as unnecessary. The Board has decided to eliminate the distribution requirement for key terms and replace it with an explanation requirement, and also to require copies of the full contract only at carrier-

controlled ticket offices. Some of these commenters also suggested that only the airline's nonfare terms be required to be distributed to passengers, and that there be allowed a charge for distribution of the contracts when requested. The Board did not adopt those suggestions.

People Express Airlines opposed the rule, arguing that there was no need for it. It stated that when domestic cargo tariffs were eliminated in 1979, the industry and the public were able to adjust without the need for uniform rules such as those proposed for passenger service. It further argued that the Board has no authority to implement such a rule preempting the States.

All of the State commenters in general supported the rule, except Massachusetts. Several of the States, in fact, asked that the rule be expanded to include operations by small aircraft. The Board is adopting its alternative proposal in this respect and is proposing to expand the coverage of the rule to all operations by direct carriers (other than those of on-demand air taxi operators) regardless of the size of the aircraft used. The Commonwealth of Massachusetts Attorney General opposed the rule, but made several suggestions for language changes for the rule if the Board did decide to adopt it.¹

The Massachusetts Attorney General argued at length that the Board should not, in view of impending Board sunset, preempt the States with respect to the standard of contract notice. He also argued that the Board lacked the authority to preempt the States. The Aviation Consumer Action Project, in its supplemental comments, and Ms. Patricia Kennedy Butler opposed the rule on somewhat similar grounds. Both argued that there has not been sufficient need shown to justify the Board's preemption of the States in this area, and that the Board lacks the legal authority to adopt this rule. These commenters argued strongly against the changes suggested by the industry trade associations, stating that consumers would be unaware of the contract terms under which they are traveling.

Most of the individual commenters supported the rule; some suggested changes or raised issues that are discussed below.

Need for the Rule

The Board has determined that there is a need for this rule, and that the Board has the authority to adopt it. With

¹ After the close of the comment period, comments were received from State officials of North Carolina and Washington, opposing preemption of State law by the rule. The Washington comment also requested that the listing of enumerated items on the ticket be "open-ended."

the modifications adopted in the final rule, it will provide a flexible framework for the formation of passenger contracts in a regime of domestic air travel without tariffs for the first time in over 40 years.

There are three main reasons for this rule. The first is to ensure that with the ending of the tariff system that amounted to uniform national rules for contracts of carriage, carriers are still able to form their contracts for interstate travel under a set of uniform rules. The second, closely related, is to make easier the use of short-form uniform ticket stock by all marketing outlets, including travel agents. The third is to make sure that the traveling public are able to find out the terms they are "buying into" whenever they purchase an airline ticket, so that they can make an informed choice of carrier, class, and flight, and protect themselves (for example, by buying extra insurance) against undesired risks.

The Board believes that standard short-form ticket stock and efficient interline agreements are important aspects of the smooth operation of the air transportation system. This rule, in the absence of tariffs, will make the use of those techniques far easier. For example, without such ticket stock, it would be far more difficult for airlines and agents to provide ticketing services for trips involving more than one airline or on airlines not having a ticket office in that location, since they would have to have on hand ticket stock of many airlines whose contract terms and notice provisions may differ. Also, without uniform ticket stock, the present Area Settlement Plan, by which agent-written tickets are cleared for reimbursement, would be difficult to operate.

The short-form ticket now allows the airline and the agents to efficiently handle hundreds of thousands of tickets each day. It also sharpens competition by allowing the airlines to change their substantive contract terms quickly without the administrative and financial costs of reprinting and recalling existing ticket stock.

With the end of domestic tariffs on January 1, 1983, the airlines would be subject to the contract law of the States in issuing ticket contracts. Other industries that conduct business and provide services across State lines have used two approaches in adjusting to that situation: (1) Adoption of the rule of the most restrictive State, or (2) adoption of the rule for the State where the contract is issued or is to be used. The first approach, if possible at all, would make use of short-form ticket stock much more difficult and increase the risk of frequent

changes. Under the first approach, airlines would have to constantly monitor and compare the rules of each State and make adjustments for local State law. The States, of course, in adopting their contract rules are primarily concerned with the effects and problems within that State, not the effects on a nationwide service industry that requires smooth and efficient interstate operations. The second is inherently contradictory to a uniform system. Under the second approach, airlines and agents would be required to have separate forms and procedures for each State at each of their ticketing offices, an unreasonable burden on airline interstate operations.

This rule takes a Federal approach to the structure of the contract notice that must be provided. It recognizes that a national approach is needed for the airline industry. These companies continually need to interact with each other, and actually sell each other's services, unlike industries such as credit cards or rental cars that are composed of companies selling only their own product.

People Express Airlines argued that when cargo tariffs were eliminated in 1979, a uniform notice requirement such as this rule was not imposed on the carriers, and there is, therefore, no need for this type of rule for passenger carriers. We disagree. Passenger and cargo service have different characteristics that require different treatment. For example, waybills have traditionally been more complete and sophisticated documents. Further, the consumers of cargo transportation, shippers and traffic managers, deal with contracts for transportation as part of their regular business routine. They know to look for or ask about such terms as liability and the time for filing claims. They are likely to have the finances and time to contest a term that is misapplied. On the other hand, passengers, even business travelers, are generally not educated in the intricacies of contracts of carriage. The American public has come to expect that people can buy an airline ticket without concerning themselves about the many incorporated terms that have a large impact on their rights and duties. For 40 years, they have relied on the Federal Government to supervise those matters.

Thus one of the main reasons for the rule is to ensure that users of passenger air transportation have the information needed to make a judgment about the contract of carriage that they receive. This rule is intended to alert passengers, and prospective passengers, that important terms are incorporated in

ticket contracts and to ensure that information is available to answer their questions about those terms.

The Board recognizes that, in most cases, decisions by passengers about which airline to fly are unlikely to be influenced strongly by the detailed contract terms of a particular airline, other than the featured ones of price, origin and destination, class, and times. The importance of additional information is to enable passengers to take protective or responsive action. For example, if passengers know an airline's baggage liability rules, they might want to purchase extra insurance, or if the time for filing a claim against the airline is short, to take quick action to protect a claim. It is this basic information for decisionmaking that the rule is designed to provide, to help passengers and the industry to do business in an unregulated environment.

Authority for the Rule

We believe that the question of the Board's authority to issue a rule such as this is well settled. Under section 204(a) of the Federal Aviation Act, the Board has the authority to issue those rules necessary to carry out the provisions of the Act. Those provisions can be found in section 102 of the Act, stating its goals, and in Title IV of the Act, stating specific substantive provisions. The goals of the Act support the rule. Under section 102, the Board is to consider in the public interest, in the performance of its duties, the availability of adequate, economic, efficient, and low-priced services, the prevention of unfair and deceptive practices, and the development and maintenance of a sound regulatory environment responsive to the needs of the public, among other things.

In addition, under section 404(a) of the Act, the airlines have, and will continue even after sunset of the Board to have, the duty to provide safe and adequate service. Within the policy set forth by Congress in section 102, the Board may issue such reasonable rules as may be needed in the public interest to ensure that this duty is performed. In an important recent decision closely in point, a U.S. Court of Appeals reaffirmed the Board's power under this provision to issue its smoking rules. *Diefenthal v. CAB*, 681 F.2d 1039 (5th Cir. 1982). In ruling on the validity of that regulation issued under section 404(a), the court stated that even if there is no express provision to issue a specific rule, the Board may regulate as long as its action "reasonably advances the purposes of the enabling statute." (Slip Opinion at p. 3933).

The Board also has the specific authority under section 411 of the Act to prevent potentially unfair or deceptive practices. The Board believes that there is the potential for such practices, with unregulated passenger air service, in the area of incorporation by reference of terms of the travel contract. Without such a rule, the airlines would be subject to the various standards of notice imposed by the States. A consumer might, for example, be led to believe that the terms included in the contract by one airline in one State would be the same for airlines in other States.

The Board disagrees with the Massachusetts Attorney General's position that it is inappropriate for the Board to issue rules on this subject in view of the impending Board sunset in 1985. Congress, in the Airline Deregulation Act of 1978, deliberately phased out domestic tariffs 2 years before Board sunset, so that the Board would still be present to deal with problems caused by the changes. That is what we are doing here. While it is generally accepted that further legislation is needed to implement Board sunset, so that the post-sunset allocation of regulatory duties is as yet unknown, it appears very likely that a successor Federal agency will continue to have power to ensure safe and adequate service, *inter alia* by enforcing rules such as this. Even if that turns out not to be the case, it is clearly the Board's duty to continue to act in the public interest, in its considered judgment, while it still exists.

The Board believes that for these reasons there should be one standard for notice of contract terms for airlines in all States, and that it has ample statutory authority to issue rules to that end.

The Rule

Preemption

Most commenters supported Federal preemption by rule in this area. One commenter suggested that the Board make explicit in the rule its intent to preempt State regulation in this matter. This has been done in § 253.1, *Purpose*. The Minnesota Attorney General suggested that the preemption be more specific so as not to preempt State contract remedies and "plain-language" statutes. The Board agrees with this suggestion with respect to contract remedies, and has clarified the fundamental provision in § 253.4 by stating that the enforcement aspects of the rule are in addition to other remedies at law. The effect and the

validity of State law relating to other aspects of the contracting process, including State "plain-language" statutes, will depend on the detailed provisions of those laws, and cannot be determined in advance within the scope of this proceeding.

The Massachusetts Attorney General argued that the Board lacks the authority to preempt the States by this rule. To some extent this commenter may have misunderstood the intended scope of the rule, in that he spoke of reconciling State and Federal regulation rather than having the State "completely ousted," and that Congress did not intend the CAB's authority over unfair and deceptive practices to "totally occupy the field." In fact, far from totally occupying the field of unfair and deceptive practices, this rule is designed to preempt the States only in one narrow area: the notice that must be given to passengers in cases where an air carrier incorporates some of its contract terms by reference.

Within that narrow area, however, the Board is of the opinion that the law clearly empowers it to preempt the States. Under Article VI of the Constitution, Federal law must prevail over State law that conflicts with, interferes with, or is contrary to it. It is also well established that duly authorized Federal regulations are included among the Federal "laws" that have this preemptive effect on State action. *Free v. Bland*, 369 U.S. 663 (1962); *Paul v. United States*, 371 U.S. 245 (1963); *PUC of California v. United States*, 355 U.S. 534 (1958).

The Massachusetts Attorney General's emphasis upon Congress' intent, or lack of it, to preempt the States on these specific issues is misplaced. Where, as here, Congress has set up an agency to administer a comprehensive program, and the Federal agency is acting within its authority delegated by Congress, it is the agency's intent that determines the scope of preemption. That is the reason why the Board has stated so clearly the preemptive intent of this regulation. Where the Federal authority and intent are clear, there is no need to look to the second test referred to in the Massachusetts comment—whether the State regulation would interfere with the Federal scheme. Even under that test, however, the outcome is clear: uniform national ticketing notice requirements, unhampered by diverse local regulations, are the very essence of this rule.

Applicability

The notice of proposed rulemaking asked for comment on whether the rule,

as an alternative to an exemption for all small aircraft operations, should apply to all airline operations in single-ticket interline air transportation involving large aircraft on at least one segment. The commenters, including representatives of small airlines, generally supported this alternative. They asked, however, that the alternative be expanded to include all operations of all air carriers involved in scheduled interstate transportation. Within the scope of the proposal, as required by the Administrative Procedure Act, the Board cannot expand the applicability of the rule in such a fashion in the final rule. The Board is issuing contemporaneously with this final rule a notice of proposed rulemaking asking for comment on the expanded applicability suggested by the commenters. Because of the need to complete action in this proceeding as soon as possible, the Board is allowing 30 days for comment on that proposed change. In the meantime, the Board is adopting the broader alternative proposed in EDR-444. This ensures that the rule applies immediately to those trips where it is most needed: all operations involving large aircraft, including any flight segments by any airlines regardless of aircraft size that are included on the same ticket with a segment using large aircraft. The rule adopted today essentially sets a uniform notice standard for those situations where small-aircraft operators have been filing joint tariffs for the same purpose—to facilitate interline travel and provide information to passengers traveling on more than one carrier.

Several Alaska carriers asked that the rule apply to intra-Alaska passenger and cargo operations. By its terms the rule applies to all interstate and overseas scheduled passenger air transportation, including intra-Alaska markets. As the Board stated in EDR-444, cargo transportation is different in this respect from passenger transportation. As discussed above, cargo transportation does not share the factors that make this rule necessary.

The Board also has clarified the rule's applicability to make it clear that it applies only to those contracts that use incorporation. The rule is not intended to preclude carriers from giving the passenger the entire contract if they prefer. Nor are carriers precluded from providing more notice than the rule requires.

Incorporation by Reference

In the proposal, the Board stated that if the airline did not follow the requirement for notice to passengers in the rule, it could not claim the benefit

against the passenger of any term incorporated by reference in the ticket contract. The proposed rule also required airlines to make the full text of its ticket contract available for inspection wherever its tickets were sold and to provide copies of the contract to passengers upon their request.

In response to the comments, the Board has made some clarifications and modifications in this section of the rule. It was the Board's intent to affirmatively allow, by Federal rule, airlines to incorporate terms by reference into their ticket contracts. Section 253.4 has been reworded to make this point clear. Further, as suggested in the comments, the Board has modified the provisions of the rule to make clear that the "penalty" of an airline not being able to enforce a term only applies with respect to a passenger who has not received the required notice. As proposed, the rule could have been interpreted to void an airline's contracts with all passengers upon a particular noncompliance with the rule at any time.

The Air Transport Association of America (ATA), the International Air Transport Association (IATA), and Southwest Airlines all suggested changes in the penalty provision of § 253.4(a) of the proposed rule. That is the provision that states that an air carrier may not claim the benefit, as against a passenger, of contract terms incorporated by reference if the notice requirement of the rule has not been followed. ATA and IATA suggested a change in wording to state that no passenger "shall be bound by the contract terms if notice is not given to that passenger as required." In addition, Southwest (incorporating its comments in D. 38348) argued that this part of the rule is unlawful because the Board has no authority to interfere in the common law of contracts with respect to ticket contracts.

As discussed above, the Board does have the legal authority to issue the rule. Southwest is correct, however, that it is the purpose of the rule to set the standard (altering common-law rules as applicable) for contract law notice with respect to airline ticket contracts. Without the enforcement mechanism of voiding the contract term, the penalty for violating the rule would be limited to a civil penalty action against the airline. The passenger, however, could still be disadvantaged in such a case if the term were still considered valid. Civil penalties will in most cases be far less effective, and far more costly to administer, than simply voiding the term

and allowing the passenger to pursue available remedies.

The courts will still have an important role to play in determining whether the notice given was "conspicuous," and if so whether the term itself is proper. The airlines may in that context still raise the defense that conspicuous notice was given and that the passenger should be held to the contract. It is only where the required notice is found not to be conspicuous or not given at all that the penalty provision voiding the term comes into effect.

The Board is adopting IATA's and ATA's language in addition to that in the proposed rule and is retaining the enforcement mechanism as proposed. If the IATA and ATA language were adopted as a substitute, as suggested, it might arguably appear to address only one side of the contract, the passenger's duty and the resulting penalty if the duty is not followed. The combination of the two proposals, in any event, seems to cover each type of transaction adequately and effectively.

In § 253.4(b), the Board is adopting the suggestion that the full text of the contract of carriage be made available for public inspection only at the airlines' airport and city ticket offices rather than at all ticket sales locations, as proposed. This change was suggested by ATA, IATA, and the American Society of Travel Agents. The full text of tariffs is now required to be available only at airport and city ticket offices in most cases. The Board is persuaded that the proposed requirement would place an unnecessary and costly burden on the airlines and at the same time could overburden travel agents with volumes of contracts for each airline. As IATA points out, this is a subject that is best left to the airlines' relationship with the agent rather than imposed by regulation. In addition, if the airlines were required to distribute each change in the contract text to travel agents and ensure that the agent copy was correct, terms could not be changed as quickly in response to competition.

The Association of Retail Travel Agents (ARTA) asked that the carriers be required to provide copies of the full contract text to their agents because they need to know the terms of the contract that they are selling to the public. While it is undoubtedly true that a better informed agent can better service the public, the Board believes that those travel agents that have the most need for the text will arrange to obtain it from the airline. The benefits of requiring such a distribution by the carrier do not outweigh the burdens that it would impose.

At the same time, recognizing ARTA's concern that its customers should have easy access to the contract, the Board is adopting IATA's suggestion that each carrier make available at each ticket outlet (including travel agents) information about how passengers can obtain a copy of the contract text. The Board is not adopting IATA's and ATA's suggestion that a request for a copy of the contract must be in writing, as confusing and unnecessarily restricting. In practice, a travel agent or ticket agent will have to write, or have the passenger write, the pertinent name and address for any request to be processed. In response to ATA and IATA suggestions, to allow flexibility the carrier response is to be by mail or other delivery service.

IATA, ATA, and Transamerica further suggested that only the full text of *nonfare* terms and conditions be required to be given to the passenger upon request. Transamerica argued that since the fare conditions change now on a frequent basis, it would be impossible for the carrier to keep its contract current, and that changes would be confusing to passengers. The Board considers that fare terms and conditions are some of the most important matters for the passenger. The Board is therefore not adopting this change. Carriers must publish changes in fares to its agents and ticket offices in a manner so that they can be understood. This same business necessity should therefore be easily adapted to contract changes.

Because of problems encountered in the past by persons wanting to inspect tariffs and rules at carrier offices, carriers should make clear to airline employees that the text required to be available under this rule is public information, and ticket counter personnel should have authority to readily release the information.

Notice of Incorporated Terms

ATA, IATA, and the Minnesota Attorney General made several suggestions to change the required general incorporation notice. Most of them have been adopted, since they were in response to changes in § 253.4. The Minnesota Attorney General suggested that the notice explain in more detail how the text of terms can be obtained. The Board has added a requirement that information sufficient to order the full text be available at each location where a carrier's tickets are sold.

In the proposal, the Board would have required that the substantive text of certain terms be given to passengers before boarding—normally with their tickets. This was in accordance with the

original communications from airline representatives (now in this docket). This turned out, however, to be the most important and controversial issue to the airline and travel agent commenters, who opposed it strongly. They pointed out that this requirement would make it difficult or impossible to use uniform ticket stock (despite their earlier representations), one of the main reasons for the rule, and would make it much more expensive for the airlines to change any of their terms. Furthermore, it might tend to have the competitively undesirable effect of causing the industry by parallel action to standardize all its terms in these areas.

The Board reluctantly agrees that these industry arguments have merit, although enhanced consumer information is one of the main intended benefits of the rule. In order to preserve this aspect of the rule, the Board is requiring a two-step notice to consumers: Each ticket must have a notice, which can and presumably will be standardized, that the contract may incorporate terms in several enumerated areas (as discussed below); and each carrier must ensure that concise and correct information concerning these terms is immediately available to the public wherever its tickets are sold.

The Board has upon consideration decided, however, that terms restricting refunds of passengers' money, or requiring additional payments, are too crucial to be totally incorporated by reference. Where loss of money is concerned, the Board considers that direct, conspicuous, notice of the salient features of the terms, in writing on or with the ticket, must be given if those terms are to be valid. While every detail need not be in the ticket, a phrase such as "this ticket is not refundable" is necessary to alert the public. Actually, it appears most likely that this requirement will impose no additional burden, since for their own commercial reasons carriers would provide such notice in any event. A new § 253.7 has been added reflecting these judgments.

IATA, ATA, and the Minnesota Attorney General also submitted proposed changes to the wording of the key terms of the contract that must be included in the general notice. The Board has accepted some changes and denied others. The purpose of the notice is to alert passengers to ask the right questions about terms that might affect them. The terms that must be included in the notice and the changes adopted in the proposed rule are as follows:

1. *Limits on the air carrier's liability for personal injury or death of passengers.* The proposal had included

language on baggage liability, but that subject, including ticket notice, has been handled in a separate proceeding. Although limits on personal injury liability may be unenforceable in domestic transportation, as suggested by the Minnesota Attorney General, if the carrier attempts to include such a limit passengers should be alerted to it.

2. *Claim restrictions, including time periods within which passenger must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.* The Board disagrees with arguments that this term should not be included in the notice. It is in fact one of the more critical terms about which the passenger needs to be alerted, since many other rights may depend on compliance with it. The Board has changed the format of this category to include "claim restrictions," so as to include an explanation of any restraints (e.g. special forms) on how the claim is to be made.

3. Refund restrictions were originally included, but the Board has decided that they are important enough to require direct ticket notice as discussed above.

4. *Rights of the carrier to change terms of the contract.* As pointed out in the comments, the carrier's right to change unilaterally any term of the contract may be unenforceable with respect to certain terms. The Board has thus deleted the word "any" so as not to mislead the passengers. Any change in the price will have to be noticed like refund restrictions.

5. *Rules about confirmation of reservations, check-in times, and refusal to carry.* The Board adopted ATA's and IATA's change concerning clarification of notice about reservation practices, limiting it to reconfirmations. The Board, however, did not delete notice of refusal to carry as requested. Although as ATA stated this term would cover such general conduct areas as intoxication, it would also cover such topics as carriage of handicapped persons, about which the Board has just issued specific rules. Reference to "oversales" has been deleted, since this subject, including ticket notice, is covered in Part 250.

6. *Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate air carriers or aircraft and rerouting, and policy on compensation for delay or nonperformance.* The Board accepted the suggested change made by ATA and by the Minnesota Attorney General.

One additional change is made in the notice requirement of specific key terms. As pointed out in the comments, it is important that passengers know how to obtain additional information if desired.

The rule now requires the notice to state that information about the listed key terms can be obtained at any ticket outlet in addition to the availability of the full contract upon request at carrier ticket offices.

Explanation of Key Terms

As originally proposed, the rule would have required the airlines to give the passenger a summary of terms listed above. As explained above, the Board has reluctantly agreed that such a requirement is probably impracticable. The intent of the requirement was to give passengers the answers to the problems that they most often face in air travel. The Board continues to believe that it is important that this information be readily available to passengers who desire it at the point of ticket purchase. In making the requirement, the Board is stating it in performance terms, to give carriers and agents latitude to use the most efficient means for their situation. The Board is therefore requiring that concise and immediate information about the terms listed in the required notice be readily available to passengers upon request at the locations where the carrier's tickets are sold.

This requirement may be met in any manner that the carriers and their agents and ticket outlets consider practical and reasonable. It may consist of keeping ready for passenger inspection at ticketing locations a concise summary of the terms in question. (They could, for example, be included in the Official Airline Guide.) Or, it may consist of a telephone number, where informed personnel will give immediate answers to agents' questions. It might even be displayed upon queries through agents' computer terminals. If the ticket is mailed to the passenger, it should include a reasonable and quick method for the passenger to obtain the information. The Board believes that this type of performance requirement will allow flexibility to the travel industry, while providing important and timely information to passengers.

Carriage Without Advance Tickets

The Board has decided to delete the proposed section on this subject. Part of this section was intended to cover the eventual possibility that written tickets might not be issued and that some type of permanent nonwritten records might be used as a substitute, and also cover situations such as "shuttle" services where ticket sales take place on board, often after takeoff. For both cases, the proposed section stated that the required notice must be given prior to boarding. Upon consideration of the

comments and the changes made from the proposal, the Board has decided that it is sufficient for the notice to be included with the actual ticket sale, with the information needed to answer passengers' questions available at that time. Passengers who board before ticketing have in fact opted to take their chances on the airline contract. If they want information ahead of time, they can still obtain it through any on-the-ground ticket outlets. Carriers, of course, may at their discretion provide information in advance of boarding in greater detail.

Other Matters

ATA in its comments included a sample ticket notice to meet the requirements of the rule including ATA's recommended changes. Aside from the changes in the notice required by the decisions discussed in this issuance, the Board notes that the notice appears to make no distinction between domestic and foreign air transportation. Tariffs will continue for travel in foreign air transportation. So that there is no confusion in this regard, any notice on or with the ticket should make clear that the applicability of tariffs only applies to foreign air transportation.

The Minnesota Attorney General questioned whether there would be any penalty outside of contract law for carriers refusing to comply with the rule. The Board has civil penalty authority under section 901 of the Act, can issue cease and desist orders, and can seek injunctive relief from a U.S. District Court if needed. However, we would expect that the primary enforcement mechanism would be contract law at the local level.

Some commenters argued that airlines should be able to impose a reasonable charge on passengers for the costs of receiving a copy of the text of the contract. They stated that to require a free copy would impose a larger proportional burden on small carriers. The Board believes that when two parties agree to a contract each should have equal access to the text of that contract. Since normal business practice would require that a substantial number of copies be made to distribute to ticket outlets and airline offices, the extra number needed for passenger requests should not impose a large added cost. The cost should also serve as an incentive to keep the document concise. The Board is thus retaining the requirement to give passengers a free copy of the contract upon request.

Two other procedural points were raised by the commenters. Two commenters argued that if the changes

proposed by ATA and IATA were adopted in some form, the Board should issue another notice of proposed rulemaking asking for comment on the change. The Board has adopted some of these suggested changes and make other changes of its own. The Board is aware that if a final rule deviates so significantly from the notice of proposed rulemaking that the interested parties have effectively been deprived of an opportunity for comment, the action may be found wanting under section 553 of the Administrative Procedure Act. We are, however, of the opinion that such is not the case here. Considering the urgent need of the carriers to know the applicable rules so that they can begin ticketing for flights after December 31, the Board cannot justify another round of comments on the rule. Most of the changes are matters of detail and clarification. The main change is in the notice of salient terms. The proposal would have required carriers to furnish their particularized contract terms on specified subjects with each ticket. The final rule limits this requirement to refund or price-change information. Otherwise it requires that these important subject areas be noted conspicuously on or with the ticket, but that information about the actual terms be available upon request of passengers wherever the carrier's tickets are sold. The final rule is less burdensome for the carriers and agents, who are enabled to continue to use standardized short-form ticket stock, while at the same time providing a comparable level of information to the public. The Board concludes that the final rule is legally and practically within the scope of the proposal.

The Board will review the operation of this rule within the next year, and determine whether it should be retained, modified, or revoked.

One commenter argued that if the Board required that copies of the terms of the contract be given free to passengers when they ask, the Board should do a Regulatory Impact Statement of the rule's costs and burdens and ask for comment on that Statement. The Board's policy statement (14 CFR 399.72) states that the Board will perform such an analysis if the rule would have an annual effect on the economy of \$100 million or more, would result in major increase in costs or prices or decrease in revenues for the industry, levels of government, or geographic regions, or where the Board finds that such an analysis is needed because of the importance or burden created by the rule. The Board finds that this rule does not meet those criteria. As

adopted, the rule is imposing on the airlines loss of a burden than would be imposed by normal business and legal practice. In fact, the rule was proposed originally at the carriers' own request, to save costs that they foresaw without it. The costs involved in providing copies of contracts by mail upon requests, and explaining terms to passengers, will not have an effect on the economy of \$100 million or more, and will not have a significant major effect on the prices, revenues, or costs of the industry, government, or any geographic region. Nor does the Board believe that this rule is so burdensome or costly as to warrant a Regulatory Impact Analysis on other grounds.

A definition section has been added, with standard definitions from other rules for "ticket office" and "large aircraft," but with a new definition of "passenger" to make sure that the information required is available to prospective as well as actual passengers.

Termination of Rulemaking

In Docket 38021 (EDR-396, 45 FR 25817, April 16, 1980) and Docket 38348 (EDR-404, 45 FR 42629, June 25, 1980), which were consolidated into EDR-404B (46 FR 35936, July 13, 1981), the Board proposed various alternatives concerning the domestic passenger contract of carriage. Those alternatives included eliminating the filing of rules tariffs and the revision of all Board-required notices. The Board believes that this rule, the ongoing revision of the Board's tariff regulations in 14 CFR Part 221, and its consumer-rule proceedings such as those on baggage liability and oversales make continuation of the previous rulemaking unnecessary. The Board is thus terminating the rulemakings in Dockets 38021 and 38348.

Effective Date

This rule is effective for tickets sold on or after January 1, 1983. That date coincides with the statutory expiration of tariff filing under the Airline Deregulation Act. Carriers may bring their ticketing practices into compliance with the rule before that date, at their discretion.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Board certifies that none of the proposed changes will, if adopted, have a significant economic impact on a substantial number of small entities. The Board adopted the alternative proposal in the notice of proposed rulemaking. That alternative does affect small carriers that interline

with large aircraft operators. Its economic impact, with the changes made in the rule, as discussed above, is not likely to be significant. It involves only minor changes in the ticketing process of those carriers, who generally favored their inclusion in the rule's scope.

List of Subjects in 14 CFR Part 253

Advertising, Air carriers, Air transportation, Claims, Consumer protection, Law, Travel.

Accordingly, the Civil Aeronautics Board amends 14 CFR chapter II by adding a new Part 253, Notices of Terms of Contract of Carriage, as follows:

1. The Table of Contents of 14 CFR Chapter II is amended to read:

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

Part

* * * * *

253 Notice of Terms of Contract of Carriage.

* * * * *

2. Subchapter A of 14 CFR Chapter II is amended by adding a new Part 253 to read:

PART 253—NOTICE OF TERMS OF CONTRACT OF CARRIAGE

Sec.

253.1 Purpose.
253.2 Applicability.
253.3 Definitions.
253.4 Incorporation by reference in the contract of carriage.
253.5 Notice of incorporated terms.
253.6 Explanation of incorporated terms.
253.7 Direct notice of certain terms.

Authority: Secs. 204, 404, 411, Pub. L. 85-726, as amended, 72 Stat. 743, 760, 769; (49 U.S.C. 1324, 1374, 1381).

§ 253.1 Purpose.

The purpose of this rule is to set uniform disclosure requirements, which preempt any State requirements on the same subject, for terms incorporated by reference into contracts of carriage for scheduled service in interstate and overseas passenger air transportation.

§ 253.2 Applicability.

This rule applies to all scheduled direct air carrier operations in interstate or overseas air transportation involving large aircraft, including any flight segments, regardless of aircraft size or the identity of the carrier, that are included on the same ticket with a flight segment using large aircraft. It applies to all contracts with passengers, for such operations, that incorporate terms by reference.

§ 253.3 Definitions.

"Large aircraft" means any aircraft designed to have a maximum passenger capacity of more than 60 seats.

"Passenger" means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, air transportation.

"Ticket office" means station, office, or other location where tickets are sold that is under the charge of a person employed exclusively by the carrier, or by it jointly with another person.

§ 253.4 Incorporation by reference in the contract of carriage.

(a) A ticket or other written instrument that embodies the contract of carriage may incorporate contract terms by reference (i.e., without stating their full text), and if it does so shall contain or be accompanied by notice to the passenger as required by this part. In addition to other remedies at law, an air carrier may not claim the benefit as against the passenger of, and the passenger shall not be bound by, any contract term incorporated by reference if notice of the term has not been provided to that passenger in accordance with this part.

(b) Each air carrier shall make the full text of each term that it incorporates by reference in a contract of carriage available for public inspection at each of its airport and city ticket offices.

(c) Each air carrier shall provide free of charge by mail or other delivery service to passengers, upon their request, a copy of the full text of its terms incorporated by reference in the contract. Each carrier shall keep available at all times, free of charge, at all locations where its tickets are sold within the United States information sufficient to enable passengers to order the full text of such terms.

§ 253.5 Notice of incorporated terms.

Each air carrier shall include in or with a ticket, or other written instrument given to a passenger, that embodies the contract of carriage and incorporates terms by reference in that contract, a conspicuous written notice that—

(a) Any terms incorporated by reference are part of the contract, passengers may inspect the full text of each term incorporated by reference at the carrier's airport or city ticket offices, and passengers have the right, upon request at any location where the carrier's tickets are sold within the United States, to receive free of charge by mail or other delivery service the full text of each such incorporated term;

(b) The incorporated terms may include and passengers may obtain from

any location where the carrier's tickets are sold within the United States further information concerning:

(1) Limits on the air carrier's liability for personal injury or death of passengers.

(2) Claim restrictions, including time periods within which passengers must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(3) Rights of the carrier to change terms of the contract. (Rights to change the price, however, are governed by § 253.7).

(4) Rules about reconfirmation of reservations, check-in times, and refusal to carry.

(5) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate air carrier or aircraft, and rerouting.

§ 253.6 Explanation of incorporated terms.

Each air carrier shall ensure that any passenger can obtain from any location where its tickets are sold within the United States a concise and immediate explanation of any terms incorporated by reference, concerning the subjects listed in § 253.5(b).

§ 253.7 Direct notice of certain terms.

A passenger shall not be bound by any terms restricting refunds of the ticket price, imposing monetary penalties on passengers, or permitting the carrier to raise the price, unless the passenger receives conspicuous written notice of the salient features of those terms on or with the ticket.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-31687 Filed 11-18-82; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION**16 CFR Part 305****Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Water Heaters**

AGENCY: Federal Trade Commission.

ACTION: Rule related notice.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a

size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year. The cost ranges for water heaters have not changed by as much as 15% since the last publication. Therefore, the ranges published in the **Federal Register** on March 25, 1980 for oil and electric water heaters, and on April 17, 1980 for gas water heaters remain in effect until new ranges are published.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-376-2891, or Lucerne D. Winfrey, 202-376-2805, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 [EPCA] ¹ required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule ² covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980.

¹ Pub. L. 94-163, 89 stat. 871 (Dec. 22, 1975).

² 44 FR 66466, 16 CFR Part 305 (November 19, 1979).

Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual cost or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published³ ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.10(a) of the rule requires that manufacturers, after filing this initial report, shall report the same information annually by specified dates for each product type.⁴ If an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the rule, publish a revised version of the new ranges. Otherwise, the Commission must publish a statement that the prior ranges remain in effect for the next year.

The annual reports for water heaters have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the initial publication of the ranges on March 25 and April 17, 1980.

In consideration of the foregoing, the present ranges for water heaters will remain in effect for the next year.

List of Subjects in 16 CFR Part 305

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

(Sec. 324 of the Energy Policy and Conservation Act, 42 U.S.C. 6294 (1975), as amended by the National Energy Conservation Policy Act, 42 U.S.C. 6291

³ 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 26036 (April 17, 1980), 46 FR 3829 (January 16, 1981).

⁴ Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerators, refrigerator-freezers, freezers and water heaters are due by August 1.

(1978); sec. 553 of the Administrative Procedure Act, 5 U.S.C. 551))

Carol M. Thomas,
Secretary.

[FR Doc. 82-31776 Filed 11-18-82; 8:45 am]
BILLING CODE 6750-01-M

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Furnaces

AGENCY: Federal Trade Commission.

ACTION: Rule related notice.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the *Federal Register* if the upper or lower limits of the range change by 15 percent or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year.

The ranges of energy efficiencies for furnaces have not changed by as much as 15 percent since the last publication. Therefore, the ranges published on March 25, 1980 and April 17, 1980 remain in effect until new ranges are published.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-376-2891, or Lucerne D. Winfrey, 202-376-2805, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA)¹ required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and

ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule² covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual cost or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published³ ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.10(a) of the rule requires that manufacturers, after filing this initial report, shall report the same information annually by specified dates for each product type.⁴ If an analysis of the new data indicates that the upper or lower limits of any of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the

² 44 FR 86466, 16 CFR Part 305 (November 19, 1979).

³ 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 26036 (April 17, 1980), 46 FR 3829 (January 16, 1981).

⁴ Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerator-freezers and freezers are due by August 1.

¹ Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).

rule, publish a revised version of the new range or ranges. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for furnaces have been received and analysed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the initial publication of the ranges on March 25, 1980 and April 17, 1980.⁵

In consideration of the foregoing, the present ranges for furnaces will remain in effect for the next year.

List of Subjects in 16 CFR Part 305

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

(Sec. 324 of the Energy Policy and Conservation Act, 42 U.S.C. 6294 (1975), as amended by the National Energy Conservation Policy Act, 42 U.S.C. 6291 (1978); sec. 553 of the Administrative Procedure Act, 5 U.S.C. 551)

Carol M. Thomas,
Secretary.

[FR Doc. 82-31115 Filed 11-18-82; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 82-220]

Customs Regulations Amendments Relating to Safety Standards for Boats and Associated Equipment

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the joint regulations of the Customs Service and the Coast Guard relating to safety standards for foreign-made boats and associated equipment. These changes, which are designed to clarify certain filing requirements, eliminate bond requirements in some instances, and implement a more reasonable time limit for the completion of repairs or alterations to such boats and equipment, are expected to reduce compliance burdens on importers and correct problems encountered under the existing regulations.

EFFECTIVE DATE: December 20, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Ellison, Office of Boating, Public, and Consumer Affairs (G-BBS-

1/42), Room 4213, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593 (202-426-1065), or H. C. Feese, Duty Assessment Division, Room 4118, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8651).

SUPPLEMENTARY INFORMATION:

Background

Section 11 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1460), provides that the Secretaries of Transportation and the Treasury may, by joint regulations, authorize the importation of boats or associated equipment which do not conform with applicable Federal safety regulations and standards upon terms and conditions which will assure that the boats or associated equipment will be brought into conformity before being used on waters subject to the jurisdiction of the United States.

Under this authority, Customs and the Coast Guard published T.D. 76-166 in the *Federal Register* on June 10, 1976 (41 FR 23398), setting forth a new section 12.85, Customs Regulations (19 CFR 12.85), relating to safety standards for boats and associated equipment.

Section 12.85 provides that boats and associated equipment will be denied entry into the customs territory of the United States unless accompanied by evidence of compliance with the standards or regulations. Evidence of compliance may consist of either a compliance certification label affixed to the product or a hull identification number affixed by the importer or the original manufacturer.

Certain products may be permitted entry and release without a compliance certification label or hull identification number if they fall within one of the following categories and if the conditions for entry and release specified in section 12.85 for each category of product are met.

1. Products manufactured before an applicable standard or regulation was in effect.
2. Products exempted from standards or regulations by a Coast Guard Grant of Exemption.
3. Products not in conformity at the time of entry but which will be brought into conformity.
4. Products belonging to nonresidents which are not in conformity and are entering the United States for repair or alteration.
5. Products owned by certain foreign government or international organization personnel.
6. Products entered for tests or experimentation.

Following the issuance of section 12.85, the Coast Guard began an

Imported Boats Compliance Program. Project managers for the Coast Guard and Customs reevaluated the program and found it to be deficient in several areas. After numerous meetings between Customs and the Coast Guard, it was determined advisable to modify the program and revise the regulations. Subsequently, a discussion of modifications of proposed regulations amendments was set forth in a notice of proposed rulemaking published in the *Federal Register* on December 15, 1981 (46 FR 61142).

Analysis of Comments

Only one comment was received in response to the notice. The commenter is opposed to the 1-year limitation in proposed § 12.85(c)(6) in which to enter boats for racing. He claims that 1 year would not allow sufficient time for adequate testing and proper utilization of such equipment. He recommends a 5-year period.

The commenter further contends that proposed § 12.85(d)(6) should be eliminated. This provision would require the identity, if known, of the city or state in which the product will be principally located to be included on the declaration filed with Customs. He argues that it would be impossible to identify the principal location of the boat because race boats typically are moved from one location to another and pre-race testing is generally conducted at sites other than the official race location. Thus, the very nature of boat racing makes it impossible to predict accurately or to plan, with any degree of certainty, the detailed locations of pre-race testing or the races themselves.

Both Customs and the Coast Guard are opposed to the 5-year entry period recommended by the commenter. However, to be consistent with Customs statutes and regulations governing similar temporary importations, § 12.85(c)(6) is being modified to provide for a 1-year period with extensions of up to 3 years at the discretion of the district director.

The suggestion to eliminate § 12.85(d)(6) cannot be adopted. This provision and § 12.85(c) are designed to provide proper control over boats which do not comply with the regulations but which are permitted into the United States on strictly a temporary basis. The changes proposed by the commenter would cause Customs and the Coast Guard to lose such control and the ability to ensure compliance with the regulations.

After careful analysis of the comment and further review of this matter, the 1-year limitation for entry of boats for

⁵ 45 FR 19520, 45 FR 26036.

racing and associated equipment under § 12.85(c)(6) is adopted, with the addition that this period may be extended at the discretion of the district director of Customs for one or more additional periods, not to exceed a total of 3 years. The other changes to § 12.85 are adopted as proposed.

Lists of Subject in 19 CFR Part 12

Customs duties and inspection, Imports, Importers, Marine safety.

Regulations Amendments

PART 12—SPECIAL CLASSES OF MERCHANDISE

Section 12.85, Customs Regulations (19 CFR 12.85), is amended as follows:

§ 12.85 Coast Guard boat and associated equipment safety standards. [Amended]

1. Section 12.85(c)(1) is amended by removing the last sentence.
2. Section 12.85(c)(4) is amended by removing "60 days" and inserting "1 year" wherever it appears.
3. Section 12.85(c)(4) is further amended by removing the last sentence.
4. Section 12.85(c)(6) is amended by revising it to read as follows:

(c) * * *
 (6) *Certain products entered for tests, experiments, exhibits, or races.* An importer or consignee seeking to enter a product for period not to exceed 1 year, for tests, experiments, exhibits, or races but not for sale in the United States, shall file a declaration in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is importing the product solely for the stated purpose and that it will not be sold or operated in the United States, unless the operation is an integral part of the stated use for which the product was imported. The importer or consignee shall attach to the declaration a description of use for which the product is being imported, the time period estimated for completion, and disposition to be made of the product after completion. Entry under this paragraph may be authorized for a period not to exceed 1 year from the date of importation. However, this period may be extended at the discretion of the district director for one or more additional periods which, when added to the initial 1-year period, shall not exceed a total of 3 years.

5. Section 12.85(d) is amended by revising it to read as follows:

- (d) *Declaration requirements.* All declarations submitted must:
- (1) Be filed at the time of entry, in duplicate on Form CG-5096.

- (2) Be signed by the importer or consignee.
- (3) State the name and U.S. address of the importer or consignee.
- (4) State the entry number and date.
- (5) Provide the make, model, and hull identification number, if affixed, or date of manufacture if hull identification number not affixed, of any boat, and a description of any equipment or component.
- (6) Identify, if known, the city or state in which the product will be principally located.
- (7) Be sent by the district director, to the Commandant (G-BBS-1/42), U.S. Coast Guard, Washington, D.C. 20593.

* * * * *
 6. Section 12.85(e)(2) is amended by revising it to read as follows:

- (e) *Release under bond.*
 (1) * * *
 (2) *Time limitation to produce statement for which bond is obligated.* Within 180 days after entry, the importer or consignee shall deliver to both the district director and the Commandant, U.S. Coast Guard, a copy of the statement for production of which the bond was obligated. If the statement is not delivered to the district director for the port of entry of the product within 180 days after the date of entry, the importer or consignee shall deliver or cause to be delivered to the district director the product that was released in accordance with this paragraph.

* * * * *
 (R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, as amended, secs. 5, 6, 7, 11, 15, 85 Stat. 215, 216, 217, 219 [5 U.S.C. 301; 19 U.S.C. 66, 1623, 1624; 46 U.S.C. 1454, 1455, 1456, 1460, 1464] 49 CFR 1.46(n) (1))

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

It is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs

offices and the Coast Guard participated in its development.

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved: November 1, 1982.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

Approved:
 J. S. Gracey,
Commandant, United States Coast Guard.

[FR Doc. 82-31755 Filed 11-18-82; 8:45am]

BILLING CODE 4820-02-M

19 CFR Part 111

[T.D. 82-219]

Customs Regulations Amendment Relating to Discharge of an Importer's Liability for Duties

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: Customs recently published a final rule in the *Federal Register* which provided an alternative procedure for an importer of record to pay duties on imported merchandise through a licensed customhouse broker. That document required brokers to provide a written notification to their clients that if they elect to pay by check, they may pay Customs charges with a separate check payable to the "U.S. Customs Service." One method of notification involves providing the written statement to each active client annually during the month of February beginning February 1983, and during each February thereafter. An active client is defined to mean a client from whom a broker has obtained a power of attorney. Because the notification procedure and definition of active client may create unintended burdensome results, this document amends the Customs Regulations to alleviate these burdens by providing that (1) the broker shall provide the notification statement to each active client annually beginning no later than February 28, 1983, and at least once at any time within each subsequent 12-month period thereafter; and (2) an active client means a client from whom a broker has obtained a power of attorney and for whom the broker has transacted Customs business on at least two occasions within the 12-month period preceding notification.

EFFECTIVE DATE: December 20, 1982.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Edward B. Gable, Jr.,
 Office of Regulations and Rulings
 (202-566-5706)

Operational Aspects: Herbert H. Geller, Duty Assessment Division (202-566-5307), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1982, Customs published a final rule in the *Federal Register* (T.D. 82-134; 47 FR 32416) which provided an alternative procedure for an importer of record to pay duties on imported merchandise through a licensed customhouse broker. When an importer uses a broker and pays by check or bank draft, the importer often furnishes the broker one check or bank draft covering both duties and the broker's fees and charges. The broker then pays the duties to Customs on behalf of the importer. Under the alternative procedure, the importer may elect to submit to the broker a separate check or bank draft for the duties, payable to the "U.S. Customs Service." The broker would then deliver the importer's check or bank draft to Customs.

That document also required brokers to provide a written notification to their clients advising that if the clients are importers of record, payment to the brokers will not relieve the clients of liability for Customs charges in the event the charges are not paid by the brokers. Clients also are advised that if they elect to pay by check, they may pay Customs charges with a separate check payable to the "U.S. Customs Service," which shall be delivered to Customs by the broker. Under T.D. 82-134, brokers are required to provide this information statement on, or attached to, a power of attorney executed on or after September 27, 1982. Additionally, brokers are required to provide the statement to each active client annually during the month of February beginning in February 1983, and during each February thereafter. The rule also defined an active client to mean a client from whom a broker has obtained a power of attorney.

It has been brought to Customs attention that the requirement to notify clients during the month of February and the definition of active client are creating unintended burdensome results.

For example, brokers already may send written communications to clients under their present procedures concerning various accounting, reconciliation, and relating matters. At that time, which may occur other than during the month of February, brokers could provide clients with the information statement. Customs has no objection to when the notification is given, provided there is written

notification at least once within a 12-month period. Accordingly, to alleviate an unintended paperwork burden on brokers, this document amends the first sentence of § 111.29(b)(2)(ii), Customs Regulations (19 CFR 111.29(b)(2)(ii)), to provide that brokers shall provide the information statement to each active client annually beginning no later than February 28, 1983, and at least once at any time within each subsequent 12-month period thereafter.

In a related matter, Customs has determined that the definition of an active client is too restrictive. There may be accounts from whom a broker has obtained a power of attorney but for whom the broker has not transacted Customs business often or within a recent period of time. Accordingly, to further alleviate a burden on brokers, this document amends the second sentence of § 111.29(b)(2)(ii), Customs Regulations, to provide that an active client means a client from whom a broker has obtained a power of attorney and for whom the broker has transacted Customs business on at least two occasions within the 12-month period preceding notification.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

It is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have a significant economic impact on a substantial number of small entities.

Inapplicability of Public Notice Requirement

The amendments are minor, of particular interest only to a limited segment of the general public, and relieve a burden on that segment. Therefore, pursuant to 5 U.S.C. 552(b)(B), notice and public participation are considered to be unnecessary.

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 111

Customs duties and inspection, Imports, Brokers.

Amendment to the Customs Regulations

Part 111, Customs Regulations (19 CFR Part 111), is amended as set forth below.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: November 1, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

PART 111—CUSTOMHOUSE BROKERS

Section 111.29(b)(2)(ii), Customs Regulations, is revised to read as follows:

§ 111.29 Diligence in correspondence and paying monies.

(b) *Notice to client of method of payment.* * * *

(2) Brokers shall provide the information statement in paragraph (b)(1) as follows:

(ii) To each active client no later than February 28, 1983, and at least once at any time within each subsequent 12-month period thereafter. An active client means a client from whom a broker has obtained a power of attorney, and for whom the broker has transacted Customs business on at least two occasions within the 12-month period preceding notification.

(R.S. 251, as amended, secs. 624, 641, 46 Stat. 759, as amended, 77A Stat. 14; (5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnt. 11), 1624, 1641))

[FR Doc. 82-31829 Filed 11-18-82; 8:46 am]

BILLING CODE 4820-02-M

19 CFR Part 144

[T.D. 82-204]

Customs Regulations Amendments Relating to Customs Bonded Warehouses

Correction

IN FR Doc. 82-29742, beginning on page 49355, in the issue of November 1, 1982, on page 49376, in the third column, Appendix A, paragraph 1., "Agreement to secure against loss.", the eighth line which now reads "including an expense caused by", should read "including an expense caused by the transfer of merchandise or".

BILLING CODE 1501-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 82N-0299]

FD&C Green No. 3

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is "permanently" listing FD&C Green No. 3 for use in food, drugs, and cosmetics, except for use in the area of the eye. This action is in response to a petition filed by the Cosmetic, Toiletry, and Fragrance Association; the Pharmaceutical Manufacturers Association; and the Certified Color Manufacturers Association, Inc. This rule will remove FD&C Green No. 3 from the provisional list of color additives for use in food, drugs, and cosmetics. Published elsewhere in this issue of the *Federal Register* is an order extending the closing date for the provisional listing of FD&C Green No. 3 until February 14, 1983.

DATES: Effective December 16, 1982; objections by December 15, 1982.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION:**I. Introduction**

FD&C Green No. 3 is a water soluble color additive of the triphenylmethane class. It is used to color food, including candy, beverages, dessert powders, and ice cream and sherbet; ingested drugs; lipsticks; and externally applied cosmetics.

FD&C Green No. 3 is principally *N*-ethyl-*N*-[4-[[4-[ethyl]-(3-sulfophenyl)methyl]amino]phenyl]-(4-hydroxy-2-sulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-3-sulfobenzenemethanaminium hydroxide, inner salt disodium salt (CAS Reg. No. 2353-45-9).

The Color Additive Amendments of 1960 (the amendments) require FDA premarket clearance of any color additive that is intended to be used or that is represented for use in or on food, drugs, certain medical devices,

cosmetics, or the human body. Under the amendments, a use of a color additive may be approved and listed if there are sufficient data establishing that the color additive is safe for its intended use.

Recognizing that many color additives were already in use at the time it enacted the amendments, Congress established transitional provisions to allow for the provisional listing and continued use of these color additives for a period of time necessary to complete the scientific investigations needed to evaluate the safety of these substances under the standards prescribed in the amendments.

Section 81.1 of the color additive regulations (21 CFR 81.1) identifies those color additives that are provisionally listed under section 203(b) of the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note)) and sets forth the closing date for each color additive. The closing date is the last day upon which a provisionally listed color additive can be used legally, absent an approval of a color additive petition and the permanent listing of the substance by FDA. (See section 203(a)(1) of the Transitional Provisions.)

FD&C Green No. 3 has been provisionally listed for use in food, drugs, and cosmetics since the enactment of the amendments. During that time, a series of toxicological studies have been performed on this color additive. Based upon the evaluation of the results of these studies and other pertinent data, the agency has concluded that FD&C Green No. 3 is safe for use in food, drugs, and cosmetics, except use in the area of the eye. Therefore, FDA is listing FD&C Green No. 3 for these uses.

II. Regulatory History of FD&C Green No. 3

FDA announced in a notice in the *Federal Register* of November 20, 1968 (33 FR 17205) that a petition (CAP 8c0065) for the listing of FD&C Green No. 3 as a color additive for general use in food, drugs, and cosmetics had been filed by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry, and Fragrance Association (CTFA)); the Pharmaceutical Manufacturers Association (PMA); and the Certified Color Industry Committee (now the Certified Color Manufacturers Association, Inc. (CCMA)), c/o Hazleton Laboratories of America, Inc., 9200 Leesburg Turnpike, Vienna, VA 22180. The petition was filed pursuant to section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C.

376). A subsequent notice published in the *Federal Register* of March 5, 1976 (41 FR 9584), amended the notice of filing for this petition to include the additional use of FD&C Green No. 3 in cosmetics intended for use in the area of the eye (Docket No. 76C-0043).

Regulations published in the *Federal Register* of February 4, 1977 (42 FR 6992), required new chronic toxicity studies for FD&C Green No. 3 as a condition of its continued provisional listing for ingested uses because the studies conducted previously were not adequate under current standards. As a result of those regulations, the agency postponed the closing date for the provisional listing of the color additive for both ingested and external uses until January 31, 1981, for completion of the studies.

In the *Federal Register* of March 27, 1981 (46 FR 18958), the agency established a new closing date of November 16, 1982, for the complete evaluation of FD&C Green No. 3. When the order set forth below becomes effective, it will remove FD&C Green No. 3 from the provisional list. Published elsewhere in this issue of the *Federal Register* is an order extending the closing date for the provisional listing of FD&C Green No. 3 until February 14, 1983, to provide the opportunity for the filing of objections to this order.

III. Evaluation of the Safety of FD&C Green No. 3 for Food, Drug, and Cosmetic Use

A. Statutory safety requirement. Under section 706(b)(4) of the act (21 U.S.C. 376(b)(4)), the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless the data presented to FDA establish that the color is safe for that use. Although what is meant by "safe" is not explained in the general safety clause, the legislative history makes clear that this word is to have the same meaning for color additives as for food additives. (See H. Rep. No. 1761, "Color Additive Amendments of 1960," Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. 11 (1960).) The Senate report on the Food Additives Amendment of 1958 states:

The concept of safety used in this legislation involves the question of whether a substance is hazardous to the health of man or animal. Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance.

This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of

scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance.

S. Rep. No. 2422, "Food Additives Amendment of 1958," Committee on Labor and Public Welfare, 85th Cong., 2d Sess. 6 (1958).

FDA has incorporated this concept of safety into its color additive regulations. Under 21 CFR 70.3(i), a color additive is "safe" if "there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." Therefore, the general safety clause prohibits approval of a color additive if doubts about the safety of the additive for a particular use are not resolved to an acceptable level in the minds of competent scientists.

B. *Safety studies on FD&C Green No. 3.* In reviewing food and color additive petitions, FDA routinely reviews all data submitted to it by the petitioner. The agency also reviews any other pertinent data that may be available to it. The agency's review includes consideration of the appropriateness of the data, of the methods used for their evaluation, and of the conclusions drawn from them. On the basis of this review, the agency makes an independent scientific judgment on whether the additive is safe. The examination of the data for FD&C Green No. 3 by FDA scientists revealed some instances of incorrect interpretation of the data in the petition, as discussed further below.

To establish that FD&C Green No. 3 is safe for use in food, drugs, and cosmetics, the petitioners have submitted reports on a number of animal toxicity studies for the color additive. Among these studies are acute toxicity studies (mice and rats); 2-year chronic feeding toxicity studies (rats, dogs, and mice); metabolism studies (rats, dogs, and rabbits); dermal studies (rabbits and mice); carcinogenicity by subcutaneous injection studies (rats, 1 and 2 years); a test for cathartic activity (dogs); and a primary irritation and sensitization study (guinea pigs). These studies did not produce any evidence that the use of this color additive, for the petitioned uses, would be unsafe.

However, as stated above, in 1977 the agency required that additional chronic toxicity studies be conducted. As a result, CCMA sponsored two additional studies on FD&C Green No. 3: a lifetime feeding study in mice and a lifetime feeding study following in utero exposure to the color additive in rats. The studies were conducted by Bio/dynamics, Inc., East Millstone, NJ (the testing laboratory). FDA received the final reports for these studies on

November 16, 1981. In analyzing the data from these studies, the testing laboratory noted a possible treatment-related effect on the urinary bladders of male rats. Consequently, CCMA, for the petitioners, decided to have a histopathologic evaluation done on all urinary bladders from male rats, including the bladders from the low- and mid-dose groups, which had not previously been examined. CCMA arranged to have these data reviewed by a consulting pathologist. The petitioners submitted the results of these evaluations as an addendum on February 19, 1982.

Charles River CD-1 mice were used for one of the chronic feeding toxicity and carcinogenicity studies with FD&C Green No. 3. Five test groups were established, receiving the color additive at dietary levels of 0 percent (2 control groups), 0.5 percent, 1.5 percent, or 5.0 percent for 733 to 737 days. Sixty males and 60 females were randomly selected for each group. There was no evidence of any treatment-related increase in the incidence of neoplasms at any site in either male or female treated mice.

The long-term feeding study in rats included in utero exposure to FD&C Green No. 3. Sixty males and sixty females of Charles River CD rats (F_0), randomly selected for each group, were fed the color additive at dietary levels of 0 percent (2 control groups), 1.25 percent, 2.5 percent, and 5.0 percent. The parental (F_0) animals received the color additive starting approximately 2 months before mating. From each of the parental (F_0) dosage groups listed above, i.e., 0, 1.25, 2.5, and 5.0 percent, 70 F_1 rats of each sex were randomly selected for the chronic feeding study at the same dosage levels. The duration of the feeding period was 29 and 31 months for males and females, respectively.

The statistical analyses performed for the petitioners by the testing laboratory reported p -values from trend tests for small increases in tumor incidence in the liver, testes, and thyroid that supported possible associations with treatment. The agency discovered, however, in its review of the data that the petitioners submitted on FD&C Green No. 3 that the petitioners had not used the correct statistical procedures in analyzing this data. The petitioners had employed non-incidentally time adjusted analyses in their statistical review of the data. These analyses incorporate the assumption that the tumors caused the death of the animals shortly after their appearance, but the tumors in the rat bioassay of FD&C Green No. 3 were not lethal. Therefore, FDA statisticians reanalyzed the data using incidental time adjusted analyses (Ref. 1). These

reanalyses produced p -values that were substantially higher than those found by the petitioners.

The incidental (prevalence) analysis gave a p -value of $p=0.062$ for the high dose to combined control group comparison for the incidence of combined hepatocellular carcinomas and neoplastic nodules of the liver in male rats. For a bioassay of this size, this p -value reflects an unremarkable finding. Nevertheless, agency pathologists examined the incidences of all proliferative lesions of hepatocytes, including foci of cellular alteration, to be better able to judge, overall, whether there was a neoplastic process in the liver associated with treatment. They found the incidence of these pre-neoplastic lesions to be comparable across treatment and control groups, thus providing reassurance that there is no effect on male rat livers attributable to FD&C Green No. 3.

The high dose to combined control comparison (prevalence) for the incidence of benign interstitial cell (Leydig) tumors of the testes gave a p -value of $p=0.040$. In groups originally containing 70 animals, 12 rats were observed with this tumor in the high dosage group compared to 6 in each control group. Agency scientists have concluded, however, that these results do not reflect a treatment-related effect. There were two main reasons for this conclusion. First, these benign tumors are commonly observed in old age rats at quite variable spontaneous rates. For example, in a study of the safety of FD&C Blue No. 2 performed with the same strain of rats, at the same laboratory, and at the same time as the FD&C Green No. 3 study, the incidence of testicular tumors in the 2 control groups was 13 and 14 rats, exceeding the 12 rats with this tumor observed in the high dosage group of the FD&C Green No.-3 study. Second, in the low dosage group in the FD&C Green No. 3 study, 10 rats were observed with this tumor even though the testes of only 27 animals were examined microscopically. Even if microscopic examination of the remainder turned up no additional testicular tumors, which is unlikely, the number of tumor-bearing rats in this group would be nearly comparable to that in the high dosage group. If FD&C Green No. 3 was acting as a tumorigen to the male rat testis, the fourfold increase in dose between the low and high dosage levels should have produced a substantial increase in tumor incidence in the high dose. It did not.

Finally, because of, among other factors, the difficulty in distinguishing

tumor types, the statistical analysis of thyroid tumors should have been performed on combined incidences of carcinomas and adenomas, not merely on carcinomas, as was done by the testing laboratory. When the tumors are combined, the direct comparison between the high dosage group and the combined control groups gives a p -value of $p > .3$. Even when only the incidence of carcinomas is considered, the p -value for the comparison between the high dose and combined control groups is $p = .065$, an unremarkable finding.

For these reasons, FDA has concluded, contrary to the original laboratory report, that there was no significance to the reported differences in tumor incidence in the liver, testes, or thyroid.

The petitioners' submission of November 16, 1981, also indicated that the testing laboratory had found that there had been an increase in the incidence of bladder neoplasms in the high-dose male group. The original submission reported that this increase was statistically significant. However, in the addendum to the final report submitted by the petitioners on February 19, 1982, the testing laboratory reported that this increased incidence was not statistically significant. In addition, the petitioners' consulting pathologist independently reviewed all microslides of the urinary bladder of the male rats and concluded that the incidence of neoplasia among these animals was not evidence of a carcinogenic effect. Thus, both the testing laboratory and the consulting pathologist agreed that the increased incidence of bladder neoplasms in the high-dose male group was not significant. Nevertheless, there was a sizable difference between the total number of neoplasms (11) reported by the testing laboratory and the number (3) reported by the consulting pathologist.

Before arriving at a decision on the safety of FD&C Green No. 3, the agency requested the urinary bladder microslides from the petitioners, so that Bureau of Foods' pathologists could conduct their own blind review of the slides. The agency routinely examines slides from studies where concern has been raised that there may be treatment-related effects. The agency conducted the microscopic review to determine validity of the diagnoses of the urinary bladders of male rats presented by the petitioners' testing laboratory and by the petitioners' consulting pathologist; to evaluate further the apparent differences in the interpretation of urinary bladder lesions between the

testing laboratory pathologist and the consulting pathologist; and to reach an independent determination on the significance of the urinary bladder lesions.

The agency pathologists found only three tumors, all in the high-dose group, in the urinary bladders of male rats in this study. They observed these tumors, which were transitional cell neoplasms, in the same three animals that the consulting pathologist had found neoplasms. Two of these neoplasms were diagnosed to be benign (papilloma) and one to be malignant (carcinoma). Furthermore, agency pathologists considered both the carcinoma and one of the papillomas to be borderline in morphology between neoplasia and hyperplasia and indicated that both of these lesions could have been given a non-neoplastic designation. The agency pathologists did not find any of the other transitional cell neoplasms that the performing laboratory had reported.

The petitioner's consultant pathologist not only disagreed with the testing laboratory on the number of neoplasms but also reported different incidences of transitional cell hyperplasia than the testing laboratory, including an apparent finding of an elevated incidence in the high dosage group. In a letter dated June 15, 1982 (item 184 in the administrative record), which he wrote with the testing laboratory's pathologist, the consultant pathologist said: "We feel there is indication of a weak proliferative effect on the bladder epithelium, but that there is insufficient progression of the lesions to regard the effect as clearly carcinogenic."

Agency pathologists have carefully examined all urinary bladder microslides for any evidence of a neoplastic process at this site associated with FD&C Green No. 3. They not only determined the incidence of transitional cell hyperplasia but also graded its severity. In contrast to the consulting pathologist, agency scientists found neither the incidence nor the severity of transitional cell hyperplasia to be associated with treatment. In addition, none of the areas of hyperplasia observed by the agency pathologists displayed any evidence of pre-neoplastic alteration. Thus, none of the pre-neoplastic indicators usually associated with carcinogenesis of the urinary bladder were found to be treatment-related.

Agency scientists have, therefore, concluded that the observation of only three neoplasms in the high-dose male group, two of which were of questionable neoplastic character, and the absence of support for a pre-

neoplastic process in the observed hyperplasia, establish that there is no indication of a neoplastic effect on the urinary bladder from the administration of FD&C Green No. 3.¹

Based upon the evaluation of the results of the two recently submitted chronic toxicity studies, the agency has determined that FD&C Green No. 3 is not carcinogenic to Charles River CD-1 mice or Charles River CD rats after lifetime dietary exposures of up to 5.0 percent. The agency has also completed its evaluation of other animal studies submitted by the petitioners for the purpose of establishing the safety of FD&C Green No. 3 for use in externally applied drugs and externally applied cosmetics. The data from these studies indicate that, with respect to dermal safety, FD&C Green No. 3 is nonirritating when applied daily to either intact or abraded skin. Furthermore, FD&C Green No. 3 was not found to be carcinogenic upon bi-weekly application to the skin of mice over their lifetimes. Therefore, FDA finds that it can conclude to a reasonable certainty that no harm will result from the petitioned uses of FD&C Green No. 3.

Using appropriate safety factors (see 21 CFR 70.40), the agency has also estimated a maximum acceptable daily intake of FD&C Green No. 3 for humans of approximately 2.5 milligrams per kilogram of body weight per day—150 milligrams per day for a 60 kilogram person. Based on its review of available data on the current uses of FD&C Green No. 3, FDA estimates that the upper limit of lifetime-average internal exposure to this color additive from food, including dietary supplements, drugs, and cosmetics is 4.2 milligrams per day (food, 1 milligram; drugs, 3 milligrams; and cosmetics, 0.2 milligram). Thus, the acceptable daily intake of FD&C Green No. 3 is approximately 37 times the estimated daily intake of the color additive.

During the safety review, the agency considered the possibility that derivatives of benzidine (benzidine is a known carcinogen) may occur in FD&C Green No. 3 as byproducts of the

¹ When the agency received the analyses of the testing laboratory and of the petitioners' consulting pathologist, FDA requested peer review by the National Toxicological Program (NTP) in anticipation that interpretation of the urinary bladder observations might be contentious. The agency did so before it had completed its own pathology slide review. NTP announced in the *Federal Register* of August 30, 1982, that it would conduct a peer review of FD&C Green No. 3 (47 FR 38209). On the basis of the agency's findings and conclusions concerning the color additive, however, FDA decided that peer review by NTP was not necessary (September 8, 1982; 47 FR 39616).

manufacture of the color additive. However, the presence of such contaminants can only be postulated. Upon careful consideration of this matter, the agency has determined that the postulated presence of benzidine derivatives of unestablished carcinogenic potential in FD&C Green No. 3 is too speculative to require the petitioners to undertake an investigation for their presence. The suitability of the color additive for permanent listing is appropriately established from the results of the animal studies wherein animals were challenged by very high doses of the color additive, and by the results of other studies submitted by the petitioners.

The agency is establishing new chemical specifications that identify the color additives more precisely than those specifications currently in 21 CFR Part 82. Also, the chemical name for the color additive in the new listing under 21 CFR Part 74 is different from the name currently listed under Part 82. The agency is listing the nomenclature designated in the Chemical Abstract Index Guide (September 1982) because the agency believes that it gives the best description of the color additive.

The agency concludes that it is necessary to include in the listing regulation for FD&C Green No. 3 a brief description of the manufacturing process to ensure the safety of the color additive. The agency is concerned that the color additive may contain potentially toxic impurities dependent upon the manufacturing process used to produce the color additive. The agency is not able at this time to set specifications that would control the presence of these impurities. The agency has contracted the National Academy of Sciences/National Research Council to develop appropriate specifications for color additives including FD&C Green No. 3 for use in food as part of the Food Chemicals Codex. These specifications will also be adopted for use in drugs and cosmetics. The agency concludes that specifying, through a general description, the manufacturing process in the regulations for these color additives will provide an adequate assurance of safety until suitable specifications can be developed. Production of the color additive by the specified method will assure qualitatively similar batches and thus adequately assure the absence of potentially toxic levels of impurities. The agency is including a description of the manufacturing procedure in 21 CFR 74.203(a) and is incorporating it by reference in 21 CFR 74.1203 and 74.2203.

IV. Conclusion

The agency, following evaluation of the available data, concludes that FD&C Green No. 3 is safe for general use in food, and for internal and external use in drugs and cosmetics, except for use in the area of the eye, and that certification is necessary for the protection of the public health. The final toxicity study reports, interim reports, and the agency's toxicology evaluations of these studies are on file at the Dockets Management Branch (address above), and may be reviewed in that office between 9 a.m. and 4 p.m., Monday through Friday.

FDA notified the petitioners by letters dated May 14, 1976, August 15, 1977, and August 4, 1978, of the need for data to support the use of FD&C Green No. 3 in cosmetics intended for use in the area of the eye. In a letter dated October 24, 1978, FDA advised the petitioners to consider withdrawing their petition that sought approval of use of FD&C Green No. 3 in cosmetics intended for use in the area of the eye because it appeared that the required data from eye-area studies would not be readily available.

The petitioners have not submitted the data required to support eye-area use of this color additive. Therefore, that portion of the petition that was amended by the filing on March 5, 1976 (Docket No. 76C-0043) to include the permanent listing of FD&C Green No. 3 for eye-area use is not considered by the agency to be withdrawn without prejudice in accordance with the provisions of § 71.4 (21 CFR 71.4). Section 71.4 requires that such requested information be submitted within 180 days after filing of the petition, or the petition will be considered withdrawn without prejudice. Use of FD&C Green No. 3 in the area of the eye has never been covered by provisional listing. Future consideration by FDA of the permanent listing of FD&C Green No. 3 for eye-area use will require the submission of a new color additive petition for that use. The agency's listing of a color additive for general use in food, drugs, and cosmetics does not encompass eye-area use (see § 70.5 *General restrictions on color additives* (21 CFR 70.5)).

The agency has determined under 21 CFR 25.24(d)(5) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Reference

The following information has been put on file at the Dockets Management Branch

(address above) and is available for review in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. R. Peto, M. C. Pike, N. E. Day, R. C. Gray, P. N. Lee, S. Parish, J. Peto, S. Richards, and J. Wahrendorf, "Guidelines for Simple, Sensitive, Significance Tests for Carcinogenic Effects in Long-Term Animal Experiments," in "International Agency for Research on Cancer (IARC) Monographs on the Evaluation of the Carcinogenic risk of Chemicals to Humans," Supplement 2, IARC, Lyon, France, 1980, pp. 311-426.

List of Subjects in 21 CFR Parts 74, 81, and 82

Color additives, Cosmetics, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 b), (c) and (d)) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. Part 74 is amended:
a. By adding new § 74.203 to Subpart A, to read as follows:

§ 74.203 FD&C Green No. 3.

(a) *Identity.* (1) The color additive FD&C Green No. 3 is principally the inner salt disodium salt of *N*-ethyl-*N*-[4-[[4-[ethyl[(3-sulfophenyl)methyl]amino]phenyl](4-hydroxy-2-sulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-4-sulfobenzenemethanaminium hydroxide (CAS Reg. No. 2353-45-9); with smaller amounts of the isomeric inner salt disodium salt of *N*-ethyl-*N*-[4-[[4-[ethyl[(3-sulfophenyl)methyl]amino]phenyl](4-hydroxy-2-sulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-4-sulfobenzenemethanaminium hydroxide; *N*-ethyl-*N*-[4-[[4-[ethyl[(4-sulfophenyl)methyl]amino]phenyl](4-hydroxy-2-sulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-3-sulfobenzenemethanaminium hydroxide and of *N*-ethyl-*N*-[4-[[4-[ethyl[(2-sulfophenyl)methyl]amino]phenyl](4-hydroxy-2-sulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-3-sulfobenzenemethanaminium hydroxide. Additionally, FD&C Green No. 3 is manufactured by the acid catalyzed condensation of one molecule of 2-formyl-5-hydroxybenzenesulfonic acid with two molecules from a mixture

consisting principally of 3-[[ethylphenylamino)methyl] benzenesulfonic acid, and smaller amounts of 4-[[ethylphenylamino)methyl] benzenesulfonic acid and 2-[[ethylphenylamino)methyl] benzenesulfonic acid to form the leuco base. The leuco base is then oxidized with lead dioxide and acid or with dichromate and acid to form the dye. The intermediate 2-formyl-5-hydroxybenzenesulfonic acid is prepared by the potassium permanganate oxidation of 2,2'-(1,2-ethenediyl)-bis(5-aminobenzenesulfonic acid) to sodium 5-amino-2-formylbenzenesulfonate. This amine is diazotized and the resulting diazonium salt is hydrolyzed to the desired 2-formyl-5-hydroxybenzenesulfonic acid.

(2) Color additive mixtures for food use (including dietary supplements) made with FD&C Green No. 3 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring food.

(b) *Specifications.* The color additive FD&C Green No. 3 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice:

Sum of volatile matter at 135° C (275° F) and chlorides and sulfates (calculated as sodium salts), not more than 15 percent.
Water-insoluble matter, not more than 0.2 percent.

Leuco base, not more than 5 percent.

Sum of 2-, 3-, 4-formylbenzenesulfonic acids, sodium salts, not more than 0.5 percent.

Sum of 3- and 4-[[ethyl(4-sulfo)phenyl]amino)methyl] benzenesulfonic acid, disodium salts, not more than 0.3 percent.

2-Formyl-5-hydroxybenzenesulfonic acid, sodium salt, not more than 0.5 percent.

Subsidiary colors, not more than 6 percent.

Chromium (as Cr), not more than 50 parts per million.

Arsenic (as As), not more than 3 parts per million.

Lead (as Pb), not more than 10 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 85 percent.

(c) *Uses and restrictions.* The color additive FD&C Green No. 3 may be safely used for coloring foods (including dietary supplements) generally in amounts consistent with current good manufacturing practice except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of FD&C Green No. 3 shall be certified in accordance with regulations in Part 80 of this chapter.

b. By adding new § 74.1203 to Subpart B, to read as follows:

§ 74.1203 FD&C Green No. 3.

(a) *Identity and specifications.* (1) The color additive FD&C Green No. 3 shall conform in identity and specifications to the requirements of § 74.203(a)(1) and (b).

(2) Color additive mixtures for drug use made with FD&C Green No. 3 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) *Uses and restrictions.* The color additive FD&C Green No. 3 may be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice.

(c) *Labeling.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of FD&C Green No. 3 shall be certified in accordance with regulations in Part 80 of this chapter.

c. By adding new § 74.2203 to Subpart C, to read as follows:

§ 74.2203 FD&C Green No. 3.

(a) *Identity and specifications.* The color additive FD&C Green No. 3 shall conform in identity and specifications to the requirements of § 74.203(a)(1) and (b).

(b) *Uses and restrictions.* The color additive FD&C Green No. 3 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of FD&C Green No. 3 shall be certified in accordance with regulations in Part 80 of this chapter.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

2. Part 81 is amended:

§ 81.1 [Amended]

a. In § 81.1 *Provisional lists of color additives*, by removing the entry "FD&C Green No. 3" from the table in paragraph (a).

§ 81.27 [Amended]

b. In § 81.27 *Conditions of provisional listing*, by removing the entry "FD&C Green No. 3" from the table in paragraph (d).

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

3. Part 82 is amended by revising § 82.203, to read as follows:

§ 82.203 FD&C Green No. 3.

The color additive FD&C Green No. 3 shall conform in identity and specifications to the requirements of § 74.203(a)(1) and (b) of this chapter.

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 15, 1982, submit to the Dockets Management Branch (address above) written objection thereto. Objections shall show how the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issue for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective December 16, 1982, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the Federal Register.

(Sec. 706(b), (c), and (d), 74 Stat. 399-403 [21 U.S.C. 376(b), (c), and (d)]; sec. 203, Pub. L. 86-618, 74 Stat. 404-407 [21 U.S.C. 376, note])

Dated: November 15, 1982.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 82-31700 Filed 11-18-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 74, 81, and 82

[Docket No. 76C-0045]

D&C Green No. 5; Listing as a Color Additive in Drugs and Cosmetics; Termination of Stay and Confirmation of Effective Date; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: This document corrects the referenced final rule by adding report numbers that were omitted from a footnote in the preamble.

FOR FURTHER INFORMATION CONTACT: Agnes Black, Federal Register Writer (HFC-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 82-30081 at page 49628 in the Federal Register of November 2, 1982 (47 FR 49628), FDA issued a final rule that "permanently" listed D&C Green No. 5 for use in drugs and cosmetics, excluding use in the area of the eye. Footnote 1 in the preamble at page 49630 referred to certain NCI Technical reports. The report numbers were inadvertently omitted. Therefore, the footnote is corrected to read as follows:

¹The use of appropriate historical control data as an aid in evaluating data on a given chemical is a well-established practice. See, e.g., NCI Technical Report Nos. 103, 128, 145, 146, 156, 185, 123, and 163.

Dated: November 10, 1982.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 82-31505 Filed 11-18-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of FD&C Green No. 3; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Green No. 3 for use as a color additive in foods, drugs, and cosmetics.

A new closing date for FD&C Green No. 3 is being established to provide time for receipt and evaluation of any objections submitted in response to the final regulation (published elsewhere in this issue of the Federal Register approving the petition for the listing of FD&C Green No. 3 for these uses.

DATES: Effective November 15, 1982, the new closing date of FD&C Green No. 3 will be February 14, 1983.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: The current closing date of November 16, 1982 for the provisional listing of FD&C Green No. 3 was established by notice published in the Federal Register of March 27, 1981 (46 FR 18958). FDA established the November 16, 1982, closing date for FD&C Green No. 3 to provide time for determining the applicability of the statutory standard for the listing of the color additive to the results of scientific investigations of FD&C Green No. 3.

After reviewing and evaluating the data, the agency has concluded that FD&C Green No. 3 is safe for its intended use. Therefore, elsewhere in this issue of the Federal Register, FDA is publishing a regulation that lists FD&C Green No. 3 for these uses. The regulations set forth below will postpone the November 16, 1982 closing date for the provisional listing of that color additive until February 14, 1983. This postponement will provide sufficient time for receipt and evaluation of comments or objections submitted in response to the listing regulation.

Because of the shortness of time until the November 16, 1982 closing date, FDA concludes that notice and public procedure on this regulation are impracticable. Moreover, good cause exists for issuing this postponement as a final rule because the agency has concluded that FD&C Green No. 3 is safe for its intended use under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of this color additive until February 14, 1983. To prevent any interruption in the provisional listing of FD&C Green No. 3 and in accordance with 5 U.S.C. 553(d)(1) and (3), this regulation is being made effective on November 15, 1982.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-

618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. Section 81.1 *Provisional lists of color additives* is amended in paragraph (a) by changing the closing date for the entry "FD&C Green No. 3" in the table to read "February 14, 1983."

§ 81.27 [Amended]

2. Section 81.27 *Conditions of provisional listing* is amended in paragraph (d) by changing the closing date for the entry "FD&C Green No. 3" in the table to read "February 14, 1983."

Effective date. This final rule is effective November 15, 1982.

(Sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: November 3, 1982.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 82-31699 Filed 11-18-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration.

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 the Upjohn Co. providing for use of a complete swine feed containing lincomycin for reduction in the severity of swine mycoplasmal pneumonia.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed a supplemental NADA (97-505) providing for safe and effective use of a complete swine feed containing 200 grams of lincomycin per ton (g/ton) for reduction in the severity of mycoplasmal pneumonia caused by *Mycoplasma*

hyopneumoniae. The firm currently holds approval for use of the drug in complete feed at 40 and 100 g/ton for control and treatment of swine dysentery.

According to the Bureau of Veterinary Medicine's proposed supplemental new animal drug policy (42 FR 64367; December 23, 1977), this use of lincomycin at a level of 200 g/ton for reduction in the severity of swine mycoplasmal pneumonia requires a review of available residue information on the drug to assess the human risk from exposure to drug residues resulting from this new use at an increased dose, taking into account the proposed 6-day withdrawal period. Available microbiological tissue residue data indicate that a significant increase in human exposure to microbiologically active parent lincomycin residues is not anticipated with an increase in dosage level to 200 g/ton for 3 weeks provided that a 6-day withdrawal period is observed.

Standards prescribed in the agency's proposal of March 20, 1979 (44 FR 17070) on chemical compounds in food-producing animals were not applied to approval of this NADA. No evidence currently available indicates that lincomycin and its known or probable metabolites are teratogenic, mutagenic, or carcinogenic. The current approval is based on alternative criteria which assure that the product is safe and on factors which justify the equitable treatment of this sponsor who adequately completed drug development testing according to scientific standards existing before March 20, 1979.

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. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)) may be seen in the Dockets Management Branch (address above).

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelivered to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.325 is amended by adding new paragraph (f)(2)(iv) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.325 Lincomycin.

- * * * * *
- (f) * * *
- (2) * * *
- (iv) Amount per ton. 200 grams.
- (a) Indications for use. For reduction in the severity of swine mycoplasmal pneumonia caused by *Mycoplasma hyopneumoniae*.
- (b) Limitations. Feed as sole ration for 21 days; not to be fed to swine that weigh more than 250 pounds; withdraw 6 days before slaughter.
- * * * * *

Effective date. November 19, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 15, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-31756 Filed 11-18-82; 8:45 am]

BILLING CODE 4160-01-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 308

[Docket No. CRT 81-2]

Adjustment of the Royalty Rate for Cable Systems; Federal Communications Commission's Deregulation of the Cable Industry

AGENCY: Copyright Royalty Tribunal.
ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal amends its rule establishing the rate of royalty payments for the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station, to establish the schedule of royalty fees for the additional broadcasting signals and programs carried by cable systems as a result of the repeal by the Federal

Communications Commission of its rules restricting the carriage of distant signals and providing for syndicated program exclusivity.

DATE: Effective December 20, 1982.

FOR FURTHER INFORMATION CONTACT:

Commissioner Thomas C. Brennan, Copyright Royalty Tribunal, 1111 20th Street, NW, Room 450, Washington, DC 20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION:

Background and Chronology

In July of 1980, the Federal Communications Commission (FCC) repealed the distant signal carriage and program syndication exclusivity restrictions on cable transmissions (*Report and Order in Docket Nos. 20988 and 21284*, 79 F.C.C. 2d 663 (1980)). However, the FCC's order was stayed by a Federal court pending an appeal of that decision. On June 16, 1981, the FCC's order won judicial approval. *Malrite T.V. of New York, Inc., v. FCC*, 652 F.2d 1140 (2d Cir. 1981), and the stay was vacated on June 25, 1981.

On August 11, 1981, the National Cable Television Association (NCTA) filed a "Petition to Waive Rule 30L63 and To Initiate Cable Television Copyright Royalty Fee Adjustment Proceedings" on behalf of the cable operators with the Copyright Royalty Tribunal (Tribunal). In the Federal Register of August 18, 1981 (46 FR 41840), the Tribunal directed interested parties to submit comments on the issues presented in the NCTA petition and whether NCTA is a user of copyrighted works "with a significant interest in the royalty rate in which an adjustment is requested" no later than September 24, 1981.

The American Society of Composers, Authors and Publishers (ASCAP) filed a "Petition to Commence Proceedings" to adjust the cable compulsory license fee with the Tribunal on September 24, 1981.

Pursuant to the Tribunal's notice, comments on the NCTA petition were filed by September 24, 1981 by the Motion Picture Association of America (MPAA); National Association of Broadcasters (NAB); ASCAP; Major League Baseball, National Basketball Association, National Collegiate Athletic Association, National Hockey League, and North American Soccer League (Joint Sports Claimants); Broadcast Music, Inc. (BMI); and NCTA. MPAA filed their comments on the NCTA petition with the Tribunal on September 14, 1981, and in addition requested the Tribunal to adopt certain interim cable television rates and to make a ruling as to the effective date of

any royalty adjustment that may result from a royalty adjustment proceeding.

In the Federal Register of September 18, 1981 (46 FR 46375), the Tribunal requested comments on the jurisdictional and procedural questions presented by the MPAA request for adoption of interim cable royalty rates to be submitted by October 1, 1981, with reply comments directed to comments filed pursuant to the notice of August 18, 1981 and/or those filed pursuant to the notice of September 18, 1981, if any, to be submitted no later than October 7, 1981.

In the Federal Register of October 7, 1981 (46 FR 49703), the Tribunal published notice of a meeting to be held October 14, 1981 to consider the NCTA and ASCAP petitions to initiate a cable television royalty fee adjustment proceeding and MPAA's request for establishment of interim cable television rates. In the public meeting of October 14, 1981, the Tribunal approved the commencement of a cable television royalty fee adjustment proceeding and published notice of such in the Federal Register of October 21, 1981 (46 FR 51631). Also, at that meeting of October 14, 1981, the Tribunal resolved not to consider adoption of interim rates in this proceeding.

On October 19, 1981, the MPAA filed with the Tribunal a request for a ruling by the Tribunal on the effective date of liability for any adjusted royalty fees. In the Federal Register of October 26, 1981 (46 FR 52159), the Tribunal directed that comments on the MPAA request for a Tribunal ruling be submitted not later than November 5, 1981.

BMI, Major League Baseball, MPAA, NAB, National Basketball Association & North American Soccer League, NCTA, National Collegiate Athletic Association, National Football League, National Hockey League, and Service Electric Cable TV, Inc. filed statements of intention to participate in the proceeding with the Tribunal. Jurisdictional and procedural motions and proposals were received from the parties on January 11, 1982 and, reply comments were received by the Tribunal on February 10, 1982, pursuant to the notice of October 21, 1981.

In the Federal Register of March 25, 1982 (47 FR 12913), the Tribunal announced that a meeting would be held on March 31, 1982 for the consideration of matters relating to jurisdictional and procedural issues submitted in comments. In that public meeting, the Tribunal resolved "not to make any determination at this time as to the commencement date of the obligation of cable systems to pay any adjusted royalty rates and the related issue of

interest on amounts not paid between the date of obligation and the date of actual payment." Also, on March 31, 1982, the Tribunal announced a prehearing conference meeting to be held on May 11, 1982 for consideration of the procedures to govern the conduct of the proceeding.

As announced in the Federal Register of May 28, 1982 (47 FR 23615), hearings were conducted by the Tribunal on June 15, 16, 17, 18, 22, 24, 25, 29, 30, July 1, 7, 8, 13, 14, 15, 16, 20, 21, and 22, 1982, at which time the Copyright Owners and NCTA presented their direct cases through their respective witnesses. Rebuttal testimony was heard on August 3, 4, 5, 6, 1982.

Proposed findings of fact and conclusions of law were received by the Tribunal on September 1, 1982.

By oral request, on September 14, 1982, the Tribunal directed the parties to submit comments concerning the impact on the cable television industry of the rate adjustments requested by the copyright owners by September 16, 1982. Reply comments were received by the Tribunal on September 21, 1982. The Tribunal heard oral arguments from the parties on October 5, 1982.

At a public meeting on October 20, 1982, the final rule in CRT Docket No. 81-2, Cable Television Royalty Fee Adjustment Proceeding, was adopted.

Summary of Evidentiary Positions of Parties

Copyright Owners

Motion Picture Association of America, Inc. (MPAA)

MPAA submitted the following rate schedule to be considered by the Tribunal in setting rates resulting from the FCC's repeal of its distant signal and syndicated exclusivity rules.

Schedule

1. Rates for new signals added as a result of the FCC's deregulation of distant signals.

5 percent of cable's gross receipts from basic services, for each distant signal equivalent carriage.

2. Rates for signal carriage as a result of the FCC's repeal of its syndicated exclusivity rules.

A. For cable systems located wholly or in part within a top 50 television market,

1. 1.634 percentum of such gross for the first distant signal equivalent;

2. 1.028 percentum of such gross receipts for each of the second, third and fourth distant signal equivalents;

3. .484 of 1 percentum for the fifth distant signal equivalent and each

additional distant signal equivalent thereafter;

B. For cable systems located wholly or in part within a second 50 television market,

1. 1.225 percentum of such gross receipts for the first distant signal equivalent;

2. .771 of 1 percentum of such gross receipts for each of the second, third and fourth distant signal equivalents; and

3. .366 of 1 percentum for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

In regard to two legal issues to be considered by the Tribunal, MPAA proposed that (1) the Tribunal provide provisions for periodic rate adjustments for inflation and (2) that the effective date for any rate increases determined by the Tribunal shall be July 1, 1981.

MPAA presented ten witnesses in its direct case: Jack Valenti, President of MPAA; Fritz E. Attaway, Vice President and Counselor, Administration Affairs of MPAA; Allen R. Cooper, Vice President of MPAA; Warren Larson, Financial Vice President, West Coast of Paramount Pictures; Robert M. Jacquemin, Senior Vice President of Sales for Paramount Television's Domestic Distribution Division; Dr. Bridger Mitchell, Senior Research economist for the Rand Corporation and an Independent Economic Consultant; Dr. Stanley Besen, Senior Economist, Rand Corporation; James W. Lavenstein, General Manager, KOKI-TV; Charles McCabe, General Sales Manager, KOKI-TV; and Richard Enderwood, Advertising and Promotion Manager, KOKV-TV, Tulsa, Oklahoma.

Jack Valenti

Mr. Valenti presented an overview of the considerations which led to the creation of cable's compulsory license for distant signals in 1976 and, the attendant royalty fee schedule. He testified that the statutory royalty fee schedule was not based on any supporting data or economic analysis, but was the product of political compromises and of Congress's perception of the economic needs of the then infant cable industry. In his testimony, Mr. Valenti described the explosive growth and profitability of the cable industry since passage of the Copyright Revision Act in 1976. He testified that these major changes in the cable industry are factors to be considered by the Tribunal in its determinations for the new royalty fee schedule.

Fritz E. Attaway

Mr. Attaway testified to the historical perspective of the FCC's enactment and subsequent repeal of its distant signal rules, and on Congress' creation of cable's license and royalty fee schedule. He also presented excerpts from several pleadings by cable interests, filed with the FCC from 1969 to 1979, to demonstrate the cable industry's perception of the high value of distant signals. Mr. Attaway stated that there is no statutory prohibition to the Tribunal's providing for periodic cost of living adjustments to rate determinations made in this proceeding, but rather there is a statutory command for the Tribunal to do so. Mr. Attaway also testified that the two most relevant factors to be considered by the Tribunal in setting reasonable rates are (1) the harm to copyright owners, and (2) the benefit to cable systems' carriage of the additional distant signals and programming, available because of the FCC's deregulatory actions.¹

Allen R. Cooper

Mr. Cooper's direct testimony was directed primarily to several sets of exhibits prepared by the program suppliers. Mr. Cooper testified that one set of the exhibits shows the extent of revenues lost by program suppliers because of cable importation of distant signals, for the years 1980, 1981, and 1982, in seven top 100 television markets. He testified that under the current fee schedule, cable systems in these markets paid royalty fees for distant signals at approximately ten percent of marketplace value of the programs carried.

Another set of the exhibits presented by Mr. Cooper was a program suppliers' survey of franchise applications taken from the files of the Cable Television Information Center (CTIC). The survey included all applications submitted for cable franchises in the top 100 television markets, between January 1980 and April 1982, for which CTIC served as a consultant. Mr. Cooper testified that this set of exhibits shows that if current rates for distant signals were increased ten times, it would have minimal effect on the viability of a present cable system. Another set of the exhibits presented by Mr. Cooper was tabulated data from the 1979-1 Statement of Account Forms for Form 3 cable systems located in the 35 mile zone of the top 50 television markets. Mr. Cooper testified that this set of exhibits shows that the repeal of the FCC's syndicated

exclusivity rules will benefit the cable industry by eliminating the costs to cable systems for program substitution and for "black outs" of restrictive programming.

Mr. Warren Larson

Mr. Larson described the syndicated television market and the process by which programs reach the syndication market. He testified that the repeal of the FCC's distant signals and syndicated exclusivity rules would have an unfavorable impact on syndicated program producers' bargaining ability in selling their programs to local broadcast stations.

Robert Jacquemin

Mr. Jacquemin described the syndicated television programming production and distribution process. He testified that a vast majority of syndication revenue is derived from the top 50 television markets, and independent television stations are the most important group of buyers in the syndication market. It was also his testimony that the repeal of the FCC's distant signal and syndicated exclusivity rules has resulted in substantial harm to syndicated program suppliers in selling their programming in these markets. Mr. Jacquemin presented two studies of selected sales of syndicated programming in high penetration cable "protected" and "unprotected" markets to demonstrate this harm to program suppliers.

Dr. Bridger Mitchell

Dr. Mitchell testified about several reports and studies he prepared for NCTA in the early 1970's concerning the prospects for the viability of cable in urban areas. Based on these materials, Dr. Mitchell had earlier concluded that cable generally was not expected to be profitable in urban markets where good quality broadcast signals were available off-air. He testified that the three principal factors that had led him to alter his earlier conclusions were (1) the elimination of many restrictive FCC regulations imposed on cable during the 1970's; (2) the cost of distant programming transmission has been significantly reduced by the advent of satellite technology; and (3) there has been substantial growth in the number and variety of programming sources available to cable systems.² Dr. Mitchell also testified about the effect of the syndicated exclusivity rules and their repeal on cable systems. Relying on a study by Dr. R. E. Park in 1972 which estimated the proportion of distant

signal programming potentially subject to blackout, and a 1978 survey by NCTA in which 1,024 cable systems subject to exclusivity rules were asked to report the extent to which programming had actually been deleted as a result, Dr. Mitchell testified that:

(a) The five NCTA "worst case" systems from its survey had a higher percentage of actual program deletions in 1978 than Dr. Park had estimated in 1972 for markets similar to those in which those five systems operated;

(b) the syndicated exclusivity rules placed an economic burden on cable systems which had to bear additional costs to either blackout certain programming, or substitute other programming for it;

(c) repeal of the exclusivity rules saved systems expenses;

(d) repeal of these rules may have benefitted these systems in terms of continuity of programming and the retention of those subscribers who prefer not to switch from one channel to another.³

Dr. Stanley Besen

Dr. Besen described for the Tribunal two types of harm to program suppliers because of cable's carriage of distant signals. He testified that the first type of harm to program suppliers results from audience viewing diversion from local broadcast signals to distant signals, and the second type of harm relates to the value of distant signals to cable subscribers. By using a study by Dr. R. E. Park, Dr. Besen produced a table showing the estimated percentages by which subscriber fees could be increased as a result of the addition of distant signals. Dr. Besen further testified that, based on his table which showed the additional revenues a cable system could generate through added distant signals and programming, the current royalty fees are substantially lower than the royalty fees that would be generated in a free market.⁴

Mr. James W. Lavenstein, Mr. Charles McCabe, Mr. Richard Enderwood

These witnesses described for the Tribunal the impact cable's carriage of distant signals was having on their Tulsa, Oklahoma independent UHF television station, KOKI-TV. They testified that Tulsa's cable penetration has increased about 20 to 25 percent to approximately 50 percent since KOKI-TV signed on in October 1980 and, that a significant portion of KOKI's syndicated programming has been duplicated by

¹ Proposed Findings of Fact and Conclusions of Law by the National Cable Television Association, Inc., September 1, 1982, p. 9.

² Ibid, p. 26.

³ Ibid, p. 28.

⁴ Ibid, p. 29.

distant signal importation in their market. They further testified that this duplication has diverted a portion of KOKI's viewing audience away from KOKI to distant signals, resulting in substantial losses in advertising revenue to KOKI.

Mr. Lavenstein testified that a major consideration in negotiations with program suppliers in the purchase of programming is the loss of syndicated exclusivity protection and the availability of additional distant signals. Because of these considerations, Mr. Lavenstein testified that he tends to offer to purchase syndicated programming for less money than he would otherwise.⁵

Joint Music: American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI)

Joint Music proposed that the Tribunal adopt the rate schedule submitted in the "Proposed Rules of the Copyright Owners" as described in an abbreviated form in the summary of the evidentiary position of MPAA.

Joint Music also contends that the Tribunal should provide for periodic rate adjustments for inflation and the effective date for any rate increase shall be July 1, 1981.

ASCAP and BMI presented their evidence jointly, and will be referred to as "Joint Music". Joint Music presented two witnesses in its direct case: Gloria Messinger, ASCAP's Managing Director; and Dr. David E. Black, Associate Chairman of the Department of Economics at the University of Delaware, and consultant to BMI.

Gloria Messinger

Ms. Messinger testified that Joint Music's license fees for the performance of music on local television stations are a function of the station's gross revenue. To the extent that viewing audience is diverted from a local station to distant signals, its gross revenues are reduced. As a result, Joint Music's fees are thereby also diminished and the music copyright holder is harmed. Because music is used to such a great extent in syndicated programming, Ms. Messinger testified that the repeal of the syndicated exclusivity rules have a greater significance to Joint Music than does the repeal of the distant carriage rules.⁶

Dr. David E. Black

Dr. Black testified that based on the value that television broadcast stations

place on music in the marketplace, cable's compulsory license royalty fees for formerly prohibited distant signals should be at least 10.8 times higher than the 1980 royalty fees, and that the fees for syndicated exclusivity should be 1.4 times higher because of the repeal of the syndicated exclusivity rules. Dr. Black presented calculations based on several exhibits including an earlier set of exhibits sponsored by MPAA witness Mr. Cooper to justify his conclusions.

National Association of Broadcasters (NAB)

NAB proposed that the Tribunal set a rate of 5% of cable's gross receipts for its basic service for each-distant signal equivalent added as a result of the FCC's deregulation of its distant signal rules. NAB offered no proposal regarding rates for signal carriage resulting from the FCC's repeal of its syndicated exclusivity rules.

In regard to two legal issues to be considered by the Tribunal, NAB proposed that (1) the Tribunal provide for periodic rate adjustments for inflation and, (2) the effective date for any rate increases determined by the Tribunal shall be July 1, 1981.

NAB presented one witness in its direct case: Dr. Lawrence Patrick, Vice President for Research, National Association of Broadcasters.

Dr. Lawrence Patrick

Dr. Patrick's testimony focused primarily on "harm" to broadcasters due to the FCC's repeal of the distant signal rules. He testified that broadcast stations are harmed by: (1) Distant cable carriage of broadcast stations' copyrighted programming, at costs less than market value and (2) distant signals divert local viewing audiences away from local signals resulting in lost advertising revenue to broadcast stations.

By using various calculations based on exhibits presented by MPAA and Joint Music, Dr. Patrick testified that reasonable rate increases necessary to compensate broadcast stations for their loss of revenues were between 16.5 and 22.5 times the current statutory rates.

Dr. Patrick further testified that local station revenue loss was not offset by any revenue gain by the additional distant audiences.

Joint Sports

Joint Sports proposed that the Tribunal set a rate of 5% of cable's gross receipts for its basic service for each distant signal equivalent added as a result of the FCC's deregulation of its distant signal rules. Joint Sports offered no proposal regarding rates for signal

carriage resulting from the FCC's repeal of its syndicated exclusivity rules.

In regard to legal issues to be considered by the Tribunal, Joint Sports proposed that (1) the Tribunal provide for periodic rate adjustments for inflation, and (2) the effective date for any rate increases determined by the Tribunal shall be July 1, 1981.

Joint Sports presented five witnesses in its direct case: Dale N. Hatfield, Independent Consultant and Former Deputy Assistant Secretary of Commerce for Communications and Information; Thomas A. Larson, Proprietor of Larson Associates, a consulting firm; Dr. Peter H. Lemieux, Independent Researcher in Telecommunications; C. J. Villante, Executive Director of Marketing and Broadcasting in the Office of the Commissioner of Baseball; and Dr. Yale Braunstein, Assistant Professor of Economics at Brandeis University and Director of and Senior Research Associate at Kalbas Bowen Associates.

Mr. Dale Hatfield

Mr. Hatfield presented testimony which described: (1) The objectives of Congress in establishing the cable royalty rate schedule in the 1976 Copyright Revision Act; (2) the cable regulatory market; (3) the cable industry's technological changes since 1976; and (4) the impact of changes in the cable industry since 1976 on the royalty fees paid by cable systems. He testified that the primary concern of Congress in setting the 1976 cable royalty rate schedule was to encourage the development of the then infant cable industry. He further testified that due to regulatory, technological, and economic changes in the cable industry since 1976, cable systems are now able to pay royalty rates consistent with copyright owners marketplace expectations; thereby encouraging the creation of new programming.

Mr. Thomas Larson

Mr. Larson presented computerized data taken from the Copyright Office's "Statement of Account" forms for all form 3 cable systems for the second half of 1981. In part, this data showed: (1) the average cable system's gross receipts for the second half of 1981; (2) the royalty fees paid by cable systems for this period; (3) the monthly subscriber fee for the system's basic services; and (4) the number of local part-time and full-time distant signals carried by each system. From this data, Mr. Larson, along with the Joint Sports witness, Dr. Peter Lemieux, developed a data base of form 3 systems that had upgraded from part-

⁵Ibid, p. 35.

⁶Ibid, p. 37.

time to full-time distant signals that had formerly been prohibited by the FCC's distant signal rules. Mr. Larson's data base was used as a basis for the development of studies and exhibits subsequently introduced into the proceeding by Dr. Braunstein and Joint Sports.⁷

Dr. Peter Lemieux

Dr. Lemieux presented several exhibits prepared to demonstrate the current and future attractiveness of distant signals to cable operators. The sources for the underlying data of Dr. Lemieux' studies were (1) the Larson/Lemieux data base of form 3 cable systems, (2) the signal registration statements filed with the FCC in the second half of 1981, and (3) the franchising proposals for 35 communities evaluated by the Cable Television Information Center (CTIC). Dr. Lemieux testified that as a result of his studies, his conclusion was that the most valuable distant signals are those that are sports flagship stations. Dr. Lemieux also testified that cable systems which had registered distant signals as a prerequisite to their carriage, but had not added them, were signifying their intention to do so at a future date.⁸

Mr. Thomas Villante

Mr. Villante testified that in a free marketplace for distant signals, professional sports programming would seek and obtain copyright payments which are (1) no lower than those received from the USA Network and (2) no higher than those received from local cable and STV negotiations.⁹ He further testified that absent compulsory licenses, cable systems' payments for baseball at the low end would be approximately .5 cents per subscriber per game, and at the high end the rate would be 20 to 25 cents per subscriber per game.¹⁰ In comparison, current revenues received by copyright owners for similar programming is substantially lower.

Dr. Yale Braunstein

Dr. Braunstein testified that based on his study presented in this hearing, current distant signal rates would have to be increased approximately 15 times

⁷ "Proposed Findings of Fact and Conclusions of Law of the Joint Sports Claimants", September 1, 1982, pp. 43-52.

⁸ "Proposed Finding of Fact and Conclusions of Law by the National Cable Television Association, Inc.", September 1, 1982, p. 50.

⁹ "Proposed Findings of Fact and Conclusions of Law by the Joint Sports Claimants, September 1, 1982, p. 39.

¹⁰ *Ibid.*, p. 41.

to result in copyright owners receiving what they would reasonably charge in a free marketplace.¹¹ Dr. Braunstein's study, designed to create an analogous market for distant signals, was based on data taken from (1) the Larson/Lemieux data base for form 3 cable systems introduced earlier by Joint Sports witnesses, Dr. Larson and Dr. Lemieux; (2) testimony presented by Sports witness, Dr. Thomas Villante, regarding Sports' free marketplace copyright payments and negotiations, and (3) on Joint Sports 15 percent royalty share for distant signal payments.

Dr. Braunstein further testified that his study confirms that copyright owners could reasonably seek and obtain from cable systems a royalty rate of five percent of their gross basic receipts for each additional DSE.¹²

Rebuttal Phase—Copyright Owners

MPAA

MPAA presented two witnesses during the rebuttal phase of the proceeding: Allen R. Cooper, Vice President, MPAA; Dr. Mark Levy, Director of the Center for Research and Public Communications.

Mr. Cooper and Mr. Levy presented the results of a survey, comprised of three exhibits, which they had conducted of several broadcast stations in the top 50 television markets. Both witnesses testified that in 41 of the 42 markets included in the survey, at least one local station in each market had requested syndicated exclusivity protection during 1978, 1979 and 1980.¹³

Copyright Users

National Cable Television Association, Inc. (NCTA)—Direct Case:

NCTA submitted, as a "worst case" representation, the following adjusted fee schedule to be considered by the Tribunal in setting reasonable rates due to the FCC's repeal of its distant signal and syndicated exclusivity rules. NCTA contended that no adjustment is warranted for the second 50 markets.

DSE Rate Schedule

Pre-deregulation statutory rate	Post-deregulation new distant signals	Pre-deregulation (top 50) syndicated exclusivity exposed
1. 0.675 of 1 percent.	1.0 percent.....	0.872 of 1 percent.

¹¹ *Ibid.*, p. 47.

¹² *Ibid.*, p. 48.

¹³ "Proposed Findings of Fact and Conclusions of Law by the Motion Picture Association of America, Inc. and its Member Companies", September 1, 1982, p. 107.

DSE Rate Schedule—Continued

Pre-deregulation statutory rate	Post-deregulation new distant signals	Pre-deregulation (top 50) syndicated exclusivity exposed
2. 0.425 of 1 percent.	0.700 of 1 percent..	0.509 of 1 percent.
3. 0.485 of 1 percent.	0.550 of 1 percent..	0.432 of 1 percent.
4. 0.425 of 1 percent.	0.330 of 1 percent..	
5. 0.200 of 1 percent.	0.330 of 1 percent..	

In regard to legal issues to be considered by the Tribunal, NCTA proposed that (1) there be no provisions for periodic rate adjustments for inflation and, (2) the effective date of any rate increases determined by the Tribunal shall be July 1, 1983.

In support of their case, NCTA presented seven witnesses during their direct case: Carolyn Chambers, Executive Vice President and Treasurer of Liberty Communications, Inc.; John Evans, Executive Vice President and Chief Operating Officer of Arlington Communications; Martin Lafferty, Director of Programming, Cox Communications; James Ackerman, Senior Vice President of Warburg, Parabus, Becker; Michelle Minarcin, NCTA's Director of Research; Char Beales, NCTA's Vice President for Media Services and Research; Dr. Rolla E. Park, Senior Economist, Rand Corporation.

Carolyn Chambers

Ms. Chambers testified that because of the major differences between broadcast television and cable television any attempt to determine reasonable rates for distant signals by comparison to what broadcasters pay for programming is invalid. She presented testimony that described many of the functional differences between broadcast and cable television including, (1) cable's narrow casting capability, (2) cable's two way technology and multi-channel broadcast retransmission capacity, and (3) cable's non-broadcast and non-entertainment transmissions and services. Ms. Chambers also testified that as a professional broadcaster it was her experience that broadcasters do receive added advertiser revenues from expanded audiences due to cable's carriage of their signals into distant markets.

John Evans

Mr. Evans described the general process by which cable operators acquire programming. He also testified that because of alternative programming

available to cable operators by broadcast satellite services, distant signals are less valuable to cable systems today than they were in 1976. Mr. Evans further testified that a retroactive rate increase for distant signals would have a disruptive impact on cable systems.¹⁴

Mr. Martin Lafferty

Mr. Lafferty described Cox Cable's priorities in acquiring programming for its cable systems. He testified that Cox's first priority is the determination of the most effective mix of pay services and next, advertiser supported and basic cable services. The greatest proportion of Cox's revenue is generated by cable pay services according to Mr. Lafferty's testimony and approximately 6% of Cox Cable channels would carry additional distant signals. Mr. Lafferty also testified that due to the many changes in cable programming priorities, the value of distant signals relative to non-broadcast programming, on a daily basis, has diminished since 1976.

James Ackerman

Mr. Ackerman presented an overview of the cable industry's financial picture. In his testimony, Mr. Ackerman described cable industry's dramatic growth and projections for its future growth. However, according to Mr. Ackerman, the substantial costs of building urban market cable systems and high interest rates have reduced cable industry profits and projections are that near term profits will remain flat.

Michelle Minarcin

Ms. Minarcin presented a variety of exhibits designed to show that (a) only a few signals that were formerly prohibited by FCC rules were added after repeal; (b) very few systems that did add signals could attribute any rate or penetration increase to them, especially because the signals were added with other non-broadcast services; (c) broadcast revenues continue to grow dramatically despite increases in cable penetration; (d) sports teams broadcast and gate revenue continue to grow dramatically despite increases in cable penetration. Ms. Minarcin also testified to the results of a NCTA survey conducted and filed with the FCC in 1979 showing the limited extent to which syndicated exclusivity protection had been requested prior to repeal. The survey included more than

1000 cable systems to which the rules applied.¹⁵

Ms. Char Beales

Ms. Beales testified to a variety of exhibits prepared by NCTA. One set of exhibits were designed to show the significant number of positive and negative changes in the cable industry since 1976. Testifying to the negative impact of these changes on the cable industry, Ms. Beales described cables' competition from various new emerging technologies and the adverse effect of increasing franchise and regulatory costs that are unique to the cable industry. Ms. Beales testified that another set of the exhibits presented demonstrated that (1) each additional channel of programming has a declining marginal value, (2) each additional distant signal gains a diminishing share of viewing, (3) markets where cable systems have 12 or more channel capacity, additional signals have minimal impact in attracting new subscribers, (4) viewing of pay and advertiser supported programming is projected to grow at a dramatic rate, and (5) cable penetration has insignificant impact on prices local broadcasters pay for syndicated programming. Other sets of the exhibits were testified to by Ms. Beales to refute NPAA exhibits previously submitted by Mr. Allen Cooper.

Ms. Beales also testified that having experience as a professional in both the cable and broadcast industries, it is her opinion, that expanded audiences due to cable carriage of distant signals do generate additional advertiser revenues for the broadcast stations carried.

Dr. Rolla E. Park

Dr. Park testified in both NCTA's direct and rebuttal case. He testified that the only relevant marketplace to examine for the purpose of approximating the rate the free marketplace would set, was one for distant signals bought by cable systems. It was his testimony that any reliance on attempted comparisons to other markets, in particular the market for sports programming purchased by USA Network and broadcast stations, is invalid and misplaced. The analogy is invalid because of the major differences between marketplaces which makes them incomparable.¹⁶ He testified that the significant differences are those (1) between the products being purchased, (2) the uses the products were put to, and (3) between the sources of revenue

generated by the product.¹⁷ In his testimony, Dr. Park stated that even though there is no operating free market for distant signals, a model of such a marketplace could be constructed from publicly available studies of the industries. Dr. Park constructed and presented his model in this proceeding. By using an example of a marketplace for oranges, Dr. Park described how prices are set by the interaction of the supply and demand for a product: His "supply" is the function of the cost of the orange to the seller (a seller would not be willing to sell the orange for less than it cost him); and, his "demand" is a function of the worth of an orange to the buyer (a buyer would be willing to pay more for the first orange than for the second, but not more than the orange is worth to him).¹⁸ Represented graphically, Dr. Park states that the point of market equilibrium is where the supply and demand curves intersect.

In the construction of his model, Dr. Park's "demand curves" are based on a 1970 regression analysis study, adjusted by Larson data as of the end of 1981, and by inflation factors. His "supply curves" are based on (1) the 1977 Wharton economic projections on audience loss, (2) the 1979 Bortz econometric projections in below 100 market, and (3) FCC case studies using 1976-1977 data. His calculations of distant revenue gains are based on a 1968 Park econometric study and his adjustments for pay cable diversions is based on May 1982 Neilsen data.¹⁹ After several calculations and adjustments of factors derived from these studies, Dr. Park summarized his analysis in a fee schedule format submitted by NCTA as a "worst case" representation of fees to be considered by the Tribunal for possible rate adjustments resulting from the FCC's repeal of its distant signal and syndicated exclusivity rules.

Copyright Users—Rebuttal Phase

The NCTA presented two witnesses in the rebuttal phase: Dr. Rolla E. Park, Senior Economist, The Rand Corporation; Char Beales, NCTA's Vice President for Media Services and Research.

Dr. Rolla Park

Dr. Park presented extensive testimony and evidence in support of his supply and demand distant signal marketplace model.

¹⁷ Ibid, p. 71.

¹⁸ Ibid, p. 72.

¹⁹ "Proposed Findings of Fact and Conclusions of Law by the Joint Sports Claimants", September 1, 1982, p. 77.

¹⁴ "Proposed Findings of Fact and Conclusions of Law by the National Cable Television Association, Inc.", September 1, 1982, p. 61.

¹⁵ Ibid, p. 66.

¹⁶ Ibid, p. 70.

Char Beales

Ms. Beales presented additional testimony, and evidence to further support NCTA's exhibits, studies and testimony presented in its direct case. Ms. Beales also presented testimony and evidence to refute testimony and evidence presented by the copyright owners in their direct and rebuttal cases.

Statutory Royalty Fee Schedule

After considering the comments of parties, the Tribunal at a public meeting on March 31, 1982 adopted a motion finding, in part, "that it has the jurisdiction and authority to consider and to set royalty rates for additional signals and programming without being limited by the rates originally contained in the Act for other signals and programming. However, the Tribunal concludes that it will also consider and judge accordingly all evidence regarding the relationship, if any, between any such new rates and the current statutory rates."

The legislative history of the cable provisions of the copyright law has been presented in considerable detail in this record. Neither the rates in the copyright law nor the legislative history limit our adjustment of the rates for those signals and programs within the scope of this proceeding. We have reached similar conclusions in other rate proceedings, which holdings have been uniformly affirmed on judicial review.²⁰

It is also clear from the legislative history that, as a policy matter, we were not expected to look to the statutory schedule for guidance as to the measure of reasonable compensation. Those rates were adopted by the Congress to implement an agreement between NCTA and MPAA, in which the fee schedule was only one of a number of accommodations reached on cable copyright issues.

Another issue related to the statutory schedule requires comment. Just as our determination in this proceeding is not restricted by the statutory schedule, the perceived inadequacies of that schedule provides this Tribunal with no justification to balance the scales by excessive compensation of the copyright owners for those copyrighted works within the scope of this proceeding. Any appeals concerning the statutory

²⁰ In the mechanical royalty adjustment, we stated: "Likewise, the statutory language and the legislative history of the copyright revision bill excludes any presumption concerning the 'reasonableness' of the existing rate. Nor is the existing rate to be accorded precedential weight in the Tribunal's proceedings." (46 FR 10476)

schedule should be addressed to the Congress.²¹

Statutory Criteria and Legislative Guidance

In contrast to the detailed criteria provided in 17 U.S.C. 801(b) for our jukebox and mechanical royalty adjustments, the copyright law provides only the most general guidance for this proceeding. We had occasion to analyze our jurisdiction in cable royalty matters in the 1980 adjustment proceeding.²² In the portion of the determination devoted to legal issues, we observed that the scope of our jurisdiction was limited, but within that scope the Congress has given us broad discretion. Our jurisdictional and legal conclusions were challenged by both copyright owners and NCTA, but fully affirmed by the Court of Appeals²³ for the District of Columbia Circuit.

We have reached the same general jurisdictional conclusions in the current proceeding as in the 1980 case. The Congress has rigidly confined the scope of the proceeding, but within the area assigned we find that the Congress has granted us broad discretion. Our conclusions are fortified by the uniform holdings of the courts reviewing our determinations.

In the new distant signal adjustment, the Act directs us to consider, "among other factors, the economic impact on copyright owners and users." The House Report (H.R. 94-1476 at 176) directs us to consider the effect of the FCC action "on copyright owners and users, including broadcast stations, and the effect of such distant signals on local broadcasters' ability to service the public."

With regard to the syndicated exclusivity rule, the Copyright Act authorizes us to "assure that such rates are reasonable in light of the changes to such rules and regulations." The House Report states that the "exclusivity rules of the FCC have the effect of protecting copyright owners by restricting the cable carriage of certain distant television programming. If these rules are changed in the future to relax or increase the exclusivity restrictions, it is the Committee's judgment that royalty

²¹ The minority views of Congressmen Harold S. Sawyer, M. Caldwell Butler, Barney Frank, and Dan Lungren to accompany H.R. 5949, Cable Television Copyright Act Amendments, of the 97th Congress, H.R. 97-559—Part I assert that the Tribunal's "bureaucratically fixed royalties were unrealistically lower than their true market value." The cable royalty schedule was not established by the Tribunal, but by the Congress in Pub. L. 94-553.

²² 46 FR 892-97.

²³ NCTA v CRT, No. 81-1005, US Court of Appeals for DC Circuit, September 10, 1982.

rates paid by cable systems should be adjusted to reflect such changes."²⁴

It is also essential to take into account the statements of the legislative drafters of these provisions that they did not contemplate the complete elimination by the Federal Communications Commission of its regulations on distant signal carriage and syndicated program exclusivity. Congressman Robert Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties and Administration of Justice wrote FCC Chairman Charles Ferris, March 13, 1980, quoted in 79 FCC 2d at 897, "We did not contemplate such a sweeping change in the regulatory structure when we drafted Public Law 94-553." It is thus necessary for the Tribunal to accommodate the statutory language to the reality of the situation existing in the cable television industry as a result of the Commission's actions.

Proceedings of the Federal Communications Commission

The record of this proceeding includes references to certain findings of the Federal Communications Commission in matters before the Commission. The Congress has assigned exclusive jurisdiction in the matters covered by this proceeding to the Tribunal. The Commission acted on the communications matters within its jurisdiction and has disclaimed any determinations concerning issues within the jurisdiction of the Tribunal.²⁵ We express no views concerning conclusions reached by the Commission on matters of communications policy. The subject matter of this proceeding was not before the Commission. We have reached our determination on the basis of the record established in this proceeding.

Other Proceedings of the Copyright Royalty Tribunal

The Tribunal has completed two proceedings, and is currently engaged in a third proceeding for the distribution among copyright owners of the cable royalty fees. During these proceedings copyright claimants presented evidence which among other matters sought to establish that the secondary transmission of their copyrighted worked by cable systems was harmful to them and of a benefit to cable operators. Cable operators did not participate in those proceedings. The evidence and findings of those proceedings cannot provide any basis for a decision in this proceeding, and such

²⁴ HR 94-1476, p. 177.

²⁵ See 79 F.C.C. 2d at 762-63.

evidence and findings were excluded from any consideration.

Impact of Tribunal Rate Adjustment

A. Availability of Diverse Programming

The cable industry asserts that any significant increase in their copyright fees would "dramatically aggravate the cable industry's movement away from carriage of distant signal programming, thus causing corresponding decreases in the availability of diverse broadcast programming sources to the public."²⁶ We are told that cable operators would not pay the copyright fees proposed by the copyright owners, but elect to drop distant signals, and in effect restore the FCC restrictions on the carriage of distant signals.

In adopting our royalty adjustment, we have attached particular importance to the ability of the cable operator to make a business judgment as to the benefit to his enterprise from the carriage of a particular signal. The extent of the subscribers interest in receiving that signal will be reflected in his judgment. If the operator concludes that the carriage of the signal is of limited benefit, he may choose not to carry it because of the increased copyright payments. Would such a decision so harm the public that the Tribunal should refrain from adopting a royalty schedule reflecting the reasonable marketplace value of the copyright owners programs?

We observe first that the Congress has not assigned to this body the determination of national policy as to fostering of various competing methods of transmitting programs to the public. If the payment of fees based on the reasonable value of the programs causes operators to drop distant signals with resulting adverse public policy consequences, the Congress may wish to consider if some form of assistance to the cable industry is appropriate. Clearly that is not the function of the Tribunal or copyright owners.

In adjusting the rates, we have examined the public policy reflected in the existence of the cable compulsory license. We further note that after protracted examination, the Congress in pending legislation is retaining the cable compulsory license. This disposition is consistent with the testimony of the Tribunal before the committees of the Congress. We stated:²⁷

²⁶ Comments of NCTA, September 16, 1982, p. 3.

²⁷ Testimony of Thomas C. Brennan, Acting Chairman, CRT, June 24, 1981 before Subcommittee on Courts, Civil Liberties, and The Administration of Justice, House of Representative's Committee on the Judiciary.

It is our view that central to the consideration of this issue is the finding of Congress in 1976 that "it would be impractical and unduly burdensome to require the operators of cable systems to negotiate with copyright owners whose works are retransmitted by cable systems. We are not aware of any changes in copyright clearance procedures that presently provide justification for altering the judgment of the Congress that a cable compulsory license is currently necessary.

Our support for the present retention of the compulsory license reflected our concern at subjecting cable operators to individual transactions with copyright owners. This fear of the Tribunal was echoed during the recent debate on the cable copyright legislation by Congressman Tom Railsback, the ranking minority member of the House Subcommittee having jurisdiction in copyright matters. He stated if the compulsory license were rejected:

We would have something over 4,000 cable systems that would then have to negotiate with all of the program suppliers. I sincerely believe we would have chaos * * * ²⁸

Testimony before both the Tribunal and congressional committees, including that of cable industry representatives and operators, permits the conclusion that the principal current justification for the cable compulsory license is the burden of the transaction costs with individual copyright owners. We do not find in the compulsory license, as it exists today, any public policy justification for establishing royalty rates below reasonable marketplace expectations of the copyright owners.

If a cable operator should elect to drop a distant signal, a wide range of alternative programming is available to cable subscribers. As to the particular programming within the scope of this proceeding our record establishes that there is much duplication of programming between that of local stations and the distant signals. For example, only a limited number of syndicated programs are available for performance. Our record further indicates that it is industry practice to run the same syndicated series in a particular day part throughout the country.

B. Copyright Costs of Cable Operators

There is no economic or policy justification for copyright owners to subsidize the existing or developing cable industry. Cable witnesses have directed our attention to the extensive capital investment required in the construction of systems, and the number

²⁸ Congressional Record, September 28, 1982, p. H7661.

of years required before many systems become profitable. But our record establishes significant growth in the number of cable subscribers and the prospect of a further steady rise in the percentage of households serviced by cable.

A more broadly based assessment of the state of the cable industry was reached by the House of Representatives Committee on the Judiciary in its recent report on cable copyright legislation. In supporting changes in cable copyright law, the committee cited the "enormous growth of the cable industry and the entry of large, well financed, corporations into the market."²⁹

NCTA has asserted that many of the cable systems currently being built will not show a profit before the eighth to twelfth year of operation. Copyright owners in their evidence presented a different picture of the health of the cable industry, but even our acceptance of NCTA's assessments would not produce the result in this proceeding urged by NCTA.

Our statutory mandate to consider the impact of the royalty schedule on the cable industry does not suggest that our task is to ascertain if the cable industry after paying for *all* other regular costs of operation has adequate remaining revenue for payment of reasonable copyright fees for the carriage of distant signals. The rates we have adopted will result in a significant increase in the cost to an operator for carriage of a distant signal, and are likely to have an impact on the level of profitability of some cable systems. But we cannot restrict our rate determination to its effect on cable industry profits. Rather, we must strike a balance between copyright owner and user, while also remembering that only the cable operator has freedom of choice in this congressional mandated marriage.

NCTA has argued that the costs of increased copyright payments cannot be readily absorbed by operators, and that they cannot be passed on to subscribers because of rate regulation and growing

²⁹ H.R. 97-559, Part I, p. 4. See also Opening Statement of Senator Strom Thurmond, Chairman, Senate Committee on the Judiciary, "Hearings on Oversight of the Copyright Act of 1976 (Cable Television) 97th Congress 1st Session, p. 1. "The major change in this industry occurred with the invention of the telecommunications satellite which could beam multiple television signals simultaneously to any ground station of a cable company. This dramatic development led to an unprecedented growth of the cable television industry . . . The boom in cable television use has also resulted in an increase in revenue for the cable industry . . . Industry reports indicate that the cable industry has recorded an increase in earnings over the last four years of 841 percent.

competition from other technologies. The Tribunal in accordance with the requirements of the copyright law considered in the 1980 inflation adjustment proceeding the impact of rate regulation and concluded that the effect on subscriber charges was minimal. The Court of Appeals found that our "conclusion was amply supported by the record."³⁰

NCTA calls our attention to the time lag between when the need for a rate increase manifests itself and the time when the request is approved. This issue also was considered extensively in the 1980 proceeding. We again conclude that this factor does not justify withholding fair compensation from copyright owners, particularly when other suppliers of goods and services to the cable industry receive fair payment, not discounted for the rate regulation factor.

Finally, NCTA has argued that higher copyright fees should be rejected by the Tribunal because subscribers are not willing to pay more for distant signals. The parties have presented evidence seeking to show what subscribers would be willing to pay. We found these speculations and projections of limited utility—the operation of the marketplace will provide the answer.

Royalty Rate for New Distant Signals

The Tribunal judged that the current statutory rates could not be considered those that would result from full marketplace conditions if the compulsory license did not exist. The rates were established as a legislative compromise, they are arbitrary, and they were intended to require only a minimum payment on the part of cable operators.³¹

The insistence by the cable operators on retaining the compulsory license is, in the Tribunal's judgment, an indication that its cost to them is lower than what they would have to pay in the free market.³² The Tribunal also considers that the cable operators enjoy a substantial benefit in not having to negotiate for each program they carry on a separate basis.³³

For reasons that are related, the Tribunal also did not consider the rate structure presented by Dr. Park for the NCTA an accurate reflection of what the rates would be in the actual marketplace. Dr. Park himself conceded that there were discrepancies between his study and the real world.³⁴ The data

upon which the study relies comes first of all from inconsistent time periods; it is a mixture of current data and of FCC data several years old, from a period in which the carriage of distant signals was significantly different from what it is today, as the cable operators themselves conceded.³⁵ The calculations themselves led to conclusions whose plausibility the Tribunal was unable to accept; such as that the copyright owners in a free market would accept rates similar to those in the statute.³⁶

Dr. Park testified:

My analysis leads to the conclusion that current rates for the first signal are higher than the rates that would result from the free market analysis, from the operation of a free market.

By the same token, the current rates are smaller than the value of the first signal to a distant station.³⁷

In addition, the study was theoretically complex, it contained acknowledged errors, and it employed judgment and intuition which the Tribunal could not evaluate,³⁸ to a degree which caused the strength of its mathematical assertions to be weakened.³⁹ The fact that the study was a projection of transactions that might take place,⁴⁰ rather than a reflection of transactions that have actually taken place, caused the Tribunal to view its conclusions as speculative, and not as a basis for determining a rate.

The Tribunal considered that the marketplace analogies presented by the copyright owners were much more helpful. These analogies were at least based upon actual transactions. The Tribunal, however, was limited in its ability to rely upon these analogies because of the substantial differences between the marketplace proposed by the copyright owners in their comparisons and the distant signal marketplace. The copyright owners in general selected for their analogies the broadcast market, U.S.A. Network, and sports regional network; however, the Tribunal considers that these markets more closely resemble each other in many respects than they do the distant signal marketplace.⁴¹

The dissimilarity between the distant signal cable market and the broadcast and sports network markets is apparent above all in the reliance by the latter for

their income upon advertising.⁴² Cable operators in the distant signal market are remunerated in no way whatsoever by advertising. Broadcasters, on the other hand, not only rely upon advertising for their income, but there is a direct relationship between their income and specific programs.⁴³ With sports cable networks the picture is mixed, in that income may not be due solely to advertising, but the relationship between a specific kind of programming, the choice to carry that programming, and income itself is direct,⁴⁴ which is not the case in the distant signal market.⁴⁵

The Tribunal therefore judged that the amounts paid for broadcast programming or sports cable network programming are unreflective of what cable operators would be willing to pay for distant signals.

The second distinction between the distant signal market and the broadcast and sports network markets relates to control over programming. In this regard, the Tribunal considers that there is no question that the broadcast market and the distant signal market are completely different. The broadcasters maintain total control over their programming.⁴⁶ With distant signals, except to the extent that cable operators may select different programming by selecting different entire broadcast signals, the cable operator has no control whatsoever. With U.S.A. Network and sports cable networks, control over programming may not be quite as absolute as it is in the broadcast market; nevertheless, the cable operator in these markets does have the choice of either carrying or not carrying a specific kind of programming.⁴⁷ The Tribunal considered that the value of a product in two different markets would not likely be equal if the control over that product were not equal.

The Tribunal was governed by this viewpoint in its judgment of all of the calculations made by the separate copyright owners in their efforts to quantify the worth of their programming. The Tribunal, therefore, did not feel obliged to assess in detail the specific accuracy of these calculations; such as the amount distant signals have diverted viewing from local broadcast stations.⁴⁸

³⁰ "Proposed Findings of Fact and Conclusions of Law of the Joint Sports Claimants", September 1, 1982, p. 77; TR 1262-63, 2102, 2104, 2394-96, 2633.

³¹ TR 2503, 2523-25.

³² TR 2676.

³³ TR 2420-27, 2518-19.

³⁴ TR 2503, 2565-67, 2610-11, 2690-93.

³⁵ TR 2392-94.

³⁶ TR 2915-16.

⁴² "Proposed Findings of Fact and Conclusions of Law by the National Cable Television Association, Inc.", September 1, 1982, p. 96; TR 2381-83, 2915-16.

⁴³ TR 1426-31, 2381-83, 2909-15.

⁴⁴ TR 2915-16.

⁴⁵ TR 2912-13.

⁴⁶ TR 2912.

⁴⁷ TR 2382.

⁴⁸ TR 266-267.

³⁰ NCTA v. CRT, p. 28, slip opinion.

³¹ Motion Picture Association of America Ex. 2 pp. 22-24; Joint Sports Claimants Ex. 1, pp. 15-40.

³² TR 1841.

³³ TR pp. 1464, 1635.

³⁴ TR p. 2531.

or the factors that go into determining the cost of broadcast programming.⁴⁹ The Tribunal also felt that the much larger issues rendered moot the issue of whether or not additional distant signals decline in value.⁵⁰ Nor did the Tribunal find anything in the record to indicate that a particular distant signal should be given a separate and distinct value, in contrast to the value given other distant signals.⁵¹

The Tribunal does single out, however, that it cannot accept the proposal by the Joint Sports Claimants that the rate should be related to the cable royalty distribution. To do so would incorporate a fixed royalty distribution in the rate for future years regardless of changing circumstances.⁵²

In the absence of a free market or any marketplace directly analogous to that for distant signals, the Tribunal looked for its initial guidance to the marketplace analogies presented by the copyright owners and to the value for their programming that they derived from them. Then, on the basis of its judgment and the record as a whole, the Tribunal made a downward adjustment for what it considers the difference between these marketplaces and the marketplace for distant signals. The Tribunal concluded that a fair and reasonable rate for each additional distant signal is 3.75%.

Program Syndication Royalty Adjustment

The Tribunal found that the statutory fee schedule does not provide "reasonable" compensation to the copyright owners as a result of the deletion of the syndicated program exclusivity protection rules by the FCC. Therefore the Tribunal is imposing an additional fee on the royalty rate already in existence to compensate the copyright owners for losing blackout protection.

The regulations repealed by the FCC in July 1980 placed exacting limitations on the number of distant television signals that cable systems could distribute to their subscribers.⁵³ In addition, the rules required deletion of certain individual syndicated programs

from distant signals otherwise available for carriage.⁵⁴

The copyright owners case in large part was based upon analogous marketplace considerations. Another perspective employed was that of harm to the owner of the copyright and benefit to the user.⁵⁵ Specifically the copyright owners were asking the Tribunal for an amount of two to three times the existing royalty rate for the loss of exclusivity protection and to compensate them for the revenues lost because of cable's importation of syndicated programming into local markets.⁵⁶

While the Tribunal agreed in principle to the arguments concerning harm and benefit advanced by the copyright owners it differed with respect to the quantification of those arguments as reflected in the record.

Benefits to the Cable Operator

Dr. Bridger Mitchell, senior research economist for the Rand Corporation, testified for the copyright owners about the effect of the syndicated exclusivity rules and their repeal on cable systems.⁵⁷ The copyright owners cite a list of alleged benefits which they maintain accrue substantially to the cable operator now that syndicated exclusivity protection has been deleted, but which the Tribunal finds of marginal if not de minimus importance. These include: elimination of subscriber confusion and resentment by reason of blackouts; enabling systems to promote their schedules with certainty and confidence; avoiding the expense of alternative stand-by delivery systems; and the privilege of piggy-backing on the promotional efforts of broadcasters.⁵⁸ These particular arguments are not persuasive since the record amply demonstrates that the overwhelming number of cable systems resorted to blacking out the programming at issue rather than substituting something in its place.⁵⁹

Harm to the Copyright Owner

The copyright owners have asserted that deletion of the distant signal and syndicated exclusivity rules reduces copyright owners' income from broadcasters for copyrighted works carried on distant signals. This result, it is said, is primarily a function of the nature of the local television market. Distant signal importation fragments

local audiences. Advertising revenues for local stations are, therefore, reduced, generally in direct proportion to audience diversion.⁶⁰ This phenomenon was viewed from the perspective of those who deal with this market on a continuing basis. To this end Program Suppliers (copyright owners) presented the testimony and exhibits of management from an independent station, KOKI, Channel 23 in Tulsa, Oklahoma.

As an independent station KOKI purchases virtually all of its programming.⁶¹ Cable penetration in the Tulsa area is now close to 50 percent.⁶² The Tribunal was told that 80 to 85 percent of KOKI's programming is duplicated by distant signals, and that cable systems in the Tulsa area actively advertise the syndicated programming they carry on a distant signal basis. Based on Arbitron surveys, KOKI has concluded that distant signals have reduced its audience by one-third.⁶³ This development, it is asserted, has made it difficult for KOKI to sell programming to advertisers, who are aware of the reduced audiences and the fact that identical programming may be appearing in distant signals.⁶⁴ KOKI estimates that distant signal importation has produced a reduction in revenues of 30-35 percent annually.⁶⁵

NCTA on the other hand countered that KOKI never requested any cable systems to provide syndicated exclusivity protection for any of its programming prior to April 1981, about 2½ months before repeal of the syndicated exclusivity rules became effective.⁶⁶ James W. Lavenstein, General Manager, KOKI-TV and witness for MPAA, testified that April 1981 was when KOKI began seeking syndicated exclusivity protection.⁶⁷ A letter for only his first request was placed in evidence by MPAA.⁶⁸

The witnesses from KOKI claimed that had the exclusivity rules not been repealed the station would have exercised its rights under these rules to the fullest extent in the future.⁶⁹ Not

⁴⁹ Proposed Findings of Fact and Conclusions of Law of the American Society of Composers, Authors and Publishers", September 1, 1982, p. 16

⁵¹ TR p. 539.

⁵² TR p. 540.

⁵³ TR p. 611.

⁵⁴ TR pp. 571-76.

⁵⁵ TR p. 611.

⁵⁶ TR p. 105.

⁵⁷ TR p. 106.

⁵⁸ TR p. 107.

⁵⁹ TR pp. 697-98. At this point MPAA introduced evidence that KOKI had exercised the right to protect some of its regional network programming under the F.C.C.'s network non-duplication rules, 47 CFR 76.92 *et seq.* MPAA Exhibit 21, pp. 1, 2, 6-10.

⁴⁹ TR 1253-55.

⁵⁰ TR 2056-57, 2119-21; "Proposed Findings of Fact and Conclusions of Law by the Motion Picture Association of America, Inc., and its Member Companies", September 1, 1982, pp. 74-75.

⁵¹ TR 2093-94.

⁵² "Proposed Findings of Fact and Conclusions of Law by the National Cable Television Association, Inc.", September 1, 1982, pp. 89 and 98; TR 1116.

⁵³ 47 CFR 76.59(b)-(e), 76.61(b)-(f) and 71.63 repealed.

⁵⁴ 47 CFR 76.151-76.161 [repealed].

⁵⁵ TR pp. 135, 170-71.

⁵⁶ TR p. 8.

⁵⁷ TR pp. 410-21.

⁵⁸ TR p. 3006.

⁵⁹ TR pp. 236-37.

withstanding what might or might not have been done with respect to requesting protection Mr. Enderwood, Advertising and Promotion Manager, KOKI-TV, testified that his station was forced to spend money on defensive advertising so as not to erode the viewer base any further, rather than to advertise expansively so as to broaden their viewership. He testified that the same defensive posture was found among advertisers.⁷⁰

The witnesses from KOKI presented what they considered to be significant "hard" data by which they attempted to quantify the loss in audiences and advertising.⁷¹ KOKI attempted to quantify the loss in audience by using the advertising rates charged in the Tulsa market during 1980. Employing several assumptions, considered conservative by KOKI, the station calculated a drop of \$1 million annually if it lost four rating points in this day part.⁷²

KOKI-TV may or may not be a typical station and its experience with cable in the Tulsa market may or may not be typical but the Tribunal believes that the evidence in the record in this regard supports, to a limited degree, one form of the harm argument made by the copyright owners.

Another form of the harm argument was made by two witnesses who presented the seller's perspective. Mr. Warren Larson, financial vice president, Paramount Picture Corporation and Mr. Robert M. Jacquemin, senior vice president of sales for Paramount Television's Domestic Distribution division described the syndicated television programming market and their opinion of the impact on it as a result of the F.C.C.'s repeal of the distant signal and syndicated exclusivity rules.⁷³

These two witnesses testified that the backbone of the syndication industry is the sale of off-network series, primarily to independent television stations.⁷⁴ Further, they said that it is impossible to look at the syndication market without considering the networks run. The present structure of the network run of any series mandates that the program supplier operate at a loss they explained.⁷⁵ As a result syndication is the place to which the supplier must look to recoup losses and to earn a profit. But, because there are so few successes in the syndication market,⁷⁶

each of the successes must bear the weight of all programs that have failed to get to syndication. This increases the deficit that must be recovered by a successful syndicated program by a multiple of 10 to 20 times the deficit for an individual program.⁷⁷

Copyright owners assert that cable has had an adverse effect on the sale and price paid for all types of programs. Mr. Jacquemin related several examples where sales had not been consummated or where the price obtained was lower as a result of cable importation.⁷⁸ He also cited some examples that had occurred showing the adverse effect since deregulation.⁷⁹ Mr. Jacquemin also testified that since deletion of the rules the problems caused by increased distant signal availability and loss of syndicated exclusivity protection has become even more pronounced.⁸⁰

An issue that surfaced repeatedly throughout the proceeding was whether or not producers received increased prices from superstations. If WTBS is a fair example, and the Tribunal believes it is, conflicting evidence was introduced to show what prices it paid for programming product. NCTA witness Char Beales testified that distant cable audiences do generate added advertising revenue for the stations carried by cable as distant signals, and she quoted Ted Turner as saying that WTBS has been paying program suppliers from 100 to 1400 percent more for programming based on its national audience.⁸¹ However she introduced no evidence to support these claims. For their part copyright owners argued that WTBS paid nowhere near what its level of distant signal subscribers warranted. Furthermore the evidence they presented showed that none of the other national or regional superstations made an effort to pay prices commensurate with their superstation status. For example Mr. Jacquemin testified about two sessions with WTBS for the sale of syndicated series and feature films. In both cases WTBS was willing to pay slightly more than what would be justified by the Atlanta market, but our record provides no basis for any general finding that program suppliers are being compensated for the distant signal audience.⁸²

This actual experience attenuates NCTA's claims of additional revenues being available because of the wider

audiences achieved by superstations.⁸³ The Tribunal concludes that the syndicated television programming market is one of high risks and that although these risks would be present without the phenomenon of cable they are nevertheless somewhat exacerbated by cable.

In an attempt to quantify the effects on the syndicated programming marketplace caused by the abolition of the syndicated exclusivity rules, Mr. Jacquemin presented two studies. In one, he attempted to determine in general whether distant signal importation has had any influence on the pricing of syndicated programming and on Paramount's revenues. This study did not address the impact of the carriage of additional signals permitted by deregulation,⁸⁴ and therefore is of limited relevance to the issues in this proceeding. His conclusion was that the importation of distant signals had a substantial negative effect on the prices paid for syndicated programming.⁸⁵

The second study attempted to show how the repeal of the exclusivity rules had a negative impact on the sales of syndicated series, the extent of that loss, and developing trends if any.⁸⁶ The working hypothesis employed by Mr. Jacquemin was where protection was given prices paid would be high. He contended that this study proved not only a disparity in prices between markets but also that the gap was widening.⁸⁷ NCTA countered that since Mr. Jacquemin classified markets as "protected" or "unprotected" based not on how frequently stations in the market requested exclusivity protection, but on how frequently cable systems chose to substitute other programming for syndicated programming deleted at the request of a station rather than blacking it out the validity of the whole study could be in question. Under those circumstances the Tribunal could assess only marginal value to these studies.

Dr. Stanley M. Besen, senior economist, Rand Corporation, testified that there were two kinds of harm which attach to program suppliers because of distant signal importation. One type results from a portion of the viewing audience being diverted from local signals to distant signals. This he said causes a reduction in advertising revenues of the local stations which, in turn, reduces the potential revenue to program suppliers from program sales to

⁷⁰TR p. 583.

⁷¹TR pp. 600-01.

⁷²TR pp. 623-29.

⁷³TR pp. 344-64 and 1292-1355.

⁷⁴TR pp. 364 and 1297.

⁷⁵TR pp. 354-55.

⁷⁶TR pp. 348-49.

⁷⁷TR p. 359.

⁷⁸TR pp. 1302-04.

⁷⁹TR pp. 1352-55.

⁸⁰TR p. 1316.

⁸¹TR pp. 2727-2753.

⁸²TR pp. 1306 and 1309-11.

⁸³TR pp. 1307-1314.

⁸⁴TR pp. 1320, 1364, 1379-80.

⁸⁵TR pp. 1317-39.

⁸⁶TR p. 1339.

⁸⁷TR pp. 1345-46.

the local stations.⁸⁸ A second type of harm relates to the value of distant signals to cable subscribers. Thus Dr. Besen contends that to the extent that program suppliers do not share in any additional revenues generated by a system's carriage of distant signals, the suppliers are also harmed.⁸⁹

In Dr. Besen's opinion the first type of harm was the main thrust of the FCC's decision to repeal its syndicated exclusivity and distant signal rules. Because he believed Congress, in creating cable's compulsory license, was concerned with the second type of harm he endeavored to estimate that harm by calculating the value of distant signals to cable subscribers.⁹⁰ Dr. Besen produced a table showing the estimated percentages by which subscriber fees could be increased as a result of the addition of a distant signal or signals.⁹¹

He testified that his table does not address the first type of harm, only the second.⁹² Moreover he conceded that the values in his table were subject to some modifications. Most important to this discussion is that the equation upon which they were based calculated the demand for adding distant signals not subject to the FCC's syndicated exclusivity rules.⁹³

The Tribunal concludes that while Dr. Besen's studies shed some light on the harm issue they are of limited value in establishing a rate structure to compensate copyright owners for the repeal of syndicated exclusivity.

For somewhat of the same reason we reject the methods of Dr. David Black of joint music to calculate new copyright fees for previously carried signals newly freed of the syndicated exclusivity rules.⁹⁴ We cannot place too much reliance on Dr. Black's entire calculation because the record reflects alleged weaknesses. First, he assumes that music's share of the compulsory license revenue pool will remain constant. This, according to NCTA's argument, is essential to his formula. If music's share of the pool were to increase, the copyright fee needed to recoup music's revenue loss from audience diversion would be lower than Dr. Black calculates. NCTA claims the converse is also true.⁹⁵ The second problem is the

assumption that all revenue lost to individual broadcasters as a result of the percent of audience diversion predicted by the FCC would be lost to the broadcast industry.⁹⁶ This results in an overstatement of the copyright fee multiples derived in this calculation. Another problem is the assumption that broadcast music license fees are indicative of the value of music to cable systems. The record reflects the very real possibility that Dr. Black overstated joint music's case, and therefore is unreliable as a total benchmark on which to set rates for syndicated exclusivity repeal.

Rates recommended by the NCTA were incorporated in the rebuttal testimony of Dr. R. E. Park, senior economist, Rand Corporation. Dr. Park constructed an alleged marketplace model for distant signals and used this plus an earlier study in attempting to arrive at a revised fee to make provision for deletion of exclusivity protection.⁹⁷ The Tribunal rejects Dr. Park's conclusions.

The Tribunal concluded from the evidence that Dr. Park's analysis was based upon assumptions that were highly tentative in nature and from inconsistent time periods.⁹⁸ The record also indicates that Dr. Park's analysis was limited to the mechanistic application of an arithmetic formula which ignored the realities of the marketplace, made no provision for emerging technological advances, compounded the confusion of the audience diversion study and understated if not totally ignored the differences between distant signal carriage during the early 70's and 1980.⁹⁹ Furthermore the Tribunal was skeptical of and unresponsive to Dr. Park's constant intuitive judgments and interpretations.¹⁰⁰ As a result the Tribunal could not accept NCTA's premise that little if any harm resulted from the repeal of the syndicated exclusivity rules.

Based on the entire record it is the Tribunal's judgment that while NCTA understated the effects of the repeal of the rules the copyright owners overstated it. Based on the evidence in this proceeding the Tribunal finds that in addition to the absence of an operating free market, the concept of an analogous market is elusive. We reject NCTA's contention that the evidence does not support levying a fee on imported distant signals to compensate

for the abolition of syndicated program exclusivity. In our view it does. Furthermore we reject NCTA's contention that a fee imposition would be burdensome. On the basis of the record we find that the cable industry has been able to absorb other cost increases without any disruptive impact on the structure.

The evidence also shows that while not conclusive there is sufficient merit to the argument that copyright owners, particularly program syndicators, will suffer further harm as cable systems increase their penetration of metropolitan markets. Again, though not conclusive the evidence indicates to a degree that audience diversion does have an economic impact primarily on the ability of syndicators to sell their product at a premium price.

In a related sense the record offers conflicting evidence as to the amount and effect of blackout protection requested by television stations. Earlier the experience of KOKI television in Tulsa, Oklahoma was cited.¹⁰¹ Again and again the record of this proceeding refers to a 1972 FCC statement¹⁰² which purports that syndicated exclusivity was requested only 26% of the time in the top 100 markets. Dr. Park relied on the 26% estimate even though he conceded that " * * * unfortunately, they don't give any backup for that. This is the conclusion they state, and I'm using it here as some indication of the amount of actual requests for exclusivity that took place."¹⁰³

Mr. Fritz E. Attaway, vice president and counsel for MPAA argued that the failure of stations to exercise their rights under the rules was not because of the low value of the rules, but because of the burden of having to give notice, or seek enforcement of the rules.¹⁰⁴ Mr. Allan R. Cooper, vice president of MPAA, along with Dr. Mark Levy, director of the Center for Research and Public Communications, presented the results of a survey conducted among broadcast stations in the top 50 television markets.¹⁰⁵ Unfortunately, from the Tribunal's perspective the survey stopped short of indicating how often stations requested protection; how many cable systems had requests made of them; and how much programming was actually affected by these requests.¹⁰⁶

⁸⁸ TR pp. 460-61, 483-87.

⁸⁹ TR p. 461.

⁹⁰ TR pp. 475-504.

⁹¹ Motion Picture Association of America Exhibit 27, TR pp. 487-505, 1257-70.

⁹² TR pp. 1261-62.

⁹³ TR pp. 513-17, 1265-67.

⁹⁴ Joint Music Exhibit 4, TR 721-25.

⁹⁵ TR pp. 729-31, 775-77.

⁹⁶ 79 FCC 2d at 699.

⁹⁷ TR pp. 2465-68, 2581-86.

⁹⁸ TR pp. 2529-31, 2511-25-37.

⁹⁹ TR pp. 2565-67.

¹⁰⁰ TR pp. 2420-27, 2518-19.

¹⁰¹ TR pp. 106-7.

¹⁰² 71 FCC 2d at 951, 964.

¹⁰³ TR p. 2465.

¹⁰⁴ TR pp. 165-66.

¹⁰⁵ Motion Picture Association of America Exhibit R3-5, TR pp. 2781-85, 2818-33.

¹⁰⁶ TR pp. 2785-2802, 2956-61.

The underlying assumption of the FCC analysis of a 26% percent request factor was that exclusivity provisions were expected to have the greatest effect on cable systems operating in the largest markets, with the smallest effects to be experienced in markets 51-100, not served by local independent stations.¹⁰⁷ On the other hand, a study by NCTA in 1979 in which 1,024 cable systems in major markets were surveyed showed that of the 421 systems responding, approximately 20 percent indicated that they were receiving exclusivity protection requests for approximately 35 hours of programming per week per system. And in some markets deletion was required of nearly half of distant signal programming.¹⁰⁸

Dr. Bridger Mitchell in his testimony, stated among other things, that the difference between the results of the FCC analysis and the results produced by NCTA may represent changes in the marketplace between the times the two studies were embarked upon. Dr. Mitchell also suggested that more reliance should be placed on the NCTA study because it is based on actual data.¹⁰⁹

Cable operator, Carolyn Chambers, executive vice president of Liberty Communications, claimed their systems received few requests for protection under the rules. She stated that only three of 18 systems ever received such requests. Conversely, only two of Liberty's broadcast stations located in top 100 markets thought the importation of syndicated programming was important enough to ask for protection.¹¹⁰ Mr. John H. Evans, executive vice president of Arlington Communications Corporation (ARTEC) testified that his company had received few exclusivity requests. The paucity of requests may be mitigated he thought, because ARTEC is virtually the only cable service in the local Washington area and serves a very small share of the audience.¹¹¹ Penetration level as in the case of ARTEC, may have been a factor in the frequency of exclusivity requests.¹¹² The record is murky in this regard. The Tribunal acknowledges that other factors may exist as well, but the evidence is too conflicting to form absolute judgments.

Cable systems will reap some benefits and the copyright owners will suffer harm as a result of the repeal of the

rules, but the record nevertheless demonstrates that this will not occur to the degree represented by the copyright owners. Therefore the Tribunal has revised downward the rates requested by the copyright owners and we set forth these new rates in § 308.2(d).

Relationship of Rate Adjustments

This proceeding has resulted from the repeal by the FCC of its regulations on distant signal carriage and syndicated program exclusivity. While these actions were taken simultaneously by the FCC, they present two distinct actions under the language of the copyright law. As we have noted before, the drafters of the statutory language have asserted that they did not contemplate the complete repeal of these rules by the FCC. It therefore has been necessary for the Tribunal to accommodate the statutory language to the actual situation resulting from the FCC action.

We resolved that the actions of the FCC should be kept separate for purposes of the evidentiary proceeding and our decision process. We have therefore made separate determinations for the royalty fee to be paid for new signals, and the adjustment of the existing schedule to reflect the elimination of program syndication exclusivity. There remains for resolution the relationship between these determinations as they apply to new signals and new systems.

We have resolved that for new signals whose carriage was not permitted prior to June 24, 1981 the copyright payment shall be determined exclusively by the application of the rate established by § 308.2(c). We have also resolved that if a signal could have been carried by a cable operator prior to June 24, 1981, was not carried, but subsequently is carried, the fees established by § 308.2(d) apply if the signal was subject to the syndication rules. As to new systems, we have provided in § 308.2(d) that if the signal would have been subject to the syndication rule if the system had been functioning prior to June 24, 1981, the fees established in § 308.2(d) apply to such signals.

NCTA asserts that the § 308.2(d) adjustment may not be applied to previously authorized but not carried signals, or those signals of a new system that would have been subject to the syndication rule.¹¹³ NCTA's position rests on their reading of 17 U.S.C. 801(b)(2)(C) which provides, in part, that "any such adjustment shall apply only to the affected television broadcast signals carried on those systems

affected by the change." This language expresses and reflects the expectation of the Congress that the FCC might adopt amendments of its program syndication rule, and that the syndication adjustment by the Tribunal should be restricted to the scope of the FCC action. It does not control the current situation where the FCC has totally eliminated the syndication rule. The interpretation urged by NCTA would render meaningless the clear intent of the Congress that the royalty schedule be "reasonable in light of the changes to such rules and regulations." The benefits to cable operators and the harm to copyright owners exist without regard to when the signal was first carried, or when the cable system commenced operations.

Cost of Living Adjustment

The Copyright Owners have proposed that our royalty schedule should include a cost of living adjustment mechanism.

In our 1980 cable adjustment determination we wrote that, "Our authority to adopt interim cost of living adjustments must be judged in each proceeding by reference to the specific statutory provisions." We did not find such authority in our cable inflation adjustment proceeding, and our holding has been affirmed upon judicial review.

We have not found it necessary to determine if our holding in a proceeding pursuant to 17 U.S.C. 801(b)(2)(A) can be distinguished from proceedings pursuant to 17 U.S.C. 802(b)(2) (B) and (D). We have resolved that the adoption of an inflation mechanism is not justified as a policy matter.

The cable royalty rates are expressed as a percentage of a system's basic revenues. Consequently cable royalty fees to some extent reflect inflation without adjustment.¹¹⁴ We also share the argument advanced by NCTA that an inflation mechanism could result "in some double counting" if no consideration was given to the impact of inflation on subscriber fees.

Effective Date

The Copyright Owners have requested that the adjusted rate schedule be effective as of July 1, 1981 to reflect the June 25, 1981 effective date of the FCC deregulation. They argue that cable operators have been enjoying the benefits of their programs since that date, and should pay for them at the level the Tribunal has now found to be reasonable. NCTA argues that the

¹⁰⁷ Motion Picture Association of America Exhibit 26, p. 2, TR pp. 412-14.

¹⁰⁸ Motion Picture Association of America Exhibit 26, Table 1 (revised), TR pp. 1331-33.

¹⁰⁹ TR pp. 415-20.

¹¹⁰ TR p. 1419.

¹¹¹ TR p. 1664.

¹¹² TR pp. 373-74.

¹¹³ Copyright Royalty Tribunal, Public Meeting, October 20, 1982 Tr. pp. 10-12.

¹¹⁴ NCTA v. CRT, No. 81-1005, U.S. Court of Appeals for D.C. Circuit, September 10, 1982, Footnote 66, p. 21 slip opinion.

Tribunal lacks authority for such action, and that any increase should not be effective until July 1, 1983 in order to allow adequate lead time for the cable industry to adjust to the new rates.

We have determined as a policy matter to establish an effective date of January 1, 1983. As discussed elsewhere, we have, particularly in our rate determination for new signals, given considerable weight to the argument of the copyright owners that in the final analysis the decision to carry or not carry certain signals will be a business decision of the cable operator. This must be an informed decision of the operator in which the operator considers copyright costs, along with other factors. We find that it would be inequitable to subject cable operators to substantial copyright payments without prior knowledge of the amount of such payments.

We find no justification for the request of NCTA for a six month delay in the effective date of the adjustment. Cable operators have enjoyed the benefits of de-regulation for 15 months—copyright owners should now receive the additional compensation authorized by the Congress.

We recently resolved¹¹⁵ that if a cable operator should elect to defer depositing the additional fees during the pendency of litigation and if such increases are affirmed after judicial review, the operator is then required to pay the higher fees, as of the effective date of the rate adjustment. We reaffirm that conclusion in this proceeding. We also reaffirm our conclusion that we have no specific or inherent jurisdiction to assess interest.

List of Subjects in 37 CFR Part 308

Copyright, Cable television.

PART 308—[AMENDED]

In consideration of the above, Part 308 is amended as follows:

Section 308.1 is revised to read as follows:

§ 308.1 General.

This part establishes adjusted terms and rates or royalty payments in accordance with the provisions of 17 U.S.C. 111 and 801(b)(2)(A), (B), (C), and (D). Upon compliance with 17 U.S.C. 111 and the terms and rates of this part, a cable system entity may engage in the activities set forth in 17 U.S.C. 111.

§ 308.2 [Amended]

Section 308.2 is amended by adding new paragraphs (c) and (d):

* * * * *

(c) Notwithstanding paragraphs (a) and (d) of this section, commencing with the first accounting period of 1983 and for each semiannual accounting period thereafter, for each distant signal equivalent or fraction thereof not represented by the carriage of:

(1) Any signal which was permitted (or, in the case of cable systems commencing operations after June 24, 1981, which would have been permitted) under the rules and regulations of the Federal Communications Commission in effect on June 24, 1981, or

(2) A signal of the same type (that is, independent, network, or non-commercial educational) substituted for such permitted signal, or

(3) A signal which was carried pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules were in effect on June 24, 1981; the royalty rate shall be, in lieu of the royalty rates specified in paragraphs (a) and (d) of this section, 3.75 per centum of the gross receipts of the cable systems for each distant signal equivalent; any fraction of a distant signal equivalent shall be computed at its fractional value.

(d) Commencing with the first accounting period of 1983 and for each semiannual accounting period thereafter, for each distant signal equivalent or fraction thereof represented by the carriage of any signal which was subject (or, in the case of cable systems commencing operations after June 24, 1981, which would have been subject) to the FCC's syndicated exclusivity rules in effect on June 24, 1981 (former 47 CFR 76.151 et seq.), the royalty rate shall be, in addition to the amount specified in paragraph (a) of this section,

(1) For cable systems located wholly or in part within a top 50 television market,

(i) .599 per centum of such gross for the first distant signal equivalent;

(ii) .377 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents;

(iii) .178 of 1 per centum for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

(2) For cable systems located wholly or in part within a second 50 television market:

(i)—.300 per centum of such gross receipts for the first distant signal equivalent;

(ii) .189 of 1 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iii) .089 of 1 per centum for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

(3) For purposes of this section "top 50 television markets" and "second 50 television markets" shall be defined as the comparable terms are defined or interpreted in accordance with 47 CFR 76.51, as effective June 24, 1981.

Thomas C. Brennan,
Acting Chairman.

[FR Doc. 82-31747 Filed 11-18-82; 8:45 am]

BILING CODE 1410-01-M

VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Interest Rate; Home Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rate on guaranteed, insured and direct loans for homes and condominiums. The maximum interest rate is decreased because the mortgage money market has eased in recent weeks. The decrease in the interest rate will allow eligible veterans to obtain a loan at a lower monthly cost.

EFFECTIVE DATE: November 15, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Ave., NW., Washington, D.C. 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by law to establish a maximum interest rate for home and condominium loan guaranteed, insured or made by the Veterans Administration as he finds the loan market demands. Recent market indicators—including the rate of discount charged by lenders on VA and Federal Housing Administration loans, the general availability of mortgage funds, and the results of the bi-weekly Federal National Mortgage Association auctions—have shown that the mortgage market has eased. After consultation with the Secretary of Housing and Urban Development as required by law, it has been determined that a decrease in the VA home and condominium interest rate is warranted at this time.

The decrease in the VA maximum home and condominium interest rate should not have an adverse impact on the availability of funds necessary to

¹¹⁵ 47 FR 44728.

make VA loans. The decrease in the VA interest rate, however, should allow more veterans to purchase a home because of the lower monthly payment for principal and interest required at the lower interest rate.

The Administrator's statutory authority to establish interest rates has been delegated by 38 CFR 2.8 to the Chief Benefits Director, Deputy Chief Benefits Director, or person authorized to act for them.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 *Federal Register*, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113 and 64.114)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1) and 1811(d)(1) of title 38, United States Code and delegated to the undersigned by 38 CFR 2.6(b)(3). The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These decreases are accomplished by amending §§ 36.4311(a), and 36.4503(a), title 38, Code of Federal Regulations.

Approved: November 12, 1982.

By direction of the Administrator.

John W. Hagan, Jr.,

Deputy Chief Benefits Director.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs/housing and community development, Manufactured homes, and Veterans.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4311, paragraph (a) is revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration which specify an interest rate in excess of 12 per centum per annum, effective November 15, 1982, the interest rate on any home or condominium loan guaranteed or insured wholly or in part on or after such date may not exceed 12 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

2. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to \$33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to \$27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the Veterans Administration shall bear interest at the rate of 12 percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of

13 percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

[FR Doc. 82-31800 Filed 11-18-82; 8:45 am]
BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6452]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

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

EFFECTIVE DATE: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building, Room 505, Washington, DC 20472.

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

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary

Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5

U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities.

This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

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

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

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective date of authorization of sale of flood insurance for area ¹	Hazard area identified
Pennsylvania: Huntingdon County	Three Spring, borough of	422576	770317, emergency; 821001, regular	750124
Arkansas:				
Lonoke County	Allport, town of	050379	800116, emergency; 821005, regular	761029
Deshia County	Arkansas City, city of	050066	750422, emergency; 821005, regular	740510
Georgia: Bartow County	Emerson, city of	130276	760419, emergency; 821008, regular	750404
Iowa: Polk County	Pleasant Hill, city of	190489	821008, emergency; 821008, regular	770204
New Jersey: Sussex County	Green, township of	340529	770622, emergency; 821008, regular	741101
Pennsylvania:				
Cumberland County	Lower Mifflin, township of	421582	770523, emergency; 821008, regular	741227
Washington County	Mount Pleasant, township of	422149	750429, emergency; 821008, regular	741206
Northampton County	Nazareth, borough of	420725	780315, emergency; 821008, regular	740109
Virginia:				
Halifax County	Halifax, town of	510301	750306, emergency; 821008, regular	751115
Greensville County	Jarratt, town of	510263	750305, emergency; 821008, regular	760730
Arkansas:				
Woodruff County	Cotton Plant, city of	050231	750811, emergency; 821012, regular	740621
Lincoln County	Grady, city of	050128	750501, emergency; 821012, regular	740510
Prairie County	Hazen, city of	050331	751119, emergency; 821012, regular	750425
Cleveland County	Kingsland, city of	050039	750411, emergency; 821012, regular	740830
St. Francis County	Palestine, city of	050359	750617, emergency; 821012, regular	750425
Arkansas County	St. Charles, town of	050285	750826, emergency; 821012, regular	750418
Saline County	Traskwood, city of	050294	750725, emergency; 821012, regular	750418
Drew County	Wilmar, city of	050076	750717, emergency; 821012, regular	760604
Louisiana: Allen Parish	Oberlin, town of	220012	790928, emergency; 821012, regular	740621
Connecticut: Litchfield County	Plymouth, town of	090138	750904, emergency; 821015, regular	750816
Iowa:				
Jackson County	Bellevue, city of	190158	750421, emergency; 821015, regular	740329
Butler County	Greene, city of	190037	750708, emergency; 821015, regular	740517
Delaware County	Manchester, city of	190112	750425, emergency; 821015, regular	740802
Idaho: Bonneville County	Idaho Falls, city of	160029	740801, emergency; 821015, regular	740208
Illinois:				
Will County	Beecher, village of	170696	741212, emergency; 821015, regular	740412
Rock Island County	East Moline, city of	170587	760305, emergency; 821015, regular	0
Fulton County	London Mills, village of	170763	760107, emergency; 821015, regular	741018
Will County	Manhattan, village of	170704	750612, emergency; 821015, regular	740315
St. Clair County	Otation, city of	170633	740703, emergency; 821015, regular	740222
Indiana:				
Hancock County	Hancock County ²	180419	750421, emergency; 821015, regular	770701
Noble County	Rome City, town of	180385	750729, emergency; 821015, regular	750711
Shelby County	Shelby County ³	180235	750313, emergency; 821015, regular	741129
Michigan:				
Calhoun County	Albion, township of	260639	750912, emergency; 821015, regular	771223
Eaton County	Eaton Rapids, city of	260067	750818, emergency; 821015, regular	740524
Ingham County	Mason, city of	260092	750424, emergency; 821015, regular	740531
Calhoun County	Pennfield, township of	260564	750825, emergency; 821015, regular	750326
Jackson County	Summit, township of	260575	751022, emergency; 821015, regular	750919
Nebraska:				
Saline County	Creta, city of	310186	740417, emergency; 821015, regular	740123
Saline County	Dewitt, village of	310187	741223, emergency; 821015, regular	731207

State and county	Location	Community No.	Effective date of authorization of sale of flood insurance for area ¹	Hazard area identified
New Jersey: Bergen County	Ridgefield Park, village of	340066	750508, emergency; 821015, regular	740628
New York:				
Suffolk County	Bellport, village of	361069	740530, emergency; 821015, regular	741101
Montgomery County	Fultonville, village of	360449	750117, emergency; 821015, regular	740301
Cortland County	Marathon, village of	360183	741121, emergency; 821015, regular	740503
Ohio:				
Jefferson County	Empire, village of	390299	750801, emergency; 821015, regular	750315
Jefferson County	Stratton, village of	390303	750627, emergency; 821015, regular	731123
Jefferson County	Tiltonsville, village of	390634	750730, emergency; 821015, regular	750808
Belmont County	Yorkville, village of	390033	750509, emergency; 821015, regular	740208
Pennsylvania:				
Washington County	Donegal, township of	422146	770323, emergency; 821015, regular	741206
Dauphin County	Jefferson, township of	421594	760211, emergency; 821015, regular	750131
Chester County	New Garden, township of	422275	751103, emergency; 821015, regular	741206
Mercer County	New Vernon, township of	422485	790907, emergency; 821015, regular	750131
Texas: El Paso County	El Paso, city of	480214	701211, emergency; 821015, regular	771129
Utah: Utah County	Utah County ²	495517	711112, emergency; 821015, regular	750110

¹ Key for reading 4th column (effective date): First two digits designate the year, middle two digits designate the month, last two digits designate the day.

² Unincorporated areas. Total is: 54.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: October 29, 1982.

Lee M. Thomas,
Associate Director, State and Local Programs
and Support.

[FR Doc. 82-31412 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6353]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

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

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 3429, Bethesda, Maryland 20034, phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building—Room 505, Washington, D.C. 20472

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

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood

insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

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

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

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

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

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

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

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special flood hazard area identified
Kansas: Jackson	Holton, city of	200141B	Dec. 27, 1976 emergency, Jan. 16 1982, regular, Jan. 16, 1982, suspended, Oct. 1, 1982 reinstated.	Feb. 22, 1974 and Oct. 24, 1975.
Michigan: Muskegon	Ravenna, township of	260731—New	Oct. 6, 1982, emergency	
North Dakota: Pembina	Drayton, township of	380276	do	Dec. 15, 1981.
Florida: Flagler	Marineland, town of	120570A	Oct. 8, 1982, emergency	July 8, 1977.
Iowa: Polk	Pleasant Hill, city of	190489B	Oct. 8, 1982, emergency, Oct. 8, 1982, regular	Feb. 4, 1978 and May 3, 1982.
Texas: Lee	Giddings, city of	480435A	Oct. 8, 1982, emergency	June 28, 1974.
Georgia: Liberty	Hinesville, city of	130125B	June 13, 1975, emergency, Sept. 16, 1982, regular, Sept. 16, 1982, suspended, Oct. 12, 1982, reinstated.	Feb. 25, 1977.
Idaho: Boise	Unincorporated areas	160205	Oct. 14, 1982, emergency	Sept. 14, 1982.
Washington: Pierce	Bonney Lake, city of	530274	do	Oct. 29, 1976 and May 1, 1980.
Iowa:				
Mills	Hastings, city of	190204	Oct. 14, 1982, emergency, Oct. 14, 1982, regular.	Sept. 19, 1975.
Do	Unincorporated areas	190891	do	Oct. 18, 1977.
Boise	Unincorporated areas	160205	Oct. 14, 1982, emergency	Sept. 14, 1982.
Washington: Pierce	Bonney Lake, city of	530274	do	Oct. 29, 1976 and May 1, 1980.
Virginia: Accomack	Wachapreague, town of	510005B	Jan. 28, 1975 emergency, Sept. 2, 1982, regular, Sept. 2, 1982, suspended, Oct. 25, 1982, reinstated.	Aug. 30, 1974 and May 28, 1976.
New York: Schoharie	Jefferson, town of	361196A	Oct. 29 1982, emergency	Aug. 12, 1977 and Jan. 24, 1975.
Georgia: Gilmer	Unincorporated areas	130317	do	
Iowa: Allamakee	New Albin, city of	190942—New	do	
Michigan: Tuscola	Indianfields, township of	260526A	do	Mar. 4, 1977.
New York: Oswego	New Haven, town of	360655B	Dec. 23, 1975, emergency, Feb. 17, 1982, regular, Sept. 2, 1982, suspended, Oct. 18, 1982, reinstated.	July 19, 1974 and April 23, 1976.
Texas: Fannin	Bonham Water Authority, city of	481582—New	Oct. 20, 1982, emergency	
Michigan: Lenawee	Adrian, township of	260732—New	do	
Connecticut: Litchfield	Plymouth, town of	090138B	Oct. 15, 1982, suspension withdrawn	Aug. 16, 1975 and Jan. 14 1977.
Florida:				
Palm Beach	Lantana, town of	120214C	do	Mar. 12, 1971, July 1, 1974 and Jan. 5, 1979.
Do	Pahokee, city of	120219B	do	Sept. 5, 1975 and May 15, 1978.
Illinois:				
Will	Becher, village of	170696B	do	Apr. 2, 1976 and Apr. 12, 1974.
Rock Island	East Moline, city of	170587B	do	
Will	Manhattan, village of	170704B	do	Feb. 20, 1976 and Mar. 15, 1974.
St. Clair	O'Fallon, city of	170633B	do	Feb. 22, 1974 and Oct. 31, 1975.
Indiana:				
Hancock	Unincorporated areas	180419B	do	July 1, 1977.
Lake	Griffith, town of	185175C	do	Apr. 18, 1972, July 1, 1974 and May 30, 1975.
Noble	Rome City, town of	180385B	do	July 11, 1975 and Sept. 1, 1978.
Shelby	Unincorporated areas	180235B	do	Apr. 15, 1977.
Maryland: Anne Arundel	Highland Beach, town of	240161B	do	Nov. 29, 1974 and Nov. 4, 1981.
Iowa:				
Jackson	Bellevue, city of	190158B	do	Mar. 29, 1974 and July 23, 1976.
Butler	Greene, city of	190037B	do	May 17, 1974 and Feb. 20, 1976.
Delaware:				
Manchester	Manchester, city of	190112B	do	Aug. 2, 1974 and Jan. 9, 1976.
Michigan:				
Eaton	Eaton Rapids, city of	260067C	do	May 24, 1974, Sept. 5, 1975 and Dec. 10, 1976.
Ingham	Mason, city of	260092B	do	June 4, 1976 and May 31, 1974.
Calhoun	Pennfield, township of	260564A	do	Sept. 26, 1975.
Jackson	Summit, township of	260575A	do	Sept. 19, 1975.
Nebraska:				
Saline	Crete, city of	310186C	do	Jan. 23, 1974, Apr. 23, 1976 and June 13, 1978.
Do	Dowitt, village of	310187A	do	Dec. 7, 1973.
New Jersey:				
Hunterdon	Stockton, borough of	345322D	do	June 16, 1972, July 1, 1974 and Nov. 14, 1975.
Bergen	Ridgefield Park, village of	360066B	do	June 28, 1974 and Jan. 2, 1976.
New York:				
Suffolk	Bellport, village of	361069B	do	Nov. 1, 1974 and May 21, 1976.
Montgomery	Fultonville, village of	360449B	do	Mar. 1, 1974 and July 9, 1976.
Cortland	Marathon, village of	380183B	do	May 3, 1974 and June 18, 1976.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special flood hazard area identified
Ohio:				
Jefferson	Empire, village of	390299B	do	Mar. 15, 1975 and Aug. 27, 1976.
Do	Stratton, village of	390303B	do	Nov. 23, 1973 and Aug. 20, 1976.
Do	Tiltonsville, village of	390634A	do	Aug. 8, 1975.
Jefferson and Belmont	Yorkville, village of	390033B	do	Feb. 8, 1974 and June 4, 1976.
Oklahoma: Tulsa and Osage	Tulsa, city of	405381E	do	May 28, 1975, July 30, 1976 and Aug. 14, 1979.
Texas: El Paso	El Paso, city of	480214B	do	Nov. 29, 1977.
Utah: Utah	Unincorporated areas	495517A	do	Jan. 10, 1975.
Wisconsin:				
Waukesha	Elm Grove, village of	550578B	Oct. 18, 1982, suspension withdrawn	Dec. 23, 1977.
Calumet	Chilton, city of	550037D	Oct. 15, 1982, suspension withdrawn	Apr. 12, 1974, May 21, 1976, Mar. 16, 1981, and Nov. 19, 1976.
Ohio: Hamilton	Cincinnati, city of	390210B	June 27, 1973 emergency, Oct. 15, 1982, regular, Oct. 15, 1982, suspended, Oct. 29, 1982, reinstated.	July 30, 1976.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: October 29, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31413 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Identification and Mapping of Special Flood Hazard Areas; Changes in Special Flood Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Associate Director, State and Local Programs and Support, after consultation with the Chief Executive Officer of each community listed, finds that modification of the proposed Special Flood Hazard Areas (SFHAs) for those communities is appropriate as a result of requests for changes in the interim and/or Proposed Rule.

DATES: These modified SFHAs are in effect as of the dates listed in the fifth column of the attached list and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified SFHA determinations for each community are available for inspection at the office of the Chief Executive Officer of the community, listed in the fourth column of the table.

FOR FURTHER INFORMATION CONTACT: Brian R. Mrazik, Acting Chief,

Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support has published a notification of the SFHAs in prominent local newspapers for the communities listed below. Ninety (90) days have elapsed since that publication, and the Associate Director has received appeals from the communities requesting changes in the proposed SFHA determinations.

The numerous changes made in the SFHAs on the Flood Insurance Rate Map for each community make it administratively infeasible to publish in this notice all of the SFHA changes contained on the maps. However, this notice includes the address of the Chief Executive Officer where the modified SFHA determinations are available for inspection.

The modifications are pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These SFHAs are basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These SFHAs together with the flood plain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified SFHAs shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

PART 65—[AMENDED]

§ 65.4 [Amended]

The changes in the SFHAs listed below are in accordance with 44 CFR 65.4.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
California: San Bernardino	Unincorporated areas (FEMA Docket No. 6312).	<i>The Sun</i> , May 5, and May 12, 1982.	Mr Robert Hammock, Board of County Supervisors, San Bernardino County Courthouse, 175 West Fifth Street, San Bernardino, CA 92415.	Jan. 18, 1983	060270C.
Illinois: DeKalb	City of DeKalb (FEMA Docket No. 6323).	<i>Daily Chronicle</i> , June 10 and June 17, 1982.	John Cartwright, City Manager, City of DeKalb, 200 South Fourth Street, DeKalb, IL 60115.	Jan. 28, 1983	170182B.
Arizona:					
Apache	Town of Springerville (FEMA Docket No. 6327).	<i>White Mountain Independent</i> , June 10 and June 17, 1982.	Honorable Dennis Silva, Mayor, Town of Springerville, P.O. Drawer 390, Springerville, AZ 85928.	Feb. 1, 1983	040011C.
Pima	Town of Oro Valley (FEMA Docket No. 6310).	<i>The Daily Reporter</i> , May 11 and May 18, 1982.	Honorable E. S. Engle, Mayor, Town of Oro Valley, 680 West Calle Concordia, Oro Valley, AZ 85704.	Feb. 1, 1983	040109C.
California:					
San Diego	City of National City (FEMA Docket No. 6341).	<i>National City Star-News</i> , June 17 and June 24, 1982.	Honorable Wile Morgan, Mayor, City of National City, 1243 National City Blvd., National City, CA 92050.	Feb. 1, 1983	060293C.
San Joaquin	Unincorporated area (FEMA Docket No. 6328).	<i>Stockton Record</i> , June 16 and June 23, 1982.	Mr. C. E. Dixon, San Joaquin County Administrator, 222 East Weber Ave., Room 703, Stockton, CA 95202.	Feb. 1, 1983	060299B.
New York: Erie County	Tonawanda, city of (FEMA Docket No. 6296).	<i>The Tonawanda Evening News</i> , Apr. 29 and May 6, 1982.	Honorable G. Delwin Hervey, Mayor, City of Tonawanda, City Hall, 200 Niagara Street, Tonawanda, NY 14150.	Feb. 11, 1983	360259B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: October 25, 1982.

Lee M. Thomas,
Associate Director, State and Local Programs and Support.

[FR Doc. 82-31400 Filed 11-18-82; 8:45 am]
BILLING CODE 6718-03-M.

44 CFR Part 65

[Docket No. FEMA 6450]

Identification and Mapping of Special Flood Hazard Areas; Changes in Special Flood Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Associate Director, State and Local Programs and Support reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table.

Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Brian Mrazik, Acting Chief, Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Map(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base

(100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-488), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

PART 65—[AMENDED]

§ 65.4 [Amended]

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community number
California: Sacramento	City of Sacramento	<i>The Sacramento Bee</i> , Sept. 14, 1982 and Sept. 21, 1982.	Hon. Phillip L. Isenberg, Mayor, City of Sacramento, Room 203, City Hall, 915 "I" Street, Sacramento, CA 95814.	Sept. 21, 1982	060266C.
Colorado: Boulder	City of Boulder	<i>Daily Camera</i> , Oct. 20, 1982 and Oct. 27, 1982.	Hon. Ruth Correll, Mayor, City of Boulder, P.O. Box 791, Boulder, CO 80306.	Sept. 27, 1982, 66-B (LOMA).	080024C.
LaPlata	City of Durango	<i>Durango Herald</i> , Sept. 7, 1982 and Sept. 14, 1982.	Hon. Robert Hatfield, Mayor, City of Durango, P.O. Box 2428, Durango, CO 81301.	Sept. 14, 1982	080099C.
Iowa: Clinton	City of Clinton	<i>Clinton Herald</i> , Sept. 7, 1982 and Sept. 14, 1982.	Hon. Clide Johnson, Mayor, City of Clinton, 611 South Third Street, Clinton, IA 52732.	Sept. 14, 1982	190088C.
Kansas: Johnson	City of Olathe	<i>The Daily News</i> , Sept. 7, 1982 and Sept. 14, 1982.	Dr. Paul Brown, Mayor, City of Olathe, P.O. Box 768, Olathe, KS 66061.	Sept. 14, 1982	200173C.
Massachusetts: Middlesex	Holliston, Town of	<i>The Middlesex News</i> , Sept. 3, 1982 and Sept. 10, 1982.	Mr. Daniel A. Miley, Chairman, Board of Selectmen, P.O. Box 207, Holliston, MA 01746.	Sept. 10, 1982	250195C.
Michigan: Washtenaw	City of Ypsilanti	<i>Ypsilanti Press</i> , Sept. 3, 1982 and Sept. 9, 1982.	Hon. George Goodman, Mayor, City of Ypsilanti, City Hall, 1 South Huron Street, Ypsilanti, MI 48197.	Sept. 10, 1982	260216C.
Mississippi: Lauderdale County	Meridian, city of	<i>Meridian Star</i> , Sept. 3, 1982 and Sept. 10, 1982.	Hon. I. A. Rosenbaum, Mayor, City of Meridian, P.O. Box 1430, Meridian, MS 39301.	Sept. 10, 1982	280096B.
New Jersey: Cumberland County	Maurice River, township of	<i>Millville Daily</i> , Sept. 10, 1982 and Sept. 17, 1982.	Hon. James Tomlin, Mayor, Township of Maurice River, Hall Road, Dorchester, NJ 08316.	Sept. 17, 1982	340172C.
New York: Ontario County	Canandaigua, city of	<i>The Daily Messenger</i> , Sept. 17, 1982 and Sept. 24, 1982.	Hon. Patricia Boland, Mayor, City of Canandaigua, City Hall, Main Street, Canandaigua, NY 14424.	Sept. 24, 1982	360597C.
North Dakota: Stark	Unincorporated areas	<i>Dickinson Press</i> , Sept. 21, 1982 and Sept. 28, 1982.	Mr. Eric Arntson, Chairman, Board of Commissioners, Stark County Courthouse, P.O. Box 130, Dickinson, ND 58801.	Sept. 28, 1982	385369B.
Oklahoma: Custer	City of Clinton	<i>The Clinton Daily News</i> , Sept. 21, 1982 and Sept. 28, 1982.	Hon. Charles L. Goodwin, Mayor, City of Clinton, P.O. Box 1177, Clinton, OK 73601.	Sept. 3, 1982, 66-B (LOMA).	400054C.
South Carolina: Chesterfield County	Cheraw, town of	<i>The Cheraw Chronicle</i> , Sept. 2, 1982 and Sept. 9, 1982.	Hon. Howard E. Duvall, Jr., Mayor, Town of Cheraw, P.O. Box 111, Cheraw, SC 29520.	Sept. 10, 1982	450050B.
South Dakota: Lincoln and Minnehaha	City of Sioux Falls	<i>Argus Leader</i> , Sept. 21, 1982 and Sept. 28, 1982.	Hon. Rick W. Knobs, Mayor, City of Sioux Falls, 224 West 9th Street, Sioux Falls, SD 57102.	Sept. 28, 1982	460060C.
Tennessee: Williamson County	Franklin, City of	<i>Review-Appeal</i> , Sept. 2, 1982 and Sept. 9, 1982.	Hon. Dr. A. J. Bethurum, Mayor, City of Franklin, 604 West Main Street, Franklin, TN 37064.	Sept. 10, 1982	470206C.
Texas: Harris, Fort Bend, and Montgomery	City of Houston	<i>The Houston Post</i> , Sept. 14, 1982 and Sept. 21, 1982.	Hon. Kathryn J. Whitemire, Mayor, City of Houston, 900 Brazos, P.O. Box 1562, Houston, TX 77251.	Sept. 21, 1982	480296C.
Harris and Chambers	City of Baytown	<i>The Baytown Sun</i> , Sept. 21, 1982 and Sept. 28, 1982.	Hon. Emmett O. Hutto, Mayor, City of Baytown, P.O. Box 424, Baytown, TX 77520.	Sept. 28, 1982	485456C.
Navarro	City of Corsicana	<i>Corsicana Daily Sun</i> , Sept. 15, 1982 and Sept. 22, 1982.	Hon. Jack McFerran, Mayor, City of Corsicana, 200 North 12th Street, P.O. Box 626, Corsicana, TX 75110.	Sept. 1, 1982, 66-B (LOMA).	480498A.
Nueces	Unincorporated area	<i>Corpus Christi Caller</i> , Oct. 13, 1982 and Oct. 20, 1982.	Hon. Robert N. Barnes, County Judge, Nueces County Courthouse, P.O. Box 2627, Corpus Christi, TX 78403.	Sept. 24, 1982, 66-B (LOMA).	485494B.
Kentucky: Jefferson County	Louisville, city of	<i>The Louisville Times</i> , Oct. 15, 1982 and Oct. 22, 1982.	Hon. William Stansbury, Mayor, City of Louisville, City Hall, 601 West Jefferson, Louisville, KY 40202.	Oct. 22, 1982	210122C.
Louisiana: St. Mary Parish	City of Morgan City	<i>The Daily Review</i> , Oct. 5, 1982 and Oct. 12, 1982.	Hon. C. R. Brownell, Mayor, City of Morgan City, P.O. Box 1218, Morgan City, LA 70381.	Oct. 12, 1982	220196B.
Minnesota: Carver	Unincorporated area	<i>Carver County Herald</i> , Sept. 29, 1982 and Oct. 6, 1982.	Greg Mangold, Executive Secretary, Carver County Courthouse, 600 East Fourth Street, Chaska, MN 55318.	Oct. 8, 1982	270049B.
New York: Onondaga County	Pompey, town of	<i>Post Standard</i> , Oct. 1, 1982 and Oct. 8, 1982.	Mr. Harold Frediani, Supervisor, Town of Pompey, Pompey, NY 13139.	Oct. 8, 1982	360590C.
Oregon: Tillamook	City of Rockaway	<i>Headlight Herald</i> , Oct. 6, 1982 and Oct. 13, 1982.	Hon. Kenneth O. Christensen, Mayor, City of Rockaway, P.O. Box 5, Rockaway, OR 97136.	Oct. 12, 1982	410201C.
Multnomah, Clackamas, and Washington	City of Portland	<i>Daily Journal of Commerce</i> , Oct. 12, 1982 and Oct. 19, 1982.	Hon. Francis J. Ivancie, Mayor, City of Portland, 1220 S.W. Fifth Avenue, Portland, OR 97204.	Oct. 19, 1982	410183C.
South Carolina: Lexington County	West Columbia, city of	<i>The Journal</i> , Sept. 29, 1982 and Oct. 6, 1982.	Hon. Paul Waites, Mayor, City of West Columbia, P.O. Box 44, City Hall, West Columbia, SC 29171-0044.	Oct. 8, 1982	450140D.
Tennessee: Shelby County	Collierville, city of	<i>The Collierville Herald</i> , Sept. 23, 1982 and Sept. 30, 1982.	Hon. Herman Cox, Mayor, City of Collierville, 101 Walnut Street, Collierville, TN 38017.	Oct. 1, 1982	470263A.
Hamilton County	Chattanooga, city of	<i>Chattanooga Times</i> , Oct. 15, 1982 and Oct. 22, 1982.	Hon. Charles A. Rose, Mayor, City of Chattanooga, City Hall, East 11th Street, Chattanooga, TN 37042.	Oct. 22, 1982	470072B.
Texas: Hidalgo	City of Pharr	<i>Pharr Press</i> , Oct. 14, 1982 and Oct. 21, 1982.	Hon. Fidencio R. Barrera, Mayor, City of Pharr, P.O. Box B, Hidalgo, TX 78577.	Oct. 19, 1982	480347C.
Taylor and Jones	City of Abilene	<i>Abilene Reporter-News</i> , Oct. 26, 1982 and Nov. 2, 1982.	Hon. Ebert E. Hall, Mayor, City of Abilene, P.O. Box 60, Abilene, TX 79604.	Oct. 15, 1982, 66-B (LOMA).	485450B.
Wisconsin: Ozaukee	Unincorporated area	<i>News Graphic Pilot</i> , Sept. 29, 1982 and Oct. 6, 1982.	William Schroeder, Chairman County Board, Ozaukee County, 121 West Main Street, Port Washington, WI 53074-0307.	Oct. 8, 1982	550310C.
Wyoming: Natrona	City of Casper	<i>Star-Tribune</i> , Oct. 5, 1982 and Oct. 12, 1982.	Hon. Jerry Combs, Mayor, City of Casper, City/County Building, 200 North David Street, Casper, WY 82601.	Oct. 12, 1982	560037C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a

substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.
(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: Oct. 25, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31411 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Mesa, Ariz., Under National Flood Insurance Program; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Mesa, Arizona. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Mesa, Arizona, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda,

Maryland 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 040048 Panel 0020B, published on October 6, 1980, in 45 FR 66116, indicates that Lots 38 through 43 and 49 through 52, Hohokam Trails, Unit Two, Mesa, Arizona, recorded as Instrument No. 28978 in Book 239, Page 36, in the Office of the Recorder, Maricopa County, Arizona, are located within the Special Flood Hazard Area.

PART 70—[AMENDED]

§ 70.7 [Amended]

Map No. H & I 040048 Panel 0020B is hereby corrected to reflect that the existing structures located on the above-mentioned lots are not within the Special Flood Hazard Area identified on May 15, 1980. These structures are in Zone B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: October 22, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31728 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-6398]

Letter of Map Amendment for the City of Tucson, Ariz., Under National Flood Insurance Program; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Tucson, Arizona. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Tucson, Arizona, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

PART 70—[AMENDED]

§ 70.7 [Amended]

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 040076 Panel 0015B, published on September 8, 1982, in 47 FR 39501, indicates that Old Farm, Units 1 through 500, located in the Southeast Quarter of Section 36, Township 13 South, Range 14 East, Gila and Salt River Base and Meridian, Tucson, Arizona, as recorded in Book 6397, Pages 457 through 460; Book 6691, Pages 387 through 389; and Book 6691, Pages 395 through 397, in the Office of the Recorder, Pima County, Arizona, is

located within the Special Flood Hazard Area.

Map No. H & I 040076 Panel 0015B is hereby corrected to reflect that the existing structures located on the above-mentioned property are not within the Special Flood Hazard Area identified on August 2, 1982. These structures are in Zone B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: October 29, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31729 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Novato, Calif.; Under National Flood Insurance Program; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final Rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Novato, California. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Novato, California, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 43294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

PART 70—[AMENDED]

§ 70.7 [Amended]

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 060178 Panel 0002A, published on October 6, 1980, in 45 FR 66118, indicates that Parcel Two of Lafranchi Parcel Map, Novato, California, as recorded in Book 12 of Parcel Maps, Page 85, in the Office of the Recorder, Marin County, California, is located within the Special Flood Hazard Area.

Map No. H & I 060178 Panel 0002A is hereby corrected to reflect that the existing structures numbered 1, and 3 through 6 located on the above-mentioned property are not within the Special Flood Hazard Area identified on January 19, 1978. These structures are in Zone B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities.

This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 1, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31730 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for Orange County, Calif., Under National Flood Insurance Program; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Orange County, California. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Orange County, California, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition

of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

PART 70—[AMENDED]

§ 70.7 [Amended]

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 060212 Panel 0008A, published on October 6, 1980, in 45 FR 66118, indicates that Tract No. 11331, Orange County, California, as recorded in Book 495, Pages 36 through 38 of Miscellaneous Maps, in the Office of the Recorder, Orange County, California, is located within the Special Flood Hazard Area.

Map No. H & I 060212 Panel 0008A is hereby corrected to reflect that the existing structures located on the above-mentioned property are not within the Special Flood Hazard Area identified on September 14, 1979. These structures are in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: October 28, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31740 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5977]

Letter of Map Amendment for Yolo County, Calif., Under National Flood Insurance Program; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Yolo County, California. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Yolo County, California, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda,

Maryland 20034, Telephone: (800) 638-6620.

PART 70—[AMENDED]

§ 70.7 [Amended]

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 060423 Panel 0575B, published on January 23, 1981, in 46 FR 7353, indicates that Lots 384 through 405 and 439 through 456, Stonegate Subdivision Unit No. 12, Davis, California, as recorded in Map Book 12, Pages 83 through 86, in the Office of the Recorder, Yolo County, California, are located within the Special Flood Hazard Area.

Map No. H & I 060423 Panel 0575B is hereby corrected to reflect that the existing structures located on the above-mentioned lots are not within the Special Flood Hazard Area identified on December 16, 1980. These structures are in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance—flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: October 28, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31742 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-6418]

Letter of Map Amendment for the Town of Manchester, Conn., Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the Town of Manchester, Conn. It has been determined by the Associate Director, State and Local Programs and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Town of Manchester, Conn., that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP), P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

PART 70—[AMENDED]**§ 70.7 [Amended]**

The map amendments listed below are in accordance with 70.7(b):

Map Number H & I 090031, Panel 0003 B published on September 22, 1982 in 47 FR 41741 indicates that Lots 226 through 240 New State Road, formerly known as Lots 26, 30, 34 and 38 New State Road, Town of Manchester, Conn., and recorded in Deed Book 528, Pages 290 and 291 in the Office of the Clerk of the Town of Manchester, Conn., are located within the Special Flood Hazard Area.

Map Number H & I 090031, Panel 0003 B is hereby corrected to reflect that the

existing structures located on the above-mentioned lots are not within the Special Flood Hazard Area identified on August 16, 1982. The structures are located in Zone C. However, portions of the above-mentioned lots would still be inundated by a flood having a one-percent chance of occurrence in any given year.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains. (National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: October 29, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31731 Filed 11-19-82; 8:45 am]

BILLING CODE 6719-01-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for Dade County, Fla., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final Rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Dade County, Florida. It has been determined by the Associate Director, State and Local Programs and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Dade County, Florida, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP), P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

PART 70—[AMENDED]**§ 70.7 [Amended]**

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 125098, Panel 0275 D published on October 6, 1982 in 45 FR 66058 indicates that Lot 3, Block 12, Kendale Lakes Section Two, according to the plat thereof as recorded in Plat Book 89 at Page 13 of the Public Records of Dade County, Florida is located within the Special Flood Hazard Area.

Map Number H & I 125098, Panel 0275 D is hereby corrected to reflect that the existing structure on the above lot is not within the Special Flood Hazard Area identified on November 14, 1980. The structure is located in Zone C. The property would still be partially inundated by the base flood.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of

technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 1, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31732 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for Hillsborough County, Fla., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Hillsborough County, Florida. It has been determined by the Associate Director, State and Local Programs and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Hillsborough County, Florida, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition

of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP), P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

PART 70—[AMENDED]

§ 70.7 [Amended]

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 120112, Panel 0369 B published on October 6, 1980 in 45 FR 66059 indicates that Lots 28 and 29 of Marc I, a subdivision situated in Section 2, Township 30 South, Range 19 East in Hillsborough County, Florida, recorded in Plat Book 53, Pages 68-1, 68-2, and 68-3 of the Public Records of Hillsborough County, Florida, are located within the Special Flood Hazard Area.

Map Number H & I 120112, Panel 0369 B is hereby corrected to reflect that the existing structures on Lots 28 and 29 are not within the Special Flood Hazard Area identified on June 18, 1980. The structures are located in Zone B. Portions of the lots would still be inundated by the base flood.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR

17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 1, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31733 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5947]

Letter of Map Amendment for Gwinnett County, Ga., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Gwinnett County, Georgia. It has been determined by the Associate Director, State and Local Programs and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Gwinnett County, Georgia, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that

no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP). P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

PART 70—[AMENDED]

§ 70.7 [Amended]

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 130322, Panel 0190 B published on April 3, 1981 in 46 FR 20178 indicates that Lots 26, 27, 28, 29, 30 and 32 of the Sweetwater Acres Subdivision, Unit 1, in Land Lot 155, Sixth Land District of Gwinnett County, Georgia as recorded in Plat Book 18 at Page 102, Gwinnett County Records, are located within the Special Flood Hazard Area.

Map Number H & I 130322, Panel 0190 B is hereby corrected to reflect that the structures on the above-mentioned lots are not within the Special Flood Hazard Area identified on June 15, 1981. The structures are located in Zone C. Portions of the lots would still be inundated by the base flood.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E. O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 1, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31727 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-6002]

Letter of Map Amendment for the Village of Orland Park, Ill., Under National Flood Insurance Program; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Village of Orland Park, Illinois. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Village of Orland Park, Illinois, that a certain structure is within the Special Flood Hazard Area.

This map amendment, by establishing that the subject structure is within the Special Flood Hazard Area, mandates the requirement to purchase flood insurance for that structure as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION:

PART 70—[AMENDED]

§ 70.7 [Amended]

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 170140, Panel No. 0002D, published on March 5, 1981, in 46 FR 15269, indicates that the existing structure located on Lot No. 52, Park View Estates Subdivision, Village of Orland Park, Cook County, Illinois, recorded as Document No. 2506648, in the Office of the Recorder of Cook County, Illinois, is not located within the Special Flood Hazard Area.

Map No. 170140, Panel No. 0002D, is hereby corrected to reflect that the above-mentioned structure is within the Special Flood Hazard Area identified on May 3, 1982. The structure is in Zone A.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency

Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood Insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 1, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31734 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Davenport, Iowa, Under National Flood Insurance Program; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule, map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Davenport, Iowa. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Davenport, Iowa, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency

Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal of federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

PART 70—[AMENDED]

§ 70.7 [Amended]

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 190242 Panel 0005A, published on October 6, 1980, in 45 FR 66102, indicates that portions of Lots 17 and 18, Peeter's 12th Addition, Davenport, Iowa, recorded as Instrument Number 14996 in Book 153, Page 586, in the Office of the Recorder, Scott County, Iowa, are located within the Special Flood Hazard Area.

Map No. H & I 190242 Panel 0005A is hereby corrected to reflect that the existing structure located on the above-mentioned property is not within the Special Flood Hazard Area identified on March 1, 1978. These lots are in Zone B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367;

delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 9, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31741 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5923]

Letter of Map Amendment for the City of Las Vegas, Nev., Under National Flood Insurance Program; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Las Vegas, Nevada. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Las Vegas, Nevada, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program

(NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

PART 70—[AMENDED]

§ 70.7 [Amended]

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 325276 Panel 0025B, published on October 21, 1980, in 45 FR 69451, indicates that Lots 2 through 12, Block 1; and Lots 1 through 6 and 19 through 26, Block 2, The Village of Washington, Las Vegas, Nevada, recorded as Document No. 1530678 in Book 28, Page 9 of Plats, Book No. 1571 of Official Records, in the Office of the Recorder, Clark County, Nevada, are located within the Special Flood Hazard Area.

Map No. H & I 325276 Panel 0025B is hereby corrected to reflect that the existing structures located on Lots 2 through 6, Block 1; and Lot 26, Block 2 of the above-mentioned property are not within the Special Flood Hazard Area identified on September 30, 1980. These structures are in Zone B.

Map No. H & I 325276 Panel 0025B is also corrected to reflect that the existing structures located on Lots 7 through 12, Block 1; and Lots 1 through 6 and 19 through 25, Block 2 of the above-mentioned property are not within the Special Flood Hazard Area identified on September 30, 1980. These structures are in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: October 28, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31743 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-6263]

Letter of Map Amendment for the Township of Pleasant, Cass County, North Dakota, Under National Flood Insurance Program; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the Township of Pleasant, Cass County, North Dakota. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Township of Pleasant, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION:

If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program

(NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

PART 70—[AMENDED]

§ 70.7 [Amended]

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 380263 Panel 0025A, published on March 25, 1982, in 47 FR 12799, indicates that Lots 1 through 38, 78 through 82, 109 through 118, and 163 Oxbow Country Club and Estates, Township of Pleasant, Cass County, North Dakota, recorded as Document No. 48003 in Book J of Plats, Page 31, in the Office of the Register of Deeds, Cass County, North Dakota, are located within the Special Flood Hazard Area.

Map No. H & I 380263 Panel 0025A is hereby corrected to reflect that Lots 1 through 38, 78 through 82, 109, 112 through 117, and 163 located on the above-mentioned property are not within the Special Flood Hazard Area identified on February 3, 1982. These lots are in Zone C.

Map No. H & I 380263 Panel 0024A is also corrected to reflect that Lots 110, 111, and 118 located on the above-mentioned property are not within the Special Flood Hazard Area identified on February 3, 1982. These lots are in Zone B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended: 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support.)

Issued: October 25, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31735 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-6237]

Letter of Map Amendment for the Township of South Lebanon, Pennsylvania; Under National Flood Insurance Program; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Township of South Lebanon, Pennsylvania. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Township of South Lebanon, Pennsylvania, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, phone: (800) 638-6620 toll free.

PART 70—[AMENDED]**§ 70.7 [Amended]**

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 420581, Panels Nos. 0005B and 0008B, published on January 25, 1982, in 47 FR 3356, indicate that a parcel of land containing approximately 6.777 acres, located between 14th Avenue and Center Street, Township of South Lebanon, Lebanon County, Pennsylvania, as recorded in Plan Book 14, Page 78, in the Office of the Recorder of Deeds of Lebanon County, Pennsylvania, is located within the Special Flood Hazard Area.

Map No. 420581, Panels Nos. 0005B and 0008B, are hereby corrected to reflect that the above-mentioned property is not within the Special Flood Hazard Area identified on December 15, 1981. The property is in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70**Flood Insurance, Flood plains.**

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support.)

Issued: October 28, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31744 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the Township of West Whiteland, Pennsylvania, Under National Flood Insurance Program; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule, map correction.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Township of West Whiteland, Pennsylvania. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Township of West Whiteland, Pennsylvania, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, phone: (800) 638-6620 toll free.

PART 70—[AMENDED]**§ 70.7 [Amended]**

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 420295B, Panel No. H&I 01, published October 6, 1980, in 45 FR 66051, indicates that Lot No. 13, as shown on the drawing entitled: Plan of Subdivision of Whiteland Business Park, Preliminary Drainage Plan, Sheet 3 of 9, dated March 1, 1982, last revised June 16, 1982, prepared by Henry S. Conrey, Inc., being a portion of a parcel of land containing approximately 71.301 acres, Township of West Whiteland, Chester

County, Pennsylvania, as recorded in Deed Book G 39, Pages 8 through 12, in the Office of the Recorder of Deeds of Chester County, Pennsylvania, is located within the Special Flood Hazard Area.

Map No. 420295B, Panel No. H&I 01, is hereby corrected to reflect that the above-mentioned property is not within the Special Flood Hazard Area identified on May 2, 1977. The property is in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70**Flood Insurance, Flood plains.**

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support.)

Issued: October 12, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31736 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-6126]

Letter of Map Amendment for the City of College Station, Texas Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of College Station, Texas. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map

for the City of College Station, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

PART 70—[AMENDED]

§ 70.7 [Amended]

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 480083 Panel 0001B, published on August 17, 1981, in 46 FR 41503, indicates that Lots 9 and 10, Block C, University Park, Section 1; and Lots 6 through 9, 11, and 12, Block J, University Park, Section 2, College Station, Texas, as recorded in Volume 486, Page 847 of Deed Records; and Volume 502, Page 501 of Deed Records, respectively, in the Office of the Clerk, Brazos County, Texas, are located within the Special Flood Hazard Area.

Map No. H & I 480083 Panel 0001B is hereby corrected to reflect that the existing structure located on Lot 10, Block C of the above-mentioned property is not within the Special Flood Hazard Area identified on July 2, 1981. This structure is in Zone B.

Map No. H & I 480083 Panel 0001B is also corrected to reflect that the existing structures located on Lot 9, Block C; and Lots 6 through 9, 11, and 12, Block J of

the above-mentioned property are not within the Special Flood Hazard Area identified on July 2, 1981. These structures are in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended: 42 U.S.C. 4001-4128; E. O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support.)

Issued: November 9, 1982.

Lee M. Thomas,
Associate Director, State and Local Programs and Support.

[FR Doc. 82-31745 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Plano, Tex., Under National Flood Insurance Program; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule, map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Plano, Texas. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Plano, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related

financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Md. 20034, Telephone: (800) 638-6620.

PART 70—[AMENDED]

§ 70.7 [Amended]

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 480140 Panel 0020A, published on October 6, 1980, in 45 FR 66099, indicates that Buildings, T, U, V, and W, Collin Greene Condominiums, being a 9.505 acre tract of land in the William Fitzhugh Survey, Abstract No. 308, Plano, Texas, recorded as Document No. 29964 in Volume 1306, Pages 749 through 751, in the Office of the County Clerk, Collin County, Texas, are located within the Special Flood Hazard Area.

Map No. H & I 480140 Panel 0020A is hereby corrected to reflect that the above-mentioned structures are not within the Special Flood Hazard Area identified on January 2, 1980. These structures are in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or

regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 9, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31746 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 205

Disaster Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule deletes requirements to remit to FEMA interest obtained by State public entity and certain private nonprofit grant recipients through deposit of funds advanced by the Federal Emergency Management Agency (FEMA). This action implements an interpretation by the Comptroller General of the United States that local governments were entitled to retain interest in these situations.

DATE: This regulation is made effective as of October 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Gene Morath, Office of Public Assistance, Disaster Assistance Programs, State and Local Programs and Support, 500 C Street, SW., Washington, D.C. 20472, Telephone: (202) 287-0575.

SUPPLEMENTARY INFORMATION: FEMA's current policy, based on the provisions of OMB Circular A-102, Attachment E, is contained in FEMA Regulation 44 CFR Part 205, Subparts E and H as follows:

(a) 44 CFR 205.76(a)(30) provides that: "Interest earned on advances of Federal funds shall be remitted to FEMA except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577) and advances made to tribal organizations pursuant to section 102, 103, or 104 of the Indian Self Determination Act (Pub. L. 93-638).

(b) 44 CFR 205.119(d) provides that: "(1) From the time that the State disburses advances of Federal funds to local applicants or to applicant State agencies, any interest earned on those

funds must be paid to the Federal Government.

(2) If an applicant incurs disaster-related obligations, discharges those obligations with its own funds, and uses the advanced funds to reimburse its own accounts, the applicant does not have to remit any interest earned to the Federal Government.

(3) States do not have to remit interest earned on advanced funds that are held briefly pending disbursement for immediate program purposes, i.e., to advance to eligible applicants for their disaster-related expenses."

Subsequent to publication of the foregoing rules, the Office of Management and Budget (OMB) asked the General Accounting Office (GAO) to reconsider an interpretation of the Intergovernmental Cooperation Act of 1968 that is having an adverse impact on cash management of Federal aid programs. Section 203 of the Act provides:

"Heads of Federal departments and agencies responsible for administering grant-in-aid programs shall schedule the transfer of grant-in-aid funds consistent with program purposes and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by a State, whether such disbursement occurs prior to or subsequent to such transfer of funds, or subsequent to such transfer of funds. *States shall not be held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes.*" [Emphasis added]

The GAO interpretation held that States, and subgrantees receiving Federal aid through the States, could not be held accountable for interest earned on cash drawn prematurely from the Federal Treasury. In its response the GAO reaffirmed its original ruling but pointed out that its decision does not preclude agencies from complying with OMB and Treasury cash management directives, or from carrying out the three steps called for by the Senate Committee on Appropriations, i.e.:

(1) Reviewing periodic reports filed by grant recipients to ascertain whether they are drawing and holding cash in excess of their current needs;

(2) Auditing a sufficient number of recipient accounts to determine whether they are filing accurate reports of cash on hand; and

(3) Initiating immediate recovery action whenever recipients are found to have drawn excess cash, in violation of Treasury Circular 1075.

The test which the Comptroller General's decisions creates is whether a

particular grant is given directly to an entity other than a State, in which case the interest earned on the advance must be returned to the Federal Government, or whether the grant on which interest is earned is passed through a State, in which case the interest need not be returned. The Comptroller General wrote in his *decision B-171019*, October 6, 1973, that " * * * political subdivisions receiving Federal grants-in-aid through State governments are entitled to retain monies received as interest earned on such Federal funds." We conclude that in the context of FEMA's disaster assistance program, interest earned by local governments and eligible private nonprofit organizations on advances through the States need not be remitted to FEMA. Regardless of whether advance checks are made payable, and sent directly, to local government applicants, the State must approve the "Request for Advance or Reimbursement" form (see Handbook for Applicants, DR&R-1, App. I). Therefore, both advances and final payments on vouchers are made "through the State."

Consequently as a result of GAO's determination, OMB's bulletin and the conclusion set out above, 44 CFR Part 205 relating to "Disposition of interest earned on advances of funds" should be modified. States may submit properly documented claims to the appropriate FEMA Regional Office for reimbursement of interest earned on advance of funds which was collected by FEMA.

Environmental Considerations. This amendment is administrative in nature and is categorically excluded from the requirements of 44 CFR Part 10 concerning preparation of environmental assessments.

Executive Order 12291, "Federal Regulations." This rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of \$100 million or more.

The rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

This rule does not call for the collection of any information. This rule relates to agency practice, and relieves a restriction, hence notices and public comment are not required and the regulation can be made effective immediately.

(Sec. 601 of the Disaster Relief Act of 1974 (Pub. L. 93-288), as amended by Pub. L. 96-446)

List of Subjects 44 CFR Part 205

Disaster assistance, Grant programs, Housing and community development.

PART 205—DISASTER ASSISTANCE

Accordingly Part 205 of Title 44 is amended as follows:

§ 205.76 [Amended]

1. Section 205.76 is amended by removing paragraph (a)(30).

§ 205.119 [Amended]

2. Section 205.119 is amended by removing paragraph (d).

Dated: November 10, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-31777 Filed 11-19-82; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Parts 32 and 33**

Addition of Twenty-one National Wildlife Refuges to the Lists of Open Areas for Migratory Bird Hunting, Upland Game Hunting, Big Game Hunting, and/or Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule adds twenty-one refuges to the list(s) of open areas for migratory bird hunting, upland game hunting, big game hunting, and/or sport fishing. It has been determined that this action would be in accordance with the provisions of all applicable laws, would be compatible with the principles of sound wildlife management, would otherwise be in the public interest, and that such uses are compatible with the major purposes for which each refuge was established. The hunting of migratory birds, upland game, big game, and/or sport fishing, subject to additional special regulations, will provide additional public recreational opportunities.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT:

James Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240; Telephone (202) 343-4311.

SUPPLEMENTARY INFORMATION: Ronald L. Fowler, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240;

Telephone (202) 343-4306 is the primary author of this final rulemaking.

General

National Wildlife Refuges are closed to hunting and sport fishing until opened by rulemaking. The Director may open refuge areas to hunting upon a determination that such uses are compatible with the major purposes for which such areas were established and that funds are available for development, operation, and maintenance of the permitted forms of recreation. This action would be in accordance with provisions of all laws applicable to the areas, would be compatible with the principles of sound wildlife management, and would otherwise be in the public interest. The Director may open refuge areas to sport fishing upon a determination that such activity is not detrimental to the objectives for which the area was established and upon a determination that the requirements of 16 U.S.C. 460k and 668dd(d) have been satisfied.

On September 22, 1982, two separate proposed rulemakings were published (47 FR 41790 and 47 FR 41792) adding twenty-two national wildlife refuges to the list of open areas for migratory game birds, upland game, big game, and sport fishing. No action is being taken at this time on the proposal to add Loxahatchee National Wildlife Refuge to the list of open areas, big game. Final rulemakings on that proposed action will be developed separately from this rulemaking. The public was provided a 30-day comment period.

In view of the rapidly approaching seasons there is an immediate need to place these regulations in effect. To delay the effective date would result in confusion to the public and would be contrary to the public interest, hunter safety, and wildlife conservation. Accordingly, these rules are effective upon publication.

Response to Comments Received

A number of letters were received on these two rulemakings (which are consolidated herein). However, all but four of these letters related to the proposal to open Loxahatchee National Wildlife Refuge to big game hunting. As stated above, that proposal has been separated from this final rulemaking and final action on that proposal is not being considered as a part of this rulemaking.

One letter was received from a national organization which expressed support for the proposal to open 22 national wildlife refuges to hunting and/or fishing. One letter from a national organization expressed several related concerns in opposition to the proposed

rule. This organization indicated that it is a contradiction to allow hunting on a "refuge."

Service Response: National Wildlife Refuges were established primarily to safeguard species and populations and their habitats, not just individual animals. As provided for in the National Wildlife Refuge System Administration Act of 1966 (as amended) and other applicable laws, hunting is consistent with the concept of providing habitat in refuges for healthy populations of wildlife and is compatible with sound wildlife management principles and practices. The Service believes that public hunting is a legitimate recreational activity and that hunting need not be engaged in only when wildlife populations exist in "excessive" numbers (i.e., used as a corrective tool), but rather sound wildlife management produces populations sufficiently healthy to sustain regulated harvests.

The issue was also raised that "many of the refuges provide necessary habitat for endangered species which will be in peril during the hunting season."

Service Response: For each refuge proposed to be added to the list(s), full consideration has been given to the effect on endangered species. In each instance where a potential conflict exists, a Section 7 evaluation has been conducted in accordance with the provisions of the Endangered Species Act of 1973, as amended. Each of these evaluations considered all aspects of the proposed action as well as any special regulations which would be in effect. In each instance, the Service concluded that the proposed action will not affect any endangered species.

One organization objected to the proposal regarding Delta National Wildlife Refuge because "sufficient areas in south Louisiana are already dedicated to waterfowl hunting."

Service Response: The Service does not consider the presence or absence of private hunting opportunity to be a primary consideration when opening public lands to this legitimate use. In response to the question raised, however, recent increases in duck hunting pressure and requests to open public lands for hunting indicate that the demand for this activity is not being met. Much of the waterfowl habitat in Louisiana is privately leased, resulting in a shortage of public hunting areas. Duck stamp sales in Louisiana have increased from 105,000 in 1969 to 125,000 in 1980. Waterfowl hunter-trips in Louisiana increased from 700,000 in 1969 to 1,000,000 in 1980. This increased hunting pressure in conjunction with leasing of hunting rights on most

suitable private marshes, has produced a shortage of public waterfowl hunting areas. Fish and Wildlife Service studies estimate an unmet hunter demand of 78,800 person-days of waterfowl hunting in 1980 in southeastern Louisiana.

One organization also stated that the Delta National Wildlife Refuge does not have management plans, therefore adverse effects on the refuge resulting from the rule change may not be recognized and corrected in a manner keeping with the concept of a refuge.

Service Response: Supporting information for this action included a Hunt Plan, an environmental assessment, and a Section 7 evaluation. These comprehensive documents explicitly outline the proposal and its environmental and budgetary consequences.

Two commentors suggested that the Delta National Wildlife Refuge is understaffed, that further staffing reductions are planned, and that the ability of the current staff to enforce the hunting regulations is impaired.

Service Response: Although the size of the staff was reduced several years ago, no further reductions in staffing are proposed. The Service recognizes the need for additional enforcement assistance. Arrangements have been made for additional refuge personnel and the Division of Law Enforcement to assist the on-site staff in their law enforcement efforts.

It should be noted that certain waters within and adjacent to Delta National Wildlife Refuge were designated as a closed area in or on which pursuing hunting, taking, capturing or killing of migratory birds, or attempting to take, capture, or kill migratory birds is not permitted (29 FR 13820). On October 21, 1982, the Service published a proposed rule (47 FR 46868) which would remove the administrative closing order from 16,800 acres of the refuge.

The staff of the Office of Management and Budget, during their review of the proposed rule asked for further clarification of the "inviolate sanctuary provisions" of the National Wildlife Refuge System Administrative Act. The statute established certain criteria which apply to those units of the National Wildlife Refuge System which were acquired with Migratory Bird Conservation Funds as well as those refuges which were withdrawn from the public domain as "inviolate sanctuaries for migratory birds." The statute sets a limit of 40 percent of any such refuge area that can be opened to the taking of migratory birds. This limit can be exceeded only under specific circumstances. The Service does not propose to exceed the 40 percent

provision in any of the migratory bird openings in this rulemaking. The inviolate sanctuary provision applies only to the taking of migratory birds and does not apply to the taking of upland game, big game or sport fishing.

NEPA Consideration

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" (FES 76-59) was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the Federal Register on November 19, 1976 (41 FR 51131). Pursuant to the requirements of Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), environmental assessments have been prepared for each of these proposed openings and are available for public inspection and copying in Room 2024, Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240, or by mail, addressing the Director at the address above. It has been determined that this rulemaking is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Conformance With Statutory and Regulatory Authorities

In accordance with Section 4(d)(1)(A) of the National Wildlife Refuge System Administration Act, the Secretary is authorized under such regulations as he may prescribe to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established: Provided, that not to exceed 40 percent at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive Order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe unless the Secretary finds that the taking of any species of migratory game birds in more than 40 percent of such areas would be beneficial to the species. Except for Lower Suwannee National Wildlife Refuge and Minnesota Valley National Wildlife Refuge, the refuges which would be opened to the hunting of migratory birds by this rule were

originally established as inviolate sanctuaries for migratory birds.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer the refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, The Refuge Recreation Act requires: "(a) that such recreational use[s] will not interfere with the primary purposes for which the areas were established, and (b) that funds are available for the development, operation, and maintenance of these permitted forms of recreation."

Fish and Wildlife Service regulations in 50 CFR 32.1 require that the opening of a wildlife refuge area to hunting will be dependent upon the provisions of law applicable to the area and upon a determination by the Secretary that the opening of the area to hunting will be compatible with the principles of sound wildlife management and will otherwise be in the public interest. In regard to sport fishing, 50 CFR 33.1 requires that a wildlife refuge area will be opened to sport fishing only when a determination has been made that such activity is not detrimental to the objectives for which the area was established.

The proposed use authorized by these regulations is compatible with the major purposes for which these areas were established. In regard to the 40 percent provisions of the National Wildlife Refuge System Administration Act, these regulations would not authorize the taking of migratory game birds in more than 40 percent of any refuge area. The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. Funds are available for the administration of the recreational activities permitted by these regulations. The implementation of these hunting programs will be consistent with all applicable laws and compatible with the principles of sound wildlife management and will otherwise be in the public interest. In regard to the areas to be opened to sport fishing, the proposed use would not be detrimental to the objective for which the individual areas were established. These determinations are based upon a consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976 and environmental assessments

which have been prepared for each of these proposed openings.

Paperwork Reduction Act

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

Economic Effect

This regulation will have a positive secondary effect on local filling stations, sporting goods stores, providers of meals, and overnight accommodations. This rule will impose no costs on small entities; the exact number and the amount of business that will result from this refuge-related recreation is unknown. The aggregate effect is a positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the estimated aggregate economic effect in excess of \$3,500,000 which will be generated annually as a direct result of implementing the proposed activities and the fact that a net aggregate economic effect far less than \$100 million will be spread over ten States, indicates that the rule will not be significant. The added cost to the government of law enforcement, posting, etc., to implement these activities will be only a small portion of the total dollars generated as a result of the implementation of these programs. The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291 and that this document will not have a significant economic effect on a substantial number of small entities under the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the annual gross effect of the rule on the economy is substantially less than \$100 million, that the rule will not result in major increases in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor is the rule likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

PART 32—HUNTING

Accordingly, 50 CFR Parts 32 and 33 are amended by the addition of Choctaw National Wildlife Refuge, San Francisco Bay National Wildlife Refuge, Lower Suwannee National Wildlife Refuge, Delta National Wildlife Refuge, Rachel Carson National Wildlife Refuge, Black Coulee National Wildlife Refuge, Creedman Coulee National Wildlife Refuge, Hailstone National Wildlife Refuge, Halfbreed Lake National Wildlife Refuge, Hewitt Lake National Wildlife Refuge, Lake Mason National Wildlife Refuge, Lake Thibadeau National Wildlife Refuge, War Horse National Wildlife Refuge, Minnesota Valley National Wildlife Refuge, Sherburne National Wildlife Refuge, Washita National Wildlife Refuge, Tincum National Environmental Center, Carolina Sandhills National Wildlife Refuge, Hagerman National Wildlife Refuge, San Bernard National Wildlife Refuge, and Texas Point National Wildlife Refuge in §§ 32.11, 32.21, 32.31 and 33.4 as follows:

§ 32.11 List of open areas; migratory game birds.

- * * * * *
- California**
- * * * * *
- San Francisco Bay National Wildlife Refuge
- * * * * *
- Florida**
- * * * * *
- Lower Suwannee National Wildlife Refuge
- * * * * *
- Louisiana**
- * * * * *
- Delta National Wildlife Refuge
- * * * * *
- Minnesota**
- Minnesota Valley National Wildlife Refuge
- * * * * *
- Montana**
- * * * * *
- Black Coulee National Wildlife Refuge
- * * * * *
- Creedman Coulee National Wildlife Refuge
- Hailstone National Wildlife Refuge
- Halfbreed Lake National Wildlife Refuge
- Hewitt Lake National Wildlife Refuge
- * * * * *
- Lake Thibadeau National Wildlife Refuge
- * * * * *
- War Horse National Wildlife Refuge
- * * * * *

- Oklahoma**
- * * * * *
- Washita National Wildlife Refuge
- * * * * *

§ 32.21 List of open areas; upland game.

- * * * * *
- Alabama**
- * * * * *
- Choctaw National Wildlife Refuge
- * * * * *
- Florida**
- Lower Suwannee National Wildlife Refuge
- * * * * *
- Maine**
- Rachel Carson National Wildlife Refuge
- * * * * *
- Minnesota**
- Minnesota Valley National Wildlife Refuge
- * * * * *
- Montana**
- * * * * *
- Black Coulee National Wildlife Refuge
- * * * * *
- Creedman Coulee National Wildlife Refuge
- Hailstone National Wildlife Refuge
- Halfbreed Lake National Wildlife Refuge
- Hewitt Lake National Wildlife Refuge
- Lake Mason National Wildlife Refuge
- Lake Thibadeau National Wildlife Refuge
- * * * * *
- War Horse National Wildlife Refuge
- * * * * *

- South Carolina**
- * * * * *
- Carolina Sandhills National Wildlife Refuge
- * * * * *

§ 32.31 List of open areas; big game.

- * * * * *
- Alabama**
- Choctaw National Wildlife Refuge
- * * * * *
- Florida**
- * * * * *
- Lower Suwannee National Wildlife Refuge
- * * * * *
- Minnesota**
- * * * * *
- Minnesota Valley National Wildlife Refuge
- * * * * *
- Montana**
- Black Coulee National Wildlife Refuge
- * * * * *
- Creedman Coulee National Wildlife Refuge
- Halfbreed Lake National Wildlife Refuge
- Hewitt Lake National Wildlife Refuge
- Lake Mason National Wildlife Refuge
- Lake Thibadeau National Wildlife Refuge
- * * * * *

War Horse National Wildlife Refuge

* * * * *

Texas

* * * * *

Hagerman National Wildlife Refuge

* * * * *

PART 33—SPORT FISHING

§ 33.4 List of open areas; sport fishing.

* * * * *

Minnesota

* * * * *

Sherburne National Wildlife Refuge

* * * * *

Pennsylvania

* * * * *

Tinicum National Environmental Center

* * * * *

Texas

* * * * *

San Bernard National Wildlife Refuge

Texas Point National Wildlife Refuge

* * * * *

(18 U.S.C. 460k, 668dd)

Dated: November 5, 1982.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-31793 Filed 11-18-82; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 32

Hunting; Modifications to the Delta Migratory Bird Closed Area, Louisiana, and Revocation of the Malheur Migratory Bird Closed Area, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule modifies the boundaries of the area closed to migratory bird hunting on the Delta National Wildlife Refuge, Louisiana, and removes the Malheur Migratory Bird Closed Area, Oregon, from the list of areas closed to migratory bird hunting. The Delta Migratory Bird Closed Area is modified to lift the administrative restrictions which prohibited the taking of migratory game birds on 16,800 acres of the Delta National Wildlife Refuge. Further rulemaking action would be necessary to open the refuge to hunting of migratory birds. Changes in the habitat at Malheur National Wildlife Refuge and the level of use by waterfowl and wading birds no longer justify continuation of the closure. The effect of this rulemaking would be to reopen private lands and their connecting waters within the Closed

Area to migratory bird hunting at Malheur Refuge.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Washington, D.C. 20240 (telephone 202-343-4311).

SUPPLEMENTARY INFORMATION: Ronald L. Fowler, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (telephone 203-343-4306) is the primary author of this rulemaking. On October 21, 1982, there was published a proposed rulemaking (47 FR 46868) to modify the Delta National Wildlife Refuge, Louisiana, Closed Area and remove the Malheur Migratory Bird Closed Area, Oregon.

Delta Migratory Bird Closed Area

Certain waters within and adjacent to Delta National Wildlife Refuge were designated as a closed area in or on which pursuing, hunting, taking, capturing or killing of migratory birds, or attempting to take, capture, or kill migratory birds is not permitted (29 FR 13820). This action removes the administrative restrictions which prohibited the taking of migratory game birds on approximately 16,800 acres of the refuge. The restrictions prohibiting the taking of migratory game birds would continue in effect on the remaining 31,200 acres of the refuge. In general, the restrictions on taking are lifted on portions of the refuge north of Main Pass and the area south of Raphael Pass. This rulemaking in and of itself would not open the refuge to the hunting of migratory birds. However, in a separate rulemaking action, (47 FR 41790) the Service is proposing to amend the list of open areas, migratory birds, by adding Delta National Wildlife Refuge.

Malheur Migratory Bird Closed Area

Executive Order No. 929, August 18, 1908, closed all land within the shoreline of Malheur and Harney Lakes, and their connecting waters, and the smallest legal subdivisions adjacent to the shoreline subject to existing rights and established the Lake Malheur Reservation as a "preserve and breeding ground for native birds." On July 19, 1935, Executive Order No. 7106 enlarged the refuge and established the Malheur Migratory Bird Refuge. Presidential Proclamation No. 2516 of October 1, 1941, closed all lands and waters within the meander lines of Malheur and Harney Lakes and their connecting waters to the hunting of migratory birds.

Presidential Proclamation No. 2818 of October 20, 1948, superseded Proclamation No. 2516; Proclamation No. 2589 of October 20, 1949 superseded Proclamation No. 2818; and the unnumbered Secretarial Order of October 16, 1953 (18 FR 6685) superseded Proclamation No. 2589, all of which relieved parts of the restrictions previously in effect. When the above cited proclamations and Secretarial Order were issued, most of the approximately 940 acres of private land subject to the closure provided good wetland habitat for waterfowl and wading birds. Since 1953, however, much of the private land has been drained and is now used for pasture and cropland. The only game birds which regularly use the private land within the closed area are a few Canada geese and mallards after the harvest. The change in the habitat has resulted in a level of waterfowl use which does not justify continuation of the closure. Rescinding the Closed Area will have a limited effect on the local economy in that waterfowl hunting will be permitted on private lands. However, this action will have no adverse impact on the effectiveness of the refuge.

Only one letter was received concerning both of the proposed actions. It was from an organization supporting the proposed rulemaking.

Special circumstances are involved in the promulgation of this rulemaking which require that this rule be effective upon publication. Opening dates for the State hunting seasons are rapidly approaching and the public interest would not be served by delaying this action unnecessarily.

NEPA Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" (FES 76-59) was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the *Federal Register* on November 19, 1976 (41 FR 51131). Pursuant to the requirements of Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), environmental assessments have been prepared for each of these actions and are available for public inspection and copying in Room 2343, Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240, or by mail, addressing the Director at the address above. It has been determined that this action is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C)

of the National Environmental Policy Act of 1969.

Conformance with Statutory and Regulatory Authorities

This action is taken by virtue of and pursuant to Section 3 of the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755, as amended; 16 U.S.C. 704), and in accordance with Section 4(a) of the Administrative Procedure Act of June 11, 1946, as amended (60 Stat. 238; 5 U.S.C. 551 *et seq.*).

There are a number of statutory criteria which must be considered in these matters. Neither the modification of the Delta Closed Area nor the revocation of the Malheur Closed Area will have any appreciable effect on the distribution or abundance of migratory waterfowl. At Delta Refuge, this action is a precursor to migratory waterfowl hunting on the refuge. At Malheur Refuge, this action would result in elimination of a prohibition of hunting on certain private lands, but would not result in any additional hunting opportunities on the Refuge. The breeding habits of migratory waterfowl would not be affected by this action. There would be no appreciable effect on the times and lines of migratory flight.

In accordance with Section 4(d)(1)(A) of the National Wildlife Refuge System Administration Act, the Secretary is authorized under such regulations as he may prescribe to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established: Provided, that not to exceed 40 percent at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe, unless he finds that the taking of any species of migratory game birds in more than 40 percent of such areas would be beneficial to the species. Each of these refuges was originally established as an inviolate sanctuary for migratory birds.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer the refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with

the primary objectives for which the area was established. In addition, The Refuge Recreation Act requires: "(a) that such recreation use[s] will not interfere with the primary purposes for which the areas were established, and (b) that funds are available for the development, operation, and maintenance of these permitted forms of recreation."

The use authorized by these regulations is compatible with the major purposes for which these areas were established. In regard to the 40 percent provisions of the National Wildlife Refuge System Administration Act, these regulations would not authorize the taking of migratory game birds in more than 40 percent of any refuge area. The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. Funds are available for the administration of the recreational activities permitted by these regulations.

This action is implemented after having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of migratory birds included in the terms of this country's migratory bird treaties with Canada, Mexico, Japan and the Soviet Union. The implementation of these changes will be consistent with all applicable laws and compatible with the principles of sound wildlife management and will otherwise be in the public interest. These determinations are based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976 and environmental assessments which have been prepared for each of these actions.

Other Determinations

Although this rulemaking in and of itself would not authorize migratory waterfowl hunting at Delta National Wildlife Refuge, the Service has issued a proposed rule, (47 FR 41790) to open the refuge to migratory bird hunting.

The circumstances are different at Malheur Refuge in that the prohibition on hunting is rescinded on private lands within the Closed Area.

This regulation will have a positive effect on local filling stations, sporting goods stores, providers of meals, and overnight accommodations. This rule will impose no costs on small entities; the exact number and the amount of business that will result from this refuge-related recreation is unknown. The aggregate effect is a positive economic effect on a limited number of

small entities. The positive effects will be spread over two (2) States.

The Department of the Interior has determined that this document is not a major rule within the meaning of Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Copies of the Determination of Effects are available upon request from the above address.

These regulations impose no reporting or recordkeeping requirements which require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

This action amends 50 CFR Part 32.4 by removing the Malheur Migratory Bird Closed Area, Oregon, and inserting a new citation revising the boundary of the Delta Migratory Bird Closed Area, in or on which pursuing, hunting, taking, capturing, or killing of migratory birds, or attempting to take, capture, or kill migratory birds is not permitted, all of the water area in Plaquemines Parish, Louisiana.

The Delta Migratory Bird closed area boundary description reads as follows:

Beginning at the navigation light marking the south bank of Cubits Gap on the Mississippi River; thence Northwesterly, crossing the mouth of Cubits Gap, approximately 4,400 feet to a navigation light on the north side of Cubits Gap; thence Easterly, with the north bank of Cubits Gap, approximately 3,500 feet; thence Northeasterly, with the northwest or left descending bank of Main Pass, approximately 44,500 feet; thence Easterly crossing Main Pass, approximately 1,700 feet; thence Northerly, with the east or right descending bank of Main Pass, approximately 8,800 feet; thence N. 45°00' E., 5,200 feet to a point in the Gulf of Mexico at 29°20.4' N. latitude and 89°10.3' W. longitude; thence S. 33°45' E., approximately 34,800 feet across the waters of the Gulf of Mexico to a point at 29°15.6' N. latitude and 89°6.7' W., longitude; thence South, approximately 13,400 feet across the waters of the Gulf of Mexico to the mouth of Raphael Pass, at Willow Point; thence Southwesterly, with the east bank of Raphael Pass, approximately 20,600 feet to the south boundary of Section 22, T. 21 S., R. 20 E.; thence Westerly, with said south boundary, approximately 1,100 feet to the corner common to Sections 22 and 28; thence Southerly, with the east boundary of said Section 28, approximately 800 feet to the east bank of Raphael Pass; thence Southerly with the east bank of Raphael Pass, approximately 2,500 feet to the north boundary of the SE¼, Section 28; thence Westerly, with said north

boundary approximately 900 feet; thence Southerly, with the west boundary of the SE¼, Section 28, approximately 400 feet to the south bank of Raphael Pass; thence Westerly, with the south bank of Raphael Pass, approximately 23,000 feet to the northeast boundary of Radial Section 35; thence Northwesterly, with the northeast boundary of Radial Sections 35, 34, and 33, approximately 2,400 feet; thence Southwesterly, with the northwest boundary of Radial Section 33, approximately 2,600 feet to the south bank of Raphael Pass; thence Northwesterly, with the south bank of

Raphael Pass and Cubits Gap, approximately 7,700 feet to the Place of Beginning.

PART 32—[AMENDED]

Accordingly, 50 CFR Part 32 is amended as follows:

§ 32.4 [Amended]

1. For the State of Louisiana, enter the date under the column headed "date," and enter the Federal Register citation under the column headed "citation" of the description of the Delta National

Wildlife Refuge Closed Area as published in the Federal Register in this final rulemaking.

2. Remove the entry for "Oregon" in its entirety.

(16 U.S.C. 704; 16 U.S.C. 460k, 668dd)

Dated: November 5, 1982.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks,

[FR Doc. 82-31794 Filed 11-18-82; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register

Vol. 47, No. 224

Friday, November 19, 1982

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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Equal Access to Justice Act Implementing Regulations

AGENCY: Merit Systems Protection Board.

ACTION: Proposed rule.

SUMMARY: The Merit Systems Protection Board ("the Board") proposes regulations governing applications for awards of attorney fees and other adjudication expenses under the Equal Access to Justice Act, 5 U.S.C. 504 *et seq.* This action is being taken pursuant to the requirement of 5 U.S.C. 504(c)(1). The proposed rule also includes a subsection governing attorney fee applications under the provisions of the Civil Service Reform Act in original jurisdiction cases.

DATES: Comments should be submitted in writing on or before December 20, 1982.

ADDRESSES: Comments should be submitted in writing and addressed to Robert E. Taylor, Secretary, Merit Systems Protection Board, c/o Legal Publications Division, 5205 Leesburg Pike, Suite 1404, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Calvin Morrow, (202) 653-7171.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act ("the Act"), 5 U.S.C. 504 *et seq.*, authorizes award of attorney fees and other adjudication expenses against the government in adversary adjudications under 5 U.S.C. 554 in which the government is represented by counsel or otherwise. Because section 554 (a)(2) excludes from its coverage all adjudications of the Board except proceedings involving administrative law judges (under 5 U.S.C. 7521 or 1207) and state and local employees (under 5 U.S.C. 1505), the Act applies only to the excepted proceedings. The proposed rule amends Part 1201, Subpart C, the regulations of the Board governing original jurisdiction

cases (*see* § 1201.2). It provides for the submission and consideration of applications for fees and expenses in the proceedings subject to the Act, which are within the Board's original jurisdiction. The proposed procedures reflect the requirements of 5 U.S.C. 504. In subsection (a) the proposed regulation also makes it clear that in original jurisdiction cases motions for attorney fee awards under the provisions of the Civil Service Reform Act (5 U.S.C. 7701(g) and 5596(b)(A)(ii)) shall be filed as prescribed in § 1201.37 governing attorney fees in appellate jurisdiction cases.

Regulatory Flexibility Act

The Chairman, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of this proposed rule, pursuant to section 603 or 604 of the Regulatory Flexibility Act, because of his determination that this rule would not have a significant economic impact on a substantial number of small entities, including small business, small organizational units, and small governmental jurisdictions.

List of Index Terms in 5 CFR Part 1201

Administrative practice and procedure, Government employees, Attorney fees, Civil rights.

Accordingly, the Merit Systems Protection Board proposes to amend 5 CFR by adding a new § 1201.126a to Part 1201, Subpart C to read as follows:

§ 1201.126a Fees.

(a) When an employee or applicant is a prevailing party in an original jurisdiction proceeding or when the Board in such a proceeding issues a final order correcting a personnel action that resulted in the withdrawal of all part of an employee's pay, allowances, or differentials, the employee or applicant may be eligible for an award of attorney fees under the provisions of the Civil Service Reform Act (5 U.S.C. 7701(g) and 5596(b)(1)(A)(ii)). Motions for fee awards under these provisions shall be filed in accordance with § 1201.37.

(b)(1) An administrative law judge who prevails in a proceeding under 5 U.S.C. 7521 or 1207 may be eligible for an award of attorney fees and other adjudication expenses under the Equal Access to Justice Act, 5 U.S.C. 504. Such an individual is not eligible under the Act, however, if his or her net worth

exceeded \$1,000,000 at the time the proceeding was initiated.

(2) A state or local officer or employee who is represented by counsel in a proceeding under 5 U.S.C. 1505 may be eligible for an award of attorney fees and other adjudication expenses under the Equal Access to Justice Act, 5 U.S.C. 504, if the Board determines that the officer or employee has not violated 5 U.S.C. 1502. Such an individual is not eligible under the Act, however, if his or her net worth exceeded \$1,000,000 at the time the proceeding was initiated.

(3) The Board will require the agency or the Special Counsel to pay any reasonable fees and expenses (as defined in 5 U.S.C. 504(b)(1)(A)) incurred by an eligible party, as defined in paragraphs (b)(1) and (2) of this section, unless it finds that the position of the agency or the Special Counsel in the proceeding was substantially justified or that special circumstances make an award unjust.

(4) Requests for payment of fees and expenses under this subsection shall be made by motion within 30 days of the decision. The request shall state the amount sought, as well as the basis for the movant's contention that the agency's position was not substantially justified. It shall include an itemized statement of the time expended and the rate at which fees and other expenses were computed.

(5) A request for an award under this subsection shall be accompanied by a statement of net worth made under oath. If the requester wishes his or her statement of net worth to be kept confidential, the statement should be submitted in a sealed envelope labeled "Confidential Statement of Net Worth." If a statement is so labeled it will not be disclosed to the public except as may be required by law.

(6) The agency or the Special Counsel may file a responsive pleading within 10 days of receipt of the motion.

(7) The Board's decision on a motion under this subsection is reviewable as provided in 5 U.S.C. 504(c)(2).

For the Board.

Dated: October 29, 1982.

Herbert E. Ellingwood,
Chairman.

[FR Doc. 82-31872 Filed 11-18-82; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amendment. No. 231]

Food Stamp Program: Resource and Financial Eligibility Criteria

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: The Department proposes changes in several current regulatory provisions governing the consideration of the resources and income of households in the Food Stamp Program. The changes being proposed include: (1) A simplification of the method for determining the value of licensed vehicles; (2) modifications in the exemptions for certain licensed vehicles; (3) modification of the terms of the resource exclusion of the applicants' rental homes; and (4) a change in the treatment of some assistance payments and educational grants as income. The proposed rule reflects several recommendations made by the Department's Task Force on Food Stamp Regulatory Review and one provision of the Food Stamp and Commodity Distribution Amendments of 1981.

This proposed rule solicits public input on these specific areas, as well as any other areas of concern regarding the calculation of household resources and income. The Department will analyze the comments received and will consider them during the development of final rules.

DATE: Comments must be received on or before January 18, 1983.

ADDRESS: Comments should be submitted to Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302. Written comments will be available for public inspection during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at the Food and Nutrition Service office located at Room 708, 3101 Park Center Drive, Alexandria, Virginia, 22302.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rule should be directed to Mr. O'Connor at the above address or by telephone at (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order No. 12291 and Secretary's Memorandum No. 1512-1. This action will not result in an annual effect on the economy of \$100 million or more or a major increase in cost or price for consumers, individuals, Federal, State or local governments, or geographical regions. Additionally, this action will not have a significant effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified "not major."

Regulatory Flexibility Analysis

This action also has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Samuel J. Cornelius, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule would amend the current provisions governing the calculation of household resources and income. The rule would affect State and local agencies by simplifying the certification procedures. The rule would not have a significant impact on households.

This rule does not contain recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Two of the major considerations in determining household eligibility for the Food Stamp Program are the household's resources (or assets) and income. The regulations provide the criteria and the procedures to be followed by eligibility workers in determining household resources and income. The regulations also detail what resources and income should be included and what should be excluded.

This proposed rule would make a number of changes in both the resource and financial eligibility criteria. Some of the proposed changes included in this rule are prompted by an amendment in the Program's authorizing statute made by section 1309 of the Food Stamp and Commodity Distribution Amendments of 1981 (Pub. L. 97-98, enacted on December 22, 1981). Other proposed changes included in this rule result from recommendations made by the

Department's Task Force on Food Stamp Regulatory Review. The Task Force, comprised of representatives of State and local agencies, USDA's Office of the Inspector General and FNS, was convened to suggest ways to simplify administration and reduce costs.

Vehicles as resources

Before implementation of the Food Stamp Act of 1977 (FSA) (Pub. L. 95-113), regulations required that nonexempt vehicles owned by applicants be assessed for equity value. (Equity value equals fair market value minus encumbrances.) The regulations required that the entire equity value of nonexempt vehicles must be counted as household resources. The FSA amended the resource provisions by requiring that, in addition to the equity value, the fair market value of nonexempt vehicles be assessed. The new statute required that the amount of the fair market value in excess of \$4,500 be counted as a household resource. Current regulations still include both the equity and fair market value provisions.

Exemptions from the equity value test are different from the fair market value test exemptions. Under the equity value provisions in effect since before implementation of the FSA, exemptions have been provided for one vehicle per household plus any other vehicles used to transport household members to employment or employment training or to conduct a required job search. These exemptions do not apply to the fair market value provisions, in accordance with the FSA. For the fair market value test, the FSA exempted only vehicles used to produce income. The 1980 Amendments to the FSA added an exemption for vehicles used to transport physically disabled household members.

As a result of the statutory provisions, the regulations include a complicated dual system of exemptions and valuation procedures. In many cases, both the equity and fair market values must be determined for the same vehicle. In such cases, only the value which will result in the higher resource determination is counted. For example, for a household comprised of two adults, one employed and the other elderly and retired, two vehicles may be exempted from equity assessment—one used for employment transportation and one for household use. However, both vehicles would be subject to the fair market value test. A third vehicle would be assessed under both the fair market and equity value tests, and whichever test assigns a higher value to the vehicle would be used in attributing resources.

Prior to the enactment of Pub. L. 97-98, the statute specifically required that the regulatory requirements governing, " * * * inclusions in, and exclusions from, financial resources, follow the regulations in force as of June 1, 1977 * * * " However, section 1309 of Pub. L. 97-98 provides that the June 1, 1977, rules regarding the consideration of licensed vehicles no longer have to be retained. While the fair market value provisions are still in the statute, the Department is now able to propose revisions in other aspects of the resource provisions for vehicles. The proposed changes are discussed below. (Note. Section 151 of Pub. L. 97-253 changed the statutory language "June 1, 1977" cited above, to read "June 1, 1982". This statutory change does not affect this proposed rule.)

Vehicle valuation

Congress enacted the change in the statute in order to allow a simplification in the provisions governing the consideration of vehicles as resources. The most obvious simplification allowed by the statute would be to eliminate the requirement for equity value assessment of vehicles. However, the simple deletion of the equity valuation provisions would raise a very significant problem. It would allow households which possess substantial assets, in the form of moderately valuable excess vehicles, to become eligible for Program benefits. (Each vehicle having a fair market value under \$4,500 would go completely uncounted, no matter how many vehicles the household owns.) The current equity valuation provisions prevent this from occurring.

The Department does not believe that Congress intended, in enacting the 1981 amendment, that the rules be changed to extend eligibility to households which own an excessive number of vehicles. The change was enacted as a part of legislation devoted exclusively to reducing Program costs and administrative complexity and to improving Program integrity. In enacting this change, Congress' only intent was to allow a simplification of the Program's administrative requirements. The equity test had been retained in the statute to place a control on households owning excess vehicles. The change in the statute provides the Department with the authority to develop an alternative method for controlling excess vehicles. Therefore, the Department is proposing changes that would both simplify administrative procedures and avoid extending eligibility to households with excess vehicles.

To meet these two objectives, the proposed rule would combine deletion of the equity valuation requirements with provisions designed to prevent the extension of eligibility to households with substantial resources in the form of excess vehicles. The proposed rule would make the following provisions. All nonexcluded licensed vehicles would be assessed for fair market value. For each household, the current fair market value test would be applied to: (1) One licensed vehicle used for general household transportation, and (2) any licensed vehicle used to transport household members to and from employment or training preparatory to employment, or to seek employment in compliance with job search requirements. For these vehicles, the value of any individual vehicle in excess of \$4,500 would be counted as a household resource. All other nonexcluded vehicles owned by household members would be considered excess vehicles. For all excess vehicles, the entire fair market value would be counted as a household resource. The \$4,500 threshold would not be considered for these vehicles. For example, if a household owns an excess licensed car with a fair market value of \$1,000, then \$1,000 would be attributed to household resources.

One problem that arises under the current regulations is that many vehicles which are not *necessary* to households are never actually counted as resources. Many unessential vehicles are not counted under the fair market value test as they are valued at less than \$4,500, and at the same time they are exempt from the equity test. The proposed rule would address this problem by differentiating between necessary and unnecessary (excess) vehicles. Under the proposed rule, households owning more than one counted vehicle would be required to provide information which would allow the State agency to determine which vehicle(s) should be considered as excess and which should not. A second, third, or fourth vehicle would be considered as an excess vehicle unless the household satisfies the State agency that the vehicle is *necessary* for general household transportation or to get to and from employment or employment training or to conduct a required job search. This policy emphasizes that it is the household's responsibility to provide information sufficient to allow the State agency to determine which valuation procedures should be applied to a particular vehicle. (As described above, for non-excess vehicles the \$4,500 threshold is used, but for excess

vehicles no threshold is used and the entire value is counted.)

The policy that it is the responsibility of the household to satisfy the State agency that a second (or any additional) vehicle should not be considered as excess would particularly affect households which have more counted vehicles than licensed drivers. A two driver, two car household in which at least one driver is employed probably could satisfy the State agency that neither car is excess. However, it would be more difficult for a one driver, two car household to satisfy the State agency that neither car is excess.

The proposed changes reflect the statutory provisions dealing with the resource valuation of vehicles. Section 5(g)(1) of the FSA applies the fair market value test, including the \$4,500 threshold, to licensed vehicles, " * * * used for household transportation or used to obtain or continue employment * * * ." In requiring a fair market valuation of excess vehicles (i.e., those not described in the statute) without the \$4,500 threshold, the proposed rule would establish a reasonable standard for the resource determination.

The proposed rule would replace the current equity value assessment of excess vehicles with a fair market value assessment. This change would simplify administrative requirements significantly, as eligibility workers would not have to secure and verify information regarding loans or liens to assess the value of vehicles. One value standard, the fair market value, would apply to all nonexcluded vehicles. At the same time, the simplification would not extend eligibility to households which own substantial resources in excess vehicles.

The Department recognizes that these changes would tighten eligibility to some extent. However, data available from Quality Control samples indicate that only about one percent of all participating households own excess vehicles. The Department believes that, as a result of the proposed change, very few of these households would experience an increase in counted resources sufficient to affect their eligibility.

Excluded vehicles

Current regulations exclude from consideration as resources any vehicles necessary for subsistence hunting or fishing (7 CFR 273.8(h)(1)(iv)). The proposed rule would limit this exemption to households in remote parts of Alaska which are dependent on subsistence hunting and fishing. This change is consistent with the original

intention of the exemption and should not place a significant hardship on other households. This proposed change is based on recommendations made by the Department's Task Force on Food Stamp Regulatory Review.

Rental property

Current regulations provide two separate resource exclusions which may apply to rental property, such as rental homes, owned by applicant households. The first exclusion is for property which annually produces an income consistent with its fair market value, even if it is only used seasonally. The second of the exclusions is for property essential to the employment of a household member. To determine the eligibility of households which own rental property, eligibility workers must consider the property in light of both exclusions. Eligibility workers are required first to determine whether the rental property qualifies for the exclusion for property producing income consistent with its fair market value. If it does not, then the eligibility worker has to determine whether the property is essential to the employment of a household member. (See 7 CFR 273.8(e) (4) and (5).)

The exclusion for property essential to the employment of a household member is intended to provide special consideration for property such as farm land, machinery, and tools. In a bad year, such property may not produce income consistent with its fair market value. Nonetheless, the property remains essential to employment, and the ability to retain the property can be the key to the household's return to economic self-sufficiency. House of Representatives Report No. 95-464 (June 24, 1977, p. 89) on the FSA, stated that such property would be excluded, " * * * thereby providing access to the food stamp program to the small businessman who has fallen on hard times or has become temporarily disabled with little or no income and who would not have to sell all of his equipment in order to become eligible and, thus, be forced to become almost a permanent ward of the State simply in order to be able to eat."

The Department does not believe that rental homes have the same characteristics as farm land, machinery, and tools, which justify the exclusion for property essential to employment. The current provision allowing exclusion of rental homes under the provision for property essential to employment opens a loophole which is subject to abuse. For example, a household may rent a house or apartment to a relative for a nominal fee (not consistent with its fair market value), yet claim that the property is

essential to the employment of a household member. To prevent such abuse, the proposed rule would allow exclusion of rental homes only under the provision for income producing property.

This change would affect only a very small number of participating households as few rental homes are exempt because they are essential to employment. A recent study conducted by the Department shows that only about 2.5 percent of all participating households own rental property, mostly apartments in the households' homes. Most of these households probably would continue to have their rental homes excluded under the proposed rule.

Exclusions mandated under Federal statutes

The current regulations include lists of types of payments that are excluded from consideration as resources and income by express provision of Federal statute. These lists appear in §§ 273.8(e)(11) and 273.9(c)(10). This proposed rule would add to these lists exclusions for relocating assistance payments made to members of the Hopi and Navajo Tribes under Pub. L. 93-351 (88 Stat. 1712).

The Department points out that the lists included in the regulations may not be complete. At times the Department does not promptly identify new excludable payments, and some time may pass before the exclusion is explicitly recognized in the regulations. To allow for more prompt exclusion of such payments, the Department has used non-regulatory means (such as memoranda) for instructing State agencies regarding exclusions that must be allowed. The Department will continue to inform State agencies regarding these exclusions by expedient methods, and will subsequently address them in the regulations. The proposed rule would change the language introducing the list of payments excluded as resources under Federal statutes to make it clear that the list may not be complete. The current regulatory language introducing the list of payments excluded as income is already consistent with this policy.

Treatment of certain assistance payments

Current regulations categorize income into two categories, *earned* and *unearned*. Households are allowed to deduct 18 percent of their earned income to compensate for taxes, other mandatory deductions from wages, and work expenses. There is no comparable

deduction for unearned income. (See 7 CFR 273.9(d)(2)).

With one exception, all nonexcluded public and general assistance payments are considered unearned income under the current regulations. The exception is that assistance payments in programs that require work as a condition of eligibility without compensation other than the assistance payments themselves are considered earned income. This exception for assistance in "workfare" type programs allows households to use the 18 percent earned income deduction on their assistance payments.

In this rule, the Department is proposing to do away with this exception. Assistance payments to households required to meet work requirements, without additional compensation, would be considered as unearned income, as are other assistance payments. As unearned income, the 18 percent deduction would not be provided for such payments.

This proposed change is consistent with the provisions of the Community Work Experience Program (CWEP). CWEP is the workfare-type program which State agencies may establish for recipients of Aid to Families with Dependent Children (AFDC). The CWEP regulations, at 45 CFR 238.20(d) (published at 47 FR 5683), states that, "Nothing in section 409 of the Act, nor in this part shall be construed as authorizing the payment of AFDC as compensation for work performed." This is to say that the AFDC payments are not to be considered as income earned through the work performed. Because of the interrelationship between the Food Stamp Program and AFDC, and consequently CWEP, it is important that the regulations for the programs be consistent. (The Department issued final regulations for the Food Stamp Optional Workfare Program on October 8, 1982, at 47 FR 44692, which were designed to facilitate coordination with CWEP.)

The 18 percent earned income deduction is provided to compensate for certain work related expenses, such as the mandatory deductions from pay checks for income taxes, social security, and the like. These work related expenses are not applicable to assistance payments connected with workfare. In addition, most workfare programs, like CWEP, provide some reimbursement for certain work related expenses, such as equipment and transportation costs. Clearly, a deduction to compensate for costs which are reimbursed is not warranted. As a result, the rationale for the earned

income deduction does not apply to such assistance payments.

Another reason for the proposed change is that the current rule has tended to equalize the desirability of gainful employment and workfare, by allowing the 18 percent earned income deduction on both employment income and workfare related assistance. However, the Department's policy is to encourage participants to find gainful employment, not to promote workfare in lieu of employment.

Treatment of certain educational grants

Educational grants, to the extent they are used for tuition and mandatory school fees, are excluded from consideration as income under current rules (7 CFR 273.9(c)(3)). To be excluded, such grants must be used at institutions of higher education or school at any level for the mentally or physically handicapped. Other portions of educational grants may be excluded if they are reimbursements specifically earmarked by the grantor agency for educational expenses, such as books or travel (7 CFR 273.9(c)(5)(iv)). In no case are portions of grants used or earmarked for normal living expenses, such as room and board, clothing, or food, to be excluded.

Since these provisions were first included in regulations, on October 17, 1978, the identity of the "grantor agency" in the Basic Educational Opportunity Grants Program has been disputed. More recently known as the Pell Grants Program, this Program is authorized under the Higher Education Act of 1965, as amended. The Program is administered by the United States Department of Education (ED), which processes applications and determines the eligibility of grant applicants. Under pertinent Federal statutory (20 U.S.C. 1070a) and regulatory (34 CFR Part 390) provisions it is clear that ED is the grantor agency in the Pell Grants Program. As such, ED may earmark any portions of grants which may be excluded as reimbursement for educational expenses. The Department understands that ED normally does not specifically earmark portions of Pell Grants for books, travel, transportation, or other expenses. Under the Food Stamp regulations, therefore, the rule is that excludable reimbursements or allowance for such expenses are not normally provided through the Pell Grants Program. To resolve any question and to make Food Stamp Program Policy clear, this proposed rule would explain that ED is the grantor agency with sole authority for earmarking portions of Pell Grants to be excluded as reimbursements for

educational expenses such as books, travel, or transportation. Portions of Pell Grants used for tuition and other mandatory school fees would continue to be excluded under 7 CFR 273.9(c)(3).

Comments

The Department encourages interested parties to submit comments and recommendations regarding the changes discussed in this preamble, as well as other aspects of the resource and financial eligibility criteria. The Department is particularly interested in receiving comments which discuss the issues of administrative feasibility, Program costs or savings, and potential effects of changes.

Implementation

State agencies would be required to begin implementing all of the provisions in this rule within 120 days of publication of the final rule. Following the end of the 120 day period, each new certification and recertification would have to be done in accordance with the new requirements.

Index

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, the Department proposes that 7 CFR Parts 272 and 273 be amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, a new paragraph (g)(51) is added as follows.

§ 272.1 General terms and conditions.

*(g) Implementation. * * **

(51) The resource and income eligibility provisions of Amendment No. 231 shall be effective no later than 120 days following publication of the final rule.

2. In § 272.8, a new sentence is added to the end of paragraph (i), as follows.

§ 272.8 Procedures for program administration in Alaska.

(i) *Resources.* * * * In those areas of Alaska where access to food stores is extremely difficult, the value of vehicles necessary for subsistence hunting and fishing shall not be counted as a household resource.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.8:

a. Paragraph (e)(4) is amended by adding a new sentence at the end of the paragraph;

b. Paragraph (e)(5) is amended by removing the words "and rental homes", and by placing a period after the words "household member" and removing the subsequent words;

c. Paragraph (e)(11) is amended by removing from the second sentence the words "the current listing of" and adding in lieu thereof the words "a listing of some". In addition, a new paragraph (e)(11)(xi) is added;

d. Paragraph (h)(1) is amended by removing paragraph (iv) and redesignating paragraphs (v) and (vi) as (iv) and (v), respectively;

e. Paragraph (h)(2) is amended by removing the reference to "(v)" and inserting in its place "(iv)";

f. Paragraph (h)(3) is revised; and

g. Paragraphs (h)(4), (5), and (6) are removed.

The additions and revisions are set forth as follows:

§ 273.8 Resource eligibility standards.

*(e) Exclusions from resources. * * **

(4) * * * Such property shall include rental homes and vacation homes.

*(11) * * **

(xi) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93-531.

(h) Handling of licensed vehicles.

(3) Licensed vehicles not excluded under paragraphs (h) (1) and (2) of this section shall be counted as household resources as follows:

(i) One licensed vehicle used for general household transportation and other vehicles necessary to transport household members to and from employment or training or education preparatory to employment, or to seek employment in compliance with job search criteria, shall be evaluated individually for fair market value. That portion of the value which exceeds \$4,500 shall be attributed in full toward the household's resource level,

regardless of any encumbrances on the vehicle. For example, a household owning an automobile described in the first sentence of this paragraph with a fair market value of \$5,500 shall have \$1,000 applied toward its resource level. Any value in excess of \$4,500 shall be attributed to the household's resource level, regardless of the amount of the household's investment in the vehicle. Each of these vehicles shall be appraised individually. The fair market value of two or more of these vehicles shall not be added together to reach a total fair market value in excess of \$4,500.

(ii) The entire fair market value of any licensed vehicle not excluded under paragraph (h)(1) or (h)(2) of this section and not described in the first sentence of paragraph (h)(3)(i) of this section shall be counted as a household resource.

* * * * *

4. In § 273.9:

a. Paragraph (b)(1)(i) is amended by removing the second and third sentences.

b. Paragraph (b)(2)(i) is amended by placing a period following the words "other assistance programs based on need", removing the words "except as provided in paragraph (b)(1)(i) of this section", and adding a new sentence in lieu thereof.

c. Paragraph (c)(5)(iv) is amended by adding a new sentence at the end of the paragraph.

d. Paragraph (c)(10) is amended by adding a new paragraph (c)(10)(xi).

The revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) *Definition of income.* * * *

(2) * * *

(i) * * * Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered unearned income.

(c) *Income exclusions.* * * *

(5) * * *

(iv) * * * As the grantor agency, the United States Department of Education shall have sole responsibility for determining or earmarking what portions of grants made available under the Higher Education Act of 1965, as amended, are reimbursements which may be excluded under this paragraph.

* * * * *

(10) * * *

(xi) Payments of relocation assistance to Navajos and Hopis under Pub. L. 93-531.

* * * * *

[91 Stat. 958, 7 U.S.C. 2011-2029]

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: November 16, 1982.

Robert E. Leard,

Associate Administrator.

[FR Doc. 82-31757 Filed 11-18-82; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska—Western Iowa Marketing Area; Proposed Temporary Revision of Shipping and Diversion Limitation Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to temporarily relax certain pooling provisions of the Nebraska-Western Iowa Federal milk order. The proposed action would relax for December 1982 through March 1983 a portion of the pooling standards for supply plants and the limit on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association representing a substantial number of producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due not later than November 26, 1982.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-7183.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

It has been determined that any need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the Federal Register. However, this

would not permit the completion of the required procedures in time to give interested parties timely notice that the shipping requirements for pool supply plants and the limits on the amount of milk that may be moved directly from producer farms to nonpool manufacturing plants for December 1982 would be modified. The initial request for this action was received November 2, 1982.

It has also been determined that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of §§ 1065.7(b)(3) and 1065.13(d)(4) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of December 1982 through March 1983.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250 not later than November 26, 1982. The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures and include December 1982 in the temporary revision period.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

The provisions proposed to be revised are (1) the shipping percentages for supply plants as set forth in § 1065.7(b) and (2) the diversion limitation percentages as set forth in § 1065.13(d) that are applicable during the months of December 1982 through March 1983. The specific revisions (1) would decrease the supply plant shipping percentages 10 percentage points from the present 40 percent to 30 percent during each respective month and (2) would increase the diversion limitation percentages 10 percentage points from the present 40 percent to 50 percent during each respective month.

Pursuant to the provisions of § 1065.7(b)(3), the supply plant shipping

percentages as set forth in § 1065.7(b) and pursuant to the provisions of § 1065.13(d)(4), the diversion limitation percentages as set forth in § 1065.13(d)(2) and (3) may be increased or decreased up to 20 percentage points during any month to encourage additional needed milk shipments to pool distributing plants or to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Associated Milk Producers, Inc., a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that during the period of December 1982 through March 1983, the pool supply plant shipping percentages be reduced 10 percentage points. Also, the cooperative requested that for the same period the percentage of allowable diversions be increased 10 percentage points.

The cooperative states that beginning in December the present pooling provisions in question will not accommodate the efficient pooling of the milk of some of its members who are regularly associated with the market. The cooperative indicates that this is because of the present buildup in the market's milk supplies due to a substantial increase in producer deliveries while Class I sales are down. It states that market data indicate that producer deliveries for January-September 1982 were up 2.5 percent from the already high levels of the same period a year ago while Class I sales were down 1.5 percent. The cooperative asserts that this marketing situation will continue at least through March 1983. Because of the market's changed supply situation, the cooperative contends that relaxation of the pool supply plant shipping percentage and the diversion limits will be needed beginning in December to prevent unnecessary and uneconomic movements of milk.

Therefore, it may be appropriate to reduce the aforementioned pooling provisions for the months of December 1982 through March 1983 to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1065

Milk Marketing Orders, Milk, Dairy Products.

Signed at Washington, D.C., on November 16, 1982.

W. H. Blanchard,

Acting Director, Dairy Division.

[FR Doc. 82-31826 Filed 11-18-82; 8:45 am]

BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

14 CFR Parts 252 and 253

[Economic Regs. Docket 41009, EDR-449]

Smoking Aboard Aircraft and Notice of Terms of Contract of Carriage

Dated: September 27, 1982.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to require a notice on airline tickets advising passengers of their right to a seat in a non-smoking section. The notice is issued at the Board's initiative, in connection with its proceeding to establish rules for notice to be given on carrier's tickets.

DATES: Comments by: December 20, 1982.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List: November 29, 1982.

The Docket Section prepares the Service List and sends it to each person listed on it, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 41009, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Associate General Counsel, or Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: By ER-1302, issued today, the Board has established rules, 14 CFR Part 253, for the notice that air carriers must provide on their tickets for domestic air transportation concerning contract terms incorporated by reference. Under Part 253 certain specified terms must have their salient features stated on the tickets. Terms of this type fall into two categories: (1) Those relating to restrictions on refunds or rights of the carrier to raise the price, and (2) those where ticket notice is required by other parts of the Board's regulations, *Viz.*, Part 250, *Oversales* (denied boarding compensation) and Part 254, *Domestic Baggage Liability*.

The purpose of this notice is to seek comment on whether to include the

smoking rules (14 CFR Part 252) among those of which the carriers should give notice on tickets. It would be possible for a sentence stating passengers' rights to a non-smoking seat to appear on the tickets. Alternatively, smoking could simply be included on the list of subjects on which tickets advise passengers that they may obtain information from their ticket source.

The argument in favor of including a notice regarding smoking rules is that it is an important subject for many travelers, and some may benefit from advance notice as to their rights. Opposing arguments are the cost of including the notice on tickets; the possible obscuring of the existing required information by including yet more; and the fact that most travelers are generally aware of the rules, since their administration by the airlines is highly visible.

List of Subjects

14 CFR Part 252

Air carriers, Consumer protection, Smoking.

14 CFR Part 253

Advertising, Air carriers, Air transportation, Claims, Consumer protection, Law, Travel.

PART 252—[AMENDED]

Accordingly, the CAB proposes to amend 14 CFR Part 252, Smoking Aboard Aircraft, by adding a new § 252.5 to read as follows:

§ 252.5 Ticket notice.

Air carriers shall include the following notice on or with their tickets: "Every passenger who meets the airline's check-in requirements has a right to a seat in a non-smoking section."

Alternative Proposal

PART 253—[AMENDED]

In 14 CFR Part 253, Notice of Terms of Contract of Carriage, § 253.5(b)(4) would be revised to read:

§ 253.5 Notice of incorporated terms.

* * * * *

(b) * * *

(4) Rules about reconfirmation of reservations, check-in times, refusal to carry, and smoking.

* * * * *

(Secs. 204, 404, 407, 411, 416, Pub. L. 85-726, as amended, 72 Stat. 743, 760, 766, 769, 771, 49 U.S.C. 1324, 1374, 1377, 1381, 1386)

By the Civil Aeronautics Board.
Phyllis T. Kaylor,
Secretary.

[FR Doc. 82-31864 Filed 11-18-82; 8:45 am]
BILLING CODE 6320-01-M

14 CFR Part 253

[Economic Reg. Docket 40772, EDR-444c]

Notice of Terms of Contract of Carriage

Dated: September 27, 1982.
AGENCY: Civil Aeronautics Board.
ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The CAB has adopted rules, applicable to large-aircraft operations and flight connecting with them, specifying disclosures to be made to passengers if terms of the contract of carriage are incorporated by reference. This notice of proposed rulemaking proposes to extend the applicability of those rules to all direct air carriers (other than on-demand air taxi operators) regardless of the size of aircraft used or whether they interline with other airlines. The Board tentatively finds that this extension would benefit passengers and would help to ensure a continuous and convenient system of air service for both large and small communities throughout the United States.

DATES: Comments by: December 8, 1982.
Reply comments by: December 20, 1982.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

Requests to be put on the Service List: November 29, 1982. The Docket Section prepares the Service List and sends it to each person listed on it, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 40772, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., soon as they are received.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Associate General Counsel, Rules & Legislation, or Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION: By a final rule CER-1302 issued today, the Board adopted requirements for notice

that airlines must give to passengers if terms are incorporated by reference in the contract of carriage (14 CFR Part 253). The rule requires that airlines provide free copies of the contract to passengers upon request. That rule is applicable to all airline operations with aircraft with a passenger capacity of 60 seats or more, and to flight segments with smaller aircraft that connect on one ticket with a large-aircraft segment.

In that rulemaking, several commenters, including smaller-aircraft operators and several States, asked that the rule be made applicable to all scheduled operations with aircraft of any size. Those commenters stated that there should be uniformity of disclosure throughout the country and on all scheduled airline operations. Small communities especially would be put at a disadvantage if those airlines are not required by rule to disclose terms of their contract, the commenters argued, since they are served primarily by airlines with small aircraft, and often have travelers for only one segment of a carrier's trip.

The Regional Airline Association (RAA), representing small-aircraft operators, commented that it would not be feasible for commuters to comply with separate notice requirements, such as those required by the States, for on-line traffic, and with those required by the Board for interline traffic. RAA further commented that such a system could be confusing to passengers if different notice standards applied on the same trip, depending on which airline wrote the ticket for which segment.

The Board could not immediately adopt RAA's suggested in the final rule on disclosure requirements, since the original proposal had not included such an extension of applicability. The operations that would be covered by an extension of the rule have been exempt from the filing of tariffs and have thus been subject to State regulation in this area. The States, however, have not in general exercised this authority, and in fact the State commenters generally supported this extension of a uniform Federal rule.

Upon review of the comments to the original proposal, the Board is proposing to extend the applicability of the rule to all commuter and certificated scheduled passenger operations, regardless of aircraft size. The Board tentatively finds that this extension would benefit passengers and would help to ensure a continuous and convenient system of air service for both large and small communities throughout the United States. The extension would make compliance with rule more practical and

efficient for the airlines and would be easier for passengers to understand.

Expedited Comment Period

Because of the need by the airlines to complete their plans for the ticketing process when tariffs expire on January 1, 1983, this rulemaking will be processed on an expedited basis. Comments will be due 20 days after publication in the *Federal Register*, with reply comments due 10 days after that date, for a total 30-day comment period.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Board certifies that none of the proposed changes will, if adopted, have a significant economic impact on a substantial number of small entities. The rule would affect small carriers in their non-interline operations. Almost all of these small carriers provide interline service as the major part of their operations, which is already covered by the rule. For example, approximately 70 percent of commuter carrier traffic, according to the RAA, is interline. Thus, only a smaller part of their traffic would be affected by this proposed rule.

List of Subject in 14 CFR Part 253

Advertising, Air carriers, Air transportation, Claims, Consumer protection, Law, Travel.

Proposed Rule

PART 253—[AMENDED]

The Civil Aeronautics Board proposes to revise 14 CFR Part 253, Notice of Terms of Contract of Carriage, as follows:

Section 253.2, *Applicability*, would be revised to read:

§ 253.2 Applicability.

This rule applies to all direct air carriers with respect to their scheduled passenger air service in interstate and overseas air transportation. It applies to all contracts with passengers for carriage in such air transportation by those air carriers that incorporate terms by reference.

(Secs. 204, 404, 411, Pub. L. 85-726, as amended, 72 Stat. 743, 760, 769; 49 U.S.C. 1324, 1374, 1381)

By the Civil Aeronautics Board.
Phyllis T. Kaylor,
Secretary.

[FR Doc. 82-31868 Filed 11-18-82; 8:45 am]
BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 772 3050]

MIB, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Westwood, Mass. non-profit medical reporting agency, among other things, to cease reporting that a code in a consumer's file has been cancelled or deleted, except to report the cancellation or deletion to a person who was previously informed of the code's existence. The order would prohibit the firm from conditioning the release of information to a consumer on his/her execution of a waiver of claims against the firm and from representing to consumers that their statements concerning disputed items be limited to 100 words or less, unless at the same time, the firm offers to assist the consumer in preparing the statement. Additionally, the firm would be required to timely reinvestigate disputed information; contact, where possible, the source(s) of disputed information or other persons identified by the consumer who may possess information relevant to the challenged data and modify its files accordingly.

DATE: Comments must be received on or before January 18, 1983.

ADDRESS: Comments should be directed to: Office of the Secretary, FTC/S, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William P. McDonough, Federal Trade Commission, Boston Regional Office, 150 Causeway St., Rm. 1301, Boston, MA 02114. (617) 223-6621.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty days (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will

be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Consumer reports.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128-38; 15 U.S.C. 1681-1681i)

[File No. 772-3050]

In the Matter of MIB, Inc., d.b.a. Medical Information Bureau; agreement containing consent order to cease and desist.

The Federal Trade Commission (Commission) has been investigating certain acts and practices of MIB, Inc., d.b.a. Medical Information Bureau (MIB). It now appears that MIB is willing to enter into an agreement containing a consent order. Accordingly, it is agreed by MIB and Commission staff that:

1. MIB is a corporation organized, existing and doing business under the laws of Delaware, with its office and principal place of business located at 160 University Avenue, Westwood, Massachusetts.

2. MIB admits all the jurisdictional facts set forth in the draft complaint here attached.

3. MIB waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify MIB, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by MIB that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to MIB, (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, this order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final

upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to MIB's address as stated in this agreement shall constitute service. MIB waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. MIB has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. MIB further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For purposes of this order, the following definitions shall apply:

A. "The Act" means the Fair Credit Reporting Act, Pub. L. No. 91-508, 15 U.S.C. 1681 *et seq.*

B. The terms "person," "consumer," "consumer report," "file" and "medical information" are as defined in Section 603 (b), (c), (d), (g) and (i), respectively, of the Act.

C. The term "medical source" means a person from whom medical information may be obtained in accordance with Section 603(i) of the Act, namely a licensed physician or medical practitioner, hospital, clinic or other medical or medically related facility which provided or provides the information with the consent of the individual to whom the information relates.

II.

It is ordered that MIB, Inc. ("MIB"), its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection, preparation, assembly or furnishing of a consumer report shall cease and desist from:

A. Reporting, directly or indirectly, that a code in a consumer's MIB file has been cancelled or deleted, except to report the cancellation or deletion to a person who was previously informed of the existence of the code.

B. Requiring, as a condition for disclosure of information (except the nature and substance of medical information) pursuant to Section 609 of the Act, that the consumer seeking disclosure execute a waiver or release of claims against MIB based on the information disclosed.

C. Failing, if the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer and such dispute is directly conveyed to MIB by the consumer, to reinvestigate the disputed item within a reasonable period of time, unless MIB has reasonable grounds to believe that the dispute by the consumer is frivolous or

irrelevant, provided that where the consumer has failed to provide information sufficient to permit MIB to identify in its records the consumer and the item in dispute, MIB may require the consumer to provide such information before initiating a reinvestigation.

D. Failing, in connection with the reinvestigation of a disputed item of medical information pursuant to Section 611 of the Act:

1. To include as part of such reinvestigation a reasonable effort to contact (a) the medical source or sources who originally provided the information upon which the disputed item is based and (b) other medical sources identified by the consumer who may reasonably be expected to have additional information directly relevant to the disputed item;

2. To complete such reinvestigation within a reasonable period of time, provided that 30 days shall be presumptively deemed a reasonable period of time, in the absence of unusual circumstances;

3. If after such reinvestigation the disputed item is found to be inaccurate or unverifiable, promptly to delete the item from the consumer's MIB file; and

4. If after such reinvestigation the disputed item is found to be accurate and verifiable but incomplete, to make the item complete by adding to the consumer's MIB file any additional information learned through the reinvestigation and necessary for a proper understanding of the disputed item, including where applicable, the fact of recovery or improvement.

E. Representing, directly or indirectly, to consumers that their dispute statement under Section 611(b) of the Act is limited to 100 words or less, unless MIB at the same time informs the consumer that it will assist the consumer in writing such a statement.

III

It is further ordered that MIB mail a copy of this order to all of its members by certified mail, return receipt requested; that MIB deliver a copy of this order to all present and future MIB employees engaged in handling consumer requests for disclosure under Section 609 of the Act or disputes of accuracy or completeness under Section 611 of the Act; and that MIB secure a signed statement acknowledging receipt of a copy of this order from all such employees.

IV

It is further ordered that MIB notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment or sales resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

V

It is further ordered that MIB shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from M.I.B., Inc. The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested parties. Comments received during this period become part of the public record. After sixty (60) days, the Commission will again review the statement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed orders.

According to the complaint, M.I.B. operates a confidential exchange of information among its more than seven hundred life insurance company members. M.I.B.'s reports bear on consumers' personal characteristics and are used in establishing eligibility for insurance. The complaint states that in 1979 M.I.B. received over 20 million requests for information and 2 million reports of new information.

The complaint accompanying the proposed order alleges that M.I.B. has violated several provisions of the Fair Credit Reporting Act. According to the complaint, when M.I.B. deletes from its files information that is obsolete, or that is found to be inaccurate or unverifiable after reinvestigation, it has included, allegedly in violation of the Act, the notations "cancelled" or "purged" in subsequent consumer reports. The order remedies this practice by prohibiting M.I.B. from reporting that a code in a consumers' file has been cancelled or deleted, except to report the cancellation or deletion to a person who was previously informed of the existence of the code.

The complaint further alleges that, by requiring consumers who seek disclosure of (non-medical) information from their files to sign a release in M.I.B.'s favor, M.I.B. has violated the Act which requires only that consumers provide proper identification in order to receive this information. The order would prohibit M.I.B. from requiring such a release as a condition to the release of non-medical information.

According to the complaint, M.I.B. has also violated the provisions of the Act requiring a reinvestigation when a consumer disputes the accuracy or completeness of an item in the file by not initiating a reinvestigation until a consumer completes a release form, identifies a physician to whom the information should be released, and obtains a witness' signature. These requirements have also allegedly resulted in a failure, in some instances, to reinvestigate within a reasonable period of time. The complaint further alleges that M.I.B. violated the Act's reinvestigation provisions by failing to contact original sources, or sources the consumer identifies as being likely to have information on the subject of the dispute, and by failing to record, after the reinvestigation, the current status of the disputed information. The order requires M.I.B. to initiate and complete reinvestigations within a reasonable period of time, to contact appropriate sources of information, and to promptly delete inaccurate or unverifiable information. Where the information is verified but incomplete, M.I.B. must include in the file any

additional information necessary for understanding the disputed item, such as the fact of a recovery or an improvement in a medical condition.

Finally, the complaint alleges M.I.B. violated the Act by informing consumers that consumer statements, to be included in the file regarding disputed items, are limited by the Act to one hundred words. In fact, M.I.B. may limit such statements to a hundred words only if M.I.B. provides assistance to consumers in preparing that statement. The order prohibits M.I.B. from representing that the dispute statement must be limited to 100 words, unless M.I.B. also informs the consumer that it will assist the consumer in writing the statement.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Carol M. Thomas,
Secretary.

[FR Doc. 82-31114 Filed 11-18-82; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

Proposed Customs Regulations Amendment Relating To Entry of Cotton Fabrics

AGENCY: U.S. Customs Service,
Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to the requirement for additional invoice information for specified "cotton fabrics", by eliminating the use of a Customs form to furnish that information and instead allow the use of a standardized commercial invoice for that purpose. This change would eliminate duplicative information and an unnecessary form, thus simplifying the procedure and lessening the reporting burden for importers.

DATES: Comments must be received on or before January 18, 1983.

ADDRESS: Comments (preferably in triplicate) shall be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Herbert H. Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5307).

SUPPLEMENTARY INFORMATION:

Background

Section 141.81, Customs Regulations (19 CFR 141.81) provides that, depending on the circumstances of each importation, either a special Customs invoice, a special summary invoice, or a commercial invoice must be presented for each shipment of merchandise imported into the United States at the time the entry documentation is filed with Customs.

Moreover, the invoices for certain classes of merchandise specified in § 141.89(a), Customs Regulations (19 CFR 141.89(a)), e.g., "cotton fabrics" classifiable under various item numbers in the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), must contain additional information set forth in detail in that section. Customs Form (CF) 5519 "Invoice Details for Cotton Fabrics and Liens," has been developed for furnishing the additional information required by § 141.89(a) in the case of enumerated cotton fabrics.

As part of an ongoing program to align and simplify the international documentation used in foreign trade, the National Committee on International Trade Documentation (NCITD)—a broad-based trade group—and Customs officials from Region II (New York), have developed a joint proposal for reporting cotton fabric details. The proposal would allow the additional information required to be submitted on a commercial invoice standardized in size, format, and information content and would eliminate the use of the CF 5519 in those instances.

At present, importers of cotton fabrics specified in § 141.89(a) and consisting of one style or design of fabric ("one line"), have to file two documents with Customs—a commercial invoice and a CF 5519—when they enter their merchandise. For shipments consisting of more than one style or design of fabric ("multiple line"), an importer has to file multiple invoices and CF 5519s.

Under the proposal, multiple line shipments would still require several invoices or an addendum to an invoice, but the procedure would be simplified because only one type of document, a standardized commercial invoice, would be involved. However, in the case of a one line entry, the proposal would permit the use of a single document, the standardized commercial invoice, to furnish the additional information

required, and eliminate the need to file an extra document, the CF 5519, with that entry. An importer of a one line shipment of cotton fabric would file only one document instead of the present two.

Customs has determined that approximately 55,000 CF 5519s were filed during 1979, representing a 4,600 annual reporting hours burden for importers. As multiple line entries account for only about 30 percent of total entries of shipments of cotton fabric, Customs would be able to reduce the filing and reporting figures mentioned above by 70 percent, i.e., 38,500 forms and 3,220 hours.

In using the standardized commercial invoice, Customs would not request any more information from an importer than is now furnished on the invoice and CF 5519 together. Rather, Customs would eliminate duplicative information and an unnecessary form, thus simplifying the procedure and lessening the reporting and paperwork burden for importers.

List of Subjects in 19 CFR Part 141

Customs duties and inspection, Imports, Invoices.

Proposed Regulations Amendments

It is proposed to amend Part 141, Customs Regulations (19 CFR Part 141), in the following manner:

PART 141—ENTRY OF MERCHANDISE

In § 141.89(a), Customs Regulations, under the paragraph beginning with the words "Cotton fabrics", the last sentence which reads "Customs Form 5519 is acceptable for furnishing the additional information required above." is removed and the following sentence inserted in its place "A standardized commercial invoice may be used for furnishing the additional information required above."

Authority

The amendment is proposed under the authority of R.S. 251, as amended, sections 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624).

Comments

Appended to this document is a sample copy of the proposed commercial invoice and the addendum

to the invoice. Public comment is invited on their suggested content and format, and the effect of the elimination of CF 5519 to furnish the required information. Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Executive Order 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the proposed amendment will not have a significant economic impact on a substantial number of small entities. On the contrary, the proposal is expected to reduce the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, the Secretary of the Treasury certifies under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: August 25, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

BILLING CODE 4820-02-M

COMMERCIAL INVOICE

APPENDIX

SHIPPER/EXPORTER/MANUFACTURER/SELLER (2)		(11) DOCUMENT NO. (5)	INVOICE DATE AND NO. ③ Purchase Date
		OTHER REFERENCES (6)	
CONSIGNEE TO ORDER OF SHIPPER/PORT AGENT/BANK (3A)		BUYER (7)	
SHIPPED TO (ULTIMATE CONSIGNEE) (3B)		POINT AND COUNTRY OF ORIGIN OF SHIPMENT (8)	
NOTIFY PARTY/INTERMEDIATE CONSIGNEE (4)		TERMS (9) SALE DELIVERY PAYMENT DISCOUNT INSTRUCTIONS REMITTANCE ADDRESS CURRENCY OTHER	
PIER OR AIRPORT (10)			
EXPORTING CARRIER (VESSEL/AIRLINE) (11)	PORT OF LOADING (12)		
AIR/SEA PORT OF DISCHARGE (13)	FOR TRANSSHIPMENT TO (14)		

PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS (16)	NO. OF PKGS. (17)	DESCRIPTION OF PACKAGES AND GOODS (18)	GROSS WEIGHT (19)	MEASUREMENT (20) (CUBE)
Case Marks	⑩	⑤ Style/Quality No.	⑪	⑫
Case No.	Quantity	⑦ Description of merchandise ⑥ Width ⑧ Threads per sq. inch ⑨ Weight per sq. yd. (oz.)		

- ⑩ Average yarn No.
- ⑪ Yarn size in warp
- ⑫ Yarn size in filling
- ⑬ No. colors or kinds
- ⑭ How woven (continue on reverse, if necessary)

Goods Total _____

Freight _____

Insurance _____

Packing _____

Commissions _____

Other (Specify) _____

Invoice Total (\$) _____

ADDENDUM TO COMMERCIAL INVOICE

DETAILS FOR COTTON FABRICS		DOCUMENT NO.				INVOICE NO. AND DATE			
DESCRIPTION OF MERCHANDISE STYLE OR DESIGN NAME	WIDTH	THREADS PER SQUARE INCH	WEIGHT PER SQUARE YD. IN OUNCES	AVERAGE YARN NO.	YARN SIZE IN WARP	YARN SIZE IN FILLING	NO. COLORS OR KINDS IN FILLING	HOW WOVEN (PLAIN, 8 OR MORE HARNESSSES, JACQUARD, SWIVEL, LAPPET)	YARDAGE

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 626

Establishment of State Job Training Coordinating Councils and Private Industry Councils; Designation of Service Delivery Areas Under the Job Training Partnership Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes new rules at 20 CFR Part 626. These regulations are required to implement certain provisions of the Job Training Partnership Act (Pub. L. 97-300). The proposed regulations will provide guidance on the structure and implementation of the planning systems authorized under Title I of the Act. The purpose of this publication is to request comments on these proposed rules.

DATES: Comments on the proposed rules are due on or before December 20, 1982.

ADDRESS: Comments should be addressed to the Assistant Secretary of Labor for Employment and Training, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213. Attention: Patrick J. O'Keefe, Director, Transition Task Force.

FOR FURTHER INFORMATION CONTACT: Patrick J. O'Keefe, Telephone (202) 376-8444.

SUPPLEMENTARY INFORMATION: On October 13, 1982, the President signed into law the Job Training Partnership Act, Pub. L. 97-300. The new statute replaces the Comprehensive Employment and Training Act with a new program and delivery system to train economically disadvantaged persons for permanent, private sector employment.

Title I of the Act defines the State and local service delivery system and planning requirements. It provides policies and procedures on the development and implementation of performance standards and defines basic administrative requirements under the Act. Title II authorizes and sets out requirements for adult and youth training programs to be administered by the State and planned and carried out via a partnership between the private sector and government at the local level. Title III provides for a State administered training and placement assistance program for dislocated workers. Title IV authorizes federally administered activities, including

programs for Native Americans, migrant and seasonal farmworkers, veterans and the Job Corps. Title V's provisions include amendments to the Wagner-Peyser Act related to funding and joint planning with the job training delivery system.

The new statute contains, in Section 181, provisions for transition from programs operated under the Comprehensive Employment and Training Act to the programs authorized under the new law. Full implementation of the new Act's systems and program requirements is required by October 1, 1983. The transition provisions include requirements for the early publication of those regulations necessary to structure and implement the planning system under Title I of the new statute. Specifically, the transition section requires that by January 1, 1983, the Secretary have published in the *Federal Register* final regulations on the establishment of the State job training coordinating councils and the designation of service delivery areas. Furthermore, by January 15, 1983, the Secretary shall have published in the *Federal Register* final regulations governing the establishment of private industry councils.

To provide guidance as early as possible, the Department of Labor is publishing combined proposed regulations on these topics for a 30-day review and comment period. Also included are proposed regulations covering the functions of private industry councils. The proposed regulations generally track the relevant statutory provisions without creating additional regulatory requirements. Section 626.3(c), however, adds procedures effectuating the statutory right of certain entities to appeal to the Secretary from a Governor's denial of service delivery area designation.

It is the Department's intent to have these regulations published together in final by January 1, 1983. With these regulations, Governors will be able to initiate the planning process required to achieve full program implementation by October 1, 1983.

The transition provisions of the new statute also require that by March 15, 1983, the Secretary have published in the *Federal Register* final regulations governing all aspects of programs under Title II of the Act not already published, i.e., the January 1 and January 15, 1983, regulations. Because the Department will publish proposed regulations governing all of Titles I and II, for review and comment prior to the final March publication, it is expected that sections of the following proposed

regulations will be renumbered.

The proposed rules do not contain any "collection of information" requirement, as defined in the Paperwork Reduction Act, 44 U.S.C. 3502; and the financial and other impact of the regulations is less than specified in Section 1(b) of Executive Order 12291 for designation as a major rule. The proposed rules are not expected to have any economic or inflationary impact, nor will they have significant impact on a substantial number of small entities as described in the Regulatory Flexibility Act, 5 U.S.C. 605(b). Moreover, Congress has waived certain rulemaking procedures to expedite publication of these rules. Section 181.

List of Subjects in 20 CFR Part 626

Grant programs—Labor, Manpower training programs.

Accordingly, Chapter V of title 20 of the Code of Federal Regulations is amended by adding a new part, Part 626, to read as follows:

PART 626—JOB TRAINING PARTNERSHIP SYSTEM

Sec.

- 626.1 Scope of purpose.
- 626.2 State job training coordinating council.
- 626.3 Service delivery areas.
- 626.4 Private industry council.

Authority: Job Training Partnership Act, Sec. 169, Pub. L. 97-300, 96 Stat. 1322 (29 U.S.C. 1501 et seq.).

§ 626.1 Scope and purpose.

These regulations implement provisions of the Job Training Partnership Act (JTPA or the Act) governing the establishment of the State job training coordinating councils, the designation of service delivery areas, and the establishment and certification of private industry councils.

§ 626.2 State job training coordinating council.

The Governor shall appoint a State job training coordinating council (SJTCC) pursuant to Section 122 of the Act. The SJTCC shall have specific functions and responsibilities outlined in Sections 122 and 501 of the Act.

§ 626.3 Service delivery areas.

(a) Pursuant to Section 101 of the Act, the Governor shall designate service delivery areas (SDAs) for the State. Requests for designation shall be submitted in a form and by a date established by the Governor.

(b) The SJTCC shall make recommendations to the Governor on proposed SDA designations in a form

and by a date established by the Governor (Sec. 101(a)(1) and (2)).

(c) Pursuant to Section 101(a)(4)(C) of the Act, an entity described in Section 101(a)(4)(A) may appeal the Governor's denial of service delivery designation to the Secretary of Labor.

(1) Appeals shall be submitted to the Secretary, U.S. Department of Labor, Washington, D.C. 20210, ATTENTION: ASET. A copy of the appeal shall simultaneously be provided to the Governor.

(2) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification of the denial from the Governor.

(3) The appealing party shall explain why it believes the denial is contrary to the provisions of Section 101 of the Act.

(4) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the denial is inconsistent with Section 101 of the Act. The Secretary may consider any comments submitted by the Governor. The Secretary shall make a final decision within 30 days after this appeal is received. (Sec. 101(a)(4)(C)).

§ 626.4 Private industry council.

(a) The chief elected official(s) of the SDA shall establish and the Governor shall certify the private industry council (PIC) pursuant to Section 102 of the Act.

(b) Pursuant to Section 103 of the Act, the PIC shall provide policy and program guidance for all activities under the job training plan for the SDA. In accordance with agreements negotiated with the appropriate chief elected official(s), the PIC shall: determine the procedures for development of the job training plan and select the grant recipient and administrative entity for the SDA. The PIC shall exercise independent oversight over activities under the job training plan, and oversight shall not be circumscribed by agreements with the appropriate chief elected official or officials of the SDA.

(c) The employment service, each appropriate PIC and chief elected official or officials of the SDA shall jointly develop plans required under the Wagner-Peyser Act of 1933, as amended, for the SDA (Sec. 501(d)).

Signed at Washington, D.C. this 10th day of November, 1982.

Raymond J. Donovan,
Secretary of Labor.

[FR Doc. 82-31835 Filed 11-18-82; 8:45 am]

BILLING CODE 4510-30-M

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in the United States in Agriculture: Adverse Effect Wage Rates

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: Pursuant to two recent Orders of the United States District Court for the District of Columbia, the Employment and Training Administration of the Department of Labor is proposing a limited amendment to its regulations for the certification of nonimmigrant aliens for temporary employment in agriculture and logging in four states. The proposed rule would amend the regulations to establish 1982 adverse effect wage rates for the four States covered by the Orders: Florida (sugar cane only), Maine, Vermont, and West Virginia. The proposal does not establish a methodology for adoption beyond 1982 in these four or any other states.

DATE: Written comments on the proposed rule may be submitted through December 20, 1982.

ADDRESS: Send written comments to: Mr. Richard C. Gilliland, Director, United States Employment Service, Employment and Training Administration, Room 8000—Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT: Mr. Charles I. Carter, Telephone: 202-376-6292.

SUPPLEMENTARY INFORMATION:

Pursuant to two Orders of the United States District Court for the District of Columbia, the Employment and Training Administration (ETA) of the Department of Labor (DOL) is proposing to amend its regulations for the certification of nonimmigrant aliens for temporary employment in agriculture and logging in the United States. The Order in *Robert A. Bragg, et al. v. Raymond J. Donovan, et al.*, Civil Action No. 82-2361 (D.D.C. August 25, 1982), deals with adverse effect wage rates (AEWRs) covering apple harvesting in Maine and Vermont and sugar cane harvesting in Florida. The Order in *NAACP, Jefferson County Branch, et al. v. Raymond J. Donovan, et al.*, Civil Action No. 82-2315 (D.D.C. September 3, 1982), deals with piece rates for apple harvesting in West Virginia. The proposed rule would establish a methodology for determining the 1982 adverse effect wage rates (AEWRs) for the four States covered by the Orders.

Whether to grant or deny a visa petition to admit a nonimmigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General and his designee, the Immigration and Naturalization Service (INS). 8 U.S.C. 1101(a)(15)(H)(ii) and 1184. INS has determined that prior to granting or denying such a visa petition it first will request the DOL to advise INS whether, in part, the employment of the alien will adversely affect the wages and working conditions of similarly employed United States workers. 8 CFR 214.2(h)(3)(i).

Pursuant to the INS regulations, ETA has published regulations at 20 CFR Part 655, Subpart C, for the certification of nonimmigrant aliens for temporary employment in agriculture and logging in the United States. DOL has determined that similarly employed United States workers had been adversely affected by the importation and employment of nonimmigrant aliens in agricultural employment. It has been determined further that employment of those aliens in a number of States at wages below specifically computed adverse effect wage rates (AEWRs) would adversely affect the wages of similarly employed United States worker. 20 CFR 655.202(b)(9) and 655.207.

Since 1968, these special AEWRs had been computed by adjusting the previous year's AEWR for a State by the same percentage change as the annual average wage rates for field and livestock workers, as surveyed by the United States Department of Agriculture (USDA). See 41 FR 25018 (June 22, 1976). However, in 1981 USDA substantially reduced its number of surveys and ceased compiling annual average wage rates. Consequently, the current methodology for computing AEWRs is no longer appropriate, and new rates have not been established for 1982.

It should be emphasized that the proposed methodology in this proposal compensates for the reduction of data available from the USDA. The Department plans to separately address the viability and appropriateness of a general AEWR methodology, and its action today is in no way intended to prejudice those more basic and broader questions. In other states rates established for 1981 have been extended to cover 1982. See 47 FR 37980 (August 27, 1982).

In recent years, ETA has considered several methodologies and options regarding the use of special AEWRs. During that time period, some options were dropped from consideration as they were determined not to be viable

due to the lack of base data or other reasons.

The presently considered methodologies are:

Option 1. Use of the Federal minimum wage (\$3.35) as the AEWR.

Option 2. Use of the Federal minimum wage increased by 15 percent as the AEWR.

Option 3. Use regression analysis for each State based on a historical relationship between the average hourly earnings paid field workers in agriculture and the average hourly wages of private, nonfarm workers during the previous year to estimate the 1981 USDA annual average rate; determine the percentage change between the actual 1980 USDA rate and the estimated 1981 rate; and apply it to the 1981 AEWR to determine the 1982 AEWR.

Option 4. Use the seven-year average differential (1974-1980) between the USDA January-April rates and the annual average rates multiplied by the January-April average rates for 1981 to estimate the 1981 USDA annual average rate for each State; determine the percentage change between the actual 1980 USDA rate and the estimated 1981 rate; apply the percentage change to the 1981 AEWR to determine the 1982 AEWR.

Option 4 has been selected for the proposed rule, because it is regarded as more precise in determining statistical relationships over a few years. Under this option the 1981 USDA annual average rates would be estimated for Florida, Maine, Vermont, and West Virginia based on the seven-year percentage differential between the USDA January-April average rates and annual average rates for each State. (AEWRs for 1982 were not determined previously because of lack of USDA annual average rates for 1981). With the estimated 1981 annual average for each State, the percentage change can be determined between it and the 1980 USDA actual annual average. The percentage change would be applied to the 1981 AEWR for each State to determine the 1982 AEWR. For the four States involved this proposed rule would amend the Federal Register notice of August 27, 1982, cited above. 47 FR 37980.

As applied to the four named States, the 1982 AEWRs would be set at the levels shown in the table below. For comparison, the 1981 AEWRs and the percentage changes also are shown.

1981 AND 1982 ADVERSE EFFECT WAGE RATES

States	1981 rates	1982 rates	Percentage changes
Florida (sugar cane only)	\$4.69	\$4.73	+0.8
Maine	3.44	3.53	+2.5
Vermont	3.54	3.63	+2.5
West Virginia	3.62	3.98	+10.0

¹The actual increase for West Virginia under the methodology was +17.2 percent. Only 10 percent of this increase will be applied in 1982, to avoid creating economic hardship on small businesses. It is anticipated, at this time, that the balance (+7.2 percent) will be applied for the 1983 AEWR in West Virginia.

Development of Proposed Rule

This proposed rule was developed under the direction and control of Mr. Richard C. Gilliland, Director, United States Employment Service, Employment and Training Administration, Room 8000—Patrick Henry Building, 601 D Street, NW., Washington, D.C. 20213.

Regulatory Impact

The proposed rule would affect only those employers in the four named States using nonimmigrant alien workers in temporary agricultural employment. It does not have the financial or other impact to make it a major rule, and therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291 (February 17, 1981).

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the proposed rule will not have a significant impact on a substantial number of small entities. It is expected to increase labor costs only moderately, and applies only to the small number of employers who employ nonimmigrant aliens in agricultural jobs in the four named States.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.202, "Certification of Foreign Workers for Agricultural or Logging Employment."

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Employment, Forests and forest products, Guam, Labor, Migrant labor, Wages.

Proposed Rule

PART 655—[AMENDED]

Accordingly, it is proposed to amend § 655.207 of Part 655 of Chapter V of

Title 20, Code of Federal Regulations, by adding thereto a paragraph (b)(3) to read as follows:

§ 655.207 Adverse effect rates.

(b) * * *

(3) Notwithstanding paragraphs (b) (1) and (2) of this section, pursuant to the orders in *Bragg v. Donovan*, Civil Action No. 82-2361 (D.D.C. August 25, 1982), and *NAACP, Jefferson County Branch v. Donovan*, Civil Action No. 82-2315 (D.D.C. September 3, 1982), the adverse effect rates for the following States shall be as follows: \$3.53 in Maine, \$3.63 in Vermont, and \$3.98 in West Virginia, for agricultural employment in those States during the 1982 harvest season; and \$4.73 in Florida for sugar cane work during the 1982-83 harvest season.

(Sections 101(a)(15)(H)(ii) and 1184(c) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii) and 1184(c)); 8 CFR 214.2(h)(3)(i))

Signed in Washington, D.C., this 17th day of November, 1982.

Raymond J. Donovan,
Secretary of Labor.

[FR Doc. 82-31874 Filed 11-16-82; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 148

[Docket No. 82N-0262]

Quick Frozen Raspberries; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

Correction

In FR Doc. 82-24071 beginning on page 38912 of the issue for Friday, September 3, 1982, make the following changes:

1. On page 38914, Table I, the "Total allowable points" at the bottom of the table should be moved one column to the right so that "15" is situated under "Minor", "10" is situated under "Major", "4" is situated under "serious", and "20" is situated under "Total".

2. On the same page, in the third column, the second paragraph, the last line should have a footnote designation which should read "Series 2."

BILLING CODE 1505-01-M

21 CFR Part 358

[Docket No. 80N-0146]

Nailbiting and Thumbsucking Deterrent Drug Products for Over-the-Counter Human Use; Tentative Final Monograph*Correction*

In FR Doc. 82-24075 beginning on page 39096 of the issue for Friday, September 3, 1982, in the second column of that page, the second complete paragraph, the seventh line, the citation should read "21 CFR 330.10".

BILLING CODE 1505-01-M

21 CFR Part 358

[Docket No. 80N-0238]

Wart Remover Drug Products for Over-the-Counter Human Use; Tentative Final Monograph*Correction*

In FR Doc. 82-24076 beginning on page 39102 of the issue for Friday, September 3, 1982, make the following changes:

1. On page 39104, the second column, the third complete paragraph, the third line should read "502, 505, 701, 52 Stat. 1041-1042 as".

2. On page 39105, the second column, the first complete paragraph, the second line, the date should read "September 3, 1983".

BILLING CODE 1505-01-M

21 CFR Part 358

[Docket No. 78N-0065]

Skin Bleaching Drug Products for Over-the-Counter Human Use; Tentative Final Monograph*Correction*

In FR Doc. 82-24077 beginning on page 39108 of the issue for Friday, September 3, 1982, on page 39114, the second column, the final paragraph, the third line, the word "domestic" should read "cosmetic".

BILLING CODE 1505-01-M

21 CFR Part 358

[Docket No. 80N-0348]

Ingrown Toenail Relief Drug Products for Over-the-Counter Human Use; Tentative Final Monograph*Correction*

In FR Doc. 82-24074 beginning on page 39120 of the issue for Friday, September 3, 1982, make the following changes:

1. On page 39123, the second column, the first complete paragraph, the second line, the citation should read "§ 358.450(c)(2)".

2. On page 39125, the third column, the second line, the date should read "January 3, 1983."

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Part 9**

[Notice No. 434; Re: Notice No. 399]

Monticello Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Amended notice of proposed rulemaking.

SUMMARY: This notice amends Notice No. 399 which proposed the viticultural area Monticello near Charlottesville, Virginia. During the comment period for this notice, a proposal was submitted for alternate boundaries which enlarged the area originally proposed. The alternative proposal was submitted by the Jeffersonian Wine Grape Growers Society. Notice No. 399 (46 FR 59274) was published in the Federal Register on December 4, 1981.

DATES: Written comments must be received by January 3, 1983.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044-0385 [Notice No. 434].

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at the ATF Reading Room, Room 4405, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman P. Blake, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:**Background**

On December 4, 1981, the Bureau of Alcohol, Tobacco and Firearms (ATF) published a notice of proposed rulemaking, Notice No. 399 (46 FR 59274), in which ATF considered the establishment of a viticultural area in the Charlottesville, Virginia, area to be

known as "Monticello." This viticultural area as originally proposed by six industry members in the area is located in Albemarle and Orange Counties and covers approximately 475 square miles. The comment period for Notice No. 399 closed on March 4, 1982. This notice amends Notice No. 399.

Alternative Proposal

During the comment period alternative boundaries for an enlarged Monticello viticultural area were submitted by the Jeffersonian Wine Grape Growers Society. This proposal cites boundaries for a portion of Nelson County and larger portions of Albemarle and Orange Counties than the original petition and covers approximately 1,250 square miles. The area within the second proposal includes 5 bonded wineries and 27 vineyards. The predominant grapes grown in the approximately 160 acres of the vinifera variety and consist of *Chardonnay*, *White Reisling*, *Cabernet Sauvignon* and *Gewurztraminer*.

The Jeffersonian Wine Grape Growers Society believes that the enlarged area it is proposing, which totally encloses the area proposed in the original petition, meets requirements for approval as the Monticello viticultural area. The Society cites the same historical and current evidence as the original petitioner in support of the Monticello name as it is known locally and nationally. Several other factors are also claimed as evidence that the geographical features of the proposed enlarged area distinguish it from the surrounding areas.

The Blue Ridge Mountains to the west shelter the proposed area from cold winds. The elevation of the area allows for a span of 220 to 250 frost-free days.

This span drops to 150-175 days in the area surrounding the proposed viticultural area. The greater span of days is important since early Spring and Fall frosts can damage the growth of the grapes.

The proposed enlarged Monticello viticultural area is located within a zone of relatively low thunderstorm activity as compared to its surrounding areas. Heating degree days of 4,000 to 4,400 and cooling degree days of 1,100 to 1,200 are found in the proposed area while different conditions exist in other areas of the state.

A survey of rainfall data was taken from owners of 15 vineyards throughout the proposed area. The average annual rainfall reported was 42.4 inches with a range of 39.5 to 44.0 inches. These amounts are similar to the average annual accumulation of 47 inches of rain

between the years of 1772 and 1777 recorded by Thomas Jefferson is his *Weather Memorandum Book* at his home, Monticello.

Boundaries

The area proposed by the Jeffersonian Wine Grape Growers Society is located within the following boundaries.

From Norwood, Virginia, following the Tye River west and northwest until it intersects with the eastern boundary of the George Washington National Forest; following this boundary northeast to Virginia Rt. 664, then west following Rt. 664 to its intersection with the Nelson County line; then northeast along the Nelson County line to its intersection with the Albemarle County line at Jarman Gap; from this point continuing northeast along the eastern boundary of the Shenandoah National Park to its intersection with the northern Albemarle County line; following the county line southeast to its intersection with the Orange County line; continuing north on the county line to its intersection with the Rapidan River, which continues as the Orange County line; following the river east and northeast to its confluence with the Mountain Run River; then following the Mountain Run River southwest to its intersection with Virginia Rt. 20; continuing southwest along Rt. 20 to the corporate limits of the town of Orange; following southwest the corporate limit line to its intersection with U.S. Rt. 15; continuing southwest on Rt. 15 to its intersection with Virginia Rt. 231 in the town of Gordonsville; then southwest along Rt. 231 to its intersection with the Albemarle County line; continuing southwest along the county line to its intersection with the James River; then following the James River to its confluence with the Tye River at Norwood, Virginia, the beginning point.

Executive Order 12291

It has been determined that this notice of proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, because the value of the proposed viticultural area designation is intangible and subject to influence by other unrelated factors. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Public Participation—Written Comments

ATF requests interested persons to submit comments regarding this proposed viticultural area, as amended.

(a) *Viticultural area name.* ATF is particularly interested in evidence which supports the claim that there is an area known locally or nationally as Monticello. For example, is there evidence which supports the claim for either one of these proposed viticultural areas that either are known as Monticello? Is there evidence to support the claim that the proposed areas of Albemarle County, as well as large areas of Nelson County and Orange County are known locally and/or nationally as Monticello? How far can one travel in any direction away from Monticello Mountain, Jefferson's home, and still be in an area known as Monticello? What evidence can be submitted to support this claim?

(b) *Viticultural area size.* ATF is also concerned about the sizes of the areas proposed in relation to the number of acres planted with grapes. The size of the area as originally proposed in Notice No. 399 is approximately 475 square miles with 114 acres planted with grapes. The alternate proposal increased the area's size to approximately 1,250 square miles with 160 acres planted with grapes. ATF questions the disproportionate sizes of both areas as proposed in relation to the number of acres planted with grapes.

(c) *Alternative boundaries.* ATF is specifically interested in comments regarding other alternative boundaries that may more accurately depict the area known as "Monticello."

All pertinent comments will be considered prior to the proposal of final regulations. Comments are not

considered confidential. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should make a request, in writing, to the Director within the 45 day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, and Wine.

Drafting Information

The principal author of this document is Norman P. Blake, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau participated in the preparation of the document, both in substance and style.

(Sec. 5 of the Federal Alcohol Administration Act (49 Stat. 391) (as amended 27 U.S.C. 205))

Signed: October 17, 1982.

Stephen E. Higgins,
Acting Director.

Approved: November 1, 1982.

David Q. Bates,
Deputy Assistant Secretary (Operations).

[FR Doc. 82-31892 Filed 11-18-82; 9:45 am]

BILLING CODE 4810-31-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA 6454]

National Flood Insurance Program; Proposed Elevations and Zone Designations for Catoosa County, Georgia

AGENCY: Federal Emergency
Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed elevations and zone designations described below.

The proposed elevations and zone designations will be the basis for the flood plain management measures that the community is required to either

adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the flood-prone areas and the proposed elevations and zone designations are available for review at the County Administrator's Office.

Send comments to: Mr. J. M. Plemons, County Administrator, Catoosa County, Office of Commissioner of Roads and Revenue, Ringgold, Georgia 30736.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, State and Local Programs and Support, Federal Emergency Management Agency, Room 514, Washington, D.C. 20472, (202) 287-0230

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed elevations and zone designations (100 year flood) for Catoosa County, Georgia in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

The proposed elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed elevations and zone designations for selected locations are:

Source of flooding	Location	Existing elevation (feet) (NGVD)	Proposed elevation (feet) (NGVD)	Existing zone designation	Proposed zone designation
West Chickamauga Creek.....	Between the Tennessee/Georgia state boundary and the Catoosa County/Walker County boundary.	Range 678-693	Range 680-692		
	North of Dyer Bridge.....			A7	A9
	Between Reed Bridge and just northeast of Alexander Bridge Road			A5	A6
	Southwest Branch.....		701-719		A9

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 67

Flood insurance.
Flood plains.

(National Flood Insurance Act of 1968 [Title XIII of Housing and Urban Development Act of 1968], effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended: 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support.

Issued: October 29, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31725 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6384]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 47 FR 35795 on August 17, 1982. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Township of Teaneck, Bergen County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Teaneck, Bergen County, New Jersey, previously published at 47 FR 35795 on August 17, 1982, in accordance with Section 110 of the Flood Disaster

Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevations determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The following location descriptions have been determined to read as follows. The remainder of the Notice of Proposed Base Flood Elevations remains unchanged.

Source of flooding	Location	Elevation in feet national geodetic vertical datum
Tributary to Overpeck Creek.	At confluence with Overpeck Creek.	*9
	Approximately 1,400 feet upstream of confluence with Overpeck Creek.	*10

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Ex. Or. 12127, 44 FR 19367; and delegation of authority to the Associate Director).

Issued: November 2, 1982.

Lee M. Thomas,

Associate Director State and Local Programs and Support.

[FR Doc. 82-31726 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 82-618]

Allocation of Frequencies for Wildlife Tracking Telemetry in the Forestry-Conservation Radio Service; Order Extending Time for Filing Comments and Reply Comments

Correction

In FR Doc. 82-29590 beginning on page 47895 in the issue of Thursday, October 28, 1982, middle column [PR Docket No. 92-618] should appear as [PR No. Docket 82-618].

BILLING CODE 1505-01-M

Notices

Federal Register

Vol. 47, No. 224

Friday, November 19, 1982

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States, to be held at 9:00 A.M. on Tuesday, November 23, 1982, at the Department of the Treasury, Cash Room (second floor), 15th Street & Pennsylvania Avenue, NW., Washington, D.C.

The Committee will meet to discuss further the Conference's project on discipline of attorneys practicing before federal agencies.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should, if possible, notify the Office of the Chairman of the Administrative Conference prior to the meeting. The Committee Chairman, if she deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during, or after the meeting.

For further information concerning this meeting contact David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037. (Telephone: 202-254-7065.) Minutes of the meeting will be available on request.

November 17, 1982.

Richard K. Berg,

General Counsel.

[FR Doc. 82-31968 Filed 11-18-82; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Soybean Research Advisory Institute

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Agricultural Research Service announces the following meeting:

Name: Soybean Research Advisory Institute.

Date: December 17, 1982 (9:00 AM).

Place: Room 104 Administration Building, U.S. Department of Agriculture, 12th and Jefferson Drive, SW, Washington, D.C. 20250.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: This is the first meeting of the Soybean Research Advisory Institute established in compliance with Section 1446 of the Agriculture and Food Act of 1981. The purpose of this Advisory Institute is to provide a temporary advisory body to assess soybean production and utilization research in the United States and to submit a comprehensive report to Congressional committees on its findings.

Contact person: Dr. Robert C. Leffel, Executive Secretary, Soybean Research Advisory Institute, Room 301, Bldg. 005, BARC-West, Beltsville, MD 20705, telephone (301) 344-3909.

Done at Beltsville, Maryland, the 8th day of November, 1982.

Robert C. Leffel,

Executive Secretary, Soybean Research Advisory Institute.

[FR Doc. 82-31756 Filed 11-18-82; 8:45 am]

BILLING CODE 3410-03-M

Rural Electrification Administration

Deputy Administrator et al.; Delegation of Authority

Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.) and paragraphs 2.7 and 2.72, Title 7, Code of Federal Regulations, the following delegations of authority are made by the Administrator of the Rural Electrification Administration and the Governor of the Rural Telephone Bank:

1. The Deputy Administrator, or the Acting Deputy Administrator, of the Rural Electrification Administration is delegated authority, to be exercised only during the absence or unavailability of the Administrator, to perform all the

duties and exercise all the powers which are now, or which may hereafter be delegated to the Administrator of the Rural Electrification Administration and the Governor of the Rural Telephone Bank.

2. The Assistant Administrator, Electric; the Assistant Administrator, Telephone; the Assistant Administrator, Management; and any officer of the Rural Electrification Administration, designated in writing by the Administrator, Deputy Administrator, or Acting Deputy Administrator, in the order listed, are authorized to serve as Acting Deputy Administrator during the absence or unavailability of the Deputy Administrator, and as Acting Deputy Governor of the Rural Telephone Bank during the absence or unavailability of the Deputy governor, or during vacancies in such offices.

These delegations shall be effective immediately and supersede all other delegations in conflict herewith.

Dated: November 15, 1982.

Harold V. Hunter,

Administrator, Rural Electrification Administration, Governor, Rural Telephone Bank.

[FR Doc. 82-31799 Filed 11-18-82; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Lower Silver Creek Watershed, Calif.; Intent To Prepare an Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Lower Silver Creek Watershed, Santa Clara County, California.

FOR FURTHER INFORMATION CONTACT: Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis,

California, 95616, telephone (916) 758-2200).

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Eugene E. Andreuccetti, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for flood prevention. Alternatives under consideration to reach this objective include nonstructural measures and channel improvement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service conducted public meetings in June 1979 and November 1980 to solicit views and suggestions of interested individuals, groups, and agencies to determine the scope of the evaluation of the proposed actions. The Soil Conservation Service has also consulted various Federal, State, and local agencies that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A summary of the scoping process has been distributed to these agencies. The information gathered and concerns expressed during the scoping process will be incorporated in the EIS. Further information on the proposed action, or the scoping process may be obtained from Eugene E. Andreuccetti, State Conservationist, at the above address or telephone (916) 758-2200.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

William H. Payne,

Assistant State Conservationist.

[FR Doc. 82-31782 Filed 11-18-82; 8:45 am]

BILLING CODE 3410-16-M

Village of Rio Grande RC&D Measure, Ohio; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of 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 Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Village of Rio Grande RC&D Measure, Gallia County, Ohio.

FOR FURTHER INFORMATION CONTACT: Robert R. Shaw, State Conservationist, Soil Conservation Service, Room 522, 200 North High Street, Columbus, Ohio 43215, telephone: (614)-469-6962.

SUPPLEMENTARY 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, Robert R. Shaw, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan installing recreational facilities near an existing reservoir. The planned works of improvement include a shelterhouse, picnic tables, playground equipment and a parking lot. All areas disturbed by construction will be seeded.

The Notice of 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 Robert R. Shaw.

No Administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: October 27, 1982.

H. Wes Oneth,

Deputy State Conservationist.

[FR Doc. 82-31445 Filed 11-18-82; 8:45 am]

BILLING CODE 3410-16-M

West Branch of the Westfield River Watershed, Massachusetts; Intent to Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the West Branch of the Westfield River Watershed project, Berkshire, Hampshire and Hampden Counties, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Sherman L. Lewis, State Conservationist, Soil Conservation Service, 451 West Street, Amherst, Massachusetts 01002, telephone (413) 256-0441.

SUPPLEMENTARY INFORMATION: A determination has been made by Sherman L. Lewis that the proposed works of improvement for the West Branch of the Westfield River Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Sherman L. Lewis, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally-assisted programs and projects is applicable.)

Dated: November 8, 1982.

Sherman L. Lewis,

State Conservationist.

[FR Doc. 82-31593 Filed 11-18-82; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Permits filed under Subpart Q of the Board's Procedural Regulations week ended November 12, 1982.

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board 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. (See, 14 CR 30.1701 et sec.)

Date filed	Docket No.	Description
Nov. 12, 1982	41091	Air Logistics of Alaska, Inc., c/o Mr. Leslie W. Bays, 6601 South Air Park Place, Anchorage, Alaska 99502. Application of Air Logistics of Alaska, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests a certificate of public convenience and necessity to engage in interstate air transportation of persons, property, and mail within the State of Alaska between the terminal point of Anchorage and the terminal point of Iliamna. Conforming applications, Motions to modify scope, and Answers may be filed by December 10, 1982.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 82-31783 Filed 11-18-82; 8:45 am]

BILLING CODE 6320-01-M

Announcement of Collection of Information Under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35)

Agency clearance officer from whom a copy of the collection of information and supporting documents is available: Robin A. Caldwell, (202) 673-5922.

New

Title of the Collection of Information: "Charter Escrow Records Survey."
Agency Form Number: None.
How often the Collection of Information must be filed: Nonrecurring.
Who is asked or required to report: Financial Institutions.
Estimate of number of annual responses: 120.
Estimate of number of annual hours needed to complete the collection of information: 240.

Extension

Title of the Collection of Information: "Report of Passengers Denied Confirmed Space."
Agency Form Number: 251.
How often the Collection of Information must be filed: Monthly.
Who is asked or required to report: Certificated U.S. route air-carriers and foreign route air carriers holding Section 402 permits.
Estimate of number of annual responses: 1,476.
Estimate of number of annual hours needed to complete the collection of information: 11,808.

Dated: November 12, 1982.

Robin A. Caldwell,

Chief, Information Management Division,
Office of Comptroller.

[FR Doc. 82-31784 Filed 11-18-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Application for Duty-Free Entry of Scientific Articles; Correction

In the Notice of Application for Duty-Free Entry of Scientific Articles appearing at page 49054 in the *Federal Register* of Friday, October 29, 1982, Docket Number 82-00362 is hereby deleted.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-31722 Filed 11-18-82; 8:45 am]

BILLING CODE 3510-25-M

Preliminary Results of Administrative Review of Countervailing Duty Order; Vitamin K From Spain

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administration review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on vitamin K from Spain. The review covers the period January 1, 1981 through December 31, 1981. As a result of this review, the Department has preliminarily determined the amount of the net subsidy to be 3.09 percent of the f.o.b. invoice price of the merchandise. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department

of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 1982, the Department of Commerce ("the Department") published in the *Federal Register* (47 FR 31304) the final results of its first administrative review of the countervailing duty order on vitamin K from Spain (41 FR 50419, November 16, 1976) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

The merchandise covered by the review is vitamin K, commercially known as mendione sodium bisulfite, imported directly or indirectly from Spain. Such imports are currently classifiable under item 412.6420 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1981 through December 31, 1981 and the following programs: (1) A rebate upon exportation of indirect taxes, under the Desgravacion Fiscal a la Exportacion; and (2) an operating capital loans program.

Analysis of Programs

1. The Desgravacion Fiscal a la Exportacion Spain employs a cascading tax system. Under this system, the government levies a turnover tax ("IGTE") on each sale of a product through its various stages of production, up to (but not including) the final sale in Spain. Upon exportation of the product, the government, under the Desgravacion Fiscal a la Exportacion ("DFE"), rebates these accumulated IGTE indirect taxes.

Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Tariff Act allows the rebate of only the following: (1) Taxes borne by inputs which are physically incorporated in the exported product (see Annex 1.1 of part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (see Annex 1.2 of part 355 of the Commerce Regulations). If the tax rebate upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy. Physical incorporation is a question of fact to be determined for each product in each case.

In this case, the physically incorporated inputs are raw materials previously allowed by the Department. The rebate of the parafiscal tax on export licenses, a final stage tax, is also allowable when calculating whether or not there is an overrebate of indirect taxes under the DFE.

As of January 1, 1981, the Spanish government increased the IGTE rate from 2.40 percent to 3.80 percent, while maintaining the previous rate for the export rebate. Based on our analysis of the indirect taxes on physically incorporated inputs and the parafiscal tax on vitamin K, we determine that the change in aggregate indirect tax incidence has eliminated the overrebate previously found countervailable; therefore, we preliminarily determine the net subsidy attributable to this program during the period of review to be zero percent.

2. Operating Capital Loans.

The Spanish government requires banks to set aside funds to provide short-term operating capital loans. These loans are granted for a period of less than one year. From January 1, 1981 through February 28, 1981 the Spanish government fixed the interest rate for such loans at 8 percent, which was 1.5 percent below the legally-established commercial rate of 9.5 percent. Effective March 1, 1981, the Spanish government increased the interest rate on operating capital loans from 8 to 10 percent while eliminating the interest rate ceiling on comparable short-term commercial loans. To determine the interest rate on comparable commercial loans for the remaining ten months in 1981, we took the average national prime interest rate for loans of comparable length, added the prevailing interest charge over prime facing borrowers of average credit-worthiness and added the legally-established fees and commissions. Based on this, we calculated the rate to

be 19.45 percent. This results in a 9.45 percent differential between the interest rate for operating capital loans and that for comparable commercial loans.

The maximum loan principal available to a given exporter is determined as a percentage of the firm's previous year's exports. This amount may be increased if the firm has a government-issued Exporter's Card. In the case of vitamin K, maximum eligibility until November 1981 was 35 percent. Effective November 21, 1981, the Spanish government decreased the maximum eligibility to 28 percent. In the absence of information on actual utilization of the operating capital loans program, we assumed that the maximum allowable amount was borrowed. Therefore, for the period of review, we preliminarily determine the benefit conferred under this program to be 3.09 percent of the f.o.b. invoice price of the merchandise.

Effective April 20, 1982, the Spanish government reduced the maximum percentage of eligibility for operating capital loans to 26.6 percent. As a result, using the calculated interest rate differential for 1982, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, that the net subsidy attributable to this program is 2.78 percent.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the net subsidies conferred during the period of review by the two programs are zero percent and 3.09 percent *ad valorem*, respectively. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 3.09 percent of the f.o.b. invoice price on all shipments of Spanish vitamin K exported on or after January 1, 1981 and on or before December 31, 1981.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 2.78 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the current review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10

days of the date of publication. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: November 15, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-31723 Filed 11-18-82; 8:45 am]

BILLING CODE 3510-25-M

Certain Stainless Steel Products From Brazil; Preliminary Affirmative Countervailing Duty Determinations

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary Affirmative Countervailing Duty Determinations.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of hot-rolled stainless steel bar, cold-formed stainless steel bar, and stainless steel wire rod (certain stainless steel products). The estimated net subsidy is 12.50 percent *ad valorem*. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain stainless steel products from Brazil which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on these products in the amount equal to the estimated net subsidy.

If these investigations proceed normally, we will make our final determinations by January 27, 1983.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-3003.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based upon our investigations, we preliminarily determine there is reason

to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of certain stainless steel products. For purposes of these investigations, the following programs are preliminarily found to confer subsidies:

- IPI export credit premium
- Preferential working capital financing for exports
- Income tax exemption for export earnings
- Long-term loans
- IPI rebates for capital investment
- Industrial Development Council (CDI) program

We estimate the net subsidy to be 12.50 percent *ad valorem*.

Case History

On June 16, 1982, we received a petition from Al Tech Speciality Steel Corporation, Carpenter Technology Corporation, Colt Industries, Inc., Crucible Speciality Metals Division, Cyclops Corporation, Guterl Special Steel Corporation, Joslyn Stainless Steels, Republic Steel Corporation, filed on behalf of the U.S. industry producing certain stainless steel products. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in Brazil of certain stainless steel products.

We found the petition to contain sufficient grounds upon which to initiate countervailing duty investigations, and on July 13, 1982, we initiated countervailing duty investigations (47 FR 30275). We stated that we expected to issue preliminary determinations by September 9, 1982. We subsequently determined that the investigations are "extraordinarily complicated," as defined in section 703(c) of the Act, and postponed our preliminary determinations for 65 days until November 15, 1982 (47 FR 40202).

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, injury determinations are required for these investigations. Therefore, we notified the U.S. International Trade Commission (ITC) of our initiations. On August 2, 1982, the ITC preliminarily determined that there is a reasonable indication that these imports are materially injuring, or threatening to materially injure, a U.S. industry (47 FR 36038).

We presented a questionnaire concerning the allegations to the

government of Brazil in Washington, D.C. On November 1, 1982, we received the response to that questionnaire.

Scope of the Investigations

The products covered by these investigations are hot-rolled stainless steel bar, cold-formed stainless steel bar, and stainless steel wire rod. For further description of these products, see Appendix A to this notice.

There are five known producers and exporters in Brazil of certain stainless steel products to the United States. We have received information from the government regarding three of these companies, Companhia Acos Especiais Itabira (ACESITA), Acos Finos Priatini S/A (PIRATINI), and Acos Villares S/A (VILLARES), which represented over 85 percent of exports of this product during the period for which we are measuring subsidization—calendar year 1981.

Analysis of Programs

In its response, the government of Brazil provided data for the applicable periods. Based upon our analysis to date of the petition and the response to our questionnaire, we preliminarily determine the following.

I. Programs Preliminarily Determined to be Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of certain stainless steel products under the following programs.

A. Industrialized Products Tax (IPI) Export Credit Premium

The IPI export credit premium has been found to be a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981.

Exporters of certain stainless steel products are eligible for the maximum IPI export credit premium. Up until March 30, 1982, 15 percent of the "adjusted" f.o.b. invoice price of the exported merchandise was reimbursed in cash to the exporter through the bank involved in the export transaction.

Subsequently, the government of Brazil reduced the benefit to 14 percent on March 31, 1982, 12.5 percent on June 30, 1982, and 11 percent on September 30, 1982.

In calculating the amount the exporter is to receive, several deductions may be made to the invoice price to obtain the "adjusted" f.o.b. value. These adjustments include: any agent commission, rebates or refunds resulting from quality deficiencies or damage

during transit, contractual penalties, and the value of imported inputs. In order to receive the maximum export credit premium, the exported product must consist of a minimum of 75 percent value added in Brazil. If this minimum limit is not met, there is a specific calculation to reduce the f.o.b. invoice price when calculating the base upon which the IPI export credit premium is paid.

To determine the amount of subsidy, we calculated the value of the IPI credits as of the date of shipment rather than the date of receipt and did not take into account the devaluation of the cruzeiro in accordance with section 771(6)(B) of the Act. We then divided the value of the IPI credits by the value of exports and calculated a subsidy value of 12.15 percent.

This rate is premised on an IPI export credit premium of 15 percent. The government of Brazil has made three reductions in the level of the IPI credit during 1982, the most recent on September 30, 1982 to 11 percent. Accordingly, the Brazilian government asserts that a downward adjustment in the rate for this program is appropriate to reflect the current availability of the benefit.

We agree and have made a proportional reduction in our calculation above. On this basis, we calculated an *ad valorem* export subsidy of 8.91 percent.

B. Preferential Working Capital Financing For Exports: Resolution 674

Under this program, companies are declared eligible to receive working capital loans by the Department of Foreign Commerce of the Banco Central do Brasil (CACEX). These loans may have a duration of up to one year. Firms in the steel industry can obtain this financing at preferential rates for up to 20 percent of the net f.o.b. value of the previous year's exports. We preliminarily determine that such financing is an export subsidy.

The net export value is calculated by taking numerous deductions from the export value of the merchandise, including agent commissions, contractual penalties or refunds, exports denominated in cruzeiros, imported inputs over 20 percent of the export value, and a deduction for the company's trade deficit as a percentage of the value of its exports. In addition, any growth in the cruzeiro value of exports over the previous year will reduce the value of the benefit as a percentage of the current year's exports.

To determine the value of loans in existence under this program during

1981, we prorated any loans that straddled other years. For loans taken out in 1980, only that portion extending into 1981 was included in our calculation. Any 1981 loans extending into 1982 were similarly adjusted. We then divided the total value of these loans by the total value of exports of the three companies under investigation to calculate the amount of preferential financing they received.

As in previous Brazilian countervailing duty cases, we are using the rate established by the Banco do Brasil for discounting sales of accounts receivable as the commercial rate for the acquisition of short-term working capital. Although we are comparing the terms of a loan with the terms of sale of an asset, we have used this comparison because information provided by the government of Brazil indicates that, within the Brazilian financial system, working capital is normally raised through the sale of accounts receivable. Currently, the rate for discounting sales of accounts receivable is 59.6 percent plus a 6.9 percent tax on financial transactions (IOF). The subsidy is the difference between the interest rate available under Resolution 674 and the commercial rate.

The interest rate on loans under Resolution 674 is 40 percent, with interest payable semiannually and the principal fully payable on the due date of the loan. The effective rate of interest for these loans is 44 percent. These loans are also exempt from the IOF. Therefore, the differential between these two types of financing is 22.5 percent. When multiplying this differential by the amount of preferential financing received as a percent of exports, we calculated an *ad valorem* export subsidy of 1.93 percent.

C. Income Tax Exemption For Export Earnings.

Exporters of certain stainless steel products are eligible to participate in this program, under which the percentage of their profit attributable to export revenue is exempt from income tax. To arrive at this percentage, export revenue is divided by total revenue. The amount of profit exempt from the income tax is then multiplied by the 35 percent corporate income tax rate to determine the amount of the benefit.

In a program of this kind, benefits cannot be determined with finality until the books are closed sometime in the following year. Therefore, we must look at fiscal year 1980 income tax returns to determine if any benefit was received in fiscal year 1981. VILLARES received benefits under this program in 1981. By dividing the benefit received by the

value of exports of the companies under investigation, we calculated an *ad valorem* export subsidy of 0.57 percent.

D. Long-Term Loans

Long-term financing in cruzeiros is available in Brazil only through government-controlled financial institutions, such as the National Bank for Economic Development (BNDE) and FINAME, a program of BNDE for the purchase of capital equipment manufactured in Brazil. Generally, these loans are fully indexed to the inflation rate in Brazil and are made at fixed real interest rates. The index used for these loans is the ratio established for the Readjustable Bonds of the National Treasury (ORTN). FINAME loans are granted through commercial banks rather than directly from BNDE and carry higher real interest rates than BNDE loans.

Among exporters of certain stainless steel products, only VILLARES has received any direct BNDE loans. As in previous steel countervailing investigations, we have determined that BNDE loans, when fully indexed, are not made at preferential rates, and we preliminarily determine that such BNDE loans are not countervailable.

However, some long-term cruzeiro loans have been granted that are not fully indexed. Under program no longer in operation, BNDE granted one such loan to VILLARES that is adjusted at only 20 percent of the variation in ORTN. VILLARES still has an outstanding balance on this loan, and we preliminarily determine that this loan is countervailable. Based on the information provided by the government of Brazil, we divided the interest payments saved in 1981 due to the favorable terms of this loan by total sales of the companies under investigation and calculated an *ad valorem* subsidy of 0.06 percent.

FINAME loans have been received by ACESITA, PIRATINI, and VILLARES and are available to a wide variety of sectors in Brazil. The steel industry has received such loans in proportions similar to other large capital-intensive industries in Brazil. This appears to be warranted by the capital requirements of such industries. In addition, numerous other sectors also received loans from FINAME during this period. Based on the general availability of these fully-indexed loans, we preliminarily determine that they do not confer a subsidy.

E. IPI Rebates for Capital Investment

Decree Law 1547 (April 1977) provides funding for the expansion of the Brazilian steel industry through a rebate

of the IPI, the Brazilian federal excise tax. Under this tax system, a company determines its liability for the tax at the end of each month. The net tax owed is calculated as the difference between the total IPI the company paid on purchases and the total IPI it collected on domestic sales. Normally, within five months after the end of each month, a company must pay the amount of the net tax owed directly to the Brazilian government. This net IPI tax is the basis for calculating the rebate for investment. A Brazilian steel company may deposit 95 percent of the net IPI tax in a special account with the Banco do Brasil. The amounts deposited are to be applied to steel expansion projects, and when rebated to the firms constitute tax-free capital reserves which must eventually be converted into subscribed capital.

PIRATINI received grants under this program from 1977 to 1981, while ACESITA and VILLARES continue to receive them. With the enactment of Decree Law 1843 (December 1980), PIRATINI must now pay the IPI tax to the government which in turn rebates 95 percent to SIDERBRAS, the government holding company to which PIRATINI belongs, to increase its capital.

We consider the amount rebated each year as an untied grant received in that year. As such, we have allocated the grants over 15 years, the estimated average life of capital assets in integrated steel mills (based on Internal Revenue Service studies of actual experience in integrated mills in the U.S.).

To calculate the benefit, we have taken the amount of the rebate received in each month, converted the cruzeiro value to an ORTN value by using the ORTN index rate in the month of receipt, added the monthly ORTN amounts to determine the amount of the grant in each year, and used as the discount rate for each year the interest rate of 4 percent on ORTN-indexed long-term government debt. The total benefit in ORTN for 1981 was converted into cruzeiros using the average ORTN index rate for the year and then divided by the total value of sales for 1981. The *ad valorem* benefit of this subsidy is 0.84 percent.

F. Industrial Development Council (CDI) Program

This program allowed an exemption of 80 percent of the customs duties and 80 percent of the IPU tax on certain imported machinery for projects approved by the CDI. Decree Law 1726 repealed this program in 1979 and no new projects are eligible for these benefits. However, companies with

projects approved prior to repeal may still receive these benefits pending the completion of the project. The government of Brazil states that ACESITA received such benefits during 1981. By dividing the benefit received by the total value of sales of the companies under investigation, we calculated the *ad valorem* benefit of this subsidy to be 0.19 percent.

II. Program Preliminary Determined Not To Be Subsidies

We preliminarily determine subsidies are not being provided to manufacturers, producers, or exporters in Brazil of certain stainless steel products under the following program.

Transportation Subsidies

The Brazilian government, in its response to our questionnaire, states that none of the exporters of certain stainless steel products receive preferential rates when using railroads and ports. We have no evidence that any program exist which give preferential freight rates to steel exporters.

III. Programs Preliminary Determined Not To Be Used

We preliminarily determine that the following programs, listed in the notice of "Initiation of Countervailing Duty Investigation," were not used by the manufacturers, producers, or exporters in Brazil of certain stainless steel products.

A. The Commission for the Granting of Fiscal Benefits for Special Export Programs (BEFIEEX)

BEFIEEX grants several types of benefits to companies that are part of certain targeted industries and that sign contracts that include specific export commitments. These benefits include the following: a reduction of between 70 percent and 90 percent of the import duties and the IPI tax on the import of machinery, equipment, apparatus, instruments, accessories and tools necessary to meet the approved export commitment; an extension of the period for carrying tax losses forward from four to six years, provided no dividends are paid during that time; and amortization of pre-operational expenses of BEFIEEX projects at the discretion of the company rather than the normal straight-line amortization over ten years. As a general rule, companies that sign BEFIEEX contracts guaranteeing these and any other benefits must make an export commitment that over the life of the project it will generate export earnings of at least three times the value of imports for the project. The

government of Brazil states that the steel industry in Brazil has been developed primarily to supply the domestic market. Since manufacturers of certain stainless steel products export only a small portion of their production, they are not in a position to make the required export commitments. The government also states that neither ACESITA nor PIRATINI received benefits from this program in 1981, and that VILLARES has received some benefits under the BEFIEEX program but not with respect to certain stainless steel products.

B. Accelerated Depreciation for Capital Goods Manufactured in Brazil

This program allows companies that purchase Brazilian-made capital equipment as part of an approved CDI expansion project to depreciate this equipment at twice the rate normally permitted under tax laws. The government of Brazil states that none of the exporters of certain stainless steel products used the accelerated depreciation provisions to reduce its tax liabilities in 1981.

C. Export Financing Under Resolution 68

This program provides financing for the export of Brazilian goods for a minimum period of 181 days. Such financing is granted on a transaction-by-transaction basis and may cover up to 85 percent of the f.o.b. invoice price for the merchandise (plus freight and insurance). To be eligible, the exporter must show that the foreign purchaser has prepaid 15 percent of the invoice price. The government of Brazil states that none of the exporters of certain stainless steel products used Resolution 68 to finance exports of this merchandise to the United States in 1981.

Verification. In accordance with section 776(a) of the Act, we will verify data used in making our final determinations.

Suspension of Liquidation. In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain stainless steel products from Brazil which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the *Federal Register* and to require a cash deposit or bond for each such entry of this merchandise in the amount of 12.50 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on December 13, 1982, at the U.S. Department of Commerce, Room 3080, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by December 6, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within thirty days of this notice's publication, at the above address and in at least ten copies.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

APPENDIX A

For purpose of these investigations:

1. The term "stainless steel wire rod" covers a coiled, semi-finished, hot-rolled stainless steel product of solid cross section, approximately round in cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, and not partly manufactured as currently provided for in item 607.26 of the *Tariff Schedules of the United States (TSUS)* or if tempered, treated, or partly manufactured as provided for in item 607.43 of the TSUS.

2. The term "hot-rolled stainless steel bars" covers hot-rolled stainless steel products of solid section having cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons or octagons, not coated or plated with metal as currently provided for in item 606.9005 of the *Tariff Schedules of the United States Annotated*.

3. The term "cold-formed stainless steel bars" covers cold-formed stainless steel products of solid section having cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons or octagons, not coated or plated with metal as currently provided for in item 606.9010 of the *Tariff Schedules of the United States Annotated*.

Stainless steel is an alloy steel which contains by weight less than 1 percent of carbon and over 11.5 percent of chromium. Iron must predominate by weight and the alloy is malleable as first cast. Alloy steel is defined as a steel which contains one or more of the following elements in the quantity, by weight, respectively indicated:

- Over 1.65 percent of manganese, or
- Over 0.25 percent of phosphorus, or
- Over 0.35 percent of sulphur, or
- Over 0.60 percent of silicon, or
- Over 0.60 percent of copper, or
- Over 0.30 percent of aluminum, or
- Over 0.20 percent of chromium, or
- Over 0.30 percent of cobalt, or
- Over 0.35 percent of lead, or
- Over 0.50 percent of nickel, or
- Over 0.30 percent of tungsten, or
- Over 0.10 percent of any other metallic element.

[FR Doc. 82-31752 Filed 11-18-82; 8:45 am]

BILLING CODE 3510-25-M

Cotton Sheeting and Sateen From Peru; Preliminary Affirmative Countervailing Duty Determinations

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary Affirmative Countervailing Duty Determinations.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty laws are being provided to manufacturers, producers, or exporters in Peru of cotton sheeting and/or sateen, as described in the "Scope of Investigations" section of this notice. The estimated net bounties or grants are 34.338 percent of the f.o.b. value of exports of cotton sheeting and/or cotton sateen manufactured in the Department of Lima or the Province of Callao, and 42.748 percent of the f.o.b.

value of exports of cotton sheeting and/or sateen manufactured outside Lima/Callao. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of the product subject to these determinations which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond for this product in an amount equal to the estimated net bounties or grants.

If these investigations proceed normally, we will make our final determinations by January 26, 1983.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT:

Vincent P. Kane or Melissa C. Skinner, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, Telephone: (202) 377-5414 or 3530.

SUPPLEMENTAL INFORMATION:

Preliminary Determinations

Based upon our investigations, we preliminarily determine that there is reason to believe or suspect that the government of Peru provides certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), to manufacturers, producers, or exporters in Peru of cotton sheeting and/or sateen, as described in the "Scope of Investigation" section of this notice. The estimated net subsidies are 34.338 percent of the f.o.b. value for cotton sheeting and/or sateen manufactured in the Department of Lima or the Province of Callao, and 42.748 percent of the f.o.b. value of the exports of cotton sheeting and/or sateen manufactured outside Lima/Callao.

These preliminary determinations are based on the best information currently available. We will seek more detailed information prior to the final determinations and also will review the methodologies used in these preliminary determinations.

Case History

On June 15, 1982, we received a petition from the American Textile Manufacturing Institute on behalf of the cotton sheeting and sateen industry in the United States. The petition alleged that certain benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters of cotton sheeting and sateen in Peru.

Since Peru is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the

products under investigation are dutiable, section 303 of the Act applies to these investigations. Therefore, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten to cause material injury to a U.S. industry. We found the petition to contain sufficient grounds upon which to initiate countervailing duty investigations, and on July 6, 1982, we initiated countervailing duty investigations (47 FR 30274).

On July 14, 1982, we presented a questionnaire concerning the allegations to the government of Peru at its embassy in Washington, D.C. Subsequently, on July 18, 1982, we determined that the case was "extraordinarily complicated" within the meaning of section 703(c)(1)(B) of the Act, and we published a notice of the postponement of the preliminary countervailing duty determinations (47 FR 37267). On September 17, 1982, we received the responses to the questionnaire. A supplemental questionnaire was presented to the government of Peru in Washington, D.C. on October 12, 1982. On October 26, 1982, we received the responses to the supplemental questionnaire.

Scope of Investigations

The products covered by these investigations, as described in the notice of amendment to the initiation notice (47 FR 33731) (August 4, 1982) are: (1) Plain-woven cotton fabric sheeting, not fancy or figured and not napped, made of singles yarn, with an average yarn number between 3 and 26, imported in Textile and Apparel Category 313, currently classified under *Tariff Schedules of the United States* (TSUS) numbers 320.—36, 320.—38, 320.—40, and 320.—44; and (2) 100% carded cotton sateen fabrics woven with a sateen weave and not napped, imported in Textile and Apparel Category 317, and currently classified in TSUS under numbers 320.—54 and 321.—54.

There are twenty-seven producers and/or exporters in Peru of cotton sheeting and/or sateen. Of those twenty-seven, twenty-five manufacture sheeting and five of those also manufacture sateen. Two of the twenty-seven are exporters only. Eleven of these exporters account for 85 percent of the total exports. We have received partial information from the government of Peru on all twenty-seven companies. The period for which we are measuring subsidization is calendar year 1981.

Analysis of Programs

Based on our analysis to date of the petition and the responses to our questionnaires, we have preliminarily determined the following.

I. Programs Preliminarily Determined to Confer Bounties or Grants

A. The Certificate of Tax Rebate (CERTEX)

The CERTEX is a tax certificate issued to exporters by the government of Peru in an amount equal to a percentage of the f.o.b. value of export shipments. The CERTEX can be used for paying any tax administered by the Tax Revenue. Applications for CERTEX are made to the Division of Foreign Trade or to Regional Councils and must be submitted within 4 months from the date of export. To be eligible for CERTEX, an exporter must be registered in the Special Chapter of Exporting Enterprises and must submit certain required documentation.

The face value of the CERTEX is equal to a percentage of the f.o.b. value of the export shipment after deductions for consular expenses and commissions paid abroad. There are no consular expenses applicable to exports of cotton sheeting and/or sateen to the United States. In its response the government of Peru stated that the average rate of commission was 4.5% of the f.o.b. value of the export, for exporters of both sheeting and/or sateen. The percentage of rebate is set according to whether the product is classified as being of high, medium, or low value added and whether the producer is located within or outside the Department of Lima. Products of low value added manufactured inside the Department of Lima or the Province of Callao receive 15 percent of the f.o.b. value after deductions of the export expenses. The percentages for medium and high value added products are 20 percent and 22 percent, respectively. Products manufactured outside the Department of Lima and the Province of Callao qualify for an additional 10 percent. In its response the government of Peru stated that cotton sheeting and sateen are considered to be medium value added products and qualify for a 20 percent rate if manufactured in the Department of Lima and the Province of Callao, and qualify for a 30 percent rate if manufactured outside of Lima/Callao.

Once the gross amount of the rebate certificate is determined, 2 percent of this amount is issued to the Fund for the Provision of Nontraditional Exports (FOPEX), and 10 percent is issued to the Provisional Municipal Towncouncil from which the product originated. The

exporter then receives the balance, 88 percent of the gross amount. The value of the certificate is expressed in Peruvian soles as determined by the official exchange rate on the day of shipment.

Although the respondent claims the CERTEX certificates are further reduced in value due to delay in receipt, commissions charged on subsequent transfer of a certificate, and taxability of certificates, are not offsets permitted under the countervailing duty law (19 U.S.C. 1677(6)(a)).

Respondents state that the rebate of indirect taxes on production is one of CERTEX's principal purposes and that there is a relationship between the present level of CERTEX payments and the incidence of indirect taxation on the producers of the products under investigation.

In determining whether the CERTEX program is a bona fide rebate of indirect taxes, the primary considerations are:

(1) Whether the CERTEX program operates for the purpose of rebating indirect taxes, (2) whether there is a clear link between eligibility for CERTEX payments and payment of indirect taxes, and (3) whether the government has reasonably calculated and documented the actual indirect tax incidence borne by exported cotton sheeting and sateen and has demonstrated a clear link between such tax incidence and the amount of CERTEX payments.

Taxes rebated by CERTEX certificates include those on salaries and wages of workers, the enterprise patrimony, revaluation of fixed assets, customs duties on fixed assets, goods and services collected over insurances and capital goods, interests in local and foreign currency, the fund for research and development, the consumption of electricity and fuel, custom duties on supplies, and the municipal sales tax. With the possible exception of the customs duties on supplies and the municipal sales tax, none of the taxes subject to CERTEX rebates appear to represent an indirect tax on inputs physically incorporated into cotton sheeting or sateen.

To date the Government of Peru has not satisfactorily demonstrated the requisite linkage between the indirect tax incidence and the level of CERTEX payments, nor has it shown that the actual indirect tax incidence has been reasonably calculated and documented. We will seek additional information on this aspect of the CERTEX program.

Since the above-described linkage has not been demonstrated to date, we have preliminarily determined that the CERTEX payments must be considered

as conferring bounties or grants in the amount of 16.8% of the f.o.b. value of the export for all exporters of cotton sheeting and/or sateen located in the Department of Lima or the Province of Callao, and 25.21% of f.o.b. value of the export for all exporters of cotton sheeting and/or sateen located outside Lima/Callao.

B. Nontraditional Export Fund (FENT)

The Nontraditional Export Fund (FENT) was established by the government of Peru to grant financial support to nontraditional export activities. Changes were made to the FENT System in June 1982. The new FENT System was established to assure the exporter a line of credit with which he could finance his exports. The government's responses detailed the characteristics of the new FENT System.

The fund is administered by the Banco Industrial del Peru through credits to financial institutions for short-term financing of exports or through credits direct to exporters for short-term financing of nontraditional exports.

The direct financing may be in the form of either preshipment credit or post-shipment credit. Preshipment credit is credit given directly to Peruvian exporters prior to shipment of the goods. Post-shipment credit is credit to the Peruvian exporter for which the bank collects foreign receivables and remits to the exporter the difference between the collection and the loan amount plus expenses. The FENT loans are for 90 days, but may be renewed once in order to cover both pre- and post-shipments, thus having an actual life of 180 days.

The exporter requesting FENT financing may apply directly to the Banco Industrial del Peru or to a financial intermediary for an amount of credit up to 90 percent of the f.o.b. value of the export. The credits are expressed in foreign currency (U.S. dollars). The interest rate charged on the FENT loan is 1 percent.

In order to obtain a FENT credit, the exporter must make a deposit of an amount equivalent to 72 percent of the f.o.b. value of the export, or 80 percent of the amount of the loan he is requesting. The deposit must be made in the Banco Central (Central Bank of Peru) and must be in a foreign currency. The exporter must obtain the resources for this deposit through borrowing from a commercial bank. The Banco Central pays a LIBOR 90-day rate plus 5 percent on the deposit.

According to information obtained from sources other than the respondent, exporters can borrow the amount of the required deposit at a rate of LIBOR plus

8 percent, thus making the net interest charged on the loan approximately 3.5 percent ((LIBOR + 8 percent) (deposit) + (1 percent) (loan amount) — (LIBOR + 5 percent) (deposit) = 3.5 percent). Since the net interest paid on FENT loans (the interest charged on the loan for the amount of the required deposit plus the 1 percent paid to the Banco Central on the FENT loan less the interest received from the Banco Central on the required deposit) appears to be less than the interest payment had the loan been from a commercial bank at a rate of LIBOR plus 8 percent, we preliminarily find that FENT export loans result in the payment of a bounty or grant.

The amount of the benefit was determined by subtracting the net interest rate paid on FENT loans from the interest rate available to non-exporters of nontraditional goods (19.625 — 3.5 = 16.125). We then applied the difference to the amount of FENT loans the exporters of cotton sheeting and/or sateen obtained, and allocated over total exports. On this basis we calculated a bounty or grant in the amount of 3.596 percent of the f.o.b. value of the export.

C. The Law for the Promotion of Exports of Nontraditional Goods (the Export Law)

The intent of the Export Law is to improve the foreign trade structure of Peru. The Export Law is an integral system aimed at the promotion of nontraditional exports. We have preliminarily determined that cotton sheeting and sateen exporters have benefitted from the Export Law as follows:

(1) Articles 8 and 9 of the Export Law are available to all enterprises exporting nontraditional goods. Both articles refer to the application of the General Law of Industries to exporters of nontraditional goods. Articles 8 and 9 offer incentives for reinvestment in the form of exemption of income tax.

We determined the amount of the benefit by multiplying the amount of the exemption claimed under this article by the tax rate and allocating the result over the value of total exports in 1981. On this basis we calculated a bounty or grant in the amount of 0.374 percent of the f.o.b. value of the export.

(2) In its response, the government of Peru stated that the benefits provided by Article 12 of the Export Law are available to all enterprises exporting nontraditional goods. This article states that enterprises that export nontraditional goods may claim, for income tax purposes, up to 50% additional depreciation on equipment

listed among their fixed assets. We preliminarily regard this additional depreciation allowance as conferring bounties or grants, since it is available only to exporters.

We determined the amount of the benefit by multiplying the amount of the exemption claimed under this article times the tax rate and allocating the result over the value of total exports in 1981. On this basis we calculated a bounty or grant in the amount of 3.012 percent of the f.o.b. value of the export.

(3) The government of Peru stated in its responses that the benefits from Article 13 of the Export Law are available to all enterprises exporting nontraditional goods. Article 13 of the Export Law states that enterprises may receive a tax exemption on the capitalization of earnings which are invested or reinvested, as long as the exemption is claimed within six years, inclusive of the fiscal year in which the investment occurs. Since this provision for an income tax exemption on earnings invested or reinvested is intended only for exporters, we preliminarily determine that this article confers bounties or grants.

The benefit provided by Article 13 was quantified by allocating the tax savings over the value of total exports in 1981. On this basis we calculated a bounty or grant in the amount of 0.348 percent of the f.o.b. value of the export.

(4) In response to our questionnaires, the government of Peru stated that Article 14 of the Export Law is available to all exporters on nontraditional goods. According to Article 14 of the Export Law, enterprises that increase the number of permanent jobs in relation to those existing in the previous year may, for income tax purposes, deduct as an expense in the fiscal year the amount of remuneration paid out as a result of the new jobs created.

Since this income tax deduction in the amount of the remuneration paid out on new jobs is available only to exporters, we preliminarily regard the resulting income tax savings as conferring bounties or grants.

We calculated this amount by determining the amount of remuneration paid out in 1981 and applying this amount to the applicable tax credit permitted. We determined the amount of the benefit by multiplying the amount of the exemption claimed under this article times the tax rate and allocating the result over the value of total exports in 1981. On this basis we calculated a bounty or grant in the amount of 0.019 percent of the f.o.b. value of the export.

(5) According to the response from the government of Peru, Article 15 of the Export Law is available to all exporters

of nontraditional goods. Article 15 states that increases in capital shall be exempt from registration tax. It also states that any contributions of real property that are made for the purpose of capital increases and purchases made to expand production facilities shall be exempt from sales and excise taxes as well as from the additional taxes added on to the sales and excise taxes.

Decree Law 22392, dated November 19, 1978, abolished the provision of Article 15 allowing an exemption from a registration tax. Therefore the only exemption currently being provided by Article 15 is for the excise tax paid on the transfer of real property. Since this exemption is available only to exporters, we preliminarily regard it as a conferring a bounty or grant.

We quantified the benefit by allocating total excise tax exempted during 1981 over total exports for 1981. On this basis we calculated a bounty or grant in the amount of 0.007 percent of the f.o.b. value of the export.

(6) In its responses, the government of Peru stated that Article 16 of the Export Law is available to all enterprises that export nontraditional goods. Article 16 states that industrial companies exporting nontraditional goods that export 40 percent of their annual production shall enjoy suspension of payment of tariff duties levied on imported capital goods for a maximum period of 5 years. If they have generated, from the use of the imported capital goods, a net inflow of foreign exchange equal to 100 percent of the value of the imported capital goods before or by the end of the 5 years, then they shall enjoy total exemption from tariff duties. The company must obtain 40 percent exportation within a maximum period of 2 years from the date of commencement of the production generated by the imported capital goods.

In order to be eligible for this benefit, the companies must sign a contract with the state. If the conditions are not met, the import duties whose payment had previously been suspended will be paid with a surcharge equal to the rate of interest established for the debt. We have no evidence that producers have failed to meet the requirements for complete exemption.

Since the suspension and/or the complete exemption from payment of import duties on imports of capital equipment used for the production of exports benefit only exporters, we preliminarily regard the exemption from import duties as a bounty or grant.

We calculated the amount of benefit provided by Article 16 of the Export Law by allocating the amount of import

duties deferred in 1981 over the total value of exports in 1981. On this basis we calculated a bounty or grant in the amount of 8.869 percent of the f.o.b. value of the export.

(7) According to the responses submitted by the government of Peru, this article is available to all exporters of nontraditional goods. Article 32 of the Export Law allows enterprises exporting nontraditional goods to hire temporary personnel for a specific job, at wage rates which are not determined by the industrial community.

The government of Peru stated in its responses that in practice, there is no case in the textile sector where a company has been able to prevent the formation of an industrial community through the hiring of non-industrial community personnel. Nevertheless, exporters have been able to hire temporary personnel at wage rates less than those of their permanent employees.

To the extent that use of Article 32 has enabled producers selling for export to reduce labor costs, we preliminarily find that this article of the Export Law confers bounties or grants.

We quantified the benefit to exporters using Article 32 by dividing the reduced labor costs in 1981 by total exports. On this basis we calculated a bounty or grant in the amount of 1.313 percent of the f.o.b. value of the export.

II. Programs Preliminarily Determined Not To Confer Bounties or Grants

We preliminarily determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Peru of cotton sheeting and sateen under the following programs.

A. The Fund for the Provision of Nontraditional Exports (FOPEX)

The petition alleges that the fund for the Promotion of Nontraditional Exports (FOPEX)—whose functions include furnishing technical services contributing to the adaptation, increase, and diversification of nontraditional exports—confers bounties or grants. The Peruvian government's response states that FOPEX provides general information services on international trade, import/export development, export promotion programs, and international shipments and transportation. FOPEX resources are composed of:

(1) 10% of the yield from a 1% ad valorem tax which is assessed on the importation of goods. This is transferred monthly to FOPEX by the Banco Industrial del Peru;

(2) 2% of the value of the CERTEX certificates, which is deducted and transferred at the time of the issuance settlement;

(3) Income generated from the services it renders; and

(4) Any other contribution of a public or private nature.

The annual reports of FOPEX were not available for our review.

However, it appears from the response that FOPEX provides no credits, guarantees, grants, or other forms of economic assistance. Since no financial assistance is provided, and since it appears that the services provided through FOPEX are essentially the same as the general types of trade information normally available from government agencies, we have preliminarily determined that FOPEX does not confer bounties or grants.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the programs listed below which were listed in the notice of "Initiation of Countervailing Duty Investigation, Cotton Sheeting and Sateen from Peru" are not being used by the manufacturers, producers, or exporters in Peru of cotton sheeting and sateen.

A. The Law for the Promotion of Exports of Nontraditional Goods (the Export Law)

(1) Article 23 of the Export Law is available to all consortiums exporting nontraditional goods. In its responses, the government of Peru stated that no consortiums exporting nontraditional goods which export cotton sheeting and sateen have been formed. Thus, we preliminarily determine that Article 23 of the Export Law has not been used.

(2) Article 24 of the Export Law applies to all enterprises exporting nontraditional goods. The Article states that the General Law of Customs (Decree-Law 20165) and its corresponding rules and regulations shall govern the Temporary Admission Arrangement referring to the exemption from duties on raw materials and/or unfinished goods to be used exclusively in the manufacture of finished goods for export and in the manufacture of unfinished goods which, once processed, are included among such goods. In its responses the government of Peru stated that Article 24 of the Export Law is, in practice, not applicable to cotton sheeting and sateen producers, as the importation of raw cotton is forbidden for sanitary reasons. They also responded that manufacturers of cotton sheeting and sateen have not imported supplies and/or intermediate goods

which were incorporated into the final product. Therefore, we have preliminarily determined that Article 23 of the Export Law has not been used.

(3) Article 31 of the Export Law states that shipping firms may grant promotional shipping rates to nontraditional exports. It further states that entities administering services in ports and airports may charge promotional fees to nontraditional exports. The government of Peru stated in its response that producers of cotton sheeting and sateen have not obtained any preferential shipping rates under Article 31 of Export Law during the period for which we are measuring subsidization.

Verification

In accordance with section 776(a) of the Act, we will verify all the information used in making our final determinations.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of cotton sheeting and sateen from Peru which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the *Federal Register*, and to require a cash deposit or bond, for each such entry of the merchandise in the amount of 34.338 percent of the f.o.b. value of exports of cotton sheeting and sateen manufactured in the Department of Lima or the Province of Callao, and 42.748 percent of the f.o.b. value of exports of cotton sheeting and sateen manufactured outside of Lima/Callao. At the present time, with information available to the Department of Commerce, Tejidos de ICA is the only company exporting cotton sheeting and/or sateen from Peru which is located outside Lima/Callao. This suspension will remain in effect until further notice.

Public Comment

In accordance with section 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on December 17, 1982, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this

notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by December 2, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within thirty days of this notice's publication, at the above address and in at least ten copies.

Judith Hippler Bello,
Acting Deputy Assistant Secretary for Import Administration.

November 15, 1982.

[FR Doc. 82-31754 Filed 11-18-82; 8:45 am]

BILLING CODE 3510-25-M

Cotton Yarn From Peru; Preliminary Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary Affirmative Countervailing Duty Determination.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties and grants within the meaning of the countervailing duty laws are being provided to manufacturers, producers, or exporters in Peru of cotton yarn, as described in the "Scope of Investigation" section of this notice. The estimated net bounties or grants are 33.153 percent of the f.o.b. value of the exports manufactured in the Department of Lima or the Province of Callao, and 41.563 percent of the f.o.b. value of the exports manufactured outside of Lima/Callao for cotton yarn from Peru. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of the product subject to this determination which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on this product in an amount equal to the estimated net bounties or grants. If this investigation proceeds normally, we will make our final determination by January 26, 1983.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane or Melissa G. Skinner, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, Telephone: (202) 377-5414 or 3530.

SUPPLEMENTAL INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that the government of Peru provides certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), to manufacturers, producers, or exporters in Peru of cotton yarn, as described in the "Scope of Investigation" section of this notice. The estimated net bounties or grants are 33.153 percent of the f.o.b. value of the exports manufactured in the Department of Lima or the Province of Callao, and 41.563 percent of the f.o.b. value of the exports manufactured outside of Lima/Callao for cotton yarn from Peru.

This preliminary determination is based on the best information currently available. We will seek more detailed information prior to the final determination and also will review the methodologies used in this preliminary determination.

Case History

On June 15, 1982, we received a petition from the American Yarn Spinners Association on behalf of the cotton yarn industry in the United States. The petition alleged that certain benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters of cotton yarn in Peru.

Since Peru is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the products under investigation are dutiable, section 303 of the Act applies to this investigation. Therefore the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten to cause material injury to a U.S. industry. We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on July 6, 1982, we initiated a countervailing duty investigation (47 FR 30274).

On July 14, 1982, we presented a questionnaire concerning the allegations to the government of Peru at its embassy in Washington, D.C. Subsequently, on July 18, 1982, we determined that the case was "extraordinarily complicated" within the meaning of section 703(c)(1)(B) of the Act, and we published a notice of the postponement of the preliminary countervailing duty

determination (47 FR 37263). On September 17, 1982, we received the responses to the questionnaire. A supplemental questionnaire was presented to the government of Peru in Washington, D.C. on October 12, 1982. On October 26, 1982 we received the responses to the supplemental questionnaire.

Scope of Investigation

The products covered by this investigation, as described in the notice of amendment to the initiation notice (47 FR 33730) (August 4, 1982) consists of various cotton yarns currently classifiable under the following *Tariff Schedules of the United States Annotated* numbers: 300.60, 301.01 through 301.60, 302.01 through 302.60, 302.70, 301.70, 301.80, 301.82, 301.84, 301.86, 301.88, 301.92, 301.94, 301.96, 301.98, 302.80, 302.82, 302.84, 302.86, 302.88, 302.92, 302.94, 302.96, 302.98.

There are fourteen producers, all of which export cotton yarn from Peru, four of which account for 85 percent of exports. The period for which we are measuring subsidization is calendar year 1981.

Analysis of Programs

Based on our analysis to date of the petition and the responses to our questionnaires, we have preliminarily determined the following:

I. Programs Preliminarily Determined to Confer Bounties or Grants

A. The Certificate of Tax Rebate (CERTEX)

The CERTEX is a tax certificate issued to exporters by the government of Peru in an amount equal to a percentage of the f.o.b. value of export shipments. The CERTEX can be used for paying any tax administered by the Tax Revenue. Applications for CERTEX are made to the Division of Foreign Trade or to Regional Councils and must be submitted within 4 months from the date of export. To be eligible for CERTEX, an exporter must be registered in the Special Chapter of Exporting Enterprises and must submit certain required documentation.

The face value of the CERTEX is equal to a percentage of the f.o.b. value of the export shipment after deductions for consular expenses and commissions paid abroad. There are no consular expenses applicable to exports of cotton yarn to the United States. In its response the government of Peru stated that the average rate of commission was 4.5% of the f.o.b. value of the export, for exporters of cotton yarn. The percentage of rebate is set according to whether the product is classified as being of high,

medium, or low value added and whether the producer is located within or outside the Department of Lima. Products of low value added manufactured inside the Department of Lima or the Province of Callao receive 15 percent of the f.o.b. value after deductions of the export expenses. The percentages for medium and high value added products are 20 percent and 22 percent, respectively. Products manufactured outside the Department of Lima and the Province of Callao qualify for an additional 10 percent. In its response the government of Peru stated that cotton yarn is considered to be a medium value added product and qualifies for a 20 percent rate if manufactured in the Department of Lima and the Province of Callao, and qualifies for a 30 percent rate if manufactured outside of Lima/Callao.

Once the gross amount of the rebate certificate is determined, 2 percent of this amount is issued to the Fund for the Provision of Nontraditional Exports (FOPEX), and 10 percent is issued to the Provisional Municipal Towncouncil from which the product originated. The exporter then receives the balance, 88 percent of the gross amount. The value of the certificate is expressed in Peruvian soles as determined by the official exchange rate on the day of shipment.

Although the respondent claims the CERTEX certificates are further reduced in value due to delay in receipt, commissions charged on subsequent transfer of certificate, and taxability of certificates, are not offsets permitted under the countervailing duty law (19 U.S.C. 1677(6)(a)).

Respondents state that the rebate of indirect taxes on production is one of CERTEX's principal purposes and that there is a relationship between the present level of CERTEX payments and the incidence of indirect taxation on the producers of the products under investigation.

In determining whether the CERTEX program is a bona fide rebate of indirect taxes, the primary considerations are: (1) Whether the CERTEX program operates for the purpose of rebating indirect taxes, (2) whether there is a clear link between eligibility for CERTEX payments and payment of indirect taxes, and (3) whether the government has reasonably calculated and documented the actual indirect tax incidence borne by exported cotton yarn and has demonstrated a clear link between such tax incidence and the amount of CERTEX payments.

Taxes rebated by CERTEX certificates include those on salaries and wages of workers, the enterprise patrimony,

reevaluation of fixed assets, customs duties on fixed assets, goods and services collected over insurances and capital goods, interests in local and foreign currency, the fund for research and development, the consumption of electricity and fuel, custom duties on supplies, and the municipal sales tax. With the possible exception of the customs duties on supplies and the municipal sales tax, none of the taxes subject to CERTEX rebates appear to represent an indirect tax on inputs physically incorporated into cotton yarn.

To date the Government of Peru has not satisfactorily demonstrated the requisite linkage between the indirect tax incidence and the level of CERTEX payments, nor has it shown that the actual indirect tax incidence has been reasonably calculated and documented. We will seek additional information on this aspect of the CERTEX program.

Since the above-described linkage has not been demonstrated to date, we have preliminarily determined that the CERTEX payments must be considered as conferring bounties or grants in the amount of 16.8% of the f.o.b. value of the export for all exporters of cotton yarn located in the Department of Lima or the Province of Callao, and 25.21% of the f.o.b. value of the export for all exporters of cotton yarn located outside Lima/Callao.

B. Nontraditional Export Fund (FENT)

The Nontraditional Export Fund (FENT) was established by the government of Peru to grant financial support to nontraditional export activities. Changes were made to the FENT system in June 1982. The new FENT system was established to assure the exporter a line of credit with which he could finance his exports. The government's responses detailed the characteristics of the new FENT System.

The fund is administered by the Banco Industrial del Peru through credits to financial institutions for short-term financing of exports or through credits direct to exporters for short-term financing of nontraditional exports.

The direct financing may be in the form of either pre-shipment credit or post-shipment credit. Pre-shipment credit is credit given directly to Peruvian exporters prior to shipment of the goods. Post-shipment credit is credit to the Peruvian exporter for which the bank collects foreign receivables and remits to the exporter the difference between the collection and the loan amount plus expenses. The FENT loans are for 90 days, but may be renewed once in order to cover both pre- and post-shipments, thus having an actual life of 180 days.

The exporter requesting FENT financing may apply directly to the Banco Industrial del Peru or to a financial intermediary for an amount of credit up to 90 percent of the f.o.b. value of the export. The credits are expressed in foreign currency (U.S. dollars). The interest rate charged on the FENT loan is 1%.

In order to obtain a FENT credit, the exporter must make a deposit of an amount equivalent to 72 percent of the f.o.b. value of the export, or 80 percent of the amount of the loan he is requesting. The deposit must be made in the Banco Central (Central Bank of Peru) and must be in a foreign currency. The exporter must obtain the resources for this deposit through borrowing from a commercial bank. The Banco Central pays a LIBOR 90-day rate plus 5 percent on the deposit.

According to information obtained from sources other than the respondent, exporters can borrow the amount of the required deposit at a rate of LIBOR plus 8 percent, thus making the net interest charged on the loan approximately 3.5 percent $((\text{LIBOR} + 8\%) (\text{deposit}) + [1\% (\text{loan amount}) - (\text{LIBOR} + 5\%) (\text{deposit})] = 3.5\%)$. Since the net interest paid on FENT loans (the interest charged on the loan for the amount of the required deposit plus the 1 percent paid to the Banco Central on the required deposit) appears to be less than the interest payment had the loan been from a commercial bank at a rate of LIBOR plus 8 percent, we preliminarily find that FENT export loans result in the payment of a bounty or grant.

The amount of the benefit was determined by subtracting the net interest rate paid on FENT loans from the interest rate available to non-exporters of nontraditional goods $(19.625 - 3.5 = 16.125)$. We then applied the difference to the amount of FENT loans the exporters of cotton yarn obtained, and allocated over total exports. On this basis we calculated a bounty or grant in the amount of 5.358 percent of the f.o.b. value of the export.

C. The Law for the Promotion of Exports of Nontraditional Goods (the Export Law)

The intent of the Export Law is to improve the foreign trade structure of Peru. The Export Law is an integral system aimed at the promotion of nontraditional exports. We have preliminarily determined that cotton yarn exporters have benefited from the Export Law as follows:

(1) Articles 8 and 9 of the Export Law are available to all enterprises exporting nontraditional goods. Both articles refer

to the application of the General Law of Industries to exporters of nontraditional goods. Articles 8 and 9 offer incentives for reinvestment in the form of exemption of income tax.

We determined the amount of the benefit by multiplying the amount of the exemption claimed under this article by the tax rate and allocating the result over the value of total exports in 1981. On this basis we calculated a bounty or grant in the amount of 0.013 percent of the f.o.b. value of the export.

(2) In its response, the government of Peru stated that the benefits provided by Article 12 of the Export Law are available to all enterprises exporting nontraditional goods. This article states that enterprises that export nontraditional goods may claim, for income tax purposes, up to 50 percent additional depreciation on equipment listed among their fixed assets. We preliminarily regard this additional depreciation allowance as conferring bounties or grants, since it is available only to exporters.

We determined the amount of the benefit by multiplying the amount of the exemption claimed under this article times the tax rate and allocating the result over the value of total exports in 1981. On this basis we calculated a bounty or grant in the amount of 0.088 percent of the f.o.b. value of the export.

(3) The government of Peru stated in its responses that the benefits from Article 13 of the Export Law are available to all enterprises exporting nontraditional goods. Article 13 of the Export Law states that enterprises may receive a tax exemption on the capitalization of earnings which are invested or reinvested, as long as the exemption is claimed within six years, inclusive of the fiscal year in which the investment occurs. Since this provision for an income tax exemption on earnings invested or reinvested is intended only for exporters, we preliminarily determine that this article confers bounties or grants.

The benefit provided by Article 13 was quantified by allocating the tax savings over the value of total exports in 1981. On this basis we calculated a bounty or grant in the amount of 1.449 percent of the f.o.b. value of the export.

(4) In response to our questionnaires, the government of Peru stated that Article 14 of the Export Law is available to all exporters on nontraditional goods. According to Article 14 of the Export Law, enterprises that increase the number of permanent jobs in relation to those existing in the previous year may, for income tax purposes, deduct as an expense in the fiscal year the amount of

remuneration paid out as a result of the new jobs created.

Since this income tax deduction in the amount of the remuneration paid out on new jobs is available only to exporters, we preliminarily regard the resulting income tax savings as conferring bounties or grants.

We calculated this amount by determining the amount of remuneration paid out in 1981 and applying this amount to the applicable tax credit permitted. We determined the amount of the benefit by multiplying the amount of the exemption claimed under this article times the tax rate and allocating the result over the value of total exports in 1981. On this basis we calculated a bounty or grant in the amount of 0.042 percent of the f.o.b. value of the export.

(5) According to the response from the government of Peru, Article 15 of the Export Law is available to all exporters of nontraditional goods. Article 15 states that increases in capital shall be exempt from registration tax. It also states that any contributions of real property that are made for the purpose of capital increases and purchases made to expand production facilities shall be exempt from sales and excise taxes as well as from the additional taxes added on to the sales and excise taxes.

Decree Law 22392, dated November 19, 1978, abolished the provision of Article 15 allowing an exemption from a registration tax. Therefore the only exemption currently being provided by Article 15 is for the excise tax paid on the transfer of real property. Since this exemption is available only to exporters, we preliminarily regard it as a conferring a bounty or grant.

We quantified the benefit by allocating total excise tax exempted during 1981 over total exports for the 1981. On this basis we calculated a bounty or grant in the amount of 0.016 percent of the f.o.b. value of the export.

(6) In its responses, the government of Peru stated that Article 16 of the Export Law is available to all enterprises that export nontraditional goods. Article 16 states that industrial companies exporting nontraditional goods that export 40 percent of their annual production shall enjoy suspension of payment of tariff duties levied on imported capital goods for a maximum period of 5 years. If they have generated, from the use of the imported capital goods, a net inflow of foreign exchange equal to 100 percent of the value of the imported capital goods before or by the end of the 5 years, then they shall enjoy total exemption from tariff duties. The company must obtain 40 percent exportation within a maximum period of 2 years from the date of commencement

of the production generated by the imported capital goods.

In order to be eligible for this benefit, the companies must sign a contract with the state. If the conditions are not met, the import duties whose payment had previously been suspended will be paid with a surcharge equal to the rate of interest established for the debt. We have no evidence that producers have failed to meet the requirements for complete exemption.

Since the suspension and/or the complete exemption from payment of import duties on imports of capital equipment used for the production of exports benefit only exporters, we preliminarily regard the exemption from import duties as a bounty or grant.

We calculated the amount of benefit provided by Article 16 of the Export Law by allocating the amount of import duties deferred in 1981 over the total value of exports in 1981. On this basis we calculated a bounty or grant in the amount of 9.176 percent of the f.o.b. value of the export.

(7) According to the responses submitted by the government of Peru, this article is available to all exporters of nontraditional goods. Article 32 of the Export Law allows enterprises exporting nontraditional goods to hire temporary personnel for a specific job, at wage rates which are not determined by the industrial community.

The government of Peru stated in its responses that in practice, there is no case in the textile sector where a company has been able to prevent the formation of an industrial community through the hiring of non-industrial community personnel. Nevertheless, exporters have been able to hire temporary personnel at wage rates less than those of their permanent employees.

To the extent that use of Article 32 has enabled producers selling for export to reduce labor costs, we preliminarily find that this article of the Export Law confers bounties or grants.

We quantified the benefit to exporters using Article 32 by dividing the reduced labor costs in 1981 by total exports. On this basis we calculated a bounty or grant in the amount of 0.211 percent of the f.o.b. value of the export.

II. Programs Preliminarily Determined Not To Confer Bounties or Grants

We preliminarily determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Peru of cotton yarn under the following programs.

A. The Fund for the Provision of Nontraditional Exports (FOPEX)

The petition alleges that the Fund for the Promotion of Nontraditional Exports (FOPEX)—whose functions include furnishing technical services contributing to the adaptation, increase, and diversification of nontraditional exports—confers bounties or grants. The Peruvian government's response states that FOPEX provides general information services on international trade, import/export development, export promotion programs, and international shipments and transportation. FOPEX resources are composed of:

(1) 10% of the yield from a 1% ad valorem tax which is assessed on the importation of goods. This is transferred monthly to FOPEX by the Banco Industrial del Peru;

(2) 2% of the value of the CERTEX certificates, which is deducted and transferred at the time of the issuance settlement;

(3) income generated from the services it renders; and

(4) any other contribution of a public or private nature.

The annual reports of FOPEX were not available for our review. However, it appears from the response that FOPEX provides no credits, guarantees, grants, or other forms of economic assistance. Since no financial assistance is provided, and since it appears that the services provided through FOPEX are essentially the same as the general types of trade information normally available from government agencies, we have preliminarily determined that FOPEX does not confer bounties or grants.

III. Program Preliminarily Determined Not To Be Used

We preliminarily determine that the programs listed below which were listed in the notice of "Initiation of Countervailing Duty Investigation, Cotton Yarn from Peru" are not being used by the manufacturers, producers, or exporters in Peru of cotton yarn.

A. The Law for the Promotion of Exports of Nontraditional Goods (the Export Law)

(1) Article 23 of the Export Law is available to all consortiums exporting nontraditional goods. In its responses, the government of Peru stated that no consortiums exporting nontraditional goods which export yarn have been formed. Thus, we preliminarily determine that Article 23 of the Export Law has not been used.

(2) Article 24 of the Export Law applies to all enterprises exporting nontraditional goods. The Article states that the General Law of Customs (Decree-Law 20165) and its corresponding rules and regulations shall govern the Temporary Admission Arrangement referring to the exemption from duties on raw materials and/or unfinished goods to be used exclusively in the manufacture of unfinished goods for export and in the manufacture of finished goods which, once processed, are included among such goods. In its responses the government of Peru stated that Article 24 of the Export Law is, in practice, not applicable to cotton yarn producers, as the importation of raw cotton is forbidden for sanitary reasons. They also responded that manufacturers of cotton yarn have not imported supplies and/or intermediate goods which were incorporated into the final product. Therefore, we have preliminarily determined that Article 23 of the Export Law has not been used.

(3) Article 31 of the Export Law states that shipping firms may grant promotional shipping rates to nontraditional exports. It further states that entities administering services in ports and airports may charge promotional fees to nontraditional exports. The government of Peru states in its response that producers of cotton yarn have not obtained any preferential shipping rates under Article 31 of the Export Law during the period for which we are measuring subsidization.

Verification

In accordance with section 776(a) of the Act, we will verify all the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of cotton yarn from Peru which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the *Federal Register*, and to require a cash deposit or bond, for each such entry of the merchandise in the amount of 33.153 percent of the f.o.b. value of the exports manufactured in the Department of Lima or the Province of Callao and 41.563 percent of the f.o.b. value of the export manufactured outside of Lima/Callao for cotton yarn from Peru. At the present time, with information available to the Department of Commerce, the only known companies exporting cotton yarn from Peru are: Industrial Textil Piura S.A., Textil Trujillo S.A., Compania Textil "El Progreso", and

Textiles del Sur S.A. This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on December 17, 1982, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by December 2, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within thirty days of this notice's publication, at the above address and in at least ten copies.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

November 15, 1982.

[FR Doc. 82-31753 Filed 11-18-82; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENT

Amending the Export Visa Requirement for Certain Man-Made Fiber Apparel Products from Taiwan

November 15, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Advising that, in order to meet the "correct category" requirement, visa for man-made fiber headwear in Category 659, produced or manufactured in Taiwan, must be visaed as follows on and after January 1, 1983 (underlined portion only):

1. *Category 659-H* (Only T.S.U.S.A. Numbers 703.0500 and 703.1000)

2. *Category 659-C* (Only T.S.U.S.A. Number 703.1515)

3. *Category 659-O* (All other T.S.U.S.A. numbers in the category)

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal

Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654)).

SUMMARY: The export visa requirement established for cotton, wool, and man-made fiber textile products under the bilateral agreement with Taiwan calls for the inclusion on each visa of the correct category and quantity of the merchandise. To ensure that man-made fiber headwear in Category 659 is charged to the correct levels of restraint under the agreement, it has been agreed that the export visas for this category shall include an "H" to identify braided and unbraided knit or woven headwear in T.S.U.S.A. numbers 703.0500 and 703.1000 and a "C" to identify other woven headwear, not in part of braid, in T.S.U.S.A. number 703.1515. All other products within the category will be visaed as Category 659-"O" (Other).

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On October 3, 1972 a letter dated September 27, 1972 from the Chairman, Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the Federal Register (37 FR 20745), prohibiting entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products, produced or manufactured in Taiwan, for which Taiwan had not issued an export visa which included the correct category and quantity of the merchandise.

The letter published below from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs further amends the directive of September 27, 1972 to require that visas for man-made fiber textile products in Category 659 include an "H", a "C", or an "O" to differentiate between headwear and other products in the category.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 15, 1982.

Committee for the Implementation of Textile Agreements
Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the

directive of September 27, 1972 from the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Taiwan for which the authorities in Taiwan had not issued an appropriate export visa.

Effective on January 1, 1983, the directive of September 27, 1972 is further amended to require that export visas for man-made fiber textile products in Category 659, produced or manufactured in Taiwan, shall be visaed as follows: (Underlined portion only):

1. Category 659-H (Only T.S.U.S.A. numbers 703.0500 and 703.1000)
2. Category 659-C (Only T.S.U.S.A. number 703.1515)
3. Category 659-O (All other T.S.U.S.A. numbers in the category)

The actions taken with respect to the authorities in Taiwan and with respect to imports of man-made fiber textile products from Taiwan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-31724 Filed 11-18-82; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1982; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List. FR Doc. 82-31081 appearing in the Federal Register on November 12, 1982, (47 FR 51179) adding two commodities and two services to the Procurement List is amended to add the following paragraph under Supplementary Information:

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

- a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- b. The actions will not have a serious economic impact on the current contractors for the commodities and services listed.
- c. The actions will result in authorizing small entities to produce or

provide commodities and services procured by the Government.

C. W. Fletcher,

Executive Director.

[FR Doc. 82-31751 Filed 11-18-82; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

NAME: National Energy Extension Service Advisory Board.

DATE AND TIME: Monday, December 6, 1982, 9 a.m. to 5 p.m., Tuesday, December 7, 1982, 9 a.m. to 3 p.m.

PLACE: Loews L'Enfant Plaza Hotel, Caucus Room, Lobby Level, 480 L'Enfant Plaza East, SW., Washington, D.C. 20024.

CONTACT: William H. H. King, Department of Energy, Forrestal Building, 5B137, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: 202-252-8290.

PURPOSE OF COMMITTEE: The Board was established to carry on a continuing review of the comprehensive Energy Extension Service program and approved plans of the Governors of each State for implementing Energy Extension Service activities.

TENTATIVE AGENDA:

Monday, December 6, 1982

Welcoming by National Energy Extension Service Advisory Board Chairman.

Remarks by Joseph J. Tribble, Assistant Secretary, Conservation and Renewable Energy.

Open Discussion:

EES Review—Past and Present.

Role of the National Energy Extension Service Advisory Board.

Discussion of Any Other Business Brought Before the Board.

Public Comment (10 minute rule).

Tuesday, December 7, 1982

Working Session:

Future of ES.

Transfer of EES Functions to States.

EES Annual Report.

Closing Remarks by National Extension Service Advisory Board Chairman.

Public Comment (10 minute rule).

PUBLIC PARTICIPATION: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gloria Decker at 252-8990. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

TRANSCRIPTS: Available for public review and copying at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on November 16, 1982.

Howard H. Raiken,

Deputy Advisory Committee, Management Officer.

[FR Doc. 82-31706 Filed 11-18-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2249-3]

Availability of Environmental Impact Statements Filed November 8 Through November 12, 1982, Pursuant to 40 CFR 1506.9

Responsible agency: Office of Federal Activities, general information 382-5075 or 382-5076.

Department of Agriculture: EIS Use No. 820733, Draft, AFS, SEV, MT, ID—Kootenai National Forest Land and Resource Management Plan, Due: 03/01/83.

Corps of Engineers: EIS Use No. 820732, Draft, DOE, CA—Sacramento-San Joaquin Delta Flood Control/Multi-Purpose Project, Due: 01/03/83.

Department of Housing and Urban Development: EIS No. 820738, Final, HUD, NC—Heather Hills Community, Mortgage Insurance, Wake County, Due: 12/20/82; EIS Use No. 820737, Final, HUD, CO, PRO—Grand Junction Areawide Study, Mesa County, Due: 12/20/82.

Department of the Interior: EIS Use No. 820739, Draft, MMS, AK, OCS—Arctic Sand and Gravel Lease Sale, Beaufort Sea, Due: 01/07/83.

Department of Defense, Air Force: EIS Use No. 820734, FSUPPL, UAF, OH—

Richenbacker ANGB, Noise Analysis, Franklin and Pickaway Counties, Due: 12/20/82.

Environmental Protection Agency: EIS Use No. 820735, Final, EPA, MXG—Offshore Platform Hazardous Waste Incineration Facility, Due: 12/20/82; EIS Use No. 820736, Final, EPA, REG—Metal Coil Surface Coating Emissions, Performance Standards, Due: 12/20/82; EPA Use No. 820740, Final, EPA, CA—City of Los Angeles WWT Facilities Plan, Grant, Los Angeles County, Due: 12/20/82.

Amended notice; EIS Use No. 820593, Draft, UMT, MD—Baltimore N. Corridor/Metro Center Transit Improvement, Baltimore Co. Due: *12/20/82 (*Published FR 09/17/82—Review extended); EIS Use No. 820577, Draft, BLM, UT—Price River Resource Area Grazing Management Program, Due: *11/30/82 (*Published FR 09/17/82—Review extended).

Dated: November 16, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82-31829 Filed 11-18-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51439; TSH-FRL 2244-1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 ninety days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the *Federal Register* of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of twenty-four PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 83-77, 83-78, 83-79, 83-80, 83-81, 83-82, 83-83, 83-84, 83-85, 83-86, and 83-87: January 26, 1983.

PMN 83-88, 83-89, 83-90, and 83-91:

January 29, 1983.

PMN 83-92, 83-93, 83-94, 83-95, and 83-96: January 30, 1983.

PMN 83-97, 83-98, and 83-99: January 31, 1983.

PMN 83-100.

Written comments by:

PMN 83-77, 83-78, 83-79, 83-80, 83-81, 83-82, 83-83, 83-84, 83-85, 83-86, and 83-87: December 27, 1982.

PMN 83-88, 83-89, 83-90, and 83-91: December 30, 1982.

PMN 83-92, 83-93, 83-94, 83-95, and 83-96: December 31, 1982.

PMN 83-97, 83-98, and 83-99: January 1, 1982.

PMN 83-100.

ADDRESS: Written comments, identified by the document control number "[OPTS-51439]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substance, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

PMN 83-77

Importer. Confidential.

Chemical. (G) Bis(((substituted propanyl)azo)substituted phenol) metallate, plus bis (((substituted propanyl)azo)substituted phenol) metallate, inorganic salts.

Use/Imports. (S) Industrial colorant for leather. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Negligible.

Environmental Release/Disposal. No release. Disposal by publicly owned treatment works (POTW) or waste water treatment facility.

PMN 83-78

Importer. Confidential.

Chemical. (G) Metal complex of ((substituted phenyl)azo) substituted phenol and ((aryl)azo)substituted phenol plus metal complex of ((substituted phenyl)azo)substituted phenol and ((aryl)azo)substituted phenol, inorganic salts.

Use/Import. (S) Industrial colorant for leather. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Negligible.

Environmental Release/Disposal. No release. Disposal by POTW or waste water treatment facility.

PMN 83-79

Importer. Confidential.

Chemical. (G) Metal complex of ((substituted phenyl)azo)naphthol and ((substituted naphthyl)azo)naphthol plus metal complex of ((substituted phenyl)azo)naphthol and ((substituted naphthyl)azo)naphthol, inorganic salts.

Use/Import. (S) Industrial colorant for leather. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Negligible.

Environmental Release/Disposal. No release. Disposal by POTW or waste water treatment facility.

PMN 83-80

Importer. Confidential.

Chemical. (G)

Bis(((aryl)azo)substituted phenol)metallate plus bis(((aryl)azo)substituted phenol)metallate, inorganic salts.

Use/Import. (S) Industrial colorant for leather. Import range: Confidential.

Toxicity Data. Acute oral: > 5.0 ml/kg; Irritation: Skin-Non-irritant, Eye—Slight; Bacterial inhibition LC_{50} : > 100 mg/l; Goldfish, 48 hrs. @ 20 mg/l—Non-toxic.

Exposure. Negligible.

Environmental Release/Disposal. No release. Disposal by POTW or waste water treatment facility.

PMN 83-81

Importer. Confidential.

Chemical. (G) Metal complex of ((substituted phenyl)azo)-substituted phenol and ((substituted pyrazolyl)azo)-substituted-benzenesulfonic acid, plus metal complex of ((substituted phenyl)azo)-substituted phenol and ((substituted pyrazolyl)azo)-substituted-benzenesulfonic acid, inorganic salts.

Use/Import. (S) Industrial colorant for leather. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Negligible.

Environmental Release/Disposal. No release. Disposal by POTW or waste water treatment facility.

PMN 83-82

Importer. Confidential.

Chemical. (G) Bis(((substituted pyrazolyl)azo)benzoic acid) metallate plus bis(((substituted pyrazolyl)azo)benzoic acid) metallate, inorganic salts.

Use/Import. (S) Industrial colorant for leather. Import range: Confidential.

Toxicity Data. Acute oral: > 5.0 ml/kg; Irritation: Skin—Non-irritant, Eye—Slight; Bacterial inhibition LC_{50} : > 100 mg/l; Zebra fish (brachydanio rerio), 96 hrs: Not toxic @ 100 mg/l.

Exposure. Negligible.

Environmental Release/Disposal. No release. Disposal by POTW or waste water treatment facility.

PMN 83-83

Importer. Confidential.

Chemical. (G) Bis(((substituted aryl)azo)-substituted phenol) metallate, and bis(((substituted aryl)azo)-substituted phenol) metallate, inorganic salts.

Use/Import. (S) Industrial colorant for leather. Import range: Confidential.

Toxicity Data. Acute oral: > 5.0 ml/kg; Irritation: Skin—Non-irritant, Eye—Slight; Bacterial inhibition LC_{50} : > 100 mg/l; Goldfish, 48 hrs (static test): Not toxic @ 20 mg/l.

Exposure. Negligible.

Environmental Release/Disposal. No release. Disposal by POTW or waste water treatment facility.

PMN 83-84

Importer. Confidential.

Chemical. (G) Bis(((aryl)azo)-substituted-phenol)metallate, and bis(((aryl)azo)-substituted-phenol)metallate, inorganic salts.

Use/Import. (S) Industrial colorant for leather. Import range: Confidential.

Toxicity Data. Irritation: Skin—Non-irritant, Eye—Moderate; Bacterial inhibition LC_{50} : > 100 mg/l; Zebra fish (brachydanio rerio) 96 hrs: Not toxic @ 100 mg/l.

Exposure. Negligible.

Environmental Release/Disposal. No release. Disposal by POTW or waste water treatment facility.

PMN 83-85

Importer. Confidential.

Chemical. (G) Bis(((substituted aryl)azo)-substituted phenol)metallate, and bis(((substituted aryl)azo)-substituted phenol)metallate, inorganic salts.

Use/Import. (S) Industrial colorant for leather. Import range: Confidential.

Toxicity Data. Acute oral: > 5 ml/kg; Irritation: Skin—Non-irritant, Eye—Slight; bacterial inhibition LC_{50} : > 100 mg/l; Goldfish, 48 hrs (static test): Not toxic @ 20 mg/l.

Exposure. Negligible.

Environmental Release/Disposal. No release. Disposal by POTW or waste water treatment facility.

PMN 83-86

Manufacturer. Dow Corning Corporation.

Chemical. (G) Mercaptoalkylsilane.

Use/Production. (G) Intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 1,172 mg/kg; Acute dermal: > 2,000 mg/kg;

Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Non-mutagenic.

Exposure. Manufacture: a total of 1 worker, up to 1 hr/da, up to 5 da/wk.

Environmental Release/Disposal. None.

PMN 83-87

Manufacturer. Dow Corning Corporation.

Chemical. (G) Siloxanes and silicones, dimethyl, methyl (mercapto-alkyl), trimethyl endblocked.

Use/Production. (G) Component in industrial coatings. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant; Ames Test: Non-mutagenic; LC_{50} , 48 hr.: > 100 parts per million.

Exposure. Manufacture: a total of 2 workers, up to 2 hrs/da, up to 12 da/yr.

Environmental Release-Disposal. No release. Disposal by POTW.

PMN 83-88

Manufacturer. Confidential.

Chemical. (G) Dimer fatty acids, monocarboxylic acids, and diamines polymer.

Use/Production. (S) High solids, solvent-based flexographic printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: inhalation, a total of 2 workers, up to 1 hr/da, up to 21 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water, 10-100 kg/yr to land. Disposal by biological treatment system.

PMN 83-89

Manufacturer. Confidential.

Chemical. (G) Dimer fatty acids, monocarboxylic acid, polycarboxylic acid, diamines polymer, modified with an acrylic acid copolymer.

Use/Production. (S) Water-borne flexographic printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: inhalation, a total of 2 workers, up to 1 hr/da, up to 15 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water, 10-100 kg/yr to land. Disposal by biological treatment system.

PMN 83-90

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Polymer of polysubstituted alkyl acrylates.

Use/Production. (S) Synthetic fiber finish. Prod. range: Confidential.

Toxicity Data. Acute oral: > 25,000 mg/kg; Irritation: Skin—Slight, Eye—Slight.

Exposure. Manufacture: dermal, inhalation.

Environmental Release/Disposal. 100–500 kg/yr released to land. Disposal by approved landfill.

PMN 83-91

Manufacturer. American Hoechst Corporation.

Chemical. (S) Polymer of tall oil rosin, gum rosin, paraformaldehyde, calcium hydroxide, and phenol.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted. *Exposure.* Manufacture: a total of 2 workers, up to 620 man hrs/yr.

Environmental Release/Disposal. Disposal by approved landfill.

PMN 83-92

Manufacturer. Confidential.

Chemical. (G) Reaction product of a polyhalogenated anhydride, maleic anhydride and alkylene glycols.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted. *Exposure.* Manufacture: a total of 2 workers 10 min. per batch.

Environmental Release/Disposal. No release.

PMN 83-93

Manufacturer. Confidential.

Chemical. (G) Polyester polycarboxylate salt.

Use/Production. (G) Open use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, use and disposal: dermal, a total of 6 workers, up to 2 hrs/da, up to 40 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, 6 hrs/da, 40 da/yr. Disposal by incineration.

PMN 83-94

Importer. Confidential.

Chemical. (G) Alkyl substituted salicylaldehyde.

Use/Import. Confidential. Import range: 25–100 kg/yr.

Toxicity Data. No data submitted. *Exposure.* Inhalation, a total of 2 workers, up to < 1 hr/da, up to < 20 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air.

PMN 83-95

Manufacturer. Confidential.

Chemical. (G) Trisubstituted benzothiazole salt.

Use/Production. (G) Minor constituent in an article. Prod. range: 3–10 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, inhalation.

Environmental Release/Disposal.

Minimal release to air and water. Disposal by biological treatment system.

PMN 83-96

Importer. Confidential.

Chemical. (G) ((Substituted phenyl)azo)benzenesulfonic acid, aminium salt.

Use/Import. (S) Colorant for paper. Import range: Confidential.

Toxicity Data. Acute oral: > 5.0 ml/kg; Irritation: Skin—Slight, Eye—Non-irritant; Bacterial inhibition LC_{50} : > 100 mg/1; Goldfish, 48 hrs. @ 10 mg/1—Not toxic.

Exposure. Minimal.

Environmental Release/Disposal. No release.

PMN 83-97

Manufacturer. BF Goodrich Company.

Chemical. (G) Thermoplastic polyurethane resin.

Use/Production. (S) Binder for magnetic recording tape, extruded and injection molded products. Prod. range: 68,000–375,000 kg/yr.

Toxicity Data. No data submitted on the PMN substance.

Exposure. Manufacture: dermal, inhalation and eye, a total of 67 workers, up to 7 hrs/da, up to 35 da/yr.

Environmental Release/Disposal. No release to air and water. Disposal by incineration and landfill.

PMN 83-98

Importer. Dragoco, Inc.

Chemical. (G) N-(trimethyl carbomonocycle) isopentanol.

Use/Import. (S) Fragrance mixtures, soaps, detergents, room freshener.

Import range: 300–1,000 kg/yr.

Toxicity Data. Acute oral: > 20.0 ml/kg; Irritation: Eye—Non-irritant; Skin sensitization: Non-sensitive.

Exposure. Processing: inhalation, a total of 5 workers, up to .08 hr/da, up to 5 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air.

Disposal by incineration.

PMN 83-99

Manufacturer. Confidential.

Chemical. (G) Sulfonated phenol formaldehyde condensation polymer.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 205 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 83-100

Manufacturer. Confidential.

Chemical. (G) Copolymer of styrene with substituted alkanolic derivatives.

Use/Production. (G) Open use. Prod. range: 60–240,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and eye, a total of 177 workers, up to 6 hrs/da, up to 52 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water, 10–1000 kg/yr to land. Disposal by incineration and approved landfill.

Dated: November 5, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-31217 Filed 11-18-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51440]

Certain Chemicals; Premanufacture Notices—BH-FRL-2248-2

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the Federal Register of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of twenty-three PMNs and provides a summary of each.

DATES: Close of Review Period.

PMN 83-101: February 2, 1983.

PMN 83-102, 83-103, 83-104, 83-105, 83-106, 83-107, 83-108, and 83-109:

February 5, 1983.

PMN 83-110, 83-111, 83-112, 83-113, 83-114 83-115, 83-116, 83-117, 83-118, and 83-119: February 6, 1983.

PMN 83-120, 83-121, 83-122, and 83-123: February 7, 1983.

Written comments by:

PMN 83-101: January 3, 1983.

PMN 83-102, 83-103, 83-104, 83-105, 83-106, 83-107, 83-108, and 83-109:

January 6, 1983.

PMN 83-110, 83-111, 83-112, 83-113, 83-114 83-115, 83-116, 83-117, 83-118, and 83-119: January 7, 1983.

PMN 83-120, 83-121, 83-122, and 83-123:

January 8, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-51440]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

PMN 83-101

Importer. Confidential.

Chemical. (G) Polymer of diphenylmethane diisocyanate, hydroxy alkyl ethers, and substituted alkanediols.

Use/Import. (S) Thermoplastic polyurethane elastomer. Import range: 9,000-318,000 kg/yr.

Toxicity Data. Acute oral: > 5 g/kg.

Exposure. None.

Environmental Release/Disposal. No release.

PMN 83-102

Manufacturer. Reliance Universal, Incorporated.

Chemical. (G) Polyacrylate.

Use/Production. (G) Open use. Prod. range: 6,000-200,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, a total of 9 workers, up to 8 hrs/da, up to 260 da/yr.

Environmental Release/Disposal. No release. Disposal by approved landfill.

PMN 83-103

Manufacturer. Lowell Cummings.

Chemical. (G) Polyamine urea formaldehyde condensate.

Use/Production. (S) Epoxy curing agent. Prod. range: 200,000-600,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 4 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. No release.

PMN 83-104

Manufacturer. Lowell Cummings.

Chemical. (G) Polyamine urea formaldehyde condensate.

Use/Production. (S) Epoxy curing agent. Prod. range: 200,000-600,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 4 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. No release.

PMN 83-105

Importer. American Hoechst Corporation.

Chemical. (S) 1,2-benzenediamine, 4-ethoxy, sulfate (1:1).

Use/Import. (S) Dye intermediate. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 3 workers, up to 70 hrs/yr.

Environmental Release/Disposal. No release. Disposal by biological treatment system.

PMN 83-106

Manufacturer. Ashland Chemical Company.

Chemical. (G) Polymer of aliphatic and aromatic diacids and an aliphatic diol.

Use/Production. (S) Used in a cured, cross-linked coating for commercial articles. Prod. range: 30,000-335,000 lbs/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: an unknown number of workers.

Environmental Release/Disposal. Minimal release. Disposal by incineration and landfill.

PMN 83-107

Manufacturer. Confidential.

Chemical. (G) Modified polyester from carbomonocyclic anhydrides, an alkanediol and an alkanedioic acid.

Use/Production. (G) Open use. Prod. range: 0-18,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, inhalation and eye, a total of 69 workers, up to 6 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr air and water with 10-10,000 kg/yr to land. Disposal by incineration.

PMN 83-108

Manufacturer. Confidential.

Chemical. (G) Polymer of fatty acids with a substituted alkanic acid, carbomonocyclic acids, polyols and a carbomonocyclic anhydride.

Use/Production. (G) Destructive use. Prod. range: 35,000-420,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and eye, a total of 162 workers, up to 6 hrs/da, up to 45 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr to air and water with 10-1,000 kg/yr to land. Disposal by incineration, landfill or sold as fuel.

PMN 83-109

Manufacturer. Confidential.

Chemical. (G) substituted alkyl methacrylate.

Use/Production. (G) Dispersive use. Prod. range: 1,000-30,000 kg/yr.

Toxicity Data. Acute oral: > 2.0 ml/kg; Acute dermal: > 2.0 ml/kg; Irritation: Skin—Irritant, Eye—Non-irritant; Inhalation: Lt₅₀-2.7; Skin sensitization: Sensory irritant.

Exposure. Manufacture and processing: dermal and eye, a total of 192 workers, up to 6 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr release to air and water with 100-1,000 kg/yr to land. Disposal by incineration and landfill.

PMN 83-110

Manufacturer. Confidential.

Chemical. (G) Saturated acid diester. *Use/Production.* Confidential. Prod. range: Confidential.

Toxicity Data. Acute oral: > 10,000 mg/kg; Acute dermal: > 1,930 mg/kg; Irritation: Skin—2.6/8/0, Eye—0.0/110.0; Ames Test: Negative; Skin sensitization: Negative.

Exposure. Manufacture, processing, use and disposal: dermal, and eye.

Environmental Release/Disposal. Less than 10 kg/yr released to air with 10-100 kg/yr to land. Disposal by biological treatment system, incineration and approved landfill.

PMN 83-111

Manufacturer. Confidential.

Chemical. (G) Aromatic acid diester.

Use/Production. (G) Industrial intermediate. Prod. range: confidential.

Toxicity Data. Acute oral: > 10,000 mg/kg; Acute dermal: > 2,100 mg/kg; Irritation: Skin—1.9/8.0, Eye—0.0/110.0; Ames Test: Negative; Skin sensitization: Weak sensitizer.

Exposure. Manufacture, processing, use and disposal: dermal, and eye.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10-100 kg/yr land. Disposal by biological treatment system, incineration and approved landfill.

PMN 83-112

Importer. American Hoechst Corporation.

Chemical. (G) Hydroxy naphthalenedisulfonic acid, disodium salt, ((2-((sodium sulfoxyethyl)sulfonyl)phenyl)azo, and dichlorotriazinylamino substituted.

Use/Import. (S) Dye for cellulosic fibers. Import range: Confidential.

Toxicity Data. Acute oral: 2,850 mg/kg; Ames Test: Non-mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by publicly owned treatment works (POTW).

PMN 83-113

Importer. Confidential.

Chemical. (G) Benzenesulfonic acid, 4-(4-((4-substituted 2-sulphophenyl)azo) 3-carboxy-5-hydroxy-1H-pyrazol-1-yl)-, x. sodium salt.

Use/Import. (S) Dye for cellulosic fibers. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Non-mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by POTW.

PMN 83-114

Importer. Confidential.

Chemical. (G) Naphthalenedisulfonic acid, disodium salt, ((2-((sodium sulfoxyethyl)sulfonyl)aryl)azo, and monochlorotriazinylamino, substituted, = copper complex.

Use/Import. (S) Dye for cellulosic fibers. Import range: Confidential.

Toxicity Data. Acute oral: >500 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Non-mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by incineration and approved landfill.

PMN 83-115

Importer. Confidential.

Chemical. (G) Naphthalenedisulfonic acid, disodium salt, ((2-((sodium sulfoxyethyl)sulfonyl)aryl)azo, and monochlorotriazinyl amino, substituted, copper complex.

Use/Import. (S) Fiber reactive dye. Import Range: Confidential.

Toxicity Data. Acute oral: >5.0 gm/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Non-mutagenic.

Exposure. Dermal, a total of 12 workers, up to 40 man-hrs/yr.

Environmental Release/Disposal. Disposal by POTW and biological treatment system.

PMN 83-116

Importer. Confidential.

Chemical. (G) Ethanol, 2-arylsulfonyl, hydrogen sulfate ester.

Use/Import. (S) Site-limited

intermediate. Import range: Confidential.

Toxicity Data. Acute oral: >5.0 gm/kg; Irritation: Skin—Non-irritant, Eye—Mild; Ames Test: Non-mutagenic.

Exposure. Dermal, a total of 3 workers, up to 45 man-hrs/yr.

Environmental Release/Disposal. Disposal by biological treatment system.

PMN 83-117

Manufacturer. Werner G. Smith, Inc.

Chemical. (S) Oxo alcohols (high boilers)-neopentyl glycol adipate ester.

Use/Production. (S) Industrial metal working lubricant additive. Prod. range: 40,000 kg/yr (min).

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 8 workers, up to 24 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land. Disposal by POTW.

PMN 83-118

Manufacturer. Celanese Specialty Resins Company.

Chemical. (G) Polymeric polyamidoamine.

Use/Production. (S) Industrial coating. Prod. range: 0-300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 8 workers, up to 8 hrs/da, up to 80 da/yr.

Environmental Release/Disposal. 1,000-10,000 kg/yr released to water with 100-10,000 kg/yr to land. Disposal by POTW and landfill.

PMN 83-119

Manufacturer. Confidential.

Chemical. (G) Polyester from a carbomonocyclic anhydride and substituted alkanediols.

Use/Production. (G) Open use. Prod. range: 0-8,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, inhalation and eye, a total of 49 workers, up to 6 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr to released to air and water with 100-10,000 kg/yr to land. Disposal by incineration.

PMN 83-120

Manufacturer. Martin Marietta Corporation.

Chemical. (G) Reaction product of isomeric mixture of dioxocarbopolycyclic amine with sulfur.

Use/Production. (S) Industrial textile dye. Prod. range: 1,350-6,800 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing, use and disposal: dermal, a total of 23 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal.

Less than 10 kg/yr released to air with 10-100 kg/yr to water and land. Disposal by approved landfill and wastewater treatment.

PMN 83-121

Importer. American Hoechst Corporation.

Chemical. (S) Polymer of: diethyleneglycol, polyethyleneglycol, dimethylterephthalate, isophthalic acid, 5-sulfiosophthalic acid, dimethyl ester sodium salt.

Use/Import. (S) Dye levelling agent. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; Bacteria toxicity: >1,000 mg/l; Fish toxicity: 100 mg/l; COD: 520 mg/O₂/g.

Exposure. Processing: dermal, a total of 30 workers, up to 240 man-hrs/yr.

Environmental Release/Disposal. Disposal by POTW.

PMN 83-122

Manufacturer. Confidential.

Chemical. (G) Organic sulfur compound.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. Acute oral: Males-199 mg/kg, females-149 mg/kg; Acute dermal: >2 g/kg; Irritation: Skin—None, Eye—irritant.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 83-123

Manufacturer. Confidential.

Chemical. (S) Poly[oxy(methyl-1, 2-ethanediyl)], . . . "-1,2,3-propanetriylris-[-hydroxy-, polymer with -hydro-hydroxypoly[oxy-(methyl-1,2-ethanediyl)] and 1,1-methylenebis[4-isocyanato-benzene].

Use/Production. (G) Open use. Prod. range: 100-6,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing, use and disposal: a total of 35 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 10-100 kg/yr released to water. Disposal by incineration and approved landfill.

Dated: November 12, 1982.

Woodson W. Bercaw,
Acting Director, Management Support
Division.

[FR Doc. 82-31568 Filed 11-18-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59108; TSH-FRL No. 2248-3]

S-Benzyl-N-Methylidithiocarbamate; Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the *Federal Register* of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by December 6, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-59108]" and the specific TME number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-401, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Dull, Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

TME 83-9

Close of Review Period. December 22, 1982.

Manufacturer. Phillips Petroleum Company.

Chemical. (S) S-benzyl-N-methylidithiocarbamate.

Use/Production. (G) Component of an industrial product. Prod. range: 12 mos.—1000 lbs.

Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation, a total of 2 workers, up to 4 hrs; processing—a total of 1 worker up to 7 hrs.
Environmental Release/Disposal. No data submitted.

Dated: November 12, 1982.

Woodson W. Bercaw,
Acting Director, Management Support Division.

[FR Doc. 82-31569 Filed 11-18-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY**Senior Executive Service Performance Review Board; Members**

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Listing names of the members of the Senior Executive Service Performance Review Board.

DATE: November 10, 1982.

FOR FURTHER INFORMATION CONTACT: Joan McDonald, Director of Personnel, 500 C Street, SW., Washington, DC 20472, (202) 287-0440.

The names of the members of the FEMA Senior Executive Service Performance Review Board established pursuant to 5 U.S.C. 4314(c) are:
Members: Joseph A. Moreland, Robert C. Goffus, James L. Holton, Paul K. Krueger, Gerald S. Martin.

Alternates: John E. Leo, Jack W. McGraw, David M. Sparks, Richard R. Strother.

Dated: November 14, 1982.

George Jett,
General Counsel.

[FR Doc. 82-31713 Filed 11-18-82; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-200]

Bell Savings Association, Belton, Tex.; Final Action

Notice is hereby given that on October 26, 1982, the General Counsel of the Federal Home Loan Bank Board, ("Board"), acting pursuant to authority delegated to him by the Board, approved a Post-Approval Amendment to the mutual-to-stock conversion application of Bell Savings Association, Belton, Texas ("Association"). The application had been approved by the Board by Resolution No. 80-580, dated September 5, 1980. Copies of the application and all amendments thereto are available for inspection at the Secretariat of the

Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent, Federal Home Loan Bank of Little Rock, 1400 Tower Building, Little Rock, Arkansas 72201.

Dated: November 4, 1982.

J. J. Finn,
Secretary.

[FR Doc. 82-31795 Filed 11-18-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-203]

First Federal Savings & Loan Association of LaFollette, Tenn.; Final Action

Notice is hereby given that on October 29, 1982, the General Counsel of the Federal Home Loan Bank Board ("Board") acting pursuant to authority delegated to him by the Board, approved Post-Approval Amendment No. 1 to the mutual-to-stock conversion application of First Federal Savings and Loan Association of LaFollette, LaFollette, Tennessee ("Association"). The application had been approved by the Board by Resolution No. 82-55, January 28, 1982. Copies of the application and all amendments thereto are available for inspection at the Secretariat of the Board, 1700 G Street, N.W., Washington, D.C. 20552, and at the Office of the Supervisory Agent, Federal Home Loan Bank of Cincinnati, 2500 DuBois Tower, Cincinnati, Ohio 45201.

Dated: November 4, 1982.

J. J. Finn,
Secretary.

[FR Doc. 82-31797 Filed 11-18-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-202]

First Modern Savings & Loan Association, Greenville, Tex.; Final Action

Notice is hereby given that on October 29, 1982, the General Counsel of the Federal Home Loan Bank Board ("Board"), acting pursuant to authority delegated to him by the Board, approved a Post-Approval Amendment to the mutual-to-stock conversion application of First Modern Savings and Loan Association, Greenville, Texas ("Association"), and an amendment to Board Resolution No. 80-437, dated July 9, 1980, pursuant to which the Board approved the mutual-to-stock conversion application of the Association. Copies of the application and all amendments thereto are available for inspection at the Secretariat of the Board, 1700 G Street,

N.W., Washington, D.C. 20552, and at the Office of the Supervisory Agent, Federal Home Loan Bank of Little Rock, 1400 Tower Building, Little Rock, Arkansas 72201.

Dated: November 4, 1982.

J. J. Finn,
Secretary.

[FR Doc. 82-31798 Filed 11-18-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-2011]

Resource Savings Association Denison, Tex.; Final Action

Notice is hereby given that on October 26, 1982, the General Counsel of the Federal Home Loan Bank Board ("Board"), acting pursuant to authority delegated to him by the Board, approved a Post-Approval Amendment to the mutual-to-stock conversion application of Resource Savings Association, Denison, Texas ("Association"). The application had been approved by the Board by Resolution No. 80-518, dated August 15, 1980. Copies of the application and all amendments thereto are available for inspection at the Secretariat of the Board, 1700 G Street, N.W., Washington, D.C. 20552, and at the Office of the Supervisory Agent, Federal Home Loan Bank of Little Rock, 1400 Tower Building, Little Rock, Arkansas 72201.

Dated: November 4, 1982.

J. J. Finn,
Secretary.

[FR Doc. 82-31796 Filed 11-18-82; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

November 15, 1982.

Background: When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on

proposed reporting requirements until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

List of Forms Under Review: Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the Federal Register. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appears below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

For further information contact:
Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Reviewer—Richard Sheppard—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for Extension Without Revision

1. Report title: Country Exposure Report
Agency form number: FFIEC 009
Frequency: Semiannual
Reporters: Member banks and bank holding companies
SIC Code: 602 pt, 671 pt.
Small businesses are not affected.
General description of report:

Respondent's obligation to reply is mandatory (12 U.S.C. 248(a) and 1844(c)); a pledge of confidentiality is promised (5 U.S.C. 552(b)(8)).

This report collects information on international claims of U.S. bank holding companies for supervisory and analytical purposes. This information is also used to analyze the country exposure of banks in order to determine the degree of risk in their portfolios and the possible impact on U.S. banks of any adverse developments in particular countries.

Request for Extension With Revision

1. Report title: Survey of Selected Transaction Accounts
Agency form number: FR 2071a
Frequency: Quarterly
Reporters: Sample of insured commercial banks that offer ATS and NOW accounts
SIC Code: 602

Small businesses are affected.

General description of report:

Respondent's obligation to reply is voluntary; a pledge of confidentiality is promised (5 U.S.C. (b)(4) and (b)(8)).

This report provides information about NOW and ATS accounts that is essential for monitoring their expansion. Such information is critical to interpreting shifts in, and setting growth targets for, the monetary aggregates.

Request for Extension Without Revision

2. Report title: Application(s) for approval to become a bank holding company and if applicable for prior approval of nonbanking acquisition/retention

Agency form number: FR Y-1, FR Y-1f

Frequency: On occasion

Reporters: Corporations, partnerships, and certain trusts and associations seeking to become bank holding companies by acquisition of one or more banks

SIC Code: 671

Small businesses are affected.

General description of report:

Respondent's obligation to reply is required to obtain or retain benefit; a pledge of confidentiality is not made.

Application form that presents financial/managerial, competitive, and convenience and needs/public benefits considerations related to a proposal to form a bank holding company. Also contains details of the proposed transaction. Information is used in the determination as to whether the proposal should be approved under relevant statutory standards. If applicable, also covers proposal to engage in nonbanking activities.

3. Report title: Application for prior approval of the acquisition of bank shares by a bank holding company

Agency form number: FR Y-2

Frequency: On occasion

Reporters: Bank holding companies

SIC Code: 671

Small businesses are affected.

General description of report:

Respondent's obligation to reply is required to obtain or retain benefits; a pledge of confidentiality is not made.

Application form that presents financial/managerial, competitive, and

convenience and needs considerations related to a proposal by a bank holding company to acquire additional bank(s). Also contains details of the proposed transaction. Information is used in the determination as to whether the proposal should be approved under relevant statutory standards. Form is also used for acquisition of a bank holding company or the retention of a bank.

4. Report title: Application for approval of acquisition/retention of nonbanking activity by a bank holding company

Agency form number: FR Y-4

Frequency: On occasion

Reporters: Bank holding companies

SIC Code: 671

Small businesses are affected.

General description of report:

Respondent's obligation to reply is required to obtain or retain benefit; a pledge of confidentiality is not made.

Application form that presents financial/managerial, competitive, and public benefits considerations related to a proposal by a bank holding company to acquire or retain nonbanking activities. Also contains details of the proposed transaction. Information is used in the determination as to whether the proposal should be approved under relevant statutory standards.

Board of Governors of the Federal Reserve System, November 15, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-31766 Filed 11-18-82; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

November 15, 1982.

Background: When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 35]. Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register, but occasionally

the public interest requires more rapid action.

List of Forms Under Review: Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the Federal Register. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appears below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

For Further Information Contact: Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Reviewer—Richard Sheppard—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for Extension With Revision

1. Report title: Domestic Finance Company Reports of Assets and Liabilities Agency form number: FR 2248, 2248a

Frequency: Monthly

Reporters: Consumer and business finance companies

SIC Code: 614, 615

Small businesses are affected.

General description of report:

Respondent's obligation to respond is voluntary (12 U.S.C. § 248(a) and § 248(i); a pledge of confidentiality is promised (5 U.S.C. 552(b)(4) and (b)(8)).

These reports collect information on major categories of consumer and business credit extended and held by finance companies and on major short-term liabilities outstanding. They are used by the Federal Reserve to analyze the possible strengths and weaknesses of demands for, as well as the availability of credit. In addition, these

data are used for monetary policy purposes.

Board of Governors of the Federal Reserve System, November 15, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-31767 Filed 11-18-82; 8:45 am]

BILLING CODE 6210-01-M

Bancshares of Camden, Inc., et al.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. 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 may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. Federal Reserve Bank of St. Louis (Delmar P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bancshares of Camden, Inc.*, Camden, Tennessee; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Camden, Camden, Tennessee. Comments on this application must be received not later than December 8, 1982.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Athena Bancshares Corporation*, Pampa, Texas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Pampa Bancshares, Inc., Pampa, Texas, and thus to directly control Citizens Bank and Trust Company, Pampa, Texas. Comments on this application must be received not later than December 10, 1982.

2. *Brownsville Bancshares, Inc.*, Brownsville, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Brownsville National Bank, Brownsville,

Texas. Comments on this application must be received not later than December 10, 1982.

3. *Kermit State Bancshares, Inc.*, Kermit, Texas; to become a bank holding company by acquiring 81.75 percent of the voting shares of Kermit State Bank, Kermit, Texas. Comments on this application must be received not later than December 10, 1982.

C. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Lakeside Bancshares, Inc.*, Rockwall, Texas; to become a bank holding company by acquiring 80 percent or more of the voting shares of Lakeside National Bank, Rockwall, Texas. This application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of Dallas. Comments on this application must be received not later than December 10, 1982.

Board of Governors of the Federal Reserve System, November 15, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-31764 Filed 11-18-82; 8:45 am]

BILLING CODE 6210-01-M

Citizens Bancorporation, Inc., et al.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. 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 may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Citizens Bancorporation, Inc.*, Plaquemine, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank & Trust Co., Plaquemine,

Louisiana. Comments on this application must be received not later than December 13, 1982.

2. *Hancock Bancorp, Inc.*, Sneedville, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens Bank of Sneedville, Sneedville, Tennessee. Comments on this application must be received not later than December 13, 1982.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Donnelly Bancshares, Inc.*, Donnelly, Minnesota; to become a bank holding company by acquiring 91.9 percent of the voting shares of Farmers and Merchants State Bank of Donnelly, Donnelly, Minnesota. Comments on this application must be received not later than December 13, 1982.

2. *Vernon Center Bancshares, Inc.*, Vernon Center, Minnesota; to become a bank holding company by acquiring 89.6 percent of the voting shares of state Bank of Vernon Center, Vernon Center, Minnesota. Comments on this application must be received not later than December 13, 1982.

Board of Governors of the Federal Reserve System, November 15, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-31766 Filed 11-18-82; 8:45 am]

BILLING CODE 6210-01-M

First State Agency of Stewart, Inc.; Formation of Bank Holding Company

First State Agency of Stewart, Inc., Stewart, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 89.2 percent or more of the voting shares of The First Bank of Minnesota, Stewart, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

First State Agency of Stewart, Inc., Stewart, Minnesota, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage directly in general insurance activities in a town of less than 5,000 population. These activities would be performed from offices of Applicant in Stewart, Minnesota, and the geographic area to be served is Stewart, Minnesota, and the surrounding local community. Such activities have been specified by

the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than December 10, 1982.

Board of Governors of the Federal Reserve System, November 15, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-31765 Filed 11-18-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82D-0281]

Guidelines for Reinstating the Eligibility of Clinical Investigators To Receive Investigational Articles; Availability

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of guidelines entitled, "Procedures for Reinstating the Eligibility of Disqualified Clinical Investigators to Receive Investigational Articles." The guidelines describe the procedure that will be followed by FDA whenever a clinical investigator who has been disqualified for violations of FDA regulations seeks to have the

agency restore his or her eligibility to receive investigational articles.

ADDRESSES: The guidelines are available for public examination at, and written comments may be submitted to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. A single copy of the guidelines may be obtained from the Associate Commissioner for Health Affairs (HFY-1) Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James A. Weixel, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: Under FDA's regulations governing investigational use of human and veterinary new drugs and investigational intraocular lenses (21 CFR Parts 312, 511, and 813), a clinical investigator who has been determined to be ineligible to receive investigational articles may be reinstated as eligible provided the Commissioner of Food and Drugs determines that the investigator has presented adequate assurance that he or she will employ such articles solely in compliance with the exemption regulations for investigational use articles.

The agency has developed guidelines that it will use to process and evaluate requests from disqualified clinical investigators who wish to be so reinstated. The guidelines, "Procedures for Reinstating the Eligibility of Disqualified Clinical Investigators to Receive Investigational Articles," are intended to provide disqualified investigators with sufficient information to determine what will be required of them and how to begin the process of requesting reinstatement.

A copy of the guidelines is available for public examination between 9 a.m. and 4 p.m., Monday through Friday, in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above). Written request for single copies of the guidelines may be sent to the Associate Commissioner for Health Affairs (HFY-1), Food and Drug Administration (address above).

Interested persons may submit written comments on the guidelines to the Dockets Management Branch (address above). Comments will be considered in determining whether future amendments to, or revisions of, the guidelines are warranted. At some time in the future, FDA may decide to incorporate the guidelines in appropriate parts of 21 CFR. Comments should be in two copies, except that individuals may

submit single copies identified with the docket number found in brackets in the heading of this document. Received comments will be incorporated into the public file on the guidelines and may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 10, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 82-31711 Filed 11-18-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82M-0345]

**Orange Medical Instruments, Inc.;
Premarket Approval of Conjunctival
Oxygen Monitor**

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Conjunctival Oxygen Monitor sponsored by Orange Medical Instruments, Inc., Costa Mesa, CA. After reviewing the recommendation of the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use on patients over the age of 12 years as recommended in the submitted labeling.

DATE: Petitions for administrative review by December 20, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On April 16, 1982, Orange Medical Instruments, Inc., Costa Mesa, CA, submitted to FDA an application for premarket approval of the Conjunctival Oxygen Monitor, a monitor for measuring oxygen tension at the palpebral conjunctiva (the membrane that lines the eyelids) of the right eye of patients over 12 years of age. The application was reviewed by the Anesthesiology Device Section of the Respiratory and Nervous System

Devices Panel, an FDA advisory committee, which recommended approval of the application. On October 27, 1982, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices. Contact Charles H. Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioner may, at any time on or before December 20, 1982, file with the Dockets Management Branch (address above) four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be

seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 15, 1982.

William F. Randolph,
*Acting Associate Commissioner for
Regulatory Affairs.*

[FR Doc. 82-31710 Filed 11-18-82; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 82M-0340]

**Premarket Approval of Bausch & Lomb
Optics Center's Bausch & Lomb®
Sensitive Eyes™ Saline Solution**

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing approval of the application for premarket approval under the Medical Device amendments of 1976 of the Bausch & Lomb® Sensitive Eyes™ Saline Solution sponsored by Bausch & Lomb Optics Center, Rochester, NY. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic, Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by December 20, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On July 30, 1981, Bausch & Lomb Optics Center, Rochester, NY, submitted to FDA an application for premarket approval of the Bausch & Lomb® Sensitive Eyes™ Saline Solution for use in the rinsing, heat disinfection, and storage of all soft (hydrophilic) contact lenses. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic, Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On October 28, 1982, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-925, 90 Stat. 539-583), soft contact lens solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft contact lens solutions are now regulated as Class III devices (premarket approval). As FDA explained in a notice published in the Federal Register of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for Class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310) until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approval final labeling is available for public inspection at the Office of Medical Devices. Contact Charles Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of the Bausch & Lomb™ Sensitive Eyes™ Saline Solution states that the solution is designed for use in the rinsing, heat disinfecting and storage of all soft (hydrophilic) contact lenses. Sponsors of any soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever FDA publishes a notice in the Federal Register of the agency's approval of a new solution for use with an approved soft contact lens, the sponsor of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as FDA prescribes by letter to the sponsor. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update the restrictive labeling to refer to new solutions that may be used with an

approved lens may be grounds for withdrawing approval of the application for the lens, under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)).

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time or on before December 20, 1982, file with the Dockets Management Branch (address above) four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 10, 1982.

William F. Randolph,
*Acting Associate Commissioner for
Regulatory Affairs.*

[FR Doc. 82-31712 Filed 11-18-82; 8:45 am]
BILLING CODE 4160-01-M

National Institutes of Health

**National Eye Institute; Board of
Scientific Counselors; Meeting**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, December 6 and 7, 1982, Building 31, Room 6A-35, National

Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on December 6 from 8:30 a.m. until approximately 4:00 p.m. for general remarks by the Institute's Scientific Director on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 6 from approximately 4:00 p.m. until adjournment on December 7 for review, discussion, and evaluation of individual projects conducted by the Section of Cataract Research of the Laboratory of Vision Research, NEI. This evaluation and discussion could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Mary Carter, Committee Management Officer, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20205 (301) 496-4903, will provide summaries of the meeting and rosters of committee members.

Substantive program information may be obtained from Dr. Jin Kinoshita, Scientific Director, National Eye Institute, Building 31, Room 6A04, National Institutes of Health, Bethesda, Maryland 20205 (telephone (301) 496-7483).

Dated: November 5, 1982.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 82-31769 Filed 11-18-82; 8:45 am]

BILLING CODE 4140-01-M

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages 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 are those packages submitted to OMB since the list was last published.

Public Health Service Centers for Disease Control

Subject: Evaluation of Acute Pharyngitis—NEW.

Respondents: Physicians.

OMB Desk Officer: Richard Eisinger.

Social Security Administration

Subject: Establishment Reporting Plan/Registration and Classification of Multi-establishment Employers (SSA-5019)—REVISION.

Respondents: Businesses or other institutions.

OMB Desk Officer: Milo Sunderhauf.

Health Care Financing Administration

Subject: Home Health Agency Referral and Treatment Plan (HCFA-2043)—EXTENSION/NO CHANGES.

Respondents: Participating home health agencies and physicians.

Subject: Alcoholism Services Demonstration Statement of Reimbursable Costs—NEW.

Respondents: Participating alcoholism treatment centers.

Subject: Organ Procurement Agency and Histocompatibility Laboratory Cost Report (HCFA-216)—REVISION.

Respondents: Participating agencies and laboratories.

Subject: Financial Statement of a Debtor (HCFA-379)—NEW.

Respondents: Physicians, medical service providers and medical equipment suppliers.

Subject: Telephone Surveys of Medicare Part B Providers and Beneficiaries (HCFA-343)—EXTENSION/NO CHANGES.

Respondents: Sample of Medicare Part B providers and beneficiaries.

Subject: Statistical Report on Medical Care: Recipients, Services and Payments (HCFA-2082)—EXTENSION/NO CHANGES.

Respondents: State Medicaid agencies.

Subject: Paperwork Requirements Associated with Departmental Clinical Laboratory Certification Surveys (HCFA-R9)—EXTENSION/NO CHANGE.

Respondents: Participating clinical laboratories.

OMB Desk Officer: Fay S. Iudicello.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses:

J. J. Strnad, HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524-F, Washington, D.C. 20201.
OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503.
ATTN: (Name of OMB Desk Officer.)

Dated: November 12, 1982.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 82-31869 Filed 11-18-82; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Consultation Meetings; Proposed Closure of Concho and Wahpeton Boarding Schools

November 12, 1982.

The Bureau of Indian Affairs has proposed the closure of Concho Boarding School in Concho, Oklahoma and Wahpeton Boarding School in Wahpeton, North Dakota at the end of the 1982-83 school year. Notice is hereby given that consultation meetings on the proposed closures will be held for the purpose of hearing comments from tribal representatives, school boards, parents and other interested parties.

Dates and locations for the consultation meetings with the Concho School Board and the Wahpeton School Board are as follows:

Concho School Board—Concho School in Concho, Oklahoma; December 6, 1982 at 9:00 A.M.

Wahpeton School Board—Holiday Inn, East 6th Avenue in Aberdeen, South Dakota; December 9, 1982 at 9:00 A.M.

Dates and locations for the open consultation meetings with parents, tribal representatives, community leaders and other interested parties are as follows:

Concho—Holiday Inn West, 801 South Meridian in Oklahoma City, Oklahoma; December 7, 1982 at 9:00 A.M.

Wahpeton—Holiday Inn, East 6th Avenue in Aberdeen, South Dakota; December 10, 1982 at 9:00 A.M.

The following persons should be contacted for the exact locations and for additional information:

Luke Toyebo (Concho); Anadarko, Oklahoma; 405-247-6673.

Harry Eagle Bull (Wahpeton); Aberdeen, South Dakota; 605-225-0250.

Jim Martin (General Information); Washington, D.C.; 202-343-4234.

Interested persons may present oral comments or file written statements. All written statements must be received no

later than January 10, 1983 in the Office of Indian Education Programs, 18th and C Streets, N.W., Washington, D.C. 20240, Attention: Acting Director, Dr. Jerry Jaeger, Code 500.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 82-31789 Filed 11-18-82; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Battle Mountain District, Nev.; Shoshone-Eureka Resource Area; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Intent to Prepare Alternatives for a Resource Management Plan (RMP).

SUMMARY: Pursuant to the Federal Land Policy and Management Act of 1976 and the Code of Federal Regulations, Title 43, § 1601.3, the Battle Mountain District hereby gives notice of its Intent to develop alternatives for an RMP that will address issues pertaining to the management of the Shoshone-Eureka Resource Resource Area.

The Shoshone-Eureka Resource Area is located in Lander, Eureka, and Nye Counties in central Nevada. Members of the public wishing to comment upon these alternatives should submit statements by January 10, 1983, Planning documents and other related materials may be examined at the Battle Mountain District Office, 2nd and Scott Streets, Battle Mountain, Nevada, between 7:30 a.m. and 4:30 p.m.

Management Issues: The plan will address the following five issues:

1. Which wilderness study areas or portions of wilderness study areas, if any, are suitable for recommendation to Congress for wilderness designation?
2. What land tenure adjustments are needed?
3. What areas are suitable for utility and transportation corridors?
4. What areas should be identified for the management of woodland products such as firewood, pine nuts, Christmas trees, and fenceposts?
5. How should the resource area be managed for livestock use, wild horse use, and wildlife habitat?

Alternatives: The RMP will be a comprehensive land use plan that identifies objectives for management of the public lands and a set of management actions to resolve the five issues. Four potential management

alternatives have been developed. The actual plan chosen may be one of the alternatives or a combination of several of the alternatives. While each alternative is multiple-use oriented, the approach used to resolve the issues differs significantly. The Resource Protection Alternative focuses upon enhancement and protection of sensitive natural resource values such as wildlife habitat and wilderness. The Mid-Range Alternative is designed to provide a wide variety of goods and services to the public within the sustained use capabilities of the public lands. The Resource Production Alternative is oriented towards meeting human demands by managing for the production of commercial resource values while complying with environmental protection requirements. Under the No Action Alternative, present resource management uses would be continued.

DATES AND ADDRESSES: Meetings will be in the form of open houses with the intent of providing information to the public concerning management issues and proposed alternatives for the Shoshone-Eureka Resource Area RMP. Open houses are listed as follows:

1. December 7, 1982, 1:00 to 4:00 p.m. and 7:00 to 9:00 p.m., Battle Mountain District Office, 2nd and Scott Streets, Battle Mountain, Nevada.

2. December 8, 1982, 1:00 to 4:00 p.m. and 7:00 to 9:00 p.m., Library Room, Firehouse, Eureka, Nevada.

3. December 9, 1982, 7:00 to 9:00 p.m., Pioneer Inn, 221 South Virginia Street, Reno, Nevada.

CONTACT FOR FURTHER INFORMATION AND COMMENTS: Neil D. Talbot, Area Manager, Shoshone-Eureka Resource Area, P.O. Box 194, 2nd and Scott Streets, Battle Mountain, Nevada 89820 or Telephone (702) 635-5181.

Dated: November 12, 1982.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 82-31785 Filed 11-18-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil Shale Land Classification Order Wyoming No. 1

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of classification of oil shale land in Wyoming.

SUMMARY: By Executive Order 5327, April 15, 1930, lands containing oil shale deposits owned by the United States were withdrawn from lease or other disposal and reserved for investigation,

examination, and classification. Accordingly, this order classified lands described in Wyoming prospectively valuable oil shale lands.

FOR FURTHER INFORMATION CONTACT: Deputy Minerals Manager for Resource Evaluation, North Central Region, Minerals Management Service, P.O. Box 2373, Casper, Wyoming 82602, telephone (307) 261-5421.

SUPPLEMENTARY INFORMATION: This order is issued under the authority of the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), and as delegated to me by Departmental Order 2563, May 2, 1950, under authority of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), the following described lands, insofar as title remains in the United States, are classified as follows:

Sixth Principal Meridian, Wyoming

Prospectively Valuable Oil Shale Lands

- T. 13 N., R. 92 W.,
Secs. 5 to 8, inclusive, and
Secs. 18.
- T. 14 N., R. 92 W.,
Secs. 6, 7, and 8;
Secs. 17 to 20, inclusive, and
Secs. 29 to 32, inclusive.
- T. 13 N., R. 93 W.,
Secs. 1 to 22, inclusive.
- T. 14 N., R. 93 W.
- T. 15 N., R. 93 W.,
Secs. 5 to 8, inclusive;
Secs. 16 to 23, inclusive, and
Secs. 25 to 36, inclusive.
- T. 16 N., R. 93 W.,
Secs. 30 and 31.
- T. 12 N., R. 94 W.,
Secs. 4, 5, and 6.
- T. 13 N., R. 94 W.,
Secs. 1 to 23, inclusive, and
Secs. 26 to 34, inclusive.
- Tps. 14 and 15 N., R. 94 W.
- T. 16 N., R. 94 W.,
Secs. 3 to 11, inclusive, and
Secs. 13 to 36, inclusive.
- T. 17 N., R. 94 W.,
Secs. 5 to 8, inclusive;
Secs. 16 to 21, inclusive, and
Secs. 28 to 34, inclusive.
- T. 18 N., R. 94 W.,
Secs. 18, 19, 30 and 31.
- T. 12 N., R. 95 W.,
Secs. 1 to 12, inclusive, and
Secs. 14 to 23, inclusive.
- Tps. 13 to 18 N., inclusive, R. 95 W.
- T. 19 N., R. 95 W.,
Secs. 20 to 23, inclusive, and
Secs. 26 to 36, inclusive.
- T. 12 N., R. 96 W.,
Secs. 1 to 24, inclusive.
- Tps. 13 to 18 N., inclusive, R. 96 W.
- T. 19 N., R. 96 W.,
Secs. 25 to 36, inclusive.
- T. 12 N., R. 97 W.,
Secs. 1 to 24, inclusive.
- Tps. 13 to 17 N., inclusive, R. 97 W.
- T. 18 N., R. 97 W.,
Sec. 1;
Secs. 11 to 15, inclusive;

- Secs. 21 to 29, inclusive, and
Secs. 31 to 36, inclusive.
- T. 12 N., R. 98 W.,
Secs. 1 to 16, inclusive, and
Secs. 21 to 24, inclusive.
- Tps. 13 to 16 N., inclusive, R. 98 W.
- T. 17 N., R. 98 W.,
Secs. 1 and 2;
Secs. 10 to 15, inclusive, and
Secs. 19 to 36, inclusive.
- T. 12 N., R. 99 W.,
Secs. 1, 2, and 12.
- T. 13 N., R. 99 W.,
Secs. 1 to 4, inclusive;
Secs. 9 to 16, inclusive;
Secs. 21 to 28, inclusive, and
Secs. 34, 35, and 36.
- T. 14 N., R. 99 W.,
Secs. 1 to 30, inclusive, and
Secs. 33 to 36, inclusive.
- Tps. 15 to 16 N., R. 99 W.
- T. 17 N., R. 99 W.,
Secs. 25 and 26, and
Secs. 29 to 36, inclusive.
- T. 14 N., R. 100 W.,
Secs. 1, 2, and 3;
Secs. 11 to 14, inclusive, and
Secs. 23 to 26, inclusive.
- T. 15 N., R. 100 W.,
Secs. 1 to 5, inclusive;
Secs. 8 to 17, inclusive;
Secs. 21 to 28, inclusive, and
Secs. 34, 35, and 36.
- T. 16 N., R. 100 W.,
Secs. 1 to 4, inclusive;
Secs. 9 to 16, inclusive;
Secs. 21 to 28, inclusive, and
Secs. 32 to 36, inclusive.
- T. 17 N., R. 100 W.,
Secs. 35 and 36.
- T. 14 N., R. 105 W.,
Secs. 7, 8, 17, 18, 19, and 30.
- T. 18 N., R. 105 W.,
Secs. 6.
- T. 19 N., R. 105 W.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive, and
Secs. 28 to 32, inclusive.
- T. 20 N., R. 105 W.,
Secs. 6 and 7;
Secs. 17 to 20, inclusive, and
Secs. 28 to 33, inclusive.
- T. 21 N., R. 105 W.,
Secs. 3 to 10, inclusive,
Secs. 15 to 22, inclusive, and
Secs. 28 to 33, inclusive.
- T. 22 N., R. 105 W.,
Secs. 2 to 11, inclusive;
Secs. 14 to 22, inclusive, and
Secs. 27 to 34, inclusive.
- T. 23 N., R. 105 W.,
Secs. 2 to 11, inclusive;
Secs. 14 to 23, inclusive, and
Secs. 26 to 35, inclusive.
- T. 24 N., R. 105 W.,
Secs. 4 to 10, inclusive;
Secs. 15 to 23, inclusive, and
Secs. 26 to 35, inclusive.
- T. 25 N., R. 105 W.,
Sec. 7;
Secs. 17 to 21, inclusive, and
Secs. 27 to 34, inclusive.
- T. 13 N., R. 106 W.,
Secs. 2 to 10, inclusive;
Secs. 16 to 20, inclusive, and
Sec. 30.
- T. 14 N., R. 106 W.
- T. 15 N., R. 106 W.,
Secs. 2 to 11, inclusive, and
Secs. 14 to 36, inclusive.
- T. 16 N., R. 106 W.,
Secs. 3 to 10, inclusive;
Secs. 15 to 22, inclusive, and
Secs. 28 to 35, inclusive.
- T. 17 N., R. 106 W.,
Secs. 1 to 24, inclusive, and
Secs. 26 to 35, inclusive,
- Tps. 18 to 24 N., inclusive, R. 106 W.
- T. 25 N., R. 106 W.,
Secs. 2 to 36, inclusive.
- T. 26 N., R. 106 W.,
Secs. 29 to 35, inclusive.
- T. 13 N., R. 107 W.,
Secs. 1 to 30, inclusive.
- Tps. 14 to 25 N., inclusive, R. 107 W.
- T. 26 N., R. 107 W.,
Sec. 7, and
Secs. 15 to 36, inclusive.
- T. 13 N., R. 108 W.,
Secs. 1 to 30, inclusive.
- Tps. 14 to 25 N., inclusive, R. 108 W.
- To 26 No., R. 108 W.
Secs. 9 to 36, inclusive.
- T. 13 N., R. 109 W.,
Secs. 1 to 28, inclusive.
- Tps. 14 to 25 N., inclusive, R. 109 W.
- T. 26 N., R. 109 W.,
Secs. 23 to 28, inclusive, and
Secs. 31 to 36, inclusive.
- T. 13 N., R. 110 W.,
Secs. 1 to 24, inclusive.
- Tps. 14 to 19 N., inclusive, R. 110 W.
- T. 20 N., R. 110 W.,
Secs. 1 to 5, inclusive, and
Secs. 8 to 36, inclusive.
- T. 21 N., R. 110 W.,
Secs. 1 to 17, inclusive;
Secs. 20 to 27, inclusive, and
Secs. 34, 35, and 36.
- Tps. 22, 23, and 24 N., R. 110 W.
- T. 25 N., R. 110 W.,
Secs. 1, 2 and 3, and
Secs. 8 to 36, inclusive.
- T. 13 N., R. 111 W.,
Secs. 1 to 24, inclusive.
- Tps. 14 to 19 N., inclusive, R. 111 W.
- T. 20 N., R. 111 W.,
Secs. 23 to 28, inclusive, and
Secs. 31 to 36, inclusive.
- T. 22 N., R. 111 W.,
Secs. 1 to 6, inclusive;
Secs. 8 to 16, inclusive;
Secs. 22 to 26, inclusive, and
Sec. 36.
- Tps. 23 and 24 N., R. 111 W.
- T. 25 N., R. 111 W.,
Secs. 24 to 28, inclusive, and
Secs. 32 to 36, inclusive.
- T. 13 N., R. 112 W.,
Secs. 1 to 24, inclusive.
- Tps. 14 to 18 N., inclusive, R. 112 W.
- T. 19 N., R. 112 W.,
Secs. 1 and 2;
Secs. 10 to 16, inclusive, and
Secs. 20 to 36, inclusive.
- T. 23 N., R. 112 W.,
Secs. 1, 2, and 3;
Secs. 11 to 14, inclusive, and
Secs. 24 and 25.
- T. 24 N., R. 112 W.,
Secs. 1 and 2;
Secs. 11 to 15, inclusive.
- Secs. 22 to 27, inclusive, and
Secs. 34, 35, and 36.
- T. 13 N., R. 113 W.,
Secs. 1 to 5, inclusive;
Secs. 8 to 16, inclusive, and
Secs. 21 to 24, inclusive.
- Tps. 14, 15, and 16 N., R. 113 W.
- T. 17 N., R. 113 W.,
Secs. 1 to 4, inclusive;
Secs. 9 to 16, inclusive;
Secs. 21 to 28, inclusive, and
Secs. 33 to 36, inclusive.
- T. 18 N., R. 113 W.,
Sec. 1;
Secs. 11 to 14, inclusive;
Secs. 22 to 27, inclusive, and
Secs. 34, 35, and 36.
- T. 19 N., R. 113 W.,
Sec. 36.

The areas described, including both public and non-public lands, aggregate approximately 2,940,288 acres (1,189,905 hectares).

Dated: November 5, 1982.

David C. Russell,

Deputy Director, Minerals Management Service.

[FR Doc. 82-31788 Filed 11-16-82; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) (5 U.S.C. App. 1 section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held at 1:30 pm on Friday, December 10, 1982 at the Headquarters Building, Cape Cod National Seashore.

The Commission was established pursuant to Pub. L. 91-383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The members of the Advisory Commission are as follows: Dexter M. Keezer, Truro; Francis R. King, Wellfleet; Nathan Malchman, Provincetown; Barbara S. Mayo, Provincetown; Thomas R. Pennypacker II, Chatham; Sherrill B. Smith, Jr., Orleans; Clifford H. White, Wrentham; Elizabeth F. Worthing, Eastham; Paul F. Nace, Jr., Woods Hole.

At the meeting at 1:30 pm the Commission will consider the following:

- (1) Dunes revegetation/stabilization.
- (2) South Hollow Wellfield reclamation and Provincetown's winter water supply.

(3) Provisions of Pub. L. 94-565.

The meeting is open to the public. It is expected that 30 persons will be able to

attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663, Telephone (617) 349-3785. Minutes of the meeting will be available for public information and copying four weeks after the meeting at the Office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts.

Herbert Olsen,

Superintendent, Cape Cod National Seashore,
November 10, 1982.

[FR Doc. 82-31772 Filed 11-18-82; 8:45 am]

BILLING CODE 4310-70-M

Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Santa Monica Mountains National Recreation Area Advisory Commission will be held on Tuesday, December 14, 1982 at 3:30 p.m. in the banquet room at the Canoga Park Best Western Motor Inn, 20122 Vanowen Street, Canoga Park, CA.

The Advisory Commission was established by Pub. L. 95-625 to provide for free exchange of ideas between the National Park Service and the public to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service in Los Angeles and Ventura Counties.

Members of the Commission are as follows: Dr. Norman P. Miller, Chairperson; Hon. Marvin Braude, Ms. Sarah Dixon, Ms. Margot Feuer, Dr. Henry David Gray, Mr. Edward Heidig, Mr. Frank Hendler, Ms. Mary C. Hernandez, Mr. Peter Ireland, Mr. Bob Lovellette, Ms. Susan Barr Nelson, Mr. Carey Peck, Mr. Donald Wallace.

The major agenda item include the following:

Superintendent's Status Report of the SMMNRA

Recognition of Groups Who Have Assisted the NRA

Visitor Use Committee Recommendation on the Development Concept Plan for Cross Mountain Parks

Resource Management Committee Report on Draft Natural Resource Management Plan

Other Committee Reports

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning issues to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California 91364.

Minutes of the meeting will be available for public inspection by January 31, 1983 at the above address.

Dated: November 10, 1982.

Robert S., Chandler,

Superintendent, Santa Monica Mountains National Recreation Area.

[FR Doc. 82-31773 Filed 11-18-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 387]

Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of provisional exemptions.

Sub-No.	Name of railroad, contract number, and specifics	Review board ¹	Decided date
384	Chicago and North Western Transportation Co., ICC-CNW-C-0371, 0372, 0373, 0374, and 0375. (Grain or oil seeds)	1	Nov. 15, 1982.
385	Chesapeake and Ohio Railway Co., ICC-CO-C-0014, Supplement 2. (Coal)	2	Do.
386	Chicago and North Western Transportation Co., ICC-CNW-C-0369. (Grain or oil seeds)	3	Do.
387	Burlington Northern Railroad Co., ICC-BN-C-0171 and Supplement 1. (Clay)	1	Do.
388	Chesapeake and Ohio Railway Co., ICC-CO-C-0040. (Storage)	2	Do.
389	Missouri Pacific Railroad Co., ICC-MP-C-0014, Supplement 1. (Soda ash)	3	Do.
390	Missouri Pacific Railroad Co., ICC-MP-C-0181. (Canned or preserved foodstuffs)	3	Do.
391	Atchison, Topeka and Santa Fe Railway Co., ICC-ATSF-C-0137. (Glycerine)	1	Do.
392	Burlington Northern Railroad Co., ICC-BN-C-0100, Supplement 2. (Canned or preserved foodstuffs)	2	Do.
393	Missouri Pacific Railroad Co., ICC-MP-C-0186. (Wheat flour and mill feed)	3	Do.
394	Missouri-Kansas-Texas Railroad Co., ICC-MKT-C-0119, Supplement 3. (Corn, grain sorghums, soybeans and wheat), via ports of Galveston and Houston, TX.	1	Do.
395	Texmex Railway Co., ICC-TM-C-32. (Seed)	2	Do.

¹ Review Board No. 1, Members Parker, Chandler and Fortier. Review board No. 2, Members Carleton, Williams, and Ewing. Member Ewing not participating. Review Board No. 3, Members Krock, Joyce, and Dowell.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-31719 Filed 11-18-82; 8:45 am]

BILLING CODE 7035-01-MY

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the Federal Register.

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway (202) 275-7278 or Tom Smerdon (202) 275-7277.

SUPPLEMENTARY INFORMATION:

The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope.

Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Cargill, Incorporated,

P.O. Box 9300, Minneapolis, Minnesota 55440.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Caprock Industries, Inc., P.O. Box 948, Gruver, Texas 79040.

(b) Cargo Carriers, Incorporated, P.O. Box 9300, Minneapolis, Minnesota 55440.

(c) C. Tennant, Sons & Co., of New York, P.O. Box 9300, Minneapolis, Minnesota 55440.

(d) Excel Corporation, P.O. Box 2519, Wichita, Kansas 67219. Subsidiary of Excel Corporation: (1) Excel Transportation, Inc., P.O. Box 2519, Wichita, Kansas 67219.

(e) Hohenberg Bros. Company, 266 South Front Street, Memphis, Tennessee 38101. Subsidiary of Hohenberg Bros. Company: (1) R. T. Hoover & Co., Inc. 817 Texas Avenue, El Paso, Texas 79999.

(f) Leslie Salt Co., 7200 Central Avenue, Newark, California 94560.

(g) Mid-State Metals, Inc., 15407 McGinty Road West, Wayzata, Minnesota 55391.

(h) North Star Steel Company 2901 Metro Drive, Suite 330, Minneapolis, Minnesota 55420. Subsidiary of North Star Steel Company: (1) Magnimet Corporation, P.O. Box 28, Monroe, Michigan 48161.

(i) Young's, Inc., Rural Route 1, Roaring Spring, Pennsylvania 16673.

(j) Zelrich Steel Company, Inc., P.O. Box 29667, Dallas, Texas 75229.

1. Parent corporation and address of principal place of business: Champion Spark Plug Company (a Delaware corporation), 900 Upton Ave., Toledo, Ohio 43661.

2. Wholly-owned subsidiaries who will participate in the operations and their States of incorporation:

(i) The Anderson Company of Indiana (a Delaware Corporation).

(ii) Baron Drawn Steel Corporation (an Ohio Corporation).

1. The parent corporation is The Maytag Company located at 403 West 4th Street North, Newton, Iowa 50208.

2. The wholly-owned subsidiaries which will participate in the operation, and the states of their incorporation are:

(i) Hardwick Stove Company, Delaware.

(ii) Jenn-Air Corporation, Delaware.

(iii) Jenn Industries, Inc., Delaware.

1. Parent corporation and address of principal office: Mid-Continent Resources, Inc., a Delaware Corporation, P.O. Box 158, Carbondale, CO 81623.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation: Carbondale Coal Carrier, Inc., a Colorado

Corporation, 698 Merrill Avenue, Carbondale, CO 81623.

1. Parent corporation: Polysar Limited—Polysar Limited, 201 North Front St., Sarnia, Ontario, Canada, N7T 7V1.

2. Wholly-owned subsidiaries which will participate in the operations and States of incorporation:

(i) Polysar Incorporated, an Ohio corporation, 1795 West Market St., Akron, Ohio 44313.

(ii) Polysar Gulf Coast Inc., a Texas corporation, Highway 1006, Orange, Texas 77630.

1. Parent corporation: Super Valu Stores, Inc., P.O. Box 990, Minneapolis, MN 55440.

2. Wholly-owned subsidiaries: J. M. Jones Co., Champaign, IL. Lewis Grocer Co., Indianola, MS. Preferred Products, Inc., Chaska, MN. Shopko Stores, Green Bay, WI. County Seat, Brooklyn Park, MN. County Seat, Dallas, TX. SVS Trucking, Inc., Eden Prairie, MN. Western Stores, Inc., Denver, CO. Western Stores, Inc., Albuquerque, NM.

Divisions:

Super Valu Stores, Inc., Plainfield, IL. Super Valu Stores, Inc., Anniston, AL. Super Valu Stores, Inc., Hopkins, MN. Super Valu Stores, Inc., Fargo, ND. Super Valu Stores, Inc., Bismarck, ND. Super Valu Stores, Inc., Green, Bay, WI.

Super Valu Stores, Inc., Des Moines, IA.

Food Marketing Corp., Ft. Wayne, IN. Charley Brothers, Greensburg, PA. Ohio Valley Division, Xenia, OH. Ryan's, Billings, MT. Ryan's, Great Falls, MT.

1. Parent corporation and address of principal office: Tibbals Flooring Company, P.O. Drawer A. 300 South Main St., Oneida, Tennessee 37841.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: Hartco, Inc., a Tennessee corporation.

1. Parent corporation and address of principal office: Valley Forge Flag Company, Inc., One Rockefeller Plaza, New York, NY 10020.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

(i) Anderson Associates Flag Company, Inc., New York.

(ii) Valley Forge Transportation Systems, Inc., Pennsylvania.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-31720 Filed 11-18-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by 49 CFR 1160.1-1160.23 of the Commission's Rules of Practice. These rules were published in the *Federal Register* on December 31, 1980, at 45 FR 86771 and redesignated at 47 FR 49583, November 3, 1982. For compliance procedures, refer to the *Federal Register* issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1160.40-1160.49. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of \$10.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new

entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to Team 2, (202) 275-7030.

Volume No. OP2-288

Decided: November 10, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 164563, filed November 4, 1982. Applicant: BERNARD A. HUTT, 130 Wood Ave., Holland, MI 49423. Representative: Bernard A. Hutt, (Same address as applicant), 616-399-0904. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP2-290

Decided: November 10, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 164572, filed November 4, 1982. Applicant: JIM L. BOYLES, 100 Wedgedale Ave., Greensboro, NC 27403. Representative: Jim L. Boyles (same as applicant), (919) 292-5663. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 164573, filed November 4, 1982. Applicant: FRANK J. CARLEY, P.O. Box 487, Ashland, VA 23005. Representative: James T. Darby, 1021 Irving Ave., Colonial Beach, VA 22443 (804) 224-0773. As a *broker of general commodities* (except used household goods), between points in the U.S.

(except AK and HI).

For the following, please direct status inquiries to Team 3 at 202-275-5223.

Volume No. OP3-25

Decided: November 15, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 158414 (Sub-1), filed November 2, 1982. Applicant: HUB TRUCKING, INC., P.O. Box 190, Wedowee, AL 36278. Representative: Harold Rice, P.O. Box 217, Bessemer, AL 35020. Transporting (1) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI), (2) for and on behalf of the United States Government, *general commodities* (except household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI), and (3) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 164494, filed October 29, 1982. Applicant: KARL SCHROFF & ASSOCIATES, INC., 90 West Street, New York, NY 10006. Representative: Joseph Gagliardi, 9757 W. Farragut St., Chicago, IL 60018, (312) 671-9500. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 4 at 202-275-7669.

Vol. No. OP4-033

Decided: November 12, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 164376, filed October 22, 1982. Applicant: MAX GRUENHUT INTERNATIONAL INC., a California corporation, Suite 1201, Los Angeles, CA 90013. Representative: Howard Feldman, 1211 Connecticut Ave., NW, Suite 300, Washington, DC 20036, (202) 331-0770.

As a *broker of general commodities* (except household goods), between points in the U.S.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-31721 Filed 11-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30061]

Rail Carriers; Burlington Northern Railroad Company— Merger Exemption— Fort Worth and Denver Railway Company

November 15, 1982.

Burlington Northern Railroad Company (BN) and its subsidiary Fort Worth Denver Railway Company (FW&D) jointly filed a notice of exemption of the proposed merger of FW&D into BN.

As stated in the agreement and plan of merger, BN owns 92,422.08 of the 92,438 shares issued and outstanding of the FW&D capital stock. Despite 50 years of effort, the unknown owners of 12 shares and B. W. Jones, the owner of 3.92 shares have not been located. On the merger date, the separate corporate existence of FW&D shall cease and all shares of its stock which are owned and held by BN shall be canceled. All shares of stock held by other stockholders shall be canceled and converted to a right to receive cash.

This is a transaction within a corporate family and will not result in adverse changes in service levels, significant operational changes or a change in the competitive balance with carriers outside the corporate family. Therefore, the proposed transaction is the type specifically exempted from the necessity for prior review and approval. See 49 CFR 1180.2(d)(3) (formerly 49 CFR 1111.2(d)(3)).

Although the parties indicate the existence of a prior merger protective agreement involving the Brotherhood of Locomotive Engineers dated January 16, 1980, which may protect employees affected by this transaction, as a condition to use of the exemption, any employee of the BN or FW&D affected by this transaction shall, as a minimum, be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). This will satisfy the statutory requirements of 49 U.S.C. 10505(g)(2).

By the Commission, Heber P. Hardy,
Director, Office of Proceedings.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-31718 Filed 11-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 439]

Railroad Revenue Adequacy—1981 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of 1981 determinations of all rail revenue adequacy.

SUMMARY: In Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981), the Commission determined that a railroad would be considered revenue adequate under 49 U.S.C. 10704(a) if the railroad had a rate of return equal to the current cost of capital. This decision utilizes the rate of return standard developed in Ex Parte No. 393, *supra*, as more fully defined in Ex Parte No. 416, *Railroad Revenue Adequacy—1980 Determination*, 365 I.C.C. 285 (1981) using data for the year 1981. Using these data, the Commission has now determined 2 of the 37 Class I carriers to be revenue adequate: the Clinchfield, and the Fort Worth and Denver.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr. (202) 275-7489.

SUPPLEMENTARY INFORMATION: Section 10704(a) of the Interstate Commerce Act requires the Commission to maintain revenue adequacy standards and procedures for rail carriers. In Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981) notice of which appeared at 45 FR 20806, April 4, 1981, the Commission determined that a railroad would be considered revenue adequate if it had a rate of return equal to the current cost of capital for the railroad industry as determined by the Commission. In that decision, the Commission utilized 1979 rate of return and cost of capital data. In Ex Parte No. 416, *Railroad Revenue Adequacy—1980 Determination*, 365 I.C.C. 285 (1981), served September 17, 1981, (46 FR 46019, September 16, 1981), the Commission determined revenue adequacy based on 1980 data.

This decision updates the Ex Parte No. 393, (*supra*), and Ex Parte No. 416, (*supra*), decisions by utilizing 1981 rate of return on investment and cost of capital data. The cost of capital data was developed in Ex Parte No. 415, *Railroad Cost of Capital*, 365 I.C.C. 734 (1982), served June 24, 1982. We have not requested public comment prior to updating these revenue adequacy determinations because none is necessary. This decision merely performs recalculations, using 1981 data, according to the standards and procedures previously established in Ex Parte No. 393, (*supra*), after public notice and comment.

I. NET INVESTMENT BASE

For the two previous determinations of revenue adequacy in Ex Parte No. 393, *supra*, and Ex Parte No. 416, *supra*, we assessed the value of the net investment base as the sum of the original cost of track assets plus betterments to track, plus the depreciated book value of all other assets, plus a working capital allowance from "Rail Form A." To meet the statutory deadlines for making those initial determinations, we used annual report data (Annual Report Form R-1) which for five railroads reflected asset values substantially less than original cost because of writedowns resulting from reorganizations occurring after 1970. These five railroads are Conrail, Delaware and Hudson, Pittsburgh and Lake Erie, Chicago and Northwestern, and Western Pacific. To make the investment bases of these roads compatible with the 32 other Class I railroads for the purpose of this revenue adequacy determination, we obtained, through our auditors, the necessary data to compute ROI on an original cost basis. These data have permitted us to recompute the five railroads' investment bases to reflect the original cost of their assets immediately prior to writedown plus any new investments subsequent to writedown. For these purposes, retirements are treated as though the writedowns never occurred and the original cost of property is adjusted accordingly. Depreciation is treated in a similar manner.

The net investment base, except for the adjustments previously described, is calculated as the sum of the average of beginning and end of year investment in railroad property used in transportation service (Annual Report R-1, Schedule 352A, line 39, columns d minus e); minus interest during construction (R-1, Schedule 352B, line 43, columns b through e); minus other elements of investment (if a debit) from the R-1, Schedule 352B, line 47, columns b through e; plus the working capital allowance from Rail Form A.

II. NET RAILWAY OPERATING INCOME

The numerator into which the net investment base is divided to determine the rate of return on net transportation investment (ROI) is net railway operating income, obtained from the Annual Report, R-1, Schedule 210, line 68, column b. Net railway operating income equals net income from railway operations, minus paid and deferred federal, state, and local income taxes, minus income from lease of road and equipment, plus rent for leased road and equipment.

III. COST OF CAPITAL

The use of 1981 annual report data in this proceeding necessitates the use of the Commission's 1981 cost of capital findings in Ex Parte No. 415, *Railroad Cost of Capital—1981*, 365 I.C.C., 734 (1982).

In that proceeding, we found the appropriate cost of capital rate to be 16.5 percent, computed as follows:

$$0.40 \times 13.7\% = 5.48\% \text{ (cost of debt portion)}$$

$$0.60 \times 18.3\% = 10.98\% \text{ (cost of equity portion)}$$

16.46% or 16.5%

IV. REVENUE ADEQUACY DETERMINATION

Based on the standard described above, we have made revenue adequacy determinations for 37 Class I freight railroads using 1981 data. Using the cost of capital standard for revenue adequacy, a railroad will be found adequate if it has a 1981 return on investment of 16.5 percent or higher. Railroads with lower returns on investment will be considered revenue inadequate.

This decision includes the 37 Class I freight railroads in existence as of December 31, 1981. We find two carriers to have earned adequate revenues during 1981. These railroads are the Clinchfield and the Fort Worth and Denver, with rates of return of 18.1 and 21.9 percent, respectively. Both these carriers were also revenue adequate in 1980.

A summary of our findings for all 37 railroads as of December 31, 1981, including the 1981 ROI's, is found as an appendix to this decision.

We find:

1. Under the standard previously established in Ex Parte No. 393, the following 2 Class I railroads were revenue adequate in 1981: Clinchfield and the Fort Worth and Denver.
2. This proceeding will not significantly affect either the quality of the environment or conservation of energy resources; nor will it have adverse economic effects on small businesses or other entities.

Authority: 49 U.S.C. 10704(a)

Decided: November 12, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Bradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,
Secretary.

Appendix

CLASS I RAILROADS—1981 REVENUE
ADEQUACY DETERMINATION

Railroad	Return on investment	Adequate or inadequate
Eastern District		
Baltimore & Ohio	2.37	Inadequate.
Bessemer & Lake Erie	8.90	Do.
Boston & Maine	0.00	Do.
Chesapeake & Ohio	5.38	Do.
Conrail	0.00	Do.
Delaware & Hudson	1.00	Do.
Detroit, Toledo & Ironton	0.00	Do.
Elgin, Joliet & Eastern	3.89	Do.
Grand Trunk Western	2.99	Do.
Norfolk & Western	10.77	Do.
Pittsburgh & Lake Erie	1.15	Do.
Western Maryland	5.72	Do.
Southern District		
Alabama Great Southern	8.65	Do.
Central of Georgia	9.74	Do.
Cincinnati, New Orleans & Texas Pacific	10.26	Do.
Clinchfield	18.06	Do.
Florida East Coast	3.33	Do.
Illinois Central Gulf	0.00	Do.
Louisville & Nashville	7.04	Do.
Seaboard Coast Line	2.10	Do.
Southern Railway	7.71	Do.
Western District		
AT&T Topeka & Santa Fe	4.99	Do.
Burlington Northern	4.29	Do.
Chicago Northwestern	12.16	Do.
Chicago, Milwaukee, St. Paul & Pacific	0.00	Do.
Colorado & Southern	4.75	Do.
Denver & Rio Grande Western	8.09	Do.
Duluth Mesabi & Iron Range	6.12	Do.
Fort Worth & Denver	21.85	Do.
Kansas City Southern	7.61	Do.
Missouri-Kansas-Texas	11.81	Do.
Missouri Pacific	7.98	Do.
St. Louis-Southwestern	3.93	Do.
Soo Line	8.12	Do.
Southern Pacific	0.50	Do.
Union Pacific	7.41	Do.
Western Pacific	10.00	Do.

¹Data shown above are from 1981 annual report form R-1's with the exception of the railroads with an (*) next to their returns on investment. These railroads had their original investment bases written down due to reorganizations. The data shown above use the original investment bases (less depreciation) before these write-downs. Two of these carriers, the Pittsburgh & Lake Erie and the Chicago Northwestern had positive returns on investment in 1981. Returns on investment based on written-down cost (as opposed to original cost) are as follows:
Chicago Northwestern 3.84 percent.
Pittsburgh & Lake Erie—2.75 percent.

[FR Doc. 82-31717 Filed 11-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Decision No. 38919]

Shippers Service Transport, Inc.— Petition for Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: In response to a petition filed by Shippers Service Transport, Inc., the Commission has decided provisionally to exempt Shippers from tariff filing requirements in 49 U.S.C. 10702, 10761, and 10762.

DATES: Comments are due December 6, 1982. The sought relief will become effective December 21, 1982 unless, in response to adverse comments filed, the Commission issues a further decision withdrawing this relief.

ADDRESSES: Send an original and, if possible, 15 copies of comments to: Room 5340, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278 or Tom Smerdon, (202) 275-7277.

SUPPLEMENTARY INFORMATION: On September 29, 1982, Shippers Service Transport, Inc., (petitioner) requested relief from the requirements of 49 U.S.C. 10702, 10761, and 10762. Petitioner transports general commodities (except classes A and B explosives, hazardous wastes, household goods, and commodities in bulk), between points in the United States (except Alaska and Hawaii), under continuing contracts with Robert E. Anderson, Inc., of Cherry Hill, NJ, L&R Traffic Service, Inc., of Philadelphia, PA, and J&V Associates, of Bordentown, NJ. The Commission granted this authority in Permit No. MC-161204. Petitioner holds no other interstate authority.

Petitioner serves only the three named shippers (all transport brokers) which require a transport service featuring flexibility and immediate response in both rates and service.¹

Section 10702 of the Interstate Commerce Act requires contract carriers to file with the Commission actual and minimum rates for the transportation they provide. Section 10761 prohibits transportation without a tariff on file with the Commission, and section 10762 sets forth general tariff requirements including contract carrier authority to file only minimum rates. Each of these sections authorizes the Commission to grant relief to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101.

Petitioner requests the sought exemption in order to meet the special needs of its shippers. It states that the tariff rules applicable to tariff changes and filings impede the necessary close interaction between broker and contract carrier.

We find the exemption is warranted. There appears to be no reason to deny the carrier and the shippers the flexibility to be realized from a tariff

¹Petitioner also offers to provide copies of its contracts and rate schedules to interested parties. Such an offer is not necessary. See No. 38828, *Three Way Corporation, Petition For Exemption From Tariff Filing Requirements*, decided June 25, 1982 [not printed].

filing exemption. It also appears that the requirement that petitioner file schedules is not in the public interest, and that relief will promote the transportation policies of 49 U.S.C. 10101. We are unable to conclude, however, that a similar exemption is justified for future contracts and services. Because the scope and terms of future contracts are necessarily unknown, an exemption as to future contracts can only be based on general findings, applicable to all motor contract carriers, about the continued utility of any contract filing requirement. A proceeding to investigate this issue on an industry-wide basis will shortly be instituted in Ex Parte No. MC-165. Under these circumstances, we do not provisionally find that operations to be conducted under future contracts would be in the public interest or would promote the transportation policies of 49 U.S.C. 10101.

With the exception noted above, we provisionally grant the sought exemption. If we receive timely filed adverse comments, we will issue a further decision addressing them and deciding whether this provisional exemption ought to be made final.

This action does not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10702, 10761, and 10762.

Decided: November 12, 1982.

By the Commission, Division 1, Commissioners Sterrett, Simmons and Cradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-31716 Filed 11-18-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-13,739]

Continental Copper and Steel Industries, Inc., Hatfield Wire and Cable Division, Linden, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 31, 1982 in response to a worker petition received on August 23, 1982 which was filed by the International Brotherhood of Electrical Workers on behalf of workers at Continental Copper and Steel Industries,

Inc., Hatfield Wire and Cable Division, Linden, New Jersey.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-13,371). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 10th day of November 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-31803 Filed 11-18-82; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Notice of Ending of Extended Benefit Periods in the States of Alaska, Arizona, California, Louisiana, Montana, Nevada, North Carolina, Rhode Island, and Utah

This notice announces the ending of the Extended Benefit Periods in the States of Alaska, Arizona, California, Louisiana, Montana, Nevada, North Carolina, Rhode Island, and Utah, effective on October 23, 1982.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer

at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

Determination of "off" Indicator

The head of the employment security agency of each State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on October 2, 1982, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Periods in those States terminated with the week ending on October 23, 1982.

Information for Claimants

The State employment security agency of each State will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the Extended Benefit Period in the State and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in a State named above should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on October 8, 1982.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 82-31805 Filed 11-18-82; 8:45]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of Changes to Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The changes to the annual list are effective on November 1, 1982.

SUMMARY: The purpose of this notice is to announce changes to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, United States Employment Service (Attention: TEEPA) 601 D Street, N.W., Washington, D.C. 20213. Telephone: 202-376-6890.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize

procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981 (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations, the Assistant Secretary of Labor published the annual list of labor surplus areas on June 4, 1982 (47 FR 24474).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(c) and are added to the annual list of labor surplus areas, effective November 1, 1982. In addition, 1 area is removed from the annual list because it no longer meets the classification criteria. The following changes to the annual list of labor surplus areas are published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, D.C. on November 10, 1982.

Albert Angrisani,
Assistant Secretary of Labor.

Additions to the Annual List of Labor Surplus Areas

November 1, 1982

Labor surplus areas	Civil jurisdiction included
Alabama	
Elmore County.....	Elmore County.
Geneva County.....	Geneva County.
Connecticut	
Meriden County.....	Meriden County.
Maine	
Androscoggin County.....	Androscoggin County.
Maryland	
Frederick County.....	Frederick County.
North Carolina	
Caldwell County.....	Caldwell County.
Ohio	
Lake County.....	Lake County.
Miami County.....	Miami County.
Pennsylvania	
Bal. of Allegheny County.....	Allegheny County less Penn Hills Township and Pittsburgh City.
Bethlehem City.....	Bethlehem City in Lehigh County and Northampton County.
Lebanon County.....	Lebanon County.
Bal. of Northampton County.....	Northampton County less Bethlehem City.
Pittsburgh City.....	Pittsburgh City in Allegheny County.
Rhode Island	
Central Falls City.....	Central Falls City.

Removal From Annual Labor Surplus Listing

November 1, 1982

Labor surplus areas	Civil jurisdiction included
Tennessee	
Weakley County.....	Weakley County.

[FR Doc. 82-31806 Filed 11-16-82; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-13,681]

Middle Atlantic Precision Steel, Division of Jones & Laughlin Steel Corp., Atco, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 30, 1982 in response to a worker petition received on July 28, 1982 which was filed on behalf of workers at Middle Atlantic Precision Steel, Division of Jones & Laughlin Steel Corporation, Atco, New Jersey.

The petitioning group of workers are subject to an ongoing investigation for

which a determination has not yet been issued [TA-W-13,401]. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 10th day of November 1982.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-31804 Filed 11-18-82; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-13,165]

Prestolite Electronics Wico Plant, West Springfield, Mass., Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 28, 1981 in response to a worker petition received on December 21, 1981 which was filed on behalf of workers at Prestolite Electronics, Wico Plant, West Springfield, Massachusetts.

The petitioner has 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, D.C. this 10th day of November 1982.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-31802 Filed 11-18-82; 8:45 am]
BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Maryland State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the Federal Register (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State plan provides for the adoption of Federal standards as State standards after comments and/or public hearings. Sections 1952.210-214 of Subpart O set forth the State's schedule for the adoption of Federal standards. By two letters dated August 19, 1982 from Commissioner Harvey A. Epstein, Maryland Division of Labor and Industry to the Regional Administrator and incorporated as part of the plan, the State submitted State standards comparable to: 1. Amendments, corrections and revisions to 29 CFR 1910.1025(e)(1) and Table 1, pertaining to occupational exposure to lead as published in the Federal Register (46 FR 80775-80776), dated December 11, 1981; and; 2. amendments, corrections and revisions to 29 CFR Part 1910, Subpart S, pertaining to electrical standards as published in the Federal Register (46 FR 40184-40185), dated August 7, 1981. These standards, which are contained in COMAR 09.12.31 Maryland Occupational Safety and Health Standards under the Maryland Occupational and Health Act of 1973, were adopted after public hearings held on July 7, 1982, pursuant to Article 89 sections 30(a), 31(i), 31(m), annotated Code of Maryland.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Commissioner of Labor and Industry, 501 St. Paul Place, First Floor, Baltimore, Maryland 21202; the Office of the Regional Administrator, OSHA, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; and the OSHA Office of State Programs, Room N3700, Third Street and Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal

law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective November 19, 1982.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania this 17th day of September 1982.

James W. Stanley,

Acting Regional Administrator.

[FR Doc. 82-31807 Filed 11-18-82; 8:45 am]

BILLING CODE 4510-26-M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms 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 forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in. Each entry will contain the following information:

- The Agency of the Department issuing this form.
- The title of the form.
- The Agency form number, if applicable.
- How often the form must be filled out.
- Who will be required to or asked to report.
- Whether small business or organizations are affected.
- The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.
- An estimate of the number of responses.
- An estimate of the total number of hours needed to fill out the form.
- The number of forms in the request for approval.

• An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Norman Frumkin, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

- Extension:** (No Change).
- Employment Standards Administration:
 - Establishment Information Form
 - WH-45
 - On Occasion
 - Individual Employers
 - Small Business or Organization
 - SIC: All
 - 4500 Responses; 750 Hours; one form

The form is used to determine possible coverage as well as other pertinent information about those establishments which are being considered for investigation under the Fair Labor Standards Act. This form is a simple and ready means of determining coverage under the Act by providing specific business information not available otherwise.

Signed at Washington, D.C. this 16th day of November, 1982.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 82-31809 Filed 11-18-82; 8:45 am]

BILLING CODE 4510-27-M

Office of Pension and Welfare Benefit Programs

[Application No. D-3141]

Proposed Exemption for Certain Transactions Involving Kemper Investors Life Insurance Company Pooled Separate Accounts Located in Chicago, Illinois

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the

Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would permit pooled separate accounts (the Fund(s)) sponsored by the Kemper Investors Life Insurance Company (KILICO), in which employee benefit plans (the Plans) would invest, to engage in certain transactions provided specified conditions are met. The proposed exemption, if granted, would affect KILICO, the Plans and their participants and beneficiaries and other persons participating in the transaction described herein.

DATES: Written comments and requests for a public hearing must be received by the Department on or before December 20, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-3141. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406 and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application filed by KILICO, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Kemper Corporation (Kemper), a publicly-held corporation incorporated in the State of Delaware, is a non-operating holding company with subsidiaries in insurance, health and safety and investment management services. Kemper is a Fortune 500 corporation with annual sales in excess of \$1,000,000,000. Through its wholly-owned subsidiaries, Federal Kemper Life Assurance Company and KILICO, Kemper writes life insurance in every state except New York and had in force as of December 31, 1981, approximately \$20 billion of life insurance. Through its wholly-owned subsidiary, Kemper Reinsurance Company (KRI), Kemper engages in the business of reinsurance. As of December 31, 1981, KRI had assets of approximately \$509,000,000. Through five regional subsidiaries (the KPC Insurers), Kemper underwrites property-casualty insurance. In addition, through its network of brokers and independent agents Kemper also aids in the placement of property-casualty insurance with unaffiliated insurance companies.

2. Bedford Properties, Inc. (Bedford), is a California corporation incorporated in 1961. Bedford Management Company, Inc. (BMC) and B.A. Construction Company (BA) are both wholly-owned subsidiaries of Bedford. Bedford is involved, both for its own account, for the account of its principal, Peter Bedford, and for the account of Mr. Bedford's partners and joint venturers, in the acquisition, sale, leasing, development and management of non-residential real property. Over the past twenty years, Bedford has grown from the role of a developer of convenience markets to that of a developer of industrial parks, office buildings and shopping centers. It has, in the past five years, specialized in properties with values of between \$1,000,000 and \$10,000,000 for investment by Mr. Bedford alone or by the various joint ventures and partnerships in which he is involved.

3. Bedford and its affiliates are also involved in the development of similar properties for sale. They have developed commercial, industrial and office properties for many of the largest corporations in the country and presently own or manage in excess of fifty different properties having a fair

market value of in excess of \$250,000,000. Bedford and its subsidiaries had thirty-five full-time employees and a combined net worth of in excess of \$350,000 as of December 31, 1981.

4. Kemper has conducted business with Bedford and its affiliates and with Mr. Bedford individually since December, 1970 as a joint venturer in approximately twenty-one separate transactions involving in excess of \$130,000,000. In all of these transactions, Bedford and its affiliates have acted as the originator, developer and manager. It is contemplated that Kemper will continue to participate with Bedford in real estate joint ventures. It is also contemplated that Kemper may in the future own properties which are developed and/or managed by Bedford and that Kemper may lend money to and/or provide insurance services and products to Bedford and its projects.

5. Due to the difficulties inherent in the direct ownership of real property by pension benefit plans, plan fiduciaries are expressing increasing interest in participating in collective investment vehicles which invest in real property. This interest has been met for the most part by commingled bank funds or insurance company separate accounts of substantial size. As a result, substantial competition has developed among the real estate equity fund investors for larger properties (\$15,000,000 and more) since the labor involved in purchasing smaller properties is not substantially less than that required for larger properties and since substantial sums must constantly be invested.

6. Kemper states that numerous plan fiduciaries have indicated that they would like to invest in real property of smaller size but believe that it is not economically feasible for an individual plan to search the country for acceptable properties and to manage a property once it is acquired. Customarily these services are provided by licensed real estate brokers and by professional property managers. A more efficient and effective alternative is for a pooled separate account such as the Fund to engage the services of such professionals.

7. It is contemplated that the first Fund will have a 10 year life with a possible extension period and a liquidation period. Participation in the Funds will be restricted to qualified pension, profit sharing and annuity plans. Each participating Plan will invest no more than 25 percent of its assets in the Funds. Participating Plans will purchase a group annuity contract from KILICO under the terms of which

all or a portion of the money paid by the Plans will be invested in the Funds. Each Plan's investment in a Fund will be limited to 10 percent of the Fund's assets until such time as \$100,000,000 of interests in the Fund have been sold, 7 1/2 percent until such time as \$200,000,000 of interests in the Fund have been sold and 5 percent thereafter. The 10 percent and 7 1/2 percent figures would no longer be applicable commencing on the fourth anniversary of the date on which the consummation of the sale of the first interest in the Fund occurs, however, compliance with the percentage requirements would be determined as of the time of initial purchase and no subsequent event other than additional purchases by Plans would cause a loss of the benefit of initial compliance. Therefore, if a Plan's purchase of interests complies with the percentage requirements at the time of purchase, the Plan would not be required, at the end of the above-described four year period, to reduce its share of the interests in the Fund to 5 percent.

8. The applicant states that the requested relaxation of the percentage limitations that would otherwise be applicable under the class exemption for insurance company pooled separate accounts (PTE 78-19, 43 FR 59915) is appropriate because the Funds are closed-end and because KILICO is entering a new and different market than that contemplated by PTE 78-19; therefore, it requires a grace period within which it may solicit Plan investment within the above-described percentage limitations.

9. All decisions by a Plan to participate in a Fund, and all decisions as to whether to continue participation in a Fund, will be made by a Plan fiduciary who is not an affiliate of KILICO or Bedford. Furthermore, the Plan fiduciaries will be given a disclosure statement prior to investment in a Fund, which will describe in detail the operation of the Fund and the relationships and compensation in connection with the Fund of KILICO, Bedford and their affiliates.

10. KILICO will provide certain general management services to the Funds including, but not limited to, marketing, investment decisions, portfolio review and oversight, acquisition of property management services, Fund accounting, reporting and disclosure and selecting and supervising other service providers. For these general management services, KILICO will receive a fee (the Management Fee) from the Fund payable monthly and computed at the annual rate of 1.2% of the net assets of the Fund. For the

purposes of determining the Management Fee, Fund assets consisting of cash and cash equivalents will be disregarded. In determining its 1.2% Management Fee with respect to the Fund, KILICO will value all real property assets held in the Fund at the end of the fiscal year at fair market value established by appraisals performed by independent appraisers.

11. KILICO will enter into an agreement with Bedford pursuant to which Bedford will provide to KILICO, in connection with KILICO's administration of the Funds, advice and counsel with respect to the marketing of interests in the particular Fund, the initial purchase of properties for the Fund, the sale of properties for the Fund, the acquisition of property management services for the properties held by the Fund, the making of improvements to properties held by the Fund and general periodic review and oversight of the Fund's portfolio.

12. For these services, KILICO will pay to Bedford, out of its Management Fee described above: (a) Bedford's actual expenses incurred in providing the services; and (b) a maximum of 50% of the pre-tax gain remaining from the 1.2% Management Fee after allocable general management expenses of both Bedford and KILICO and KILICO's actual expenses incurred in administering the Fund are charged against the Management Fee.

13. KILICO will have responsibility for hiring and overseeing property managers with respect to each property acquired by the Fund. Where it is feasible and reasonable to do so, KILICO will retain BMC to provide such property management services. Any such retention of BMC will be on a commercially reasonable basis under which BMC will receive a management fee which Bedford and KILICO believe to be competitive. Each contract for property management services entered into by BMC and KILICO on the Fund's behalf, will be subject to termination by KILICO upon 60 days notice.

14. If a Fund acquires an interest in real property where Kemper or one of its affiliates holds a pre-existing lease which has not been entered into in contemplation of the acquisition of the property by the Fund, the applicant requests an exemption to permit the continuation of such lease in accordance with its terms; provided however, that Kemper will not permit any transaction to take place that involves any expansion of space, extension, renewal, waiver, exercise of option or any other modification to such lease.

15. In many cases a commission is payable to a real estate broker who

secures a tenant for real property owned by the Fund. Depending on market conditions and commercial practices existing from time to time in the locality involved, the commission may be paid by the Fund and/or by the tenant. It is contemplated that BMC will act as the renting broker with respect to Fund properties which it manages and that it will be compensated on a commercially reasonable basis therefor, taking into account the area and the type and size of the transaction. Each contract for brokerage services entered into by BMC and KILICO on behalf of a Fund, will be subject to termination by KILICO upon 60 days notice. Furthermore, BMC will, on a quarterly basis, provide KILICO and each Plan with a statement setting forth the amount of the leasing commissions for that quarter and a description of the method by which such compensation was calculated.

16. Frequently, properties owned by a Fund will require repairs, rehabilitation and other improvements, both at the time of their initial acquisition by the Fund and thereafter. It is contemplated that BA will act as the general contractor in connection therewith and that it will be compensated on a commercially reasonable basis. All decisions concerning the retention of Bedford or one of its affiliates to provide such contracting, and decisions with respect to the amount which will be paid to Bedford or its affiliates, will be made by KILICO.

17. Properties acquired by the Fund may be covered by Kemper property, liability or casualty insurance written by a KPC Insurer. Although Bedford will avoid dealing with the KPC Insurers in terms of new insurance, the applicant asserts that it would be wasteful to require the replacement of existing insurance on a Fund property. Therefore, an exemption is requested for the acquisition by a Fund of a property which is covered by property, liability or casualty insurance written by a KILICO affiliate if (a) such insurance was bound at the time of the acquisition of the property by the Fund and was not bound in contemplation of such acquisition; and (b) such insurance is not renewed upon the expiration of its term.

18. In addition, KRI reinsures risks both on a treaty and on a facultative basis. No exemption has been requested for renewals of reinsurance on a facultative basis. In a treaty situation, a reinsurer agrees to reinsure, on a blanket basis, a percentage or layer of a certain type of risk written by a primary insurer or another reinsurer. For example, KRI might write a treaty with an unrelated casualty company to automatically reinsure one percent of all

shopping center fire risks underwritten by the casualty company, one of which properties may be owned by the Fund. In a facultative situation, a reinsurer agrees to reinsure a specific risk. Prohibited transactions could occur by virtue of KRI's acting as a reinsurer with respect to a policy written on a property owned by the Fund and receiving a fee therefor. An exemption is requested to permit reinsurance by an affiliate of KILICO if the underlying property, liability or casualty insurance was bound at the time of the acquisition of the property by the Fund and was not bound in contemplation of such acquisition. Also, an exemption is requested for the prospective reinsurance by an affiliate of KILICO on a treaty basis of any property, liability or casualty insurance covering any property acquired by the Fund. The applicant represents that there will be no arrangements or agreements between KRI and other reinsurers regarding specific properties covered under a reinsurance treaty.

19. In general, it is contemplated that properties acquired by the Funds will be purchased for cash and that the Funds will not rely on mortgage financing or other loans in connection with the acquisition or carrying of properties. However, there may be situations where the assumption of indebtedness by a Fund becomes desirable. For example, the Fund may wish to purchase a property which is subject to an existing mortgage which does not permit prepayment or which contains harsh prepayment penalty provisions, or may wish to acquire a property which is subject to an existing mortgage on terms so favorable that it would not be in the interest of the Fund to prepay the mortgage.

20. Violations of the prohibited transaction rules in this area may arise from the fact that a Kemper affiliate may have provided pre-existing financing on properties which will be purchased by the Fund and, unless the financing is paid off prior to the acquisition, KILICO or an affiliate would be lending money to the Fund. Accordingly, an exemption is requested for the loans to the Fund from a Kemper affiliate if: (a) the loan was in effect prior to the acquisition of the property by the Fund and was not placed on the property in contemplation of such acquisition; and (b) Kemper and its affiliate do not take any action to foreclose such loan or otherwise exercise any discretionary authority granted to them under such mortgage.

21. In the interest of expediting the investment of the assets of the Fund, and in the interest of possibly being able

to inform independent fiduciaries who are considering authorizing the investment of plan assets in the Fund of the real properties in which the Fund may invest, KILICO and/or Bedford may find it necessary or desirable either to acquire options on real property or to sign binding contracts for the acquisition of real property. Since at the time of these acquisitions, the Fund may not have been established and/or the Fund may not be fully capitalized, it may be necessary for KILICO and/or Bedford to advance its own assets and/or to become legally obligated to do so. The assignment of the option or acquisition agreement to the Fund in exchange solely for the consideration advanced by KILICO and/or Bedford and reimbursement of its direct out-of-pocket expenses and, in certain cases, an assumption of the obligation of KILICO and/or Bedford to acquire the property, might constitute a violation of the prohibited transaction rules and an exemption is requested therefor. The option or acquisition agreements will specifically state that they have been entered into for the purpose of ultimately being placed with the Fund and that KILICO and/or Bedford are only parties thereto until such time as such placement can be effectuated.

22. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) due to the following:

(a) The decision to invest in a Fund will be made by Plan fiduciaries who are not affiliates of KILICO and Bedford;

(b) The independent Plan fiduciaries will have the opportunity to review a disclosure statement prior to a Plan's investment in a Fund. The disclosure statement will describe in detail the operation of the Fund and the relationships and compensation of KILICO, Bedford and their affiliates in connection with the Fund;

(c) The assets of each Fund will be valued annually by independent appraisers; and

(d) All transactions described herein will be conducted on an arm's-length basis in the ordinary course of business and all sums to be paid Bedford and KILICO and their affiliates will represent not more than adequate consideration for the sale, exchange or transfer involved and reasonable compensation for the service rendered.

Notice to Interested Persons

Because the Plans who will invest in the Funds are not presently ascertainable, the Department has determined that the only practical form of notice is publication in the Federal Register.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Accordingly, the following exemption is hereby proposed under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1.

Section I—Basic Exemption

The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to transactions described below if the applicable conditions set forth in section IV are met.

A. *General exemption.* Any transaction between a party in interest with respect to a Plan and the Fund in which the Plan has an interest, or any acquisition or holding by the Fund of employer securities or employer real property, if, at the time of the transaction, acquisition or holding of such interest—

(1) The aggregate interest (calculated on the basis of the ratio of its original purchase price to the original purchase price of all other such interests which have not been withdrawn or redeemed) of such Plan in the Fund shall not exceed 10%, if \$100,000,000 or less of such interests have been sold, or 7½%, if between \$100,000,000 and \$200,000,000 of such interests have been sold, or 5%, if more than \$200,000,000 of such interests have been sold; provided, however, that the 10% and 7½% figures shall be deemed to be 5% from and after the fourth anniversary of the sale of the first such interest; and

(2) The party in interest is not KILICO or any affiliate of KILICO, except for the transactions described in Section II of this proposed exemption.

B. *Excess holding exemption for Plans.* Any acquisition or holding of qualifying employer securities or qualifying employer real property by a Plan (other than through the Fund) if—

(1) The acquisition or holding contravenes the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of the Act solely by reason of being aggregated with employer securities or employer real property held by the Fund in which the Plan has an interest, and

(2) The requirements of paragraph (a) of this section are met.

C. *Employer securities and employer real property.*

(1) Except as provided in subsection 2 of this paragraph, any acquisition, sale or holding of employer securities and any acquisition, sale, holding or lease of employer real property by the Fund in which a Plan has an interest and which does not meet the requirements of paragraph A of this section, if no commission is paid to KILICO or an affiliate of KILICO or to the employer or any affiliate of the employer in connection with the acquisition or sale of employer securities or the acquisition,

sale or release of employer real property, and—

(a) In the case of employer real property—

(i) Each parcel of employer real property and the improvements thereon are suitable (or adaptable without excessive cost) for use by different tenants, and

(ii) The property of the Fund, which is leased or held for lease to others, in the aggregate, is dispersed geographically.

(b) In the case of employer securities—

(i) The employer security is (A) stock, or (B) a bond, debenture, note, certificate, or other evidence of indebtedness (the security described in (B) is hereinafter referred to as an "obligation"), and

(ii) Neither KILICO nor any affiliate of KILICO is an affiliate of the issuer of the security and, if the security is an obligation of the issuer, either

(iii) The Fund already owns the obligation at the time the Plan acquires an interest in the Fund and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

(iv) Immediately after acquisition of the obligation: (A) not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such Plan, and (B) in the case of an obligation which is a restricted security within the meaning of Rule 144 under the Securities Act of 1933, at least 50 percent of the aggregate amount referred to in (A) is held by persons independent of the issuer. KILICO, its affiliates and any separate account of KILICO shall be considered persons independent of the issuer if KILICO is not an affiliate of the issuer.

(2) Provided that, in the case of a plan which is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), immediately after such acquisition the aggregate fair market value of employer securities and employer real property owned by the Plan does not exceed 10 percent of the fair market value of the assets of the Plan.

(3) For the purposes of the exemption contained in subsection (1) of this paragraph (C), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party in interest with respect to a Plan (which has an interest in the Fund) by reason of a relationship to the employer described in section 3(14)(E), (G), (H), or (I) of the Act.

Section II—Specific Exemptions

The restrictions of section 406(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the transactions described below provided that the conditions of section IV are met.

A. The leasing of any property of a Fund to KILICO or an affiliate thereof if:

(1) Such lease was in being at the time of the acquisition of such property by the Fund and such lease was not entered into in contemplation of such acquisition; and (2) KILICO permits no transaction to take place that involves any expansion of space, extension, renewal, waiver, exercise of option or other modification of such lease.

B. (1) The facultative reinsurance by an affiliate of KILICO of any property, liability or casualty insurance covering any property of a Fund if the underlying insurance was bound at the time of the acquisition of such property by the Fund and was not bound in contemplation of such acquisition, provided that such reinsurance is not renewed upon the expiration of its term.

(2) The reinsurance by an affiliate of KILICO on a treaty basis of any property, liability or casualty insurance covering any property of a Fund, provided that there are no arrangements or agreements between the KILICO affiliate and other reinsurers regarding specific properties covered under a reinsurance treaty.

C. The acquisition by the Fund of a property which is covered by any property, liability or casualty insurance written by an affiliate of KILICO, if: (1) Such insurance was bound at the time of the acquisition of such property by the Fund and was not bound in contemplation of such acquisition; and (2) such insurance is not renewed upon the expiration of its term.

D. The acquisition of any property by a Fund which is subject to a mortgage loan from KILICO or an affiliate thereof if: (1) Such loan was in effect prior to such acquisition and was not placed on such property in contemplation of such acquisition; and (2) KILICO and its affiliate do not take any action to foreclose such loan or otherwise exercise any discretionary authority granted to them under such mortgage loan.

E. The assignment by KILICO and/or Bedford to a Fund of an option agreement and/or an acquisition agreement if the Fund pays KILICO and/or Bedford no more than their direct out-of-pocket costs, expenses and advances with respect to such agreement and such agreement

specifically states that it has been entered into for the purpose of ultimately being placed with the Fund and that KILICO and/or Bedford are only parties thereto until such time as placement can be effectuated.

F. Any transaction between a Fund and a person who is a party in interest with respect to a Plan, which Plan has an interest in the Fund, if—

(1) The person is a party in interest (including a fiduciary) by reason of providing services to the Plan, or by reason of a relationship to a service provider described in section 3 (14) (F), (G), (H), or (I) of the Act, and the person exercised no discretionary authority, control, responsibility, or influence with respect to the investment of Plan assets in the Fund and has no discretionary authority, control, responsibility, or influence with respect to the management or disposition of the Plan assets held in the Fund; and

(2) The person is not an affiliate of KILICO.

G. The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by a Fund, to a party in interest with respect to a Plan, which Plan has an interest in the Fund, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

Section III—Leasing Services

The restrictions of section 406(b)¹ of the Act and the taxes imposed by section 4975(a) and (b) by reason of section 4975(c) (1) (E) and (F) shall not apply, provided that the conditions of section IV are met, to the provision of real estate leasing services with respect to any property of a Fund by Bedford or any of its affiliates, and receipt of compensation by Bedford or its affiliates from tenants for such services, if the amount of such compensation is approved in advance by KILICO and if Bedford and KILICO furnish to each Plan in a Fund, within 45 days after the end of each calendar quarter, a statement setting forth the amount of the leasing commissions received from tenants during such calendar quarter by Bedford or its affiliates with respect to property held in the Fund together with a description of the method by which such compensation was calculated. In addition, each contract for the provision of real estate services shall be subject to termination by KILICO upon 60 days notice.

¹ The Department is providing no exemption from section 406(a) of the Act beyond that which is provided under section 408 (b) (2) of the Act and the regulations promulgated thereunder.

Section IV—General Conditions of Exemption

The exemption proposed in Sections I, II and III above shall be subject to satisfaction of each of the following conditions:

A. At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of KILICO or Bedford, the terms of the transaction are not less favorable to the Fund than the terms available in arm's-length transactions between unrelated parties.

B. The decision by each Plan participating in a Fund to become a participant in such Fund will be made by an independent fiduciary who is not an affiliate (as described below) of KILICO or Bedford.

C. Participating Plans shall invest no more than 25% of their assets in the Funds.

D. KILICO maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (D) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of KILICO, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by Section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required by paragraph (d) below.

E. (1) Except as provided in subsection (2) of this paragraph and notwithstanding any provisions of subsections (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (C) of this section are unconditionally available at their customary location for examination during normal business hours by:

(a) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

(b) Any fiduciary of a plan who has authority to acquire or dispose of the interest of the Plan in the Fund, or any duly authorized employee or representative of such fiduciary.

(c) Any contributing employer to any Plan which has an interest in the Fund or any duly authorized employee or representative of that employer.

(d) Any participant or beneficiary of any Plan which has an interest in the Fund or any duly authorized employee

or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (b) through (d) of this paragraph shall be authorized to examine trade secrets or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this proposed exemption:

A. An "affiliate" of a person includes, (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee (including in the case of an insurance company, an insurance agent thereof, whether or not such agent is a common law employee of the insurance company), or a relative of, or partner in, any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

B. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

C. The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister; and

D. The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the date of granting of this exemption, or a renewal that requires the consent of the Fund occurs on or after the date of granting of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to a holding exempt by virtue of Section I(A) at such time as the interest of the Plan exceeds the percentage interest limitation of Section I(A), unless no portion of such excess results from an increase in the assets allocated to the

Fund by the Plan. For this purpose, assets allocated do not include the reinvestment of Fund earnings. Nothing in this paragraph shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in Section 406 of the Act or Section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 15th day of November, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

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BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-184; Exemption Application No. D-2853]

Temporary Exemption From Certain Prohibitions of ERISA and the Internal Revenue Code for Transactions Involving the Alaska Teamsters-Employer Pension Trust Located in Anchorage, Alaska

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemption.

INTRODUCTION: On September 10, 1981, the Alaska Teamsters-Employer Pension Trust (the Trust) filed with the Department of Labor an application for an exemption from the prohibitions of ERISA Section 406 and from the sanctions resulting from the application of Section 4975 of the Internal Revenue Code of 1954, as amended, in connection with a real estate development known as Desert Horizons. The application for the exemption was filed pursuant to ERISA § 408 and ERISA Procedure 75-1 (40 FR 18,471) and was processed by the Department of Labor under these procedures. On March 5, 1982, a notice of pendency of the proposed exemption was published in the *Federal Register* (47 Fed. Reg. 9,607), requesting the comments of interested persons. Sixteen public comments were received, all of

which opposed granting the proposed exemption. By letter dated June 18, 1982, the Plan was notified that the Department had determined that it would have been inappropriate to grant that part of the proposed class exemption which related to loans or extensions of credit to parties in interest. On August 13, 1982, a notice was published in the Federal Register (47 FR 35,370) withdrawing the proposed exemption.

On August 11, 1982, the Trust brought a lawsuit against the Department seeking review of the Department's decision not to grant the proposed exemption, *Alaska Teamsters-Employee Pension Trust v. Donovan*, Civil Action No. 82-2259 (D.D.C.). Shortly thereafter, the Department moved the Court to remand the action to the Department to reconsider the Plan's application for the exemption. The stated ground for this motion was that when the Plan's application for an exemption was originally considered, the Department considered certain information not in the public record. On October 4, 1982, the parties to the law suit entered into an agreement entitled Stipulation With Respect To Motion To Stay, concerning the conditions of the remand to the Department. Among other things, the agreement provided that Mr. Elliot I. Daniel, an official of the Department, would review the record provided to him by the parties and render a written decision either granting or denying the exemption sought, on the basis of the record reviewed and the regulations, the statute and any applicable precedent. The following grant of a conditional exemption is the decision reached by Mr. Daniel pursuant to the above described Stipulation. On November 12, 1982, the District Court entered an Order settling and dismissing the Plan's complaint, based upon the granting of this exemption.

SUMMARY: This exemption conditionally permits: (1) The proposed sales of certain residential units, located near Palm Springs, California, by a wholly owned corporation of the Alaska Teamsters-Employer Pension Trust to non-fiduciary parties in interest with respect to the Trust; and (2) the proposed extensions of credit by the Trust to the parties in interest in connection with such sales. In the absence of this exemption, it is likely that the transactions would be prohibited by reason of section 406(a) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1106(a)) and section 4975(c)(1) of the Internal Revenue Code of 1954 (the Code) (26 U.S.C. 4975(c)(1)).

FOR FURTHER INFORMATION CONTACT: Elliot I. Daniel of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8368. (This is not a toll-free number.)

I. Background

The Alaska Teamsters-Employer Pension Trust (the Trust) is part of a defined benefit, collectively bargained, multiemployer pension plan established in 1966. As of August 23, 1981, the Trust had more than 15,000 participants and total assets exceeding \$239 million. Over 250 employers, including many large U.S. corporations, make monthly contributions exceeding \$3.1 million to the Trust on behalf of their employees.

In 1977, the Trust purchased 100% of the stock of Desert Horizons, Inc., a California corporation. For all purposes pertinent to this exemption proceeding, both the Applicant (Trust) and the Department of Labor (the Department) have considered the assets and activities of Desert Horizons to be attributable to the Trust. Desert Horizons is a development and construction company which has completed construction of 135 of a projected 500 residential units (the Units), with an accompanying golf course and club house, located on 275 acres of land in Indian Wells, California (near Palm Springs). The Units already constructed comprise Phase I and part of phase II of the planned development.

There is no construction taking place at present pending the improvement of marketing conditions. No final decision has been made by the chief operating officer of Desert Horizons or the Pension Trustees with regard to future construction of the units beyond the completed 135, and with regard to further development of the project. To date, approximately 80 of the Units have been sold. For every unit that remains unsold, carrying charges and interest paid to the construction lender represents a loss to the development and to the Trust of between \$3,500 and \$4,000 per month.

In order to facilitate sales of the Units during a period of high interest rates and generally depressed housing market conditions, and in an effort to reduce the monthly carrying costs, all prospective purchasers are offered, but are not required to accept, a 12% mortgage loan. This financing is provided by Fidelity Federal Savings and Loan Association of Glendale, California (Fidelity), using funds committed by the Trust to fidelity pursuant to an agreement entered into in April 1981. A prospective purchaser of a

Unit who wishes to be considered for the 12% rate presents an application to Fidelity which processes its using its standard mortgage loan procedures and criteria. If Fidelity approves the loan, the Trust advances the funds, the loan is secured by the unit purchased and the funds paying for the property reduce proportionately Desert Horizon's debt to the construction lending institution. The amount of a loan is limited to 80% of the purchase price of a Unit. Principal and interest payments are made monthly by purchasers to Fidelity as servicing agent for the Trust, based on a 30-year amortization schedule. In the event a purchaser's loan is in default, Fidelity has agreed with the Trust that upon the request and under the direction of the Trust, Fidelity will assist in the foreclosure upon the property or in the pursuit of other appropriate legal process against the debtor.

The price for each unit has been set by Walker & Lee, Inc., a large and reputable residential real estate company located in Santa Ana, California. Based on extensive market research and experience in California real estate, Walker and Lee reviewed the properties and priced each model and phase uniformly. Printed price lists are publicly available and sales personnel are instructed to sell only at the established price for that Unit.

In an effort to expand the market of potential purchasers, the Trust filed an application for exemption from the prohibited transaction restrictions described in section 406(a) of ERISA and section 4975(c)(1)(A) through (D) of the tax Code. The application requested a variance from the restrictions, specifically those prohibiting the sale of property and the lending of money or other extension of credit (direct or indirect) between an employee benefit plan and a "party in interest", so as to permit the units to be offered for sale, with the financing arrangement, to parties in interest who are not fiduciaries with respect to the Pension Plan and Trust. As defined in section 3(14) of ERISA and section 4975(e)(2) of the tax Code, these disqualified parties would include, for example, thousands of employees of contributing employers to the Plan, the employers themselves, and employees of the sponsoring union and of the various service providers to the Trust. The Applicant represented that inasmuch as the Teamsters is relatively strong in Alaska, a large segment of the Alaskan population, including many companies and people with the financial means to purchase Units typically priced in the \$235,000 to \$375,000 range, were prohibited from

closing on purchases because of the reach of the party in interest rules. Since Palm Springs is a favored vacation area for Alaskans, many persons who are parties in interest are familiar with the Desert Horizons development.

The Applicants further represented that if the exemption were granted all described party in interest transactions would be arm's-length, with terms identical or no better than those offered to the general public. To provide assurance that parties in interest would not receive concessions by Desert Horizons or the Trust, Applicant represented that no sale of a Unit would be made to a party in interest until it had been advertised to the public in the local (Palm Springs) newspaper for a period of thirty days after its price had been determined by Walker and Lee. If the Unit were not purchased within such time period by a non-party in interest, a party in interest would become eligible to purchase the Unit, but only at the advertised price or at a higher price. In addition, Applicant proffered the utilization of an official independent of the Trust and Desert Horizons who would ascertain whether the prospective purchaser was a party in interest. If such a party was identified, the independent fiduciary, Jay D. Wahlin, C.P.A. of Palm Desert California, having access to all pertinent Desert Horizons documents necessary to evaluate each transaction, would be required, prior to sale, to determine that the advertised price procedure was followed and then certify that the terms and conditions of the transactions did not constitute a price or financing "break" to the party in interest.

On the basis of the facts and representations contained in the Application, as outlined above, on March 5, 1982, notice was published in the Federal Register (47 FR 9,607) that, pursuant to the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18,471, April 28, 1975), the Department was considering the granting of the requested exemption. The notice of pendency (Notice) set forth a summary of the Application and referred interested persons to the Application, available for inspection at the Department in Washington, D.C., for a complete statement of the facts and representations.

The Notice invited interested persons to submit comments on the requested exemption to the Department. The Applicant has represented that it has satisfied the notification-to-interested persons requirement of the Notice.

II. Public Comments

Sixteen public comments were received by the Department, all objecting to the grant of the sales and financing exemptions. Fifteen of the commentators generally were concerned that special exemptive relief granted under the facts and circumstances of the instant situation would not encourage the Trust to act with appropriate judgment and care with respect to future investments. Fourteen of the commentators indicated that following the grant of the exemption, as proposed, pressure would be applied to participants and contributing employers to purchase the unsold residential units. One comment declared, without explanation, that the potential for abuse or impropriety arising during the course of the transactions was too great.

III. Reactions of Applicant

In an initial response, the Applicant claimed that as of April 21, 1982, only two of the sixteen written comments were in the public file contained in the Department's Public Documents Room and marked "Received" by the Department on or before April 19, 1982, the date designated by the Notice as the end of the comment period. Accordingly, Applicant asserted that undue prejudice would result to the Applicant and to the exemption application process were the Department to consider the other fourteen comments. Applicant also objected to consideration by the Department of most of the public comments because they did not express the reasons for the writers' interest in the pending exemption, as requested in the Notice. Moreover, in the view of the Applicant, an objective reading of thirteen of the comment letters and telegrams, indicating identical or similar: wording, photocopied form, envelopes, handwriting on address to the Department, and city and date on post mark (Fairbanks, April 15), demonstrates an orchestrated comment campaign. Thus, those thirteen letters and telegrams should, at most, be considered as a single comment. In a later letter, Applicant notified the Department that it had examined the membership roles of the Alaska Teamsters Local Union 959, Alaska Teamsters-Employer Pension, Health and Welfare and Prepaid Legal Trusts, and two lesser trusts the Union maintains. As a result of this investigation, the Applicant stated that none of the authors of the sixteen comment letters are presently participants or beneficiaries of any of the plans, union members, contributing employers or service providers to the

Pension Trust, nor have they been since the application for exemption was filed with the Department. According to the Applicant, two of the commentators are former contributing employers to the Trust and one of these employers has been in protracted litigation with the sponsoring union. One of the comments was from a former union member and participant in the Trust who was suspended by the union approximately two years ago. At the time of the commentator's suspension, he had earned less than half of the credits necessary for his pension to vest.

In summary, the Applicant argues that the very publication of the proposed exemption indicates that, based on the facts and representations set forth by the Applicant, a *prima facie* case has been made by the Applicant, concurred in by the Department, that the statutory requirements for providing an exemption have been met. Therefore, for the public comments to reverse the Department's "conclusion," they would have to state a conclusive argument that either: (1) The Applicant's facts and representations were materially inaccurate; or (2) Granting the exemption was not administratively feasible, in the interests of the plan, its participants and beneficiaries, or protective of the rights of such participants and beneficiaries.

IV. Views of Department

Section 408(a) of ERISA provides, in pertinent part, that, pursuant to an established procedure, the Secretary of Labor [or his delegate] may grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a). An exemption may not be granted unless the Secretary finds that such exemption is:

- (1) Administratively feasible,
- (2) In the interest of the plan and of its participants and beneficiaries, and
- (3) Protective of the rights of participants and beneficiaries of the plan.

Before granting an administrative exemption, the Secretary must publish notice in the Federal Register of the pendency of the exemption, must require that adequate notice be given to interested persons, and must afford interested persons opportunity to present views.¹ (Italics added)

¹Section 4975(c)(2) of the Code confers substantially similar authority upon the Secretary of the Treasury to issue exemptions of the type described in ERISA section 408(a). However, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority

The enactment of ERISA's Prohibited Transactions provisions in 1974 represented the determination by Congress after years of hearings and debate that a simple "adequate consideration" standard² regulating conduct between employee benefit plans and their fiduciaries, sponsors and other potentially influential "insiders" was hardly adequate to protect those plans against one-sided and abusive dealings. In addition to codifying the common law rules proscribing self-dealing, active conflicts of interest and "kickback" receipts by fiduciaries (ERISA section 406(b)), Congress added a number of "prior restraint" provisions, set forth in ERISA section 406(a), which preclude consummation of sales, lease, loan, service and other transactions which could inure to the benefit of a party in interest. In making these changes, Congress considered the broad impact the new prohibited transaction regulatory framework would have on existing business practices and incorporated explicit statutory exemptions, a provision for administrative exemptions, as well as transitional rules which allowed for a gradual phasing in of certain of the new rules.

In presenting the administrative exemption provision, the ERISA Conferees expressed their collective view that while a procedure for allowing variances was to be established, the authority to grant variances was to be exercised by the authorized Department only for appropriate cases; it was not to be required to grant variances.³ For example, the Secretary of Labor might refuse to grant an exemption if the transaction would constitute an abuse of the labor laws. Exemptions were not to be "allowed" unless the Secretary found that adequate safeguards were provided for participants and beneficiaries, that the exemption would not present administrative problems, and that the transaction would be in the interests of the plan and its participants and beneficiaries.

Publication of a Notice of Pendency in the *Federal Register* does not constitute the requisite finding by the Department that the criteria for the grant of the exemption are inexorably met unless some quantum of clear, credible and

convincing comment and evidence refuting the applicant's representations is offered by interested persons. Each such Notice, including the one published with respect to the instant matter, recites that the "Department is considering granting the requested exemption".

In the process of reaching a determination of whether to grant or deny a requested exemption, the Department seeks to ascertain and examine all information which materially pertains to the decision making processes and dynamics surrounding the transactions. Facts, representations and opinions of applicants, plan participants, and the persons interested enough to express their views, whether or not informed, are accorded proportionate weight in aiding the Department to conclude that the transactions are sufficiently safeguarded from potentially pernicious conflicts of interest so as to justify a favorable finding; or, conversely, that the evident risks to the plan assets outweigh the benefits promised. A relevant consideration in the exemption process may be whether the plan or trust has ever been found to be in violation of the prohibited transaction provisions, or other fundamental fiduciary responsibility rules of ERISA and the Code. (See section 4.06(11) of ERISA Procedure 75-1.) If the situation warrants it, the Department will often encourage the utilization by the plan of independent expert advice, such as for appraisals of property, or the interposition of an independent fiduciary to approve or monitor the transaction on behalf of the trust where one or more of the plan fiduciaries appears to have a personal interest, or is in a conflict position, with respect to the transaction. So long as the Department is unable to issue a final decision on the merits, it reserves the prerogative to request the applicant to augment the protections deemed necessary for a grant or to demonstrate that adequate safeguards are already in place.

As a matter of practice, the Department does not automatically reject comment letters which fail to state the writer's interest in a pending exemption. In this regard, neither the ERISA Procedure nor the published Notice establish qualification requirements for "interested persons". Similarly, the Department does not resolutely disregard all late-arriving comments to the Public Documents Room, especially where, as in the present case (as acknowledged by the Applicant), the challenged (14) letters and telegrams were mailed four days

before the comment period stipulated in the Notice was to expire. As a general matter, the Department views the date set forth in the Notice for the receipt of comments as being in the nature of a guarantee to interested persons that the record with respect to the application for exemption will not be closed, and a final determination made, before the specified date. (See ERISA Procedure 75-1, Section 6.01. " * * * the earliest date upon which a decision may be entered") The Applicant has not shown that consideration by the Department of the contested "late" comments would result in undue prejudice to the Applicant's rights. In fact, wherever possible the Department does entertain delayed or other late-arriving comments so long as a final determination to grant or deny the requested exemption has not been made.

Nevertheless, substantive review of all 16 comment letters received following publication of the Notice does not compel a conclusion that the exemption as proposed, or as modified to more precisely and appropriately define fiduciary decision making with respect to the transactions, would not be in the interests, or protective, of the Trust and its participants. As mutually understood both by the Department and Applicant, granting of the exemption in no way represents the approval by the Department of the investment by the Trust in Desert Horizons or the prior or future course of conduct with respect to the development of the Desert Horizons, or any other investment properties. Trustees and other fiduciaries must still strictly adhere to the standards of care, undivided loyalty and prudence prescribed in section 404(a)(1) of ERISA, regardless of any exemption granted.

The statement by commentators that Trust participants and other parties in interest will be subjected to pressure to purchase the residential Units is an unsubstantiated claim. Thus, the Department cannot conclude that any labor laws will be violated or that implementation of an exemption lifting the legal barrier against the sale of property will not inure to the benefit of the Trust and, derivatively, the participants as a whole. We note that the exemption granted below does not provide relief from the proscriptions of section 406(b) of ERISA. If, hypothetically, a fiduciary used his position, as such, to pressure a Trust participant to engage in a transaction, involving the assets of the Trust, for the purpose of avoiding or reducing actual or potential liability for prior acts or omissions by the fiduciary in dereliction of duty, this conduct could result in an

of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor, effective December 31, 1978.

² See section 503(b) of the Internal Revenue Code of 1954 which, by reason of amendment of section 503(a)(1)(B) of the Code by Pub. L. 93-406, section 2003(b) no longer applies to most privately sponsored employee benefit plans, as defined in ERISA section 3(3), after December 31, 1974.

³ H.R. REP. NO. 1280, 93d Cong., 2d Sess. 311 (1974).

act of self-dealing, in contravention of ERISA section 406(b)(1), which act would not be exempted by this, or any other, exemption.⁴

Post-comment period review by the Department of the record with respect to the Application failed to indicate to any degree of certainty that, given the fixed 12 percent interest rate commitment by the Trust, sales prices for the Units were, or would be, adjusted periodically by Desert Horizons (or Walker & Lee) as a function of the prevailing interest rate climate, as well as other relevant market conditions. The Application included promotional materials tending to demonstrate that, in Southern California and other regions of the U.S., subdivision houses recently have been offered principally on a two-pronged basis: list sales price plus available financing. Applicant argued that it was necessary and prudent to integrate housing prices and finance "packages" so as to stimulate the marketing of real estate during a period of high interest rates. Yet, there was little evidence that an adequate decision making process, or price formulation, would be in place to assure that the pricing of Units would realistically reflect and, when appropriate, effectively offset, the attractive interest rate that was established by agreement between the Trust and the Fidelity Bank in 1981. Thus, the Department could not determine that, under the exemption, as proposed, the Trust would receive a fair market value for the Units sold with associated financing which would be at least commensurate with the total value of other sales-financing packages offered for similar real estate in a similar region under similar market conditions.

From all impressions that could be discerned from the record, it appeared that, in fixing the interest rate at 12 percent, significant emphasis was placed by the Trust on the large carrying cost losses incurred by the

⁴ See Section 510 of ERISA, which provides, in part, that it shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan or title I of ERISA.

Section 511 of ERISA provides that it shall be unlawful for any person through the use of fraud, force, violence, or threat of the use of force or violence, to restrain, coerce, intimidate, or attempt to restrain, coerce or intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan or title I of ERISA. Any person who willfully violates this section shall be fined \$10,000 or imprisoned for not more than one year, or both.

Development. In this regard, through May 31, 1981, total revenues from the project were approximately \$2,605,000 while development-related costs totaled approximately \$51,000,000, with monthly carrying costs sustained of \$3,500-4,000 per Unit. Under those circumstances, only a clarification of the fair market value question or a modification of the proposed exemption to provide additional protections could undo the Department's concern that the operators of Desert Horizons might artificially stimulate the market for the Units, without due regard for the prevailing rate of return on similar investments. As a general matter, the Department does not believe that either the Prohibited Transaction provisions or the general fiduciary responsibility provisions of ERISA are easily susceptible to interpretations that would encourage "bargain sales" of employee benefit plan assets or interest rate concessions by plans.⁵

The Department has consulted with counsel for the Applicant who requests that the exemption be granted under the express condition that Walker & Lee, Inc. certify the fair market value on any Unit sold to a party in interest of the Trust. The fair market value certification, based upon all relevant market conditions at the time of sale, including financing, will be forwarded by Walker & Lee to Jay D. Wahlin. Wahlin, acting as transactional fiduciary for the Trust, will certify separately that no eligible party in interest is the recipient of a concession with respect to the terms and conditions of the sales and financing transactions. It is expected that Wahlin will be given access to all information necessary for him to make his decisions including, for example, actual sales prices of similar Units that have been sold to non-parties in interest. No Unit can be offered for sale to a party in interest, and no prospective transaction may be certified by Walker & Lee or Wahlin, unless the published advertisement procedures submitted by the Applicant are satisfied. Loan applications will be approved solely by Fidelity which will use its standard qualification procedures.

The Department has reviewed the entire record and has decided to grant the exemption subject to the clarifications and modifications outlined

⁵ Cf., Department of Labor letter to National Coordinating Committee for Multiemployer Plans. Ad. Op. 81-12A, January 15, 1981 (Application of "prudence" and "reasonable rate of interest" requirements of sections 404(a)(1)(B) and 408(b)(1) of ERISA to participant loan programs of plans); H.R. Rep. No. 1280, *Supra*, at 302 (prevailing rate of return requirement applies to plan investments in general).

above. Based on this review, and following consultation with counsel for the Applicant, the Department has also concluded that the exemption permitting sales of Units shall expire as of May 15, 1985. This will enable Desert Horizons to offer Units to all eligible persons through three prime (winter) selling seasons. Subsequent to the expiration date of the exemption for sales, Fidelity or the Trust may hold mortgage loans made to parties in interest provided that the loans were originated in connection with sales covered by the exemption. The grant of this temporary exemption does not prejudice the Trust's (or Desert Horizon's) right to apply for additional exemptive relief at some future date.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan or trust to which the exemption is applicable from certain other provisions of ERISA and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA, which among other things require a fiduciary to discharge his or her duties respecting the plan or trust solely in the interest of the participants and beneficiaries of the plan or trust and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan or trust must operate for the exclusive benefit of the employees of the employers maintaining the plan or trust and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b) of ERISA and section 4975(c)(1)(E) or (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

(4) The notice of pendency was issued and the exemption is being granted solely by the Department because,

effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Exemption

In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1, and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the Plan (and Trust) and of its participants and beneficiaries;

(c) It is protective of the rights of the participants and beneficiaries of the Plan (and Trust).

Accordingly, the restrictions of section 406(a) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to

(a) Sales before May 15, 1985 of residential Units in the Desert Horizons developed, located in Indian Wells, California, by Desert Horizons, Inc. to parties in interest of the Alaska Teamsters-Employer Pension Trust who are not fiduciaries (within the meaning of ERISA section 3(21)(A)) with respect to such Trust, and

(b) Mortgage loans furnished, in connection with sales of Units, to such non-fiduciary parties in interest by Fidelity Federal Savings and Loan Association, acting as agent, in fact, for such Trust, if the following conditions are satisfied:

(1) (A) Every thirty (30) days, Desert Horizons shall publish in the Desert Sun newspaper (Palm Springs, California) a price list delineating each available residential Unit and the price at which it is offered for sale to the general public.

(B) For thirty (30) days from initial publication, no sale of any such advertised Unit shall be made to a party in interest, even if such party offers more than the advertised price.

(C) If, after thirty (30) days from initial publication, no non-party in interest offers to purchase the Unit, a party in interest shall become an eligible purchaser, but only at the advertised price or at a higher price.

(D) A party in interest shall not be eligible to purchase a Unit whose advertised price has been altered until the expiration of thirty (30) days following publication at the altered price.

(E) All prospective purchasers shall complete a questionnaire indicating

whether they are a party in interest with respect to the Trust.

(2) Prior to the execution of a contract for the sale of a residential Unit to a party in interest of the Trust, Walker & Lee, Inc., serving as an independent fiduciary for the Trust, shall submit to Jay D. Wahlin, C.P.A. (of Palm Springs, California) a letter certifying that, based on all relevant market factors, including financing, the sales price for the Unit is no less than its fair market value;

(3) Using its standard procedures and criteria, Fidelity Federal Savings and Loan Association shall, in fact, be solely responsible for the processing of applications for the subject mortgage loans, and for the qualification of prospective borrowers covered by this exemption;

(4) No contract for the sale of a Unit (or associated mortgage loan) shall be executed until Jay D. Wahlin determines whether the prospective purchaser is a party in interest with respect to the Trust. Upon identification of such party, Wahlin, serving as transactional fiduciary who is independent of the Trust and having access to all information and documentation that he deems necessary for an informed determination, shall evaluate and approve the proposed transaction, based on determinations made that: (i) The published advertisement procedures of condition (1), above, are fully met, and (ii) the terms and conditions of such sales and financing transactions are at least equal to those that the Trust would receive in a similar transaction with an unrelated party. In the event that Wahlin resigns this position as transactional fiduciary, or if his appointment is otherwise terminated, the Trust shall notify the Department's Office of Fiduciary Standards of the name and qualifications of a prospective successor fiduciary. Appointment of such successor shall be effective thirty (30) days after receipt of such notification, unless the Department issues a letter to the Trust explaining its objections:

(5) The Trust or Desert Horizons, Inc. shall maintain accurate records demonstrating compliance with the conditions of this exemption for all covered transactions.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the Application are true and complete, and that the Application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Statement on Effect of Exemption

The granting of this exemption does not constitute an opinion or approval by the Department with regard to the appropriateness or prudence of the Trust's decision to invest its assets in Desert Horizons, Inc. or in the development of the Desert Horizons' properties. Nor does the granting of this exemption indicate the Department's opinion or approval with respect to any future decision by the Trust to construct additional residential Units in the Desert Horizons development. This exemption is directed solely to certain transactions which will enable the Trust to sell the Units which the Trust represents it has been unable to sell. The Applicant (Trust) expressly concurs with the foregoing statement.

Signed at Washington, D.C., this 21st day of October 1982.

Elliot I. Daniel,

Chief, Division of Fiduciary Interpretations and Regulations, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-31831 Filed 11-18-82; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Artists in Education Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Artists in Education Advisory Panel to the National Council on the Arts will be held on December 6, from 8:30 a.m.-7:15 p.m.; on December 7, from 8:30 a.m.-5:30 p.m.; and on December 8, from 8:30 a.m.-4:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E. Street, NW., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be general policy issues & application review.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

November 12, 1982.

[FR Doc. 82-31791 Filed 11-18-82; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel (Prescreening-Film/Video Production); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Prescreening-Film/Video Production) to the National Council on the Arts will be held on December 7-9, 1982, from 9:00 a.m.-5:30 p.m. in the 12th floor screening room of the Columbia Plaza Office Complex, 2401 E Street, NW, Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.
November 12, 1982.

[FR Doc. 82-31790 Filed 11-18-82; 8:45 am]
BILLING CODE 7537-01-M

Institute of Museum Services; Meeting

AGENCY: Institute of Museum Services.
ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: December 3, 1982.

ADDRESS: National Zoological Park, 3001 Connecticut Avenue, NW.

FOR FURTHER INFORMATION CONTACT: Denna Jones, Executive Assistant to the National Museum Services Board, 330 C Street, SW., Room 4006, Washington, D.C. (202) 426-6577.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under Title II of the National

Museum Services Act of the "Arts, Humanities, and Cultural Affairs Act of 1976," Pub. L. 94-462. The Board is established to have the responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under this title.

The meeting of the Board is open to the public on December 3, 1982 from 10:00 a.m. to 4:30 p.m. The agenda includes:

Preamble to Code of Federal Regulations 34, part 64;
Education Department General Administrative Regulations (EDGAR).

Records are kept of all Board meetings and proceedings, and are available for public inspection at the office of the Institute of Museum Services from the hours of 9:00 a.m. to 5:30 p.m. Monday through Friday.

Dated: Tuesday, November 16, 1982.

Lilla Tower,
Director.

[FR Doc. 82-31822 Filed 11-18-82; 8:45 am]
BILLING CODE 4000-02-M

NATIONAL SCIENCE FOUNDATION

Ad Hoc Oversight Subcommittee for Low Temperature Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meetings:

Name: Ad Hoc Oversight Subcommittee for Low Temperature Physics Program, Advisory Committee for Materials Research.

Date and Time: December 6-7, 1982; 9:00 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, N.W., Room 338, Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Donald H. Liebenberg, Program Director, Low Temperature Physics Program, Condensed Matter Sciences Section, Division of Materials Research, Room 404, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357-9737.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in Low Temperature Physics.

Agenda Closed: Monday, December 6, 1982—9:00 a.m. to 5:00 p.m. Review and comparison of declined proposals (and supporting documentation) with successful awards including review of peer review materials and other privileged materials.

Closed: Tuesday, December 7, 1982—9:00 a.m. to 5:00 p.m. Further discussions of declined proposals and awards—Preparation of report on Subcommittee findings and recommendations.

Reasons for Closing: The Subcommittee will be reviewing grants and/or declination

jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This session will also include a review of the peer review of documentation pertaining to applicants. These matters are within exemptions (4) and (6) of U.S.C. 552 (c), Government in the Sunshine act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

November 16, 1982.

[FR Doc. 82-31771 Filed 11-18-82; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee For Engineering; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering
Date and Time: December 6-7, 1982; 9 a.m.-5 p.m., December 6, 9 a.m.-3 p.m., December 7

Place: National Science Foundation, 1800 G Street, NW, Room 540, Washington, D.C. 20550

Type of Meeting: Open

Contact Person: Mrs. Mary Poats, Executive Secretary, Advisory Committee for Engineering, Room 537, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357-9571

Summary Minutes: Contact Mrs. Mary Poats at the above address

Purpose of Advisory Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda:

December 6

9:00 a.m.—Opening Remarks

9:30 a.m.—Discussion of Committee Interaction with NSB Pre-College Commission

10:45 a.m.—Discussion of Increasing Participation of Women and Minorities in Engineering; Problems of Women Engineering; Faculty Members

Noon—Lunch

1:30 p.m.—Discussion of International Science

2:45 p.m.—ASME Presentation

4:15 p.m.—Goals of Engineering Directorate

5:00 p.m.—Adjourn

December 7

9:00 a.m.—Discussion with Director

9:30 a.m.—Discussion of Construction Engineering and Building Research Thrust

10:45 a.m.—New Action Items

Noon—Lunch

1:30 p.m.—New Technical Initiatives

2:15 p.m.—Information Items

3:00 p.m.—Ajourn

M. Rebecca Winkler,

Committee Management Coordinator.

November 16, 1982.

[FR Doc. 82-31770 Filed 11-18-82; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Research Program; Meeting

The ACRS Subcommittee on the Safety Research Program will hold a meeting on December 8, 1982, Room 1046, at 1717 H Street, NW., Washington, DC. The Subcommittee will discuss the NRC Safety Research Program for FY 1984 and 1985 and also Draft 1 of the ACRS Report to the Congress on this matter.

In accordance with the procedures outlined in the *Federal Register* on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statement.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: *Wednesday, December 8, 1982—10:00 a.m. until 6:30 p.m.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this matter.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Sam Duraiswamy

(telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: November 16, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-31824 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.
2. The title of the information collection: 10 CFR Part 51, Licensing and Regulatory Policy and Procedures for Environmental Protection.
3. The form number if applicable: Not applicable.
4. How often the collection is required: Non-recurring.
5. Who will be required or asked to report: Nuclear power plant applicants and permit holders, and certain nuclear materials applicants and licensees.
6. An estimate of the number of responses: 23.
7. An estimate of the total number of hours needed to complete the requirement or request: 117,900.
8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.
9. Abstract: Policy and procedures are established for the preparation and processing of environmental impact statements and related documents relative to the Commission's licensing and regulatory activities.

Copies of the submittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585. Dated at Bethesda, Maryland, this 15th day of November, 1982.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 82-31823 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Generic Items; Meeting

The ACRS Subcommittee on Generic Items will hold a meeting on December 8, 1982, Room 1046, 1717 H Street, NW., Washington, DC. The Subcommittee will discuss the Office of Nuclear Reactor Regulation's draft report on the prioritization of safety-related generic issues (NUREG-0933).

In accordance with the procedures outlined in the *Federal Register* on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, December 8, 1982—8:00 a.m. until 10:00 a.m.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Sam Duraiswamy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: November 16, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-31821 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-368]

Arkansas Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 37 to facility Operating License No. NPF-6 issued to Arkansas Power & Light Company (the licensee), which revised the Technical Specifications for operation of Arkansas Nuclear One, Unit 2 (the facility), located in Pope County, Arkansas. The amendment is effective as of the date of issuance.

The amendment restricts the movement of the full length and part length control element assembly (CEA) groups and allows for a special test exception for the part length CEA group.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 8, 1982, as supplemented October 6, 1982, (2) Amendment No. 37 to Facility Operating License No. NPF-6, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 5th day of November, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-31809 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-142]

University of California at Los Angeles; Availability of the Supplemental Safety Evaluation Report

Notice is hereby given that the Office of Nuclear Reactor Regulation has published a Supplemental Safety Evaluation Report on the proposed operating license renewal of research reactor license R-71. The facility is located on the campus of the University of California in Los Angeles, California.

The report is being made available at the Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C., for inspection and copying. The report can also be purchased from the Director, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated: November 15, 1982.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Acting Chief, Standardization & Special Projects Branch, Division of Licensing.

[FR Doc. 82-31814 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

[License No. 42-08456; (EA 82-45) (ASLBP 83-483-01 OT)]

Consolidated X-Ray Service Corp.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the *Federal Register*, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a presiding officer is designated in the following proceeding: Consolidated X-Ray Service Corp., License No. 42-08456.

The presiding officer is being designated pursuant to an order of the Commission dated November 1, 1982 concerning Consolidated X-Ray Service Corporation's request for a hearing in this enforcement action.

The presiding officer in this proceeding is the Honorable James A. Laursen, Administrative Law Judge.

All correspondence, documents and other materials shall be filed with Judge Laursen in accordance with 10 CFR

2.701 (1980). His address is:

Administrative Law Judge James A. Laursen, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Md., this 15th day of November 1982.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 82-31820 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collection: 10 CFR Part 100, Appendix A—Seismic and Geologic Siting Criteria for Nuclear Power Plants.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Non-recurring.

5. Who will be required or asked to report: Nuclear Power Plant Applicants.

6. An estimate of the number of responses: 8.

7. An estimate of the total number of hours needed to complete the requirement or request: 67,000 person hours per year for 3 years.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC regulations, 10 CFR Part 100, Appendix A, require applicants to provide information which show evidence or clues as to the size and frequency of occurrence of prehistoric earthquakes, and evidence of last time there was movement along faults at the site or site region to determine potential for fault offset during life of a nuclear power plant.

Copies of the submittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 15th day of November 1982.

For the Nuclear Regulatory Commission.
Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 82-31818 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission: New.
2. The title of the information collection: IE Bulletin 82- : "Deficiencies in Primary Containment Electrical Penetration Assemblies."
3. The form number if applicable: Not applicable.
4. How often the collection is required: One time.
5. Who will be required or asked to report: NRC licensees and holders of construction permits.
6. An estimate of the number of responses: 110.
7. An estimate of the total number of hours needed to complete the requirement or request: 8,800.
8. Section 3504(h), Pub. L. 96-511 does not apply.
9. Abstract: IE Bulletin 82- : "Deficiencies in Primary Containment Electrical Penetration Assemblies" requires NRC licensees and holders of construction permits to submit written reports regarding the adequacy of electrical penetration assemblies supplied by the Bunker Ramo Corporation. The information in such reports will provide reasonable assurance that these electrical penetration assemblies are suitable for service intended.

Copies of the submittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 15th day of November, 1982.

For the Nuclear Regulatory Commission.
Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 82-31819 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 59 to Facility Operating License No. DPR-66 issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), which revised Technical Specifications for operation of the Beaver Valley Power Station, Unit No. 1 (the facility) located in Beaver County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment adds Technical Specifications on radiation monitoring instrumentation, as recommended by NUREG-0737, Items II.F.1.1, II.F.1.2, and II.F.1.3.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 30, 1982, (2) Amendment No. 59 to License No. DPR-66 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the B. F. Jones Memorial Library,

663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of November 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-31810 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 67 to Facility Operating License No. DPR-36, issued to Maine Yankee Atomic Power Company, which revised Technical Specifications for operation of the Maine Yankee Atomic Power Station (the facility) located in Lincoln County, Maine. The amendment is effective as of the date of issuance.

The amendment allows the Power Operated Relief Valves to be temporarily rendered inoperable for required hydrostatic tests of the Reactor Coolant System.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 7, 1982, (2) Amendment No. 67 to License No. DPR-36 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the

Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Wiscasset Public Library Association, High Street, Wiscasset, Maine. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda Maryland, this 9th day of November, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

*Chief, Operating Reactors Branch No. 3,
Division of Licensing.*

[FR Doc. 82-31811 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket 50-387]

Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc.; Issuance of Amendment to Facility Operating License

On July 17, 1982, the U.S. Nuclear Regulatory Commission (the Commission) issued Facility Operating License NPF-14, to Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (licensees) authorizing operation of the Susquehanna Steam Electric Station, Unit No. 1 (the facility), at reactor core power levels of 164.4 megawatts thermal (five percent power) in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan.

The Commission has now issued Amendment No. 5 to Facility Operating License No. NPF-14 which authorizes operation of the Susquehanna Steam Electric Station, Unit No. 1, at reactor core power levels not in excess of 3293 megawatts thermal (100 percent power) in accordance with the provisions of the amended license; defer full qualification documentation on containment vent and purge valves to December 1982; changes implementation of interim gas pipeline procedures to December 1982; adds implementation of design modifications to wetwell/drywell vacuum breakers to be completed by startup following first refueling outage; modifies implementation date for maintenance and surveillance program; defers equipment qualification for equipment covered by Section 5.3 of NUREG-0803 for SDV break environment to be completed by startup following first refueling outage; adds schedule for corrective action on emergency preparedness findings; adds schedule for full seismic and dynamic qualification of seismic category I

mechanical and electrical equipment; adds evaluation and application of inplant SRV test to be conducted at LaSalle, Unit 1; adds submittal of detailed analysis or testing results for feedwater isolation valves with feedwater line break outside containment; adds submittal of report discussing experience and reliability of the Display Control System; and adds license subject to final resolution of pending litigation involving Table S-3. The amendment is effective as of the date of issuance.

The Susquehanna Steam Electric Station, Unit No. 1 is a boiling water nuclear reactor located at the licensee's site in Luzerne County, Pennsylvania.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulation. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amended license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on August 9, 1978 (43 FR 35406). The increase in power level authorized by this Amendment is encompassed by that prior public notice.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Amendment No. 5 to License No. NPF-14; (2) the Commission's Safety Evaluation Report (NUREG-0776), dated April 1981, Supplement No. 1, dated June 1981, Supplement No. 2, dated September 1981, Supplement No. 3, dated July 1982, and Supplement No. 4 dated November 1982; (3) the Final Safety Analysis Report and amendments thereto; and (4) the Final Environmental Statement (NUREG-0564) dated, June 1981.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. A copy of Amendment No. 5 to Facility Operating License No. NPF-14 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention:

Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements No. 1, 2, 3 and 4 (NUREG-0776) and the Final Environmental Statement (NUREG-0564), may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call 301-492-9530.

Dated at Bethesda, Maryland, this 12th day of November 1982.

For the Nuclear Regulatory Commission,

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 82-31812 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

South Carolina Electric & Gas Co. and South Carolina Public Service Authority; Issuance of Amendment to Facility Operating License

On August 6, 1982, the U.S. Nuclear Regulatory Commission (the Commission) issued Facility Operating License NPF-12 to South Carolina Electric & Gas Company and South Carolina Public Service Authority (licensees) authorizing operation of the Virgil C. Summer Nuclear Station, Unit No. 1 (the facility), at reactor core power levels not in excess of 2775 megawatts thermal in accordance with the provisions of the license, the Technical Specification and the Environmental Protection Plan with a condition limiting operation to five percent of full power (139 megawatts thermal).

The Commission has now issued Amendment No. 5 to Facility Operating License No. NPF-12 which authorizes operation of the Virgil C. Summer Nuclear Station, Unit No. 1, at reactor core power levels not in excess of 2775 megawatts thermal in accordance with the provisions of the amended license. The amendment includes a license condition restricting operation to 50 percent of full power until certain documentation concerning the steam generators is submitted for NRC staff review and approval. The amendment is effective as of the date of issuance.

The Virgil C. Summer Nuclear Station, Unit No. 1 is a pressurized water nuclear reactor located in Fairfield County, South Carolina, approximately 26 miles northwest of Columbia, South Carolina

and approximately one mile east of the Broad River near Parr, South Carolina.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amended license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on April 18, 1977 (42 FR 20203). The increase in power level authorized by this amendment is encompassed by that prior public notice.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Amendment No. 5 to License No. NPF-12; (2) the Commission's Safety Evaluation Report, dated February 1981 (NUREG-0717), Supplement No. 1, dated April 1981, Supplement No. 2, dated May 1981, Supplement No. 3, dated January 1982, Supplement No. 4, dated August 1982, and Supplement No. 5, dated November 1982; (3) the final Safety Analysis Report and amendments thereto; (4) the Final Environmental Statement, dated May 1981 (NUREG-0719); (5) the Environmental Report, dated February 1977, and supplements thereto; and (6) the Initial Decisions of the Atomic Safety and Licensing Board, dated July 20, 1982 and August 4, 1982.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Fairfield County Library, Garden and Washington Streets, Winsboro, South Carolina 29180. A copy of Amendment No. 5 to Facility Operating License No. NPF-12 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements (NUREG-0717) and the Final Environmental Statement (NUREG-0719) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear

Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call 301-492-9530.

Dated at Bethesda, Maryland, this 12th day of November 1982.

For the Nuclear Regulatory Commission.

B. J. Youngblood,
Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 82-31813 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

**Virginia Electric and Power Co.;
Issuance of Amendment to Facility
Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 44 to Facility Operating License No. NPF-4 issued to the Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Unit No. 1 (the facility) located in Louisa County, Virginia. The amendment is effective as of its date of issuance.

The amendment corrects an administrative error presently existing in the Technical Specifications which requires Type C testing for isolation valve TV-SV102-2. The amendment is administrative in nature and does not involve any safety related matter.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 8, 1982; (2) Amendment No. 44 to Facility Operating License No. NPF-4; and (3) the Commission's related letter dated November 9, 1982. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

20555 and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of items (2) and (3) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 9th day of November, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,
*Chief, Operating Reactors Branch No. 3,
Division of Licensing.*

[FR Doc. 82-31815 Filed 11-18-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

**Wisconsin Electric Power Co.;
Issuance of Amendments to Facility
Operating Licenses**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 66 to Facility Operating License No. DPR-24, and Amendment No. 71 to Facility Operating License No. DPR-27 issued to Wisconsin Electric Power Company (the licensee), which revised Technical Specifications for operation of Point Beach Nuclear Plant, Unit Nos. 1 and 2 (the facilities) located in the Town of Two Creeks, Manitowoc County, Wisconsin. The amendments are effective 20 days from the date of issuance.

The amendments upgrade the existing Technical Specifications for Point Beach Units 1 and 2 in order to provide for redundancy of decay heat removal during all modes of operation.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in

connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated November 16, 1981 as modified by letter dated May 3, 1982, (2) Amendment Nos. 66 and 71 to License Nos. DPR-24 and DPR-27, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Joseph Mann Library, 1516 16th Street, Two Rivers, Wisconsin 54241. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 8th day of November, 1982

For the Nuclear Regulatory Commission.
Robert A. Clark,
*Chief, Operating Reactors Branch No. 3,
 Division of Licensing.*

[FR Doc. 82-31816 Filed 11-18-82; 8:45 am]
 BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 67 and 72 to Facility Operating License Nos. DPR-24 and DPR-27 issued to the Wisconsin Electric Power Company (the licensee), which revised the license for operation of the Point Beach Nuclear Power Plant, Unit Nos. 1 and 2 (the facility) located in Manitowoc County, Wisconsin. The amendments are effective as of the date of issuance and are to be implemented in accordance with the provisions 10 CFR 73.55(b)(4) and Appendix B.

The amendments add license conditions to include the Commission approved Security Force Training and Qualification Plan as a part of the licenses.

The licensee's filing, which has been handled by the Commission as an application, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required

since the amendments do not involve a significant hazards condition.

The Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

The licensee's filings dated April 7, 1981, July 28, 1981 and August 5, 1982 consist of Safeguards Information required to be protected from public disclosure pursuant to 10 CFR 73.21.

For further details with respect to this action, see (1) Amendment Nos. 67 and 72 to Facility Operating License Nos. DPR-24 and DPR-27 and (2) the Commission's related letter to the licensee dated November 15, 1982. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555 and at the Joseph Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin. A copy of items (1) and (2) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 15th day of November, 1982.

For the Nuclear Regulatory Commission.
Robert A. Clark,
*Chief, Operating Reactors Branch No. 3,
 Division of Licensing.*

[FR Doc. 82-31817 Filed 11-18-82; 8:45 am]
 BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Hearings on Suspension of MFN Treatment for Poland

1. *Summary.* On October 27, 1982, the President signed Proclamation 4991 (47 FR 49005, October 29, 1982) which provided for the suspension of the rates of duty provided in column 1 of the Tariff Schedules of the United States (TSUS) to products of Poland. The provisions of this Proclamation apply to products exported on and after November 1, 1982. This action was taken because the President determined that the Government of the Polish People's Republic failed to meet certain import commitments under its Protocol of Accession to the General Agreement on Tariffs and Trade (GATT) (19 UST 4331). The President also determined that the national interest required expeditious action.

On June 30, 1967, the Government of the Polish People's Republic of Poland undertook certain import commitments under its Protocol of Accession to the GATT. Pursuant to the authority vested in the President by the Constitution and statutes of the United States, including the Trade Expansion Act of 1962 and the Trade Act of 1974, as amended, the President entered into, and proclaimed tariff rates, under trade agreements with the Polish People's Republic. The President may, pursuant to his rights under a trade agreement, including the above mentioned Protocol, take action to suspend obligations of the United States under such an agreement and to increase duties, or other restrictions, as are appropriate in the exercise of such rights. The President has determined that since 1978 the Government of the Polish People's Republic has failed to meet its import commitments. In addition, the Polish martial law government's steps further to increase its repression of the Polish people by outlawing the independent trade union Solidarity has left the United States without any reason to continue withholding action on its trade complaints against Poland.

In suspending the application of column 1 rates of duty for products of Poland, the President was acting under the authority vested in him by the Constitution and the statutes of the United States including the Trade Expansion Act of 1962 and the Trade Act of 1974. Under section 125(c) of the Trade Act of 1974 (19 U.S.C. 2135), whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to that Act or section 201 of the Trade Expansion Act of 1962, withdraws, or modifies, any obligation with respect to the trade of any foreign country or instrumentality, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States.

Before taking any action under section 125 to restore the balance of obligations, the President is required by section 135(f) to provide for public hearings at which time interested persons will be given a reasonable opportunity to be present, to produce evidence and to be heard, unless he determines that prior hearings will be contrary to the national interest because of the need for expeditious action, in which case he shall provide for a public hearing promptly after such action.

2. *Notice of Public Hearings.* Pursuant to section 125(f) of the Trade Act of 1974 (19 U.S.C. 2135), the Trade Policy Staff Committee (TPSC), chaired by the Office of the United States Trade Representative, has scheduled public hearings beginning at 10:00 a.m., on Wednesday, December 8, 1982, in Room 403, Office of the United States Trade Representative, Winder Building, 600 Seventeenth Street, N.W., Washington, D.C.

3. *Communications Regarding Hearings.* Communications with regard to these hearings should be addressed to: Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 500, 600 Seventeenth Street, NW., Washington, D.C. 20506 (Phone (202) 395-3487).

4. *Requests to Present Oral Testimony.* All requests to present oral testimony must be received by the Secretary of the TPSC not later than close of business, Wednesday, December 1, 1982, and must be accompanied by a written brief, in 20 copies, which states clearly the position taken and describes with particularity the evidence supporting such position.

5. *Written Briefs.* Written briefs may be submitted in lieu of oral testimony. To be fully considered by the Committee, written briefs, in 20 copies, should be received by noon, December 10, 1982. Any rebuttal briefs, in 20 copies, are to be received by December 16, 1982.

6. *Procedures for Conduct of Hearing and Submission of Briefs.* Procedures for the submission of written briefs and rebuttal briefs and other relevant information concerning the hearing process is contained in the Code of Federal Regulations, Title 15, Part 2003.

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.

[FR Doc. 82-31709 Filed 11-18-82; 8:45 am]

BILLING CODE 3190-01-M

1982 Annual Product Review; Withdrawal and Acceptance of Certain Petitions; and Public Hearing

Summary

The purpose of this notice is to announce the withdrawal of certain petitions accepted for the 1982 annual product review as well as to announce the acceptance of a petition for review submitted by Armstrong World Industries, Inc. pursuant to 15 CFR 2007.3(b) and notice of public hearing.

Withdrawal of Cases From the 1982 Annual Product Review

The cases withdrawn include: (82-7) Wheat Bran, submitted by the Government of Chile; (82-33, 34) Certain textile fasteners, submitted by the Government of Uruguay; and (82-53, 54, 55) Certain ceramic capacitors, submitted by AVX Ceramics, Inc. These products will not be considered for

possible inclusion on the list of items eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP). Announcement of the acceptance of these petitions for the 1982 GSP product review appeared in the Federal Register of July 16, 1982. The Trade Policy Staff Committee has granted the petitioners' requests for withdrawal and is notifying the U.S. International Trade Commission of this action.

Case No.	TSUS or TSUSA ¹	Article	Petitioner
82-7	131.75pt.	Milled grain products: Not fit for human consumption: Wheat: Bran Articles not specially provided for, of textile materials: (Lace or net articles, whether or not ornamented, and other articles ornamented) Other articles not ornamented: Of man-made fibers: (Knit (except pile or tufted construction)) Pile or tufted construction: Fasteners consisting of two mating knit or woven textile strips Other: (Artificial flowers) Other: Fasteners consisting of two mating knit or woven textile strips	Gov't of Chile
82-33	389.50pt.	Electrical capacitors, fixed or variable: Fixed capacitors: Ceramic: Multilayer: Axial leads	Gov't of Uruguay
82-34	389.6265pt.	Radial leads	Do.
82-53	685.8013	Chips	AVX Ceramics, Myrtle Beach, SC
82-54	685.8016		do.
82-55	685.8017		do.

¹Tariff Schedules of the United States Annotated.

Petition Accepted for Review

Notice is hereby given of acceptance for review of a petition requesting modification of the list of articles eligible to receive duty-free treatment under the GSP as provided for in Title V of the Trade Act of 1974 (19 U.S.C. 2461-2465). The petition, submitted by Armstrong World Industries, Inc. requests the removal of Taiwan from GSP eligibility on certain vinyl tile. The petition will be reviewed pursuant to regulations codified at 15 CFR 2007.3(b) which provide for an expeditious review of petitions outside the timeframe of the annual product review. The International Trade Commission has been notified of the acceptance of this petition for review, and will provide advice to the President on the probable economic effect on U.S. industries and consumers of the removal of Taiwan from duty-free eligibility for the item.

Acceptance of the petition for review does not indicate any opinion with respect to a disposition on the merits of the petition. Acceptance only indicates that the petition is eligible for review by the GSP Subcommittee and the TPSC. The TPSC will hold a hearing in connection with the Armstrong request on Tuesday, December 14, 1982, at 10:00 a.m., in Room 403 in the Office of the United States Trade Representative, 600

17th Street Northwest, Washington, D.C. The hearing will be open to the public and transcripts will be made available for public inspection or purchase from the reporting company.

Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2007.7. Parties submitting briefs or statements containing confidential information must indicate clearly on the cover page of each of the twenty copies submitted and each page within the document, where appropriate, that confidential materials are included. Non-confidential summaries of all confidential material must be submitted in twenty copies, in English, at the same time that confidential submissions are filed.

All communications with regard to the petition and hearing should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street N.W., Room 316, Washington, D.C. 20506. The telephone number of the Secretary of the GSP Subcommittee is (202) 395-6971. Questions may also be directed to any member of the staff of the GSP Information Center.

The GSP Subcommittee invites submissions in support or in opposition to the Armstrong petition. All such submissions should conform to 15 CFR 2003.2. Requests to present oral testimony in connection with the public hearings should be accompanied by twenty copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommittee not later than the close of business December 1. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement the information contained in briefs or statements submitted for the record. Post hearing briefs or statements will be accepted if submitted in twenty copies, in English, within one week after the close of the hearings (but in no case later than December 21, 1982) and rebuttal briefs should be submitted in twenty copies, in English, by close of business, Tuesday, December 28, 1982.

Parties not wishing to appear may submit written briefs or statement in twenty copies, in English, in connection with the Armstrong petition, provided that such submissions are filed on December 28 and conform with the regulations cited above.

Petition Accepted for Review

TSUSA:¹ 728.2530 (Taiwan)²

Article: Floor covering not specially provided for: Vinyl Tile

Petitioner: Armstrong World Industries, Inc.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 82-31870 Filed 11-18-82; 8:45 am]

BILLING CODE 3790-01-M

POSTAL RATE COMMISSION

[Order No. 459; Docket No. A83-5]

Clark, Ohio 43810; Chester Nikodym, et al., Petitioners; Notice and Order of Filing of Appeal

November 12, 1982.

On November 4, 1982, the Commission received an appeal letter from Charles Nikodym and 140 "joint petitioners" (hereinafter "Petitioners"), concerning the United States Postal Service's decision to close the Clark, Ohio, post office. The Commission also received an appeal letter from Mr. and Mrs. Vic Lahm. We will consider the appeals in

this one docket because the subject matter is the same. The appeal letters request the review provided by section 404 (b) of the Postal Reorganization Act [39 U.S.C. 404(b)].¹

The petition sets out the Postal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service complied with the applicable law and its regulations for the closing of post offices.²

Upon preliminary inspection, this case appears to involve the following issues of law:

1. Whether the Postal Service gave adequate consideration under the effect-on-service factor [39 U.S.C. 404(b)(2)(C)] to the question of security of delivery under the Postal Service's proposed alternative, particularly in light of Petitioners' presentation of summaries from the sheriffs of the two adjacent counties showing numerous complaints of theft and vandalism of mailboxes.

2. Whether the Postal Service gave adequate consideration to the effect-on-service and effect-on-community factors in light of Petitioners' allegation that the Postal Service failed to take account of the Pallet All Division of Semac Industries' Clark plant.

3. Whether the Postal Service developed a reasonably accurate description of the community. Petitioners allege that the Postal Service determined that Clark residents are mostly elderly and retire but argue that this cannot be true, as 120 students attend the Clark elementary school, which has kindergarten through fourth grade.

4. Whether the Postal Service was required by 39 U.S.C. 404(b)(2)(A) to consider the expense of driving to the alternative post office. Petitioners estimate the round-trip expense as \$3.60 or \$6.80, depending upon the post office used.

5. Whether the Postal Service was required by 39 U.S.C. 404(b)(2)(A) to consider Petitioners' allegation that closing the Clark post office would adversely affect land values in the community.

6. Whether the Postal Service acted in compliance with section 113.213 of the Domestic Mail Manual. This section requires, "that the reasons which lead a postal manager to propose the discontinuance of a particular post office are fully articulated and disclosed

at a stage that will enable customer participation to make a helpful contribution toward the final decision." The Petitioners state that the Postal Service employees who spoke to the Clark residents before the Final Determination was posted had previously decided that the post office should be closed.

7. Whether the Postal Service appropriately considered the effect on service. Petitioners claim that it is more convenient to drive to the Clark post office for retail services rather than waiting for the carrier at the end of the driveway.

Other issues of law may become apparent when the Commission has had the opportunity to examine the record made by the Postal Service. The record may be found to resolve adequately one or more of the issues involved in the case.

In view of the above, and in the interest of expediting this proceeding under the 120-day decisional deadline imposed by section 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on the issues described above and/or any further issues of law disclosed by the record in this case. In the event that the Commission finds such memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will make the request therefor by order, specifying the issues to be addressed.

When such a request is issued, the memorandum shall be filed within 20 days of the issuance, and a copy of the memorandum shall be served on the Petitioner by the service.

In briefing the case or in filing any motion to dismiss for want of prosecution, in appropriate circumstances the service may incorporate by reference all or any portion of a legal memorandum filed pursuant to such an order.

The Commission orders:

(A) The appeal letters from Chester Nikodym and others, and from Mr. and Mrs. Vic Lahm be accepted as petitions for review pursuant to section 404(b) of the act (39 U.S.C. 404(b))

(B) The Secretary of the Commission shall publish this Notice and Order in the Federal Register.

By the Commission Commissioner Duffy abstaining.

David F. Harris,

Secretary.

Appendix

November 4, 1982; Filing of Petition.

November 12, 1982; Notice and Order of Filing of Appeal.

¹ Tariff Schedules of the United States Annotated.

² The country named is the beneficiary developing country specified by the petitioner. While the Trade Policy Staff Committee's (TPSC) review will focus on that country, the TPSC reserves the right to address the removal of GSP status for countries other than that specified by the petitioner.

¹ 39 U.S.C. 404(b) was added to title 39 by Pub. L. 94-421 (September 24, 1976), 90 Stat. 1310-11. Our rules of practice governing these cases appear at 39 CFR 3001.110 *et seq.*

² 42 FR 59079-85 (November 17, 1977). The Commission's standard of review is set forth at 39 U.S.C. 404(b)(5).

November 19, 1982: Filing of Record by Postal Service (see 39 CFR 3001.113(a)).

November 24, 1982: Last day for filing of petitions to intervene (see 39 CFR 3001.111(b)).

December 6, 1982: Petitioners' Initial Brief (see 39 CFR 3001.115(a)).

December 21, 1982: Postal Service Answering Brief (see 39 CFR 3001.115(b)).

January 5, 1983: (1) Petitioners' Reply Brief should Petitioners choose to file one (see 39 CFR 3001.115(c)). (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument.

March 4, 1983: Expiration of 120 day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 82-31786 Filed 11-18-82; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 12, 1982.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Carnation Company

Common Stock, \$2 Par Value (File No. 7-6359)

Easco Corporation

Common Stock, \$2.50 Par Value (File No. 7-6360)

Emerson Radio

Common Stock, \$10 Par Value (File No. 7-6361)

Facet Enterprises

Common Stock, \$1 Par Value (File No. 7-6362)

Federal Paper Board Co., Inc.

Common Stock, \$5 Par Value (File No. 7-6363)

Ferro Corporation

Common Stock, \$1 Par Value (File No. 7-6364)

Felmont Oil

Common Stock, \$1 Par Value (File No. 7-6365)

First City Bankcorporation of Texas

Common Stock, \$3.25 Par Value (File No. 7-6366)

Lifemark Corporation

Common Stock, \$.01 Par Value (File No. 7-6367)

United States Home Corporation

Common Stock, \$.10 Par Value (File No. 7-6368)

These securities are listed and registered on one or more other national

securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 6, 1982 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-31714 Filed 11-18-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[SBLC No. 04/B-0029]

First Western SBLC, Inc.; Issuance of Small Business Lending Company Participation Agreement

On September 16, 1982, a Notice was published in the *Federal Register* (47 FR 40965) stating that an Application had been filed with the Small Business Administration pursuant to § 120.4(b) of the Regulations governing Small Business Lending Companies (13 CFR 120.4(b) (1982)) by First Western SBLC, Inc., Commercial Bank Building, 12550 Biscayne Boulevard, North Miami, Florida 33181, to participate with the SBA as a Small Business Lending Company (SBLC).

Interested parties were given until the close of business October 1, 1982, to submit their comments on the Applicant and/or its management. No comments were received.

Notice is hereby given that after review of the Application and all other pertinent information, SBA issued Small Business Lending Company Participation Agreement No. SBLC 04/B-0029 to First Western SBLC, Inc., to operate as an SBLC on this date.

(Catalog of Federal Domestic Program No. 59.012 Small Business Loans.)

Dated: November 16, 1982.

Edwin T. Holloway,

Associate Administrator for Finance & Investment.

[FR Doc. 82-31761 Filed 11-18-82; 8:45 am]

BILLING CODE 8025-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that the objects in the exhibit, "The Vatican Collections: The Papacy and Art" (included in the list¹ filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to an agreement between the foreign lender and The Metropolitan Museum of Art, New York. I also determine that the temporary exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York, beginning on or about February 26, 1983, to on or about June 12, 1983; The Art Institute of Chicago, Chicago, Illinois, beginning on or about July 16, 1983, to on or about October 16, 1983; and The Fine Arts Museums of San Francisco, San Francisco, California, beginning on or about November 19, 1983, to on or about February 19, 1984, is in the national interest.

Public notice of this determination is ordered to be published in the *Federal Register*.

Dated: November 12, 1982.

Gilbert A. Robinson,

Acting Director. [40] [FR Doc. 82-31761 Filed 11-18-82; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C.

¹An itemized list of objects included in the exhibit is filed as part of the original document.

Chapter 35). This document lists a revision. The entry contains the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed fill out the form; and (8) An indication of whether section 3504(H) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed form and supporting documents may be obtained from Patricia Viers, Agency Clearance Office (004A2), Veterans Administration, 810 Vermont Avenue, NW, Washington DC, 20420 (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Karen Sagett, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-6880.

DATE: Comments on the form should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: November 15, 1982.

By Direction of the Administrator.

Domonick Onorato

Associate Deputy Administrator for Information Resources Management.

Revision

- (1) Department of Medicine and Surgery.
- (2) Application for Participation in the Veterans Administration Health Professional Scholarship Program.
- (3) VA Form 10-0003
- (4) One time.
- (5) Applicants for the Health Professional Scholarship Program.
- (6) 6,000 responses.
- (7) One-half hour.
- (8) Not applicable under 3504(H).

[FR Doc. 82-31759 Filed 11-18-82; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF EDUCATION

Education Appeal Board Proceedings

AGENCY: Department of Education.

ACTION: Notice of Education Appeal Board Proceedings.

SUMMARY: This notice advises readers that the Education Appeal Board has scheduled prehearing conferences in the following cases: *Appeal of the Illinois Teachers' Retirement System and the State of Illinois*, Docket No. 80-97, December 3, 1982, to start at 10:30 a.m. in Room 3000, 400 Maryland Avenue, SW., Washington, D.C.; *Appeal of the State of California*, Docket No. 9-(55)-79, December 16, 1982, to start at 10:30

a.m. in Room 1130, (Willard Room), at the above address; *Appeals of the State of Illinois*, Docket Nos. 7-(62)-80 and 9-(64)-80, January 6, 1983, to start at 10:00 a.m. in Room 1130 (Patterson Room), at the above address; *Appeal of the State of Washington*, Docket No. 3-(58)-80, February 15, 1983, to start at 10:30 a.m. in Room 1130 (Stewart Room), at the above address.

FOR FURTHER INFORMATION CONTACT:

Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 2141, FOB-6), Washington, D.C. 20202. Telephone (202) 245-7835.

SUPPLEMENTARY INFORMATION: Under the Education amendments of 1978 (20 U.S.C. 1234), the Education Appeal Board has authority to conduct (1) audit appeal proceedings, (2) withholding, termination, and cease and desist proceedings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board. For information concerning the Board and its procedures, see the Board's final regulations as published in the *Federal Register* on May 18, 1981 (46 FR 27304).

(Catalog of Federal Domestic Assistance Number not applicable)

Dated: November 16, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-31926 Filed 11-18-82; 8:45 am]

BILLING CODE 4000-01-M

Special Needs Program; Application Notice for "Historically Black Institutions" To Compete for New Awards Under the Fiscal Year 1982 Supplemental Competition.

Institutions with special needs, that (1) have historically served substantial numbers of black students and (2) were not already selected for funding under the Strengthening or the Special Needs Programs authorized by Title III of the Higher Education Act of 1965, are invited to compete for a grant under the Special Needs Program under the fiscal year 1982 supplemental competition for historically black institutions. For the purpose of this notice, and as indicated in the Special Needs Program regulations, 34 CFR 626.31(b), institutions that have historically served substantial numbers of black students are those institutions listed in the 1978 publication of the National Center for Education Statistics entitled "Traditionally Black Institutions of Higher Education: Their Identification and Selected Characteristics". These institutions will be referred to as "historically black institutions".

The Special Needs Program is authorized by sections 321-324 and 341-347 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1060-1063 and 1066-1069c. This supplemental competition is authorized by the Fiscal Year 1982 Supplemental Appropriation Act, Pub. L. 97-257.

The Special Needs Program assists eligible institutions of higher education to become self-sufficient by providing funds to improve their academic quality and strengthen their planning, management, and fiscal capabilities. To this end, the Secretary awards planning grants and non-renewable development grants to eligible two and four-year, public and private institutions of higher education. The purpose of the planning grants is to assist institutions in developing their long-range plans. The purpose of the development grants is to assist institutions in implementing portions of their long-range plans, thereby becoming self-sufficient.

Closing Date for Transmittal of Applications: An application for a planning or development grant must be mailed or hand delivered by January 5, 1983.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.031B, Washington, D.C. 20202-3561.

An application must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Eastern Time) daily, except Saturdays, Sundays, and Federal holidays.

Program Information

A. Eligible Institutions

The Fiscal Year 1982 Supplemental Appropriation Act, Pub. L. 97-257, authorizes the Secretary to award grants in fiscal year 1983 to historically black institutions from funds that were reserved for such institutions in fiscal year 1982 under section 347(e) of Title II of the Higher Education Act. The Secretary will award these funds to historically black institutions that have not already been awarded a grant under the Strengthening Program of Special Needs Program, and that satisfy the definition of an eligible institution under the Special Needs Program.

The following institutions have previously satisfied all the above eligibility requirements and may compete for a grant under the Special Needs Program fiscal year 1982 supplemental competition for historically black institutions:

1. Concordia College, Alabama
2. Miles College, Alabama
3. Shorter College, Arkansas.
4. Bethune Cookman College, Florida
5. Coahoma Junior College, Mississippi
6. Elizabeth City State University, North Carolina
7. Johnson C. Smith University, North Carolina
8. Morristown College, Tennessee
9. Wiley College, Texas

Other institutions designated as "historically Black institutions" by the National Center for Education Statistics in the previously cited volume, "Traditionally Black Institutions of Higher Education: Their Identification and Selected Characteristics" and which did not receive a Strengthening or a Special Needs Program grant in the 1982 competition, will be eligible to compete for grant under this competition if they are designated as an eligible institution under the Special Needs Program. These institutions must submit a "Request for Designation as an Eligible Institution" form by January 5, 1983.

Note.—A separate closing date notice for designation as an eligible institution under the Special Needs Program for purposes of this competition is published separately in today's Federal Register.

B. Grant Information

Planning Grants: (1) The Secretary will not accept an application for a planning grant from institutions applying in a cooperative arrangement unless the purpose of the grant is to develop a

separate long-range plan for each participating institution.

(2) Approval of a planning grant does not commit the Secretary to fund a subsequent application for a development grant.

C. Duration and Maximum Grants

Approximately \$9 million will be made available for this supplemental competition under the Special Needs Program.

Planning grants will be awarded, up to a maximum of \$37,500, per institution for a twelve month period. Development grants will be awarded, up to a maximum of \$1,200,000, for an initial budget period, which will run into September, 1984 and may be of 18 months duration. Subsequent budget periods for development grants will be 12 months. The maximum grant for that period will be \$800,000.

Application forms: Application forms may be obtained by writing to the Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza Station, Post Office Box 23868, Washington, D.C. 20024.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary strongly urges that (1) the individual parts of the application not exceed the page limitations identified in the application materials, and (2) applicants not submit information that is not requested.

The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competition.

Applicable Regulations: Regulations applicable to the program include the following:

- (a) The regulations in 34 CFR Part 624;
- (b) The regulations in 34 CFR Part 626; and
- (c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, except that 34 CFR 75.129(a) and 75.128(a)(2) do not apply to cooperative arrangements.

Parts 624 and 626 of Title 34 of the Code of Federal Regulations were published in the Federal Register of January 5, 1982, 47 FR 540-557.

Further Information: For further information contact: Dr. W. A. Butts, Director, Institutional Development, U.S. Department of Education, Room 3066, Regional Office Building 3, 400 Maryland

Avenue SW., Washington, D.C. 20202-3311. Telephone: (202) 245-2715, 245-9091, 245-9585. (20 U.S.C. 1060-1069c).

Dated: November 18, 1982.

(Catalog of Federal Domestic Assistance No. 84.031B—Special Needs Program)

Edward M. Elmendorf,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 82-32006 Filed 11-19-82; 11:47 am]

BILLING CODE 4000-01-M

Special Needs Program; Notice of Closing Date for Requests for Designation as an Eligible Institution for the Fiscal Year 1982 Supplemental Competition for "Historically Black Institutions"

"Historically black institutions" will be eligible to compete for a grant under the Special Needs Program fiscal year 1982 supplemental competition for historically black institutions if they are designated by the Secretary as an eligible institution for the Special Needs Program. To that end, these institutions are invited to submit a "Request for Designation as an Eligible Institution" form (ED Form 1049-6).

Historically black institutions are those institutions that historically served substantial numbers of black students and are listed in the 1978 publication of the National Center for Education Statistics entitled "Traditionally Black Institutions of Higher Education: Their Identification and Selected Characteristics."

The Special Needs Program is authorized under sections 321-324 and 341-347 of Title III of the Higher Education Act of 1965, as amended. (20 U.S.C. 1060-1063 and 1066-69c). This supplemental competition is authorized by the Fiscal Year 1982 Supplemental Appropriations Act, Pub. L. 97-257.

The Special Needs Program assists eligible institutions of higher education to become self-sufficient by providing funds to improve their academic quality and strengthen their planning, management and fiscal capabilities.

Historically black institutions of higher education that wish to apply for a grant for the Special Needs Program must first be designated as an eligible institution under that program in accordance with the applicable regulations. Historically black institutions which established their eligibility under the Special Needs Program in FY 1982 do not need to re-establish their eligibility for this competition.

Closing Date for Transmittal of Requests: A "Request for Designation as an Eligible Institution" form must be mailed or hand-delivered by January 5, 1983.

Requests Delivered by Mail: A request sent by mail must be addressed to the Evaluation Section, Division of Institutional Development, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20024.

Proof of mailing must consist of one of the following:

1. A legibly dated U.S. Postal Service postmark.
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice, or receipt from a commercial carrier.
4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If a request is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its request will not be considered.

Requests Delivered by Hand: A request that is hand-delivered must be taken to the Evaluation Section, Division of Institutional Development, Room 3045, Regional Office Building 3, 7th and D Streets SW., Washington, D.C. Hand-delivered requests must be accepted by the staff of the Evaluation Section.

The staff of the Evaluation Section will accept and receipt hand-delivered requests between 9:00 a.m. and 4:30 p.m. (Eastern Time) daily, except Saturdays, Sundays and Federal holidays.

A request that is hand-delivered will not be accepted after 4:30 p.m. on January 5, 1983.

Request Forms: Eligibility request forms may be obtained by writing to the Evaluation Section, Division of Institutional Development, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20024 or calling (202) 245-2338.

Applicable Regulations: Regulations applicable to the eligibility process include §§ 624.2, 624.3 and 624.20 of the Institutional Aid Programs-General Provisions Regulations, 34 CFR 624.2, 624.3 and 624.20; and §§ 626.2 and 626.3 of the Special Needs Program

Regulations, 34 CFR 626.2 and 626.3. These regulations were published in the Federal Register of January 5, 1982, 47 FR 540-557.

Program Information:

A. The following historically black institutions have previously satisfied the eligibility requirements and may compete for a grant under the Special Needs Program fiscal year 1982 supplemental competition for historically black institutions.

1. Concordia College, Alabama
2. Miles College, Alabama
3. Shorter College, Arkansas
4. Bethune Cookman College, Florida
5. Coahoma Junior College, Mississippi
6. Elizabeth City State University, North Carolina
7. Johnson C. Smith University, North Carolina
8. Morristown College, Tennessee
9. Wiley College, Texas

B. Other institutions designated as "historically black institutions" by the National Center for Educational Statistics in the previously cited volume, which did not receive a Strengthening or a Special Needs Program grant in the 1982 competition, will be eligible to compete for a grant under this competition if they are designated as an eligible institution under the Special Needs Program.

C. The definition of an eligible institution for the Special Needs Program is set forth in § 626.2 of the Special Needs Program regulations, 34 CFR 626.2. The Secretary will use award year 1979-80 (July 1, 1979-June 30, 1980) as the base year for calculating the variables used to determine an institution's eligibility under § 626.2(a) (2) and (3) of the Special Needs Program regulations. These variables include (1) the percentage of full-time equivalent (FTE) undergraduate students that received Pell Grants, Supplemental Educational Opportunity Grants (SEOG), College Work-Study (CWS) employment, and National Direct Student Loans (NDSL) that were enrolled in the institution and (2) the average amount of such assistance per recipient.

The base year to be used for calculating the variables in § 626.2(a)(4) will also be 1979-80. These variables include the educational and general (E&G) expenditures per FTE

undergraduate student at the institution. Institutions are to submit E&G expenditure data for the 12 month period they reported in the "Higher Education General Information Survey (HEGIS XV), Financial Statistics for Institutions of Higher Education for Fiscal Year Ending 1980."

The Department of Education will use Pell Grant data currently on file in the Department in making its determinations under the financial aid eligibility criteria in 34 CFR 626.2. The Department will use the 1979-80 figures as they have been corrected and updated as of January 12, 1983.

Conversion tables which explain how the Secretary assigns points to institutions applying for eligibility designation were published in the Federal Register on January 27, 1982, as an appendix to the Notice of Closing Date for designation as an eligible institution for the Institutional Aid Programs for the regular Fiscal Year 1982 competition, 47 FR 3826-3833. In addition, such conversion tables will be included in the request for eligibility package for the FY 1982 supplemental competition for historically black institutions.

Eligibility forms will be processed and reviewed by the Evaluation Section in the order in which they are received. Institutions will be notified of their designation as soon as possible. Institutions should note that the closing date for receipt of applications for funding is being announced in a separate notice within the Federal Register.

An institution that does not submit its eligibility form by January 5, 1983 will not be eligible for Institutional Aid Program assistance in Fiscal Year 1982 under the supplemental competition.

Further Information: For further information contact: Evaluation Section, Division of Institutional Development, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20024. Telephone: (202) 245-2338. (20 U.S.C. 1051-1060c).

Date: November 18, 1982.

[Catalog of Federal Domestic Assistance Number: 84.031—Institutional Aid Programs]

Edward M. Elmendorf,
Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 82-32005 Filed 11-18-82; 11:47 am]
BILLING CODE 4000-01-M

Sunshine Act Meetings

Federal Register

Vol. 47, No. 224

Friday, November 19, 1982

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).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 11:00 a.m. on Monday, November 15, 1982, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), 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 matters:

Application of North Valley Bank, Redding, California, for the Corporation's prior consent to purchase the assets of and assume the liability to pay deposits made in the Central Valley and Enterprise branches of The Bank of California, National Association, San Francisco, California, and to establish those two offices as branches of North Valley Bank.

Application of People's Savings Bank—Bridgeport, Connecticut, for the Corporation's prior consent to purchase substantially all of the assets of and assume the liability to pay substantially all of the deposits made in Guardian Savings and Loan Association, Bridgeport, Connecticut, to establish two of the three existing offices and one approved but unopened office of Guardian Savings and Loan Association as branches of People's Savings Bank—Bridgeport, and to transfer a portion of the assets back to Guardian Savings and Loan Association in consideration of the assumption of a portion of the deposit liabilities.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,480-L (Amended)—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee

By the same majority vote, the Board further determined that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: November 15, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1670-82 Filed 11-17-82; 11:03 am]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 7:45 p.m. on Friday, November 12, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of the assumption of the liability to pay deposits made in Bank of Quitman, Quitman, Arkansas, which was closed by the Arkansas State Banks Commissioner on November 12, 1982; (2) accept the bid for the transaction submitted by First National Bank of Cleburne County, Quitman, Arkansas, a newly-chartered national bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

At that same meeting, the Board of Directors considered a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public

interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 15, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1671-82 Filed 11-17-82; 11:03 am]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 11:30 a.m. on Monday, November 15, 1982, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), 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 matters:

Application of Union State Bank, Nanuet, New York, for the Corporation's prior consent to purchase certain assets of and assume the liability to pay certain deposits made in four branch offices of The Bank of New York, New York (Manhattan), New York, which are located in Rockland County, New York, and to establish those offices as branches of Union State Bank.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: The Hamilton Bank and Trust Company, Atlanta, Georgia

Discussion re: Applications for bank charters by institutions which will invest only in money market instruments.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable;

that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10)).

Dated: November 15, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1672-82 Filed 11-17-82; 11:04 am]

BILLING CODE 6714-01-M

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FEDERAL ENERGY REGULATORY COMMISSION

Meeting

November 16, 1982.

TIME AND DATE: 10 a.m., November 23, 1982.

PLACE: Room 9306, 825 North Capitol Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda—760th Meeting, November 10, 1982, Regular Meeting (10 a.m.)

- CAP-1. Project No. 5108-001, Homestake Consulting and Investments, Inc.
- CAP-2. Project No. 6415-000, The Slush Cup Co.
- CAP-3. Project No. 3662-001, Continental Hydro Corp.; Project No. 3669-000, Mitchell Energy Co., Inc.; Project No. 4120-000, Saranac Energy Corp.; Project No. 4613-000, City of Rochester, New York; Project No. 4614-000, Mohawk Energy Corp.; Project No. 4615-000, Village of Arcade, New York
- CAP-4. Project No. 4245-002, City of Bedford, et al.; Project No. 3421-000, Eastern States Energy Resources, Inc., and County of Bath, Kentucky
- CAP-5. Project Nos. 6175-004, 6206-001, 6245-001 and 6246-001, Lester Kelley, Vernon Ravenscroft and Helen Chenoweth
- CAP-6. Project No. 3612-002, Brasfield Development, Ltd.; Project No. 4179-000, Appomattox River Water Authority
- CAP-7. Project No. 5965-002, Firmin O. Gotzinger
- CAP-8. Project No. 6216-001, Western Hydro Electric, Inc.

- CAP-9. Project No. 2892-002, Friant Power Authority
- CAP-10. Project No. 176-011, Escondido Mutual Water Co.
- CAP-11. Omitted.
- CAP-12. Project No. 2543-000, Montana Power Co.
- CAP-13. Project No. 2573-000, Arizona Power Authority
- CAP-14. Project No. 5451-001, Ted Lance Slater
- CAP-15. Omitted.
- CAP-16. Docket Nos. E-9002-002 and ER76-122-001, Commonwealth Edison Co.
- CAP-17. Docket No. ER76-828-000, Nantahala Power & Light Co.; Docket No. EL78-18-007, The Town of Highlands, North Carolina, et al., v. Nantahala Power & Light Co.
- CAP-18. Docket No. ER80-214-02, Pacific Gas & Electric Co.
- CAP-19. Docket No. ER82-410-003, New York State Electric & Gas Corp.
- CAP-20. Docket Nos. ER82-689-000 and 001, Gulf Power Co.
- CAP-21. Docket No. ER82-618-001, Middle South Energy, Inc.
- CAP-22. Docket No. ER82-673-001, Jackson Purchase Electric Cooperative Corp. v. Kentucky Utilities Co.
- CAP-23. Docket No. ER82-852-000, Southwestern Public Service Co.
- CAP-24. Docket No. ER83-2-000, Wisconsin Electric Power Co.
- CAP-25. Docket Nos. ER82-853-000 and ER82-854-000, Appalachian Power Co.
- CAP-26. Docket No. ER83-21-000, Ohio Edison Co.
- CAP-27. Docket No. ER82-579-000, Southern Co. Services, Inc.
- CAP-28. Docket No. ER82-375-002, Gulf States Utilities Co.
- CAP-29. Docket No. ER82-793-000, Florida Power & Light Co.
- CAP-30. Docket No. ER82-200-000, Maine Public Service Co.
- CAP-31. Docket Nos. ER82-565-000 and ER82-566-000, Orange and Rockland Utilities, Inc.
- CAP-32. Docket Nos. ER81-653-000 and ER82-193-000, Northern States Power Co. (Wisconsin)
- CAP-33. Docket Nos. ER82-105-000 and 001, Sierra Pacific Power Co.
- CAP-34. Project No. 6230-000, Mr. Lester Kelley, Vernon Ravenscroft and Helen Chenoweth
- CAP-35. Project No. 6231-000, Mr. Lester Kelley, Vernon Ravenscroft and Helen Chenoweth
- CAP-36. Docket Nos. EL78-24-001, 006, 007, 008, 009, 010 and 011 (Phase I), Municipal Electric Utilities Association of the State of New York v. Power Authority of the State of New York; Docket No. EL78-37-001 (Phase II), Village of Iliion, New York v. Power Authority of the State of New York

Consent Miscellaneous Agenda

- CAM-1. California Public Utilities Commission
- CAM-2. Docket No. RM80-58-000, Gulf State Utilities Co.
- CAM-3. Docket No. RM79-76-32 (Colorado—1 addition II), high-cost gas produced from tight formations

- CAM-4. Docket No. GP82-43-000, United States Department of Interior, Mineral Management Service, Section 107 determination, Amoco Production Co., Shute Creek Unit No. 4 Well, USGS Docket No. W326-1-T, J.D. No. 82-10512
- CAM-5. Docket No. GP82-42-000, State of Oklahoma, Pioneer Production Corp. Section 102, NGPA Determination, Thelma Brown No. 1-21 Well, J.D. No. 81-31003
- CAM-6. Omitted.
- CAM-7. Docket No. RA82-27-000, Industrial Fuel & Asphalt of Indiana, Inc.
- CAM-8. Docket No. RA81-72-000, Beacon Oil Co.

Consent Gas Agenda

- CAG-1. Docket No. OR82-2-000, Tipco Crude Oil Co. v. Shell Oil Pipe Line Corp.
- CAG-2. Docket No. RP82-1-002, Michigan Wisconsin Pipe Line Co.
- CAG-3. Docket Nos. TA83-1-43-000 and 001 (PGA83-1), Cities Service Gas Co.
- CAG-4. Docket No. 82-2-33-013, El Paso Natural Gas Co.; Docket Nos. TA83-1-33-001, 002, 003, 004 and 006, El Paso Natural Gas Co.
- CAG-5. Docket No. TA82-2-9-006, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.
- CAG-6. Docket No. TA83-1-53-001 (PGA83-1), Kansas Nebraska Natural Gas Co. Inc.
- CAG-7. Docket No. RP83-16-000, Midwestern Gas Transmission Co.
- CAG-8. Docket No. RP83-13-000, El Paso Natural Gas Co.
- CAG-9. Docket No. TA83-1-58-000 (PGA83-1), Texas Gas Pipe Line Corp.
- CAG-10. Docket No. TA83-1-55-000 (PGA83-1), Mountain Fuel Resources, Inc.
- CAG-11. Docket No. TA83-1-56-000 (PGA83-1), Valebro Interstate Transmission Co.
- CAG-12. Docket No. TA83-1-45-000 (PGA83-1), Inter City Minnesota Pipelines Ltd., Inc.
- CAG-13. Docket No. RP83-15-000, Natural Gas Pipeline Co. of America
- CAG-14. Docket Nos. TA82-2-11-000 and RP82-57-000, United Gas Pipe Line Co.
- CAG-15. Docket No. TA82-2-17-000 (PGA82-2) (IPR82-2) and (DCA82-2), Texas Eastern Transmission Corp.
- CAG-16. Docket No. TA82-2-46-001 (PGA82-2) (IPR82-2), Kentucky West Virginia Gas Co.
- CAG-17. Docket No. RP82-87-001, National Fuel Gas Supply Corp.
- CAG-18. Docket Nos. TA82-2-42-000 and 001, RP81-130-000 and TA83-1-42-000, Transwestern Pipeline Co.
- CAG-19. Docket Nos. TA83-1-7-000 (PGA83-1, IPR83-1, and DCA83-1) and RP82-116-000, Southern Natural Gas Co.
- CAG-20. Docket No. TA82-2-21-000 (PGA82-2, IPR82-2 and AP82-2), Columbia Gas Transmission Corp.
- CAG-21. Docket No. TA82-2-18-000 (PGA82-2, TPR82-2, AP82-2 and TT82-2), Texas Gas Transmission Corp.
- CAG-22. Docket No. TA82-2-28-000, Panhandle Eastern Pipe Line Co.
- CAG-23. Docket Nos. TA83-1-33-001, TA82-2-33-001, et al., and RP82-33-000, El Paso Natural Gas Co.
- CAG-24. Docket No. TA83-1-48-000 (PGA83-1), Michigan Wisconsin Pipeline Co.

- CAG-25. Docket No. RP79-76-000, Cities Service Gas Co.
- CAG-26. Docket No. RP81-20-001, U-T Offshore System; Docket Nos. CP75-104-029 and CP76-118-013, High Island Offshore System, et al.
- CAG-27. Docket No. IN78-1-000, Tenneco Inc.; Docket Nos. IN79-3-000, CI77-298-000, CI75-45-000 and Docket Nos. CI75-466-000, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Docket No. CI77-298-000 and CP75-23-000, Tenneco Oil Co.; Docket No. CP75-358-000 and CP76-284-000, Channel Industries Gas Co.; Docket No. IN83-1-000, Amoco Production, et al.
- CAG-28. Docket No. CI72-393-003, Exxon Corp., et al.; Docket No. CI82-412-001, Pioneer Production Corp.; Docket No. IC82-404-001, NF Corp.; Docket No. CI82-402-001, Tenneco Oil Co.; Docket No. CI82-407-001, McMoran-Freepoint Oil Co.; Docket No. CI82-391-001, Houston Oil & Mineral Corp.; Docket No. CI-82-396-001, Pacific Lighting Exploration Co.; Docket No. CI82-403-001, Anadarko Production Co.; Docket No. CI82-401-001, Kerr-McGee Corp.; Docket No. CS72-36-002, PSEC, Inc.
- CAG-29. Docket No. ST82-369-000, Taft Pipeline;
- CAG-30. Docket No. ST82-370-000, Northern Illinois Gas Co.;
- CAG-31. Docket No. TC82-42-001, Texas Eastern Transmission Corp.;
- CAG-32. Docket Nos. RP71-29-025, 026 and 027, et al., (Phase II), United Gas Pipe Line Co.;
- CAG-33. Docket No. CP95-93-005, Black Marlin Pipeline Co.;
- CAG-34. Docket No. CP82-261-001, Trunkline Gas Co.;
- CAG-35. Docket No. CP82-262-002, Trunkline Gas Co.;
- CAG-36. Docket No. CP82-454-001, United Gas Pipe Line Co.;
- CAG-37. Docket No. CP82-455-001, United Gas Pipe Line Co.;
- CAG-38. Docket No. CP78-43-004, Trunkline Gas Co.;
- CAG-39. Docket No. CP82-381-002, Consolidated Gas Supply Corp.;
- CAG-40. Docket No. CP83-38-000, Transcontinental Gas Pipe Line Corp.; Docket No. CP83-52-000, Consolidated Gas Transmission Co.;
- CAG-41. Docket No. CP81-301-000, American Natural Rocky Mountain Co., et al.
- CAG-42. Docket No. CP82-395-000, Florida Gas Transmission Co.
- CAG-43. Omitted
- CAG-44. Docket No. CP82-318-000, Mississippi River Transmission Corp.
- CAG-45. Docket No. G-104-000, El Paso Natural Gas Co.
- CAG-46. Docket Nos. RP82-102-001 and 002, Gas Research Institute
- CAG-47. Docket No. RP82-62-004, Natural Gas Pipeline Co. of America
- Power Agenda**
- I. Licensed Project Matters**
- P-1. Project No. 4881-001, Arthur L. Bloom and Ada County, Idaho; Project No. 3598-000, Cook Electric Co.
- P-2. Project No. 3283-000, Gas and Electric Department of the City of Holyoke, Massachusetts
- P-3. Docket No. EL82-9-000, South Carolina Public Service Authority
- P-4. Project No. 4634-000, The City of Billings, Montana; Project No. 4816-000, Montana Department of Natural Resources and Conservation
- P-5. Project No. 3365-000, Continental Hydro Corp.; Project No. 3579-000, Town of Converse, Indiana; Project No. 4197-000, Indiana Municipal Power Agency
- P-6. Project No. 5126-000, Mega Hydro, Inc.
- I. Electric Rate Matters**
- ER-1. Docket No. ER80-5-000, Minnesota Power & Light Co.
- ER-2. Docket No. ER77-277-002 and EL82-24-000 (Phase II), Pennsylvania Power Co.
- ER-3. Docket No. ER78-338-001, Public Service Co. of New Mexico
- ER-4. Docket Nos. ER79-105-004, 005 and 006, Southern California Edison Co.
- ER-5. Docket No. ER81-736-000, Central Illinois Public Service Co.
- ER-6. Docket No. ER82-576-000, Energy Conversions of America, Inc.
- ER-7. Docket No. QF82-179-000, Hetch Hetchy Water & Power Department
- ER-8. Docket No. EL82-19-000, St. Joe Minerals Corp.
- ER-9. Docket No. ES82-53-000, Montana-Dakota Utilities Co.
- Miscellaneous Agenda**
- M-1. Docket No. RM83-7-000, eligibility, rates, and exemptions for utility-owned geothermal small power production facilities
- M-2. Reserved
- M-3. Reserved
- M-4. (a) Docket No. RM80-47, regulations implementing section 110 of the Natural Gas Policy Act of 1978 and establishing policy under the Natural Gas Act; (b) Docket No. RM80-73, gathering allowances under section 110 of the Natural Gas Policy Act of 1978; Docket No. RM80-74, compression allowances under Section 110 of the Natural Gas Policy Act of 1978; (c) Docket No. RM80-14, regulations implementing section, 105, 106(b), and 110 of the Natural Gas Policy Act of 1978; (d) Docket No. RM83-6, regulations implementing refund and enforcement provisions under Subpart K of Part 271 for recovering production-related costs; (e) Docket No. CI77-412, Phillips Petroleum Co.
- M-5. Docket No. CP79-70, Transcontinental Gas Pipe Line Corp. and United Gas Pipe Line Co.; Docket No. CP80-217, Transcontinental Gas Pipe Line Corp.; Docket No. CP80-218, Transcontinental Gas Pipe Line Corp.; and United Gas Pipe Line Co.; Docket No. CP80-236, Transcontinental Gas Pipe Line Corp.; Docket No. CP80-82, Michigan Wisconsin Pipe Line Co., Texas Eastern Transmission Corp. and Transcontinental Gas Pipe Line Corp.; Docket Nos. CP80-227, CP80-251, CP80-286 and CP80-384, Michigan Wisconsin Pipe Line Co.; Docket No. CP80-267, Columbia Gulf Transmission Co. and Southern Natural Gas Co.; Docket No. CP80-375, Consolidated Gas Supply Corp., Northern Natural Gas Co., Division of Internorth, Inc., Michigan Wisconsin Pipe Line Co. and El Paso Natural Gas Co.
- M-6. Docket No. CP82-50-000, indicated producers—Shell Oil Co., et al., in the matter of the transportation of liquid and liquefiable hydrocarbons by Natural Gas Pipelines [RM81-32]; Docket No. CP82-51-000, Associated Gas Distributors, transportation by natural gas pipelines of producer-owned liquids and liquefiable hydrocarbons under Title I of the Natural Gas Policy Act of 1978 [RM81-39]; Docket No. CP82-52-000, Texas Eastern Transmission Corp., transportation by natural gas pipelines of producer-owned liquids and liquefiable hydrocarbons [RM81-43]
- Gas Agenda**
- I. Pipeline Rate Matters**
- RP-1. Docket No. CP78-124-000, Northern Border Pipeline Co.
- II. Producer Matters**
- CI-1. Docket Nos. RI74-188-003, RI74-188-004 and RI75-21-002, Independent Oil & Gas Association of West Virginia
- III. Pipeline Certificate Matters**
- CP-1. Docket Nos. CP80-520-003, 006, 007 and 008, Natural Gas Pipeline Co. of America; Docket No. CP81-361-002, Northern Natural Gas Co.; Docket No. ST81-315-000, United Texas Transmission Co.; Docket No. ST81-314-000, Channel Industries Gas Co.
- CP-2. Docket No. CP80-520-004, Natural Gas Pipeline Co. of America
- CP-3. Docket No. CP82-392-000, Natural Gas Pipeline Co. of America; Docket No. CP82-462-000, Florida Gas Transmission Co.
- CP-4. Docket Nos. CP80-274-000 and 001, Mountain Fuel Supply Co. and Mountain Fuel Supply Resources, Inc.; Docket Nos. CP80-275-000 and 002, Mountain Fuel Supply Co. and Wexpro Co.; Docket Nos. CI80-233-000 and 002, Celsius Energy Co.; Docket No. CI82-216-000, Wexpro Co.; Docket No. CP76-397, Mountain Fuel Supply Co.; Docket No. CP80-144-005, Mountain Fuel Supply Co.; Docket Nos. CP82-153-000 and 001, Mountain Fuel Supply Co.
- CP-5. Docket Nos. CP81-522-000 and 002, Northern States Power Co.
- CP-6. Docket Nos. CP80-581-000 and 001, Pataya Storage Co.; Docket No. CP81-308-000, El Paso Natural Gas Co.
- CP-7. Docket No. CP80-22-00, Northern Natural Gas Co., Division of Internorth, Inc.; Docket No. CP76-124-007, Northern Border Pipeline Co.
- CP-8. Docket No. CP66-110, et al., Great Lakes Gas Transmission Co. and Midwestern Gas Transmission Co.; Docket No. CP79-169, Michigan Wisconsin Pipe Line Co.
- CP-9. (a) Docket No. CP82-485-000, Columbia Gas Transmission Corp.; (b) Docket No. CP82-452-000, Michigan Wisconsin Pipe Line Co.; (c) Docket Nos. CP83-14-000 and

001, CP83-16-000 and 001, and CP82-33-002 and 005, Northern Natural Gas Co.

Kenneth F. Plumb,
Secretary.

[S-1676-82 Filed 11-17-82; 3:56 pm]

BILLING CODE 6717-01-M

5

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: Approximately 12:30 p.m., Wednesday, November 24, 1982, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: November 16, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1673-82 Filed 11-17-82; 11:38 am]

BILLING CODE 6210-01-M

6

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10 a.m. Wednesday, November 24, 1982.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Summary Agenda:* Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed amendments to the Board's Regulation Q (Interest on Deposits) regarding eligibility of governmental units to maintain NOW accounts.

2. Proposed amendments to Regulation D (Reserve Requirements of Depository Institutions) to increase the low reserve tranche for transaction accounts.

Discussion Agenda:

3. Proposals under Regulation D (Reserve Requirements of Depository Institutions) regarding the new ceiling-free deposit instrument to be authorized by the Depository Institutions Deregulation Committee.

4. Proposed revisions to certain reports to collect information on new ceiling-free money market accounts (FR 2900, FR 2042, FR 2573, and FR 2071).

5. Proposed amendments to Regulation D (Reserve Requirements of Depository Institutions) to apply zero percent reserve requirements to \$2 million in reservable liabilities at each depository institution and to increase that amount of reservable liabilities subject to zero percent reserves for 1983.

6. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: November 16, 1982.

James McAfee,

Assistant Secretary of the Board.

[S-1674-82 Filed 11-17-82; 12:32 pm]

BILLING CODE 6210-01-M

7

NATIONAL COMMISSION ON STUDENT FINANCIAL ASSISTANCE

Public Meeting

DATE: Monday, December 6, 1982.

TIME: 10 a.m.-1 p.m.

PLACE: Room 311, Cannon House Office Building.

PURPOSE: The Commission was established by Public Law 96-374 to analyze the Federal Role in providing student financial assistance and to provide the President and the Congress with guidance as to what this role should be in the future. The purpose of this meeting is to discuss the recent activities of the Commission and to hear reports from The Commission's subcommittees concerning research being conducted for those subcommittees.

FOR FURTHER INFORMATION CONTACT:

Richard T. Jerue, Chief Executive Officer (202) 472-9023.

This meeting was called by the Commission Chairman, Mr. David R. Jones.

Submitted the 15th day of November 1982.

Richard T. Jerue,

Chief Executive Officer.

[S-1675-82 Filed 11-17-82; 3:12 pm]

BILLING CODE 6820-BC-M

8

NUCLEAR REGULATORY COMMISSION

DATE: Week of November 22, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED: *Monday, November 22:*

10:00 a.m.:

Discussion of Proposed Safety Goals and Implementation Plan (Public meeting)

1:30 p.m.:

Briefing by Regulatory Reform Task Force—Administrative Proposals (Public meeting)

3:30 p.m.:

Discussion of Draft Policy and Planning Guidance for FY 81 (Public meeting)

Tuesday, November 23:

2:00 p.m.:

Affirmation/Discussion and Vote (Public meeting):

a. Pending Commission Proceeding Concerning Renewal of Byproduct Materials License of Self-Powered Lighting, Inc.

b. MVPP's Petition to Commission to Disqualify Staff Attorney from Zimmer Proceeding

ADDITIONAL INFORMATION:

On November 12th the Commission voted 5-0 to hold Discussion of Commission Action on Zimmer, held that day. Affirmation items *added* for November 18, Offshore Power Systems and San Onofre Board Certification.

AUTOMATIC TELEPHONE ANSWERING

SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE

INFORMATION: Walter Magee (202) 634-1410.

November 15, 1982.

Walter Magee,

Office of the Secretary.

[S-1689-82 Filed 11-16-82; 4:46 pm]

BILLING CODE 7590-01-M

Federal Register

Friday
November 19, 1982

Part II

Environmental Protection Agency

Steam Electric Power Generating Point
Source Category; Effluent Limitations
Guidelines, Pretreatment Standards and
New Source Performance Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 125 and 423

[WH-FRL 2238-2]

Steam Electric Power Generating Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation limits the discharge of pollutants into navigable waters and into publicly owned treatment works by existing and new sources of steam electric power plants. The Clean Water Act and a Settlement Agreement require EPA to issue this regulation.

The purpose of this regulation is to revise and supplement effluent limitations for "best practicable technology" (BPT), "best available technology" (BAT), "new source performance standards" (NSPS) for direct dischargers, and pretreatment standards for new and existing indirect dischargers.

This regulation relates only to the discharge of toxic and other chemical pollutants; EPA is not issuing regulations for thermal discharges at this time. The Agency is also reserving coverage of "best conventional pollutant control technology" (BCT).

DATES: In accordance with 40 CFR 100.01 (45 FR 26048), the regulations developed in this rulemaking shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on December 3, 1982. These regulations shall become effective on [44 days after publication date], except for: 40 CFR 423.13(d)(3) and 423.15(j)(3) which concern certification alternatives to monitoring requirements; 40 CFR 423.12(a) which concerns the fundamentally different factors variance for BPT, and the chlorination demonstration language appearing at 40 CFR 423.13(c)(2) and (d)(2), 423.15(h)(2), (i)(2), and (j)(2). These provisions will be submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act. The compliance date for the newly issued PSNS and NSPS regulation is the date that the new source commences discharge. The compliance date for BAT and PSES is July 1, 1984.

Under Section 509(b)(1) of the Clean Water Act judicial review of this regulation can be made only by filing a

petition for review in the United States Court of Appeals within 90 days after these regulations are considered issued for purposes of judicial review. Under Section 509(b)(2) of the Clean Water Act, the requirements of the regulations may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: The record for this rulemaking will be available for public review within four weeks after the date of publication in EPA's Public Information Reference Unit, Room 2004 (Rear) (EPA Library), 401 M Street, SW., Washington, D.C. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

Technical information may be obtained by writing to Dennis Ruddy, Effluent Guidelines Division (WH-552), EPA, 401 M Street, SW., Washington, D.C. 20460, or calling (202) 382-7165. Copies of the technical development and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703) 487-6000.

FOR FURTHER INFORMATION CONTACT: For general and technical information contact Dennis Ruddy at (202) 382-7165. For information concerning the economic impact analysis contact Jeannie Austin at (202) 382-2724.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

- I. Legal Authority
- II. Scope of this Rulemaking
- III. Summary of Legal Background
- IV. Prior Regulations and Methodology and Data Gathering Efforts
- V. Summary of Final Regulations and Changes From Proposal
- VI. Cost and Economic Impact
- VII. Non-Water Quality Environmental Impact
 - A. Air Pollution
 - B. Solid Waste
 - C. Consumptive Water Loss
 - D. Energy Requirements
- VIII. Pollutants and Subcategories Not Regulated
- IX. Summary of Public Participation and Responses to Major Comments on the Proposed Regulation
- X. Best Management Practices
- XI. Upset and Bypass Provisions
- XII. Variances and Modifications
- XIII. Relationship to NPDES Permits
- XIV. Availability of Technical Assistance
- XV. OMB Review
- XVI. Appendices
 - A. Steam Electric Point Source Category Pollutants Excluded From Regulation
 - B. Abbreviations, Acronyms, and Other Terms Used in This Notice

I. Legal Authority

This regulation is being promulgated under the authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 as amended by the Clean Water Act of 1977, Pub. L. 95-217 (the "Act"). These regulations are also promulgated in compliance with the Settlement Agreement in *Natural Resources Defense Council v. Train*, 8 ERC 2120 (D.D. C. 1976), modified at 12 ERC 1833 (D.D.C. 1979).

II. Scope of this Rulemaking

The purpose of this rulemaking is to revise the effluent limitations for BAT, NSPS, pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS), under Sections 301, 304, 306, 307, and 501 of the Clean Water Act.

These final regulations apply to processes used in the steam electric power generating industry. This industry is composed of facilities that are engaged in the generation of electricity for distribution and sale, and use either fossil-type fuel (coal, oil, or gas) or nuclear fuel in conjunction with a thermal cycle that has a steam/water thermodynamic medium. Together these processes make up the steam electric category (Standard Industrial Classification (SIC) Major Group 4900), and relate specifically to both the Electric Services (SIC 4911) and the Electric and Other Services Combined (SIC 4931) subgroups.

There are approximately 850 steam electric power plants in the United States representing a total of over 450 gigawatts (GW). A more detailed discussion of the industry is presented in the preamble to the proposed regulation of October 14, 1980 (45 FR 68330).

EPA's 1973 to 1976 rulemaking efforts emphasized the achievement of best practicable control technology currently available (BPT) by July 1, 1977. In general, BPT represents the average of the best existing performances of well-known technologies for control of traditional (i.e., "classical") pollutants.

In contrast, this round of rulemaking aims for the achievement by July 1, 1984, of the best available technology economically achievable (BAT) that will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. At a minimum BAT represents the best economically achievable performance in any industrial category or subcategory. Moreover, as a result of the Clean Water

Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a lengthy list of toxic pollutants.

Previously promulgated BAT, NSPS, PSES, and PSNS are amended by these final regulations. The regulations promulgated today establish new and revised limitations, standards, and prohibitions to control the 126 toxic pollutants, iron, total residual chlorine (total residual oxidants), free available chlorine, total suspended solids, oil and grease, and pH. In addition, the BPT limitations are amended to allow concentration based limitations to be included in permits. The coverage of today's rulemaking is for the following types of waste streams:

- (1) Once through cooling water
- (2) Cooling tower blowdown
- (3) Fly ash transport water
- (4) Bottom ash transport water
- (5) Chemical metal cleaning wastes
- (6) Low volume wastes
- (7) Coal pile runoff

EPA is reserving effluent limitations for four types of wastewaters for future rulemaking. These four waste streams are:

- (1) Non-chemical metal cleaning wastes
- (2) Flue gas desulfurization waters
- (3) Runoff from materials storage and construction areas (other than coal storage)
- (4) Thermal discharges.

Additionally, all best conventional technology (BCT) limitations will be repropoed for the reasons described in Sections III and V.

III. Summary of Legal Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical and biological integrity of the Nation's waters" (Section 101(a)). To implement the Act, EPA was to issue effluent standards, pretreatment standards, and new source performance standards for industrial dischargers.

The Act included a timetable for issuing these standards. However, EPA was unable to meet many of the deadlines and, as a result, in 1976, it was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a court-approved "Settlement Agreement." This Agreement required EPA to develop a program and adhere to a schedule in promulgating effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 "priority" pollutants and classes of pollutants for 21 major industries. See *Natural Resources Defense Council Inc.*

v. Train, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979).

Many of the basic elements of this Settlement Agreement program were incorporated into the Clean Water Act of 1977 ("the Act"). Like the Settlement Agreement, the Act stressed control of the "priority" pollutants. In addition, to strengthen the toxic control program, section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMP) to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

Under the Act, the EPA program is to set a number of different kinds of effluent limitations. These are discussed in detail in the preamble to the 1980 proposal and the technical development document supporting these regulations. The following is a brief summary:

1. *Best Practicable Control Technology Currently Available (BPT)*. BPT Limitations generally are based on the average of the best existing performance at plants of various sizes, ages, and unit processes within the industry or subcategory. In establishing BPT limitations, EPA considers the total cost of applying the technology in relation to the effluent reduction derived, the age of equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes and non-water-quality environmental impacts (including energy requirements). The total cost of applying the technology is balanced against the effluent reduction.

2. *Best Available Technology Economically Achievable (BAT)*. BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters. In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction, and non-water quality environmental impacts. The Administrator retains considerable discretion in assigning the weight to be accorded these factors.

3. *Best Conventional Pollutant Control Technology (BCT)*. The 1977 Amendments added section 301(b)(2)(E) to the Act establishing "best conventional pollutant control

technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in section 304(a)(4) (biochemical oxygen demanding pollutants (e.g., BOD₅), total suspended solids (TSS), fecal coliform and pH) and any additional pollutants defined by the Administrator as "conventional," i.e., oil and grease. See 44 FR 44501; July 30, 1979.

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two part "cost-reasonableness" test. *American Paper Institute v. EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the cost to publicly owned treatment works (POTWs) for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50732). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required). On October 29, 1982 the Agency proposed a revised BCT methodology. See 47 FR 49176. As discussed later, we are deferring promulgation of BCT limitations so that we can apply the revised methodology to the technologies available for control of conventional pollutants in this industry. However, comments on the BCT methodology must be submitted during the comment period for the October 29, 1982 BCT proposal.

4. *New Source Performance Standards (NSPS)*. NSPS are based on the best available demonstrated technology. New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies.

5. *Pretreatment Standards for Existing Sources (PSES)*. PSES are designed to control the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of a publicly owned treatment works (POTW). They must be achieved within three years of promulgation. The Clean Water Act of 1977 requires

pretreatment for pollutants that pass through the POTWs in amounts that would violate direct discharger effluent limitations or interfere with the POTW's treatment process or chosen sludge disposal method. The legislative history of the Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology. EPA has generally determined that there is pass through of pollutants if the percent of pollutants removed by a well-operated POTW achieving secondary treatment is less than the percent removed by the BAT model treatment system. The general pretreatment regulations, which served as the framework for the categorical pretreatment regulations, are found at 40 CFR Part 403 (43 FR 27736, June 26, 1978; 46 FR 9462 January 28, 1981).

6. *Pretreatment Standards for New Sources (PSNS)*. Like PSES, PSNS are to control the discharge of pollutants to POTWs which pass through, interfere with, or are otherwise incompatible with the operation of the POTW. PSNS are to be issued at the same time as NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating PSES.

IV. Prior Regulations and Methodology and Data Gathering Efforts

A. *Prior Steam Electric Regulations*. EPA promulgated BPT, BAT, NSPS, and PSNS for the steam electric point source category on October 8, 1974 (39 FR 36186, as amended at 40 FR 7095, February 19, 1975; 40 FR 23987, June 4, 1975) (the "1974 regulations"). The 1974 regulations covered two basic kinds of pollution from power plants: (1) Thermal pollution (discharges of heat) and (2) chemical pollution (e.g., discharges of chlorine, phosphorous, PCBs, suspended solids). Chemical limitations were written for the following waste streams: once-through cooling water, cooling tower blowdown, bottom ash transport water, fly ash transport water, boiler blowdown, metal cleaning wastes, low volume wastes, and material storage and construction runoff (including coal pile runoff).

On July 16, 1976, the U.S. Court of Appeals for the Fourth Circuit remanded the following provisions of the 1974 regulations: (1) The thermal limitations, (2) the NSPS for fly ash transport water, (3) the rainfall runoff limitations for material storage and construction site runoff, and (4) the BPT variance clause. All other provisions of the regulations were upheld. *Appalachian Power v.*

Train, 545 F.2d 1351 (4th Cir. 1976). EPA repromulgated the coal pile runoff regulations in 1980. 45 FR 37432 (June 3, 1980). See Section XII concerning the BPT variance clause).

EPA promulgated pretreatment standards for existing sources (PSES) on March 23, 1977 (42 FR 15695) in partial response to the Settlement Agreement. The PSES covered copper present in metal cleaning wastes, PCBs, and oil and grease.

Revised BAT, NSPS, PSES and PSNS, and new BCT regulations were proposed on October 14, 1980. (45 FR 68328) (the "1980 proposal"). At the same time, the Agency proposed to change the subcategorization scheme, style and format for all of the existing regulations including the applicable BPT effluent limitations. (See Section V of this preamble). Thus, the final regulations appearing today contain both the 1974 and 1977 limitations that EPA did not change and the revised limitations that are the subject of this rulemaking. The new format, however, does not affect the previously promulgated limitations that are not amended. Consequently, they are not subject to judicial review.

B. *Methodology and Data Gathering Efforts*. The methodology and data gathering efforts used in developing the proposed regulations were discussed in the preamble to the 1980 proposal. In summary, before proposal, the Agency conducted a data collection program at 36 steam electric power plants. This program stressed the acquisition of data on the presence and treatability of the toxic pollutants. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants* (U.S. EPA, April 1977). Based on the results of that program, EPA identified several distinct treatment technologies, including both end-of-pipe and in-plant technologies, that are or can be used to treat steam electric wastewaters.

For each of these technologies, the Agency (i) compiled and analyzed historical and newly-generated data on effluent quality, (ii) identified its reliability and constraints, (iii) considered the non-water quality impacts (including impacts on air quality, solid waste generation and energy requirements), and (iv) estimated the costs and economic impacts of applying it industrywide. Costs and economic impacts of the technology options considered are discussed in detail in *Economic Analysis of Final Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Steam Electric Power Generating Point Source*

Category. A more complete description of the Agency's study methodology, data gathering efforts and analytical procedures supporting the regulation can be found in the *Development Document for Final Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Steam Electric Point Source Category*. (EPA 440/1-82/029).

After proposal, EPA conducted a telephone survey on dechlorination and gathered data on the treatment costs of gas-side washes. EPA also gathered more data to verify the costs of controlling chlorine; these data are reflected in a draft report prepared for EPA titled *Costs of Chlorine Discharge Control Options for Once Through Cooling Systems at Steam Electric Power Plants* dated October 2, 1981, and the final Development Document. As the new information was collected to respond to comments and to confirm the accuracy of earlier analyses, EPA did not take public comment on it. In addition, to confirm its analysis of the cost for new source fly ash disposal, EPA examined two reports. The first report is titled *Coal Ash Disposal Manual*, Electric Power Research Institute, Report #C52049, 1981. The second report is titled *Economics of Ash Disposal at Coal-Fired Power Plants*, EPA and TVA, Report #EPA 600/7-81-170, 1981.

V. Summary of Final Regulations and Changes From Proposal

A. *Subcategorization*

The 1974 regulations treated the steam electric industry as three subcategories: (1) Generating units; (2) small units; and (3) old units. This subcategorization scheme was based on considerations that related to thermal discharges. As discussed in the preamble to the 1980 proposal, the subcategorization scheme was changed to treat the entire industry as a single subcategory, with separate limitations for each type of waste stream. This was done because the Agency determined that: (1) Since the 1974 subcategorization scheme was based primarily upon thermal considerations, it was inappropriate to retain that scheme as no thermal limitations are being adopted at this time; and (2) the basic differences within and between plants can be accommodated by addressing individual types of waste streams within a single subcategory. A complete description and rationale for the new subcategorization scheme is presented in the Technical Development Document. No comments were received

opposing the changes; therefore, the final subcategorization scheme is the same as proposed.

B. Summary of Final Regulations and Changes From Proposal

This section first discusses requirements or issues pertaining to all wastestreams. Each regulated wastestream is then discussed in the following order: Once-through cooling water, cooling tower blowdown, fly ash transport water, bottom ash transport water, low volume wastes, metal cleaning wastes, and coal pile runoff. For each wastestream, a brief background is presented along with a discussion of the existing, proposed, and final limitations and an explanation of the changes from proposal. The discussion covers those previously promulgated limitations which are retained and the revisions being promulgated today.

1. *All Wastewater Streams.* (a) *Best Conventional Technology (BCT).* EPA proposed BCT limitations for TSS and oil and grease based on the "cost-reasonableness" test that was rejected in part in the *American Paper Institute v. EPA* case mentioned previously. Therefore, before promulgating BCT limitations, EPA must repropose them based on the revised BCT methodology proposed on October 29, 1982. See 47 FR 49176. In the interim, EPA is reserving BCT for the entire steam electric power industry. The Agency is also withdrawing the BAT limitations now in the Code of Federal Regulations for TSS and oil and grease since these pollutants are now regulated under BCT, not BAT.

(b) *Polychlorinated Biphenyl Compounds (PCBs).* The discharge of PCBs in any type of wastewaters from this industry is prohibited. This limitation was promulgated in 1974 and 1977 for BAT, NSPS, and PSES and EPA did not propose any changes in 1980 with the exception of adding PCB coverage for PSNS.

(c) *Commingling of Waste Streams.* Where two or more different types of waste streams are combined for treatment or discharge, the total allowable discharge quantity of each pollutant may not exceed the sum of the allowable amounts for each individual type of wastewater. This requirement was promulgated in 1974 and EPA did not propose any changes in 1980.

(d) *Mass Limitations and Concentration Limitations.* The existing and proposed regulations specified that permits were to be based on mass limitations to be calculated by multiplying flow by concentration. The final rule allows the permitting authority to establish either concentration or mass

limits for any effluent limitation or standard, based on the concentrations specified in the regulations. See Section IX of the preamble, "Response to Major Comments on the Proposed Regulation."

(e) *Pretreatment Standards for Existing Sources (PSES).* EPA is withdrawing the 1977 PSES requirement from oil and grease for all waste streams, as proposed in 1980. There was no PSS for oil and grease. The 1977 PSES limited oil and grease based upon a maximum concentration of 100 mg/l. The Agency has determined that, for this industry, this level is no longer appropriate because oil and grease levels in raw waste streams are most typically less than 100 mg/l. No lower level of control for oil and grease is being established for PSES because the Agency found that oil and grease at levels less than 100 mg/l does not interfere with or pass through POTWs.

2. *Once-Through Cooling Water.* (a) *Background.* In plants using once-through cooling systems, heated water passes through condensers before being discharged into the receiving water. The thermal efficiency of the steam cycle can be greatly reduced if biological growth (biofouling) occurs in the condenser. This is not a problem at all plants; however, 71 percent of the once-through cooling water generating capacity uses chlorine to control biofouling. Plants using chlorine have the potential to discharge total residual chlorine (TRC) and chlorinated compounds to receiving waters.

The two primary treatment options employed to reduce TRC discharges are "chlorine minimization" and dechlorination. Chlorine minimization, in essence, is a program designed to assure the most efficient use of chlorine to reduce the amount of TRC discharged. In such a program, plant personnel conduct certain tests to determine the minimum amount of chlorine necessary to control biofouling. Chlorination practices can then be adjusted in accordance with the test results. Continued monitoring and inspection of the condensers on a periodic basis is conducted to assure minimum chlorine use and proper operation.

Many power plants that undertake some form of chlorine minimization program find that they do not need to use additional chlorine removal technologies such as dechlorination. Their current chlorine usage can be reduced sufficiently to comply with effluent limitations without other methods or technologies for chlorine removal.

Dechlorination, the second technology option, entails the use of chemical

treatment devices that remove a significant amount of TRC from the cooling water before it is discharged from the plant. Most of the dechlorination processes use sulfur dioxide or sodium thiosulfate to accomplish TRC reduction.

The 1974 BPT, BAT, and NSPS limited free available chlorine (FAC) with mass limitations based upon 0.2 mg/l daily average concentration and 0.5 mg/l daily maximum concentration. Neither FAC nor TRC could be discharged from any single unit for more than two hours per day and multi-unit chlorination was prohibited. There was an exception from the latter requirements if the utility could demonstrate to the permitting authority that the units in a particular location could not operate at or below this level of chlorination.

(b) *Final Limitations. BAT and NSPS.* EPA is promulgating a daily maximum limitation for total residual chlorine (TRC) (also called total residual oxidants (TRO)) based upon a concentration of 0.20 mg/l, applied at the final discharge point to the receiving body of water. Each individual generating unit is not allowed to discharge chlorine for more than two hours per day, unless the discharger demonstrates to the permitting authority that a longer duration discharge is required for macroinvertebrate control. Simultaneous multi-unit chlorination or more than one generating unit is allowed.

The above limitation does not apply to plants with a total rated generating capacity of less than 25 megawatts. EPA is establishing BAT and NSPS equal to BPT for those plants.

PSES and PSNS. There are no categorical pretreatment standards for once through boiling water for PSES and PSNS, with the exception of the PCB prohibition. The PSES for oil and grease is withdrawn.

(c) *Changes From Proposal and Rationale.* (i) *BAT and NSPS.* For BAT and NSPS, EPA proposed to prohibit the discharge of total residual chlorine (TRC) unless facilities could demonstrate a need for chlorine to control condenser biofouling. Where such demonstrations were made, EPA proposed to limit the discharge to the minimum amount of TRC necessary to control biofouling, as determined by a chlorine minimization program. However, a maximum TRC limitation based upon a concentration of 0.14 mg/l at the point of discharge would have been established to be achieved either through chlorine minimization or dechlorination. In addition, EPA proposed to prohibit the discharge of TRC for more than two hours a day

unless the plant could show that chlorination for a longer period was necessary for crustacean control. Finally, the existing prohibition (1974) on simultaneous dechlorination of generating units would have been withdrawn.

Commenters raised a variety of issues, leading EPA to change the proposal substantially with respect to the TRC limitation, the two hour a day discharge requirement, and other requirements. These comments and the changes are discussed below.

Chlorine Limitation. Commenters stated that EPA has no authority to prohibit the use of chlorine or to require dischargers to conduct a chlorine minimization program. They also stated that the 0.14 mg/l maximum TRC limitation was not achievable by all sources. Some comments indicated a maximum 0.2 mg/l TRC concentration would be achievable; other comments said that BAT should equal BPT.

Under the proposed regulations all plants would have been required to reduce chlorine discharges to the maximum extent feasible. However, in reviewing the comments, the Agency concluded that the proposed approach deprived power plants of any flexibility in controlling chlorine discharges. Because it is the Agency's intent in the development of effluent limitations guidelines not to require reliance on only one technology where it can be reasonably avoided, the requirement that all plants institute chlorine minimization programs was deleted in the final regulation to provide more flexible alternatives to control chlorine discharges.

In assessing alternative approaches, the Agency initially considered requiring the maximum 0.14 mg/l TRC level but without requiring a mandatory chlorine minimization program. Based on the public comments, however, it appeared that the 0.14 mg/l limit would discourage use of chlorine minimization in favor of dechlorination. Industry commenters explained that many plants would still have to dechlorinate to meet the proposed limit even if they first minimized chlorine usage. If that were the case, it was stated the plants would rely on dechlorination exclusively to achieve the limits and not devote resources to a chlorine minimization program. However, if the final effluent limitations were based on 0.2 mg/l, the commenters generally believed that most plants could achieve the limit solely by chlorine minimization.

The Agency is establishing a 0.20 mg/l based limit because we think it is better, in the circumstances presented here, to establish a limitation that generally can

be met without chemical treatment rather than one which entails both the addition of chlorine and its subsequent removal by the addition of other chemicals used to dechlorinate. Consequently, the Agency concluded that a mass limitation based on 0.20 mg/l TRC concentration would allow plants flexibility while encouraging reliance on the preferable technology option—chlorine minimization.

We rejected the suggestion to promulgate BAT and NSPS to equal BPT. As described in Sections VI and IX and in the Development Document, the use of chlorine minimization and/or dechlorination is technically and economically achievable. Compliance with the final regulations will remove 13.5 million pounds of chlorine annually, beginning in 1985. Further, the new limitations will control total residual chlorine in this wastestream, as discussed in Section IX, TRC is a better measure of chlorine toxicity than free available chlorine (FAC). In view of all these factors and the absence of any significant economic impact, we have concluded that more stringent regulations are warranted under the Act.

Two Hour Chlorine Discharge Limit. The final rule also differs from the proposed rule on the two hour chlorine discharge limit. The Agency proposed to limit the discharge of chlorine to two hours per day per plant. We also proposed to relax the prohibition in the 1974 regulations on simultaneous chlorination of generating units because of our concern that some plants would not be able to adequately control biological growth on the condensers when limited to chlorine discharges to two hours per day for the entire facility.

The final regulations limit the duration of chlorine discharge to two hours per generating unit. For example, a plant with four units is allowed to discharge chlorine for a maximum of eight hours per day. This change is consistent with the BPT requirement and was made in response to comments that the proposed change would have disrupted the established chlorination operating procedures required by BPT and that significant expenditure of resources would have been required to comply with the proposed BAT requirement. Many plants installed chlorination systems capable of chlorinating only one unit at a time to comply with the 1974 BPT chlorine requirements. The proposed new BAT may have required those plants with single discharge points serving multiple units to significantly enlarge their existing chlorination facilities. The Agency believes there are no compelling reasons to require this

change for BAT or to set different limits for new sources.

Comments on the 1980 proposal supported the proposal to allow simultaneous chlorination. While we have deleted the proposed prohibition on the discharge of chlorine for more than two hours a day per plant, we have also decided to retain the proposal to allow simultaneous chlorination. The option to chlorinate generating units simultaneously will provide more operational flexibility to the discharger while maintaining the more stringent control of chlorine discharge with TRC limitations. For multi-unit discharges, these requirements will allow for natural chlorine demand to reduce chlorine discharge levels.

Crustacean Control. EPA proposed to allow an exception to the two hour a day chlorination limit if plants demonstrated that chlorination for a longer period of time was necessary for crustacean control. Because commenters pointed out that other macroinvertebrates besides crustaceans could impede the operation of the cooling tower, EPA is broadening the exception to cover macroinvertebrates.

(ii) **PSES/PSNS.** There were no changes in PSES and PSNS from the proposed regulation. No known facilities discharge once through cooling water to POTWs and none are known to be planned. These very high flow volumes would be unacceptable for discharge to POTWs.

3. Cooling Tower Blowdown. (a) **Background.** In this type of waste stream, the cooling water is recirculated several times before being discharged to receiving waters. This is accomplished through the use of mechanical or natural draft evaporative cooling towers. These large towers use fans or tower design to move air past the droplets or films of water to be cooled. The mechanism for cooling in both types of towers is water evaporation.

As in once-through cooling systems, EPA is concerned with the discharged of chlorine that is added to prevent biological growth in the condensers. In addition to chlorine, other chemicals may be added to control scaling, corrosion, and biofouling of the tower itself. The most common chemicals added (besides chlorine) are chromium and zinc. These chemicals are discharged in the cooling tower blowdown. There are about 300 plants with recirculating cooling systems; this represents 58 percent of the total generating capacity of steam electric power plants.

The 1974 BPT limits control free available chlorine (FAC) with mass

limitations based upon 0.2 mg/l daily average and 0.5 mg/l daily maximum concentrations. FAC and TRC discharges are limited to 2 hours per day per generating unit and simultaneous multi-unit chlorination is prohibited. The 1974 BAT and NSPS contain limitations equivalent to 1974 BPT, plus mass limitations for zinc, chromium, and phosphorous based upon concentrations of 1.0 mg/l, 0.2 mg/l, and 5.0 mg/l, respectively, and for PCBs. The 1974 PSNS contained no categorical pretreatment standards for cooling tower blowdown. The 1977 PSES limits oil and grease with a mass limitation based upon 100 mg/l and prohibits the discharge of PCBs.

The major technology options for this wastestream are dechlorination, chemical substitution, and chemical precipitation.

(b) *Final Limitations. BAT and NSPS. Chlorine.* EPA is promulgating BAT and NSPS limitations equivalent to the 1974 BAT and NSPS level of control. These limitations are based upon daily average and daily maximum concentrations for FAC of 0.2 mg/l and 0.5 mg/l, respectively.

Toxics. The discharge of one hundred twenty-four toxic pollutants is prohibited in detectable amounts from cooling tower discharges if the pollutants come from cooling tower maintenance chemicals. The discharger may demonstrate compliance with such limitations to the permitting authority by either routinely sampling and analyzing for the pollutants in the discharge, or providing mass balance calculations to demonstrate that use of particular maintenance chemicals will not result in detectable amounts of the toxic pollutants in the discharge. In addition, EPA is promulgating a daily maximum BAT limitation and NSPS for chromium and zinc based upon concentrations of 0.2 mg/l and 1.0 mg/l, respectively.

The existing limitation for phosphorous is deleted.

PSES and PSNS. The final regulations prohibit or limit the 126 toxic pollutants as discussed above for BAT and NSPS. Oil and grease PSES are withdrawn.

(c) *Changes from Proposal and Rationale. Chlorine.* For BAT and NSPS, EPA proposed a limitation on TRC discharges based upon a maximum concentration of 0.14 mg/l times flow. A chlorine minimization program was not required. The Agency also proposed to prohibit all discharges of cooling tower maintenance chemicals containing any of the 129 priority pollutants. Since then three of the 129 toxic pollutants have been "delisted." They are dichlorodifluoromethane,

trichlorofluoromethane, and bis-chloromethyl ether. See 46 FR 2266; 46 FR 10723.

Public comments opposed the limitations on chlorine, stating that the proposed limit was unachievable and would not result in any environmental benefit. We do not agree that the limit would be unachievable or result in no effluent reduction benefits; however we did reexamine the data pertaining to chlorine. We found that the flow of this waste stream was less than one percent of the once through cooling water flow. Further, less than 0.5 percent of the TRC which would be removed by regulating both cooling tower blowdown and once-through cooling water is attributable to cooling tower blowdown. We therefore concluded that the appropriate emphasis on chlorine control should be in the once-through cooling water waste stream and that BAT and NSPS for this waste stream should equal the previously promulgated BPT, BAT, and NSPS Limits. This will result in a cost savings of \$25 million in annual costs in 1985 and similar savings in future years.

Toxics. For BAT and NSPS, EPA proposed to prohibit any discharge of cooling tower maintenance chemical containing the 129 priority pollutants. The same prohibition was proposed for PSES and PSNS. Since equivalent pollutant removals are required for indirect and direct dischargers, EPA determined that a zero discharge pretreatment standard was the only means of assuring that no priority pollutant would pass through the POTW.

Commenters objected to the proposed zero discharge requirement for maintenance chemicals, raising concerns about the regulation of maintenance chemicals instead of priority pollutants and the means of measuring compliance with a zero discharge limit. In response, we have substituted "no detectable" for "zero discharge" and made clear that the limit applies to priority pollutants from maintenance chemicals, and not the chemicals themselves. EPA presently considers the nominal detection limit for most of the toxics to be 10 µg/l (i.e., 10 parts per billion). See, *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*, EPA, 1977.

Another concern expressed by commenters was that EPA did not account for those prohibited toxics that are present in new construction materials for cooling towers. For example, wooden supporting structures or other construction materials in new or rebuilt cooling towers may contain preservatives which contain trace

amounts of certain of the toxic pollutants. These may leach for a period of time from contact with the cooling water. The Agency recognizes such situations. Thus, the prohibition in the final rule, as in the proposed rule, is applicable only to pollutants that are present in cooling tower blowdown as a result of cooling tower maintenance chemicals.

Commenters also expressed concern over potentially substantial compliance costs in analyzing for the 129 toxic pollutants in their discharges. The Agency agrees that the costs of routine compliance monitoring for the toxics could be quite expensive, and that there are alternative compliance mechanisms. Therefore, as an alternative to routine monitoring by sampling and analysis of effluents, the final rule provides for mass balance calculations to demonstrate compliance with the prohibition. For example, the discharger may provide the certified analytical contents of all biofouling and maintenance formulations used and engineering calculations demonstrating that any of the priority pollutants present in the maintenance chemicals would not be detectable in the cooling tower discharge using appropriate analytical methods. The permit issuing authority shall determine the appropriate approach.

Many commenters also indicated that there are presently no acceptable substitutes for the use of chromium and zinc based cooling tower maintenance chemicals. The Agency agrees that adequate substitutes are not presently available for many facilities. This is due in part to site specific conditions, including cooling water intake quality and the presence of construction materials susceptible to fouling corrosion. Further, there is a potential for substitutes to be more toxic than the substances they are meant to replace. Therefore, the final BAT, NSPS and pretreatment standards allow for the discharge of chromium and zinc in cooling tower blowdown. The limitations are the same as those adopted in 1974 for BAT and are based upon pH adjustment, chemical precipitation, and sedimentation or filtration to remove precipitated metals.

No comments were received on the proposal to delete the phosphorous limitations; therefore, the final rule is the same as proposed.

4. *Fly Ash Transport.* (a) *Background.* Coal or oil that is burned in a boiler produces ash that requires disposal. The relatively fine and light-weight ash that is commonly discharged with the flue gases and collected with air pollution

equipment is called "fly ash." Fly ash enters the water primarily through dissolution of reactive compounds on the surface of the fly ash particles. Only plants handling fly ash using partially recirculating water or once-through water systems generate this type of wastewater.

The 1974 BPT and BAT regulations covered PCBs and contained mass limitations for several pollutants based on the following concentrations: total suspended solids at 30 mg/l daily average and 100 mg/l daily maximum; oil and grease at 15 mg/l daily average and 20 mg/l daily maximum. The 1974 NSPS required zero discharge based upon use of dry fly ash transport. (This standard was remanded in 1976). The 1974 PSNS contained no categorical pretreatment standards for the waste stream. The 1977 PSES contains a mass limit for oil and grease based upon a maximum concentration of 100 mg/l and a prohibition on the discharge of PCBs.

(b) *Final Limitations. BAT and PSES.* As discussed below, there are no BAT or PSES limitations for fly ash transport water, with the exception of the prohibition on discharges of PCBs. BAT limitations for conventional pollutants are withdrawn, as discussed earlier.

NSPS and PSNS. As discussed below, the final regulation prohibits the discharge of all pollutants from fly ash transport systems.

(c) *Changes From Proposal and Rational.* EPA determined at proposal that the available data regarding the degree of toxic pollutant reduction to be achieved beyond BPT were too limited to support national limitations. Therefore, EPA did not propose BAT limitations or PSES for the priority pollutants. The Agency considered requiring a zero discharge option for existing sources but rejected it because the high cost of retrofitting does not justify the additional pollutant reductions beyond BPT. EPA did not receive any comments that we should establish BAT and revised PSES for the priority pollutants found in this wastestream. Therefore, no changes were made in the approach to BAT and PSES for the final rule. However, the Agency will be evaluating the level of control that is appropriate for conventional pollutants for BCT as discussed previously.

For NSPS and PSNS, the coverage of the proposal was ambiguous. The preamble and development document indicated that EPA was prohibiting all discharges of fly ash water. 45 FR 68338. However, the proposed regulatory language only prohibited the discharge of copper, nickel, zinc, arsenic, and selenium. It did not cover the remaining

toxic pollutants or conventional pollutants. Because the preamble correctly reflected EPA's intent, the final rule follows the preamble and not the proposed regulation. There is no practical difference between the two approaches since the fly ash technology option identified by EPA (dry fly ash transport systems) eliminates any discharge of wastewater whatsoever. The absence of any wastewater discharge means that all pollutants would be controlled, not just the five metals listed in the proposed regulation.

Comments were received concerning the proposed NSPS and PSNS but EPA did not make any changes as a result of them. The commenters stated that most new sources can meet the NSPS. However, they stated that EPA's cost estimates did not support the conclusion that the costs of dry and wet fly ash systems are not appreciably different. They also stated that EPA should provide a less stringent NSPS for those plants which could not meet the NSPS because of solid waste disposal constraints or air pollution problems.

We do not believe that less stringent NSPS or PSNS are warranted. Almost half of the existing plants already use dry fly ash systems; we are unaware of any particular technical, air pollution, disposal, or other problems they have encountered, or any reasons why all new plants cannot install dry fly ash systems. No specific examples or problems were given by the commenters. Further, as discussed in Section VI of this preamble, we believe the costs for wet and dry fly ash systems are comparable.

We believe that a zero discharge NSPS and PSNS is practicable and fully demonstrated for new sources. Many existing plants are achieving zero discharge and new plants are at least as capable of implementing dry fly ash systems. We estimate that a typical size new plant operating a dry fly ash handling system will reduce toxic metals discharges by approximately 4800 pounds per year beyond the BAT level of control. Therefore, we have determined that the nonwater quality environmental and energy impacts are reasonable in view of the effluent reduction that is achieved.

Finally, EPA has changed the definition of fly ash to include economizer ash where economizer ash is collected with fly ash. This change was not proposed; it is based on a comment which correctly pointed out that steam electric plants may collect economizer ash with either fly ash or bottom ash. The 1974 definition section, however, only included economizer ash in the bottom ash definition. Therefore,

we are changing both the definition of fly ash and bottom ash to resolve this problem. EPA is not providing the opportunity for comment since the change was made in response to public comment and is necessary to correct a prior oversight.

5. *Bottom Ash Transport Water.* (a) *Background.* Bottom ash refers to the relatively bulky and heavy ash that settles at the bottom of the boiler furnace. Approximately 70 plants currently transport their bottom ash using a dry system and report no discharge to the navigable waters.

Many plants recirculate their bottom ash transport water with a blowdown stream to control the buildup of dissolved solids. A completely recirculating system returns all of the ash sludge water to the ash collecting hoppers for repeated use in sluicing. A recirculating system can be operated at partial recirculation, usually from 12.5 to 25 times recycle, or operated with a complete recycle of bottom ash sludge water. The Agency has not identified any plants with complete recirculation except those in arid areas which had land available to evaporate all excess water.

The 1974 BPT regulations contain mass limitations for PCB and for several pollutants based on the following concentrations: total suspended solids of 30 mg/l daily average / 100 mg/l daily maximum and oil and grease of 15 mg/l daily average / 20 mg/l daily maximum. In addition, the pH is limited to within the range of 6.0 to 9.0. The 1974 BAT contains the same total suspended solids, oil and grease, pH and PCB limits as BPT, plus a recycle requirement of 12.5 cycles of bottom ash sludge water. The 1974 NSPS contains the same total suspended solids, oil and grease, and pH limits as BPT, plus a recycle requirement of 20 cycles of bottom ash sludge water. The 1974 PSNS do not contain any categorical pretreatment standards and the 1977 PSES contains a mass limitation for oil and grease based upon a maximum limitation of 100 mg/l, and prohibits the discharge of PCBs.

(b) *Final Limitations. BAT.* The final regulations contain BAT limitations for PCBs. The BAT limitations for conventional pollutants are withdrawn.

NSPS. The final regulations contain limitations for total suspended solids, oil and grease, PCBs, and pH equal to the existing BPT. The 1974 recycle requirement for 20 cycles of bottom ash sludge water is withdrawn.

PSES and PSNS. The final regulations contain categorical pretreatment requirements on PCBs for this

wastestream. PSES for oil and grease is withdrawn.

(c) *Changes From Proposal and Rationale.* EPA did not propose BAT limitations for the priority pollutants. Analysis of available wastewater sampling data did not indicate that a quantifiable reduction of toxic pollutants would be achieved by requiring technologies beyond the BPT level of control. These technologies include bottom ash recirculation systems and dry bottom ash transport systems. No comments were received objecting to the proposal; therefore, the final rule is the same as proposed. As explained before, EPA will examine conventional pollutant technology options in light of the revised BCT cost test.

For NSPS, PSES, and PSNS, no comments were received. Therefore, the proposed and final regulation are identical.

Finally, EPA is changing the definition of bottom ash for the reasons discussed in the previous section on fly ash.

6. *Low Volume Wastes.* (a) *Background.* Low volume wastes include boiler blowdown, wet air scrubber pollution control systems, ion exchange water treatment system discharges, water treatment evaporation blowdown, laboratory and sampling waste streams, floor drains, cooling tower basin cleaning wastes, and discharges from house service water systems.

The existing BPT, BAT, and NSPS regulation establishes mass limitations for conventional pollutants: (1) Total suspended solids based upon 30 mg/l daily average and 100 mg/l daily maximum concentrations; (2) oil and grease based upon 15 mg/l daily average and 20 mg/l daily maximum concentrations; and (3) pH between 6 and 9. There are no existing categorical pretreatment standards, with the exception of PCBs and oil and grease for PSES.

(b) *Final Limits.* EPA did not propose new or revised limitations for this waste stream with the exception of substituting BCT for the control of conventional pollutants instead of BAT and withdrawing the PSES for oil and grease. BCT limitations are now reserved. However, EPA changed the definition of low volume waste to include boiler blowdown and is withdrawing the separate regulations for boiler blowdown.

(c) *Changes from Proposal and Rationale.* EPA proposed to include boiler blowdown as a low volume waste. This represents a change in coverage from the 1974 regulation. Information collected and analyzed by

the Agency since 1974 led to the conclusion that there is no need to regulate boiler blowdown as a separate waste stream. Boiler blowdown is sufficiently similar in characteristics to the other specific types of low volume wastes. No commenters objected to the proposed change; therefore, the proposed and final rule are identical.

7. *Metal Cleaning Wastes.* (a) *Background.* "Metal cleaning wastes" is the generic name for a class of waste streams which results from the cleaning of boiler tubes, air preheater wash water, and boiler fireside wash water. This may be accomplished with either chemical cleaning solutions such as acids, degreasers, and metal complexers, or with plant service water only.

The 1974 BPT and BAT limitations and NSPS contain mass limitations for several pollutants based on the following concentrations: total suspended solids of 30 mg/l daily average / 100 mg/l daily maximum; oil and grease of 15 mg/l daily average / 20 mg/l daily maximum; total copper of 1.0 mg/l daily average and daily maximum; total iron 1.0 mg/l daily average and daily maximum pH is limited within the range of 6.0 to 9.0. The discharge of PCBs is prohibited.

The 1974 PSNS contains no categorical pretreatment standards for this waste stream. The 1977 PSES contains: a mass limitation for total copper based upon a maximum concentration of 1.0 mg/l; a mass limitation for oil and grease based upon a maximum concentration of 100 mg/l; and a prohibition on the discharge of PCBs.

(b) *Final Limitations. Chemical Metal Cleaning Wastes.* BAT. With one exception, BAT is equal to the 1974 regulations. The BAT limitations for conventional pollutants are withdrawn since BAT no longer applies to them.

NSPS. There are no changes from the 1974 NSPS.

PSES and PSNS. The final PSES and PSNS contain a maximum concentration limitation of 1.0 mg/l for total copper, and prohibit the discharge of PCBs. The PSES for oil and grease is withdrawn.

Non-Chemical Metal Cleaning Wastes. BAT, NSPS, PSES and PSNS for this waste stream are reserved for future rulemaking.

(c) *Changes From Proposal and Rationale.* For chemical metal cleaning wastes, the final BAT, NSPS, PSES and PSNS are equivalent to the 1980 proposal. The 1980 proposal contained first time coverage of copper for PSNS and, for PSES, copper was changed from a mass-based limitation to a concentration limitation. Unlike the

existing regulations and the 1980 proposal, however, the requirements do not cover non-chemical metal cleaning wastes.

In the preamble to the 1980 proposal, EPA explained that the existing requirements applied to all metal cleaning wastes, whether the wastes resulted from cleaning with chemical solutions or with water only. EPA rejected an earlier guidance statement which stated that wastes from metal cleaning with water would be considered "low volume" wastes. However, because many dischargers may have relied on this guidance, EPA proposed in 1980 to adopt the guidance for purposes of BPT and to change the BPT limitation to apply only to "chemical" metal cleaning wastes. See 45 FR 68333 (October 14, 1980) for a full discussion of the issue.

Commenters argued that EPA's clarified interpretation of the existing regulations would result in extremely high compliance costs and were not supported by the record. In response to the comments, we examined the available data on waste characteristics of non-chemical metal cleaning wastes and the costs and economic impacts of controlling them. The data indicated that there was a definite potential for differences in concentration levels of inorganic pollutants depending on whether the plants were coal or oil-fired. Further, compliance with the existing effluent limitations and standards could be very costly and result in significant adverse economic impacts. However, the data were too limited for EPA to make a final decision.

EPA requested that the Utility Water Act Group provide specific, additional information. The data were submitted too late for the Agency to use at this time. Consequently, EPA is reserving BAT, NSPS, PSES and PSNS for non-chemical metal cleaning wastes in today's rule.

EPA is withdrawing the proposal to change the BPT definition of metal cleaning wastes. However, until the Agency promulgates new limitations and standards, the previous guidance policy may continue to be applied in those cases in which it was applied in the past.

8. *Coal Pile Runoff.* (a) *Background.* Area runoff limitations were promulgated in 1974. The 1974 regulations included coverage for materials storage, including coal, ash, and chemical storage, and runoff from construction area activities. In *Appalachian Power v. Train*, 545 F.2d 1351, 1378 (4th Cir. 1976) the Court remanded the area runoff regulations. In

1980, EPA repromulgated the 1974 coal pile runoff limitations but did not repromulgate any other area runoff limitations.

The BPT and BAT limitations and NSPS for coal pile runoff contain a maximum concentration limitation of 50 mg/l for total suspended solids and pH within the range 6.0 to 9.0. Any untreated overflow from a treatment facility sized to treat coal pile runoff which results from a 10 year-24 hour event is not subject to these 1974 limitations. The 1974 PSNS and 1977 PSES for coal pile runoff contain no limitations for specific pollutants.

(b) *Final Limits.* There are no changes to the existing regulations with the exception of the BAT limitations for conventional pollutants. The latter regulations are withdrawn since BAT limits no longer apply to conventional pollutants.

(c) *Changes From Proposal and Rationale.* EPA did not propose any changes to the existing coal pile runoff regulations with the exception of proposing BCT limitations to replace BAT. As stated previously, we are reserving BCT until we apply the revised BCT methodology to the technology options for controlling conventional pollutants.

VI. Costs and Economic Impact

The Agency's economic impact assessment is set forth in the *Economic Analysis of Final Effluent Limitations, New Source Performance Standards and Pretreatment Standards for the Steam Electric Power Generating Point Source Category*, (EPA 230/11-83/00). The report presents the detailed annualized and investment costs for the industry as a whole and for model plants covered in this regulation. Underlying cost data were obtained from the technical development document and supporting documents, while the economic impact assessment was developed based on an analysis of current and projected costs for the industry under this regulation.

Nationally, the total annual revenue requirements for this regulation range from \$11.5 million in 1985 to \$10.9 million in 1995 (1982 dollars) compared to baseline annual revenue requirements to \$120 to \$175 billion over this period. This range reflects the change in costs as old facilities retire and new facilities are added. This represents a nationwide average increase in consumer charges of less than one-tenth of one percent over that period. Through this period, 85 percent of these costs are for existing facilities. These costs are associated entirely with the BAT and NSPS limitations on total residual chlorine for once-through cooling water. It is

estimated that the regulation will result in the removal of 13.5 million pounds of total residual chlorine in 1985.

Limits for several waste streams beyond current limits are also being set, which provide no incremental cost over the existing regulatory requirements. For BAT and PSES, this regulation prohibits the discharge of 124 of the 126 toxic pollutants in detectable amounts for cooling water blowdown discharges. Substitutes for these heat exchanger maintenance chemicals are available which do not contain these toxics, and the cost differentials are minimal. For the other two toxics, chromium and zinc, mass limitations are being set equivalent to the existing BAT. Therefore, there are no new costs associated with this requirement.

While the final PSNS for chemical metal cleaning wastes contains first time coverage of copper, the copper limitation is no more stringent than the existing PSES. Therefore, there are no incremental costs for new source indirect dischargers as a result of this requirement.

An NSPS limitation and PSNS of zero discharge from fly ash disposal is also being promulgated, while BAT will be set equal to BPT for existing facilities. All existing plants must use either dry or wet fly ash disposal systems to dispose of their waste. Since EPA determined that there are no appreciable cost differences between dry and wet fly ash disposal systems, the economic analysis performed at proposal assumed that no incremental costs beyond BPT would be associated with meeting NSPS.

While stating that most new sources can meet the NSPS, commenters asserted that EPA's Development Document did not support the conclusion that the costs for both disposal systems are comparable. The final development Document indicates that the costs for plants of 500 MW or greater capacity are less for dry than for wet fly ash handling systems. This is confirmed by a recent TVA study, *Economics of Ash Disposal at Coal-Fired Power Plants*, EPA-600/7-81-170, October 1981. The Agency also believes that dry fly ash handling costs are no more than wet fly ash handling costs for smaller plants, but more detailed analyses are not available. The absence of analyses to confirm these conclusions is not critical because it is unlikely that plants smaller than 500 MW capacity will be built in the future. However, should the industry plan to build such smaller plants, and demonstrate that use of dry fly ash systems would pose a significant hardship when compared to the expense of a wet fly ash system, they may file a petition for rulemaking

concerning the suitability of these standards for smaller plants.

In summary, in the absence of case specific, contrary data, we have concluded that the costs of both systems are comparable. Thus, the NSPS requirement will add no incremental cost.

For all other waste streams, no new limitations or standards more stringent than existing requirements are established. Thus there are no other incremental costs associated with the regulation promulgated today.

Individual plants and utility systems which use once-through cooling water will bear somewhat varying costs in controlling chlorine, depending on the control technology used by those plants to meet the individual limits. Forty-two percent of the generating capacity uses recirculating cooling water and therefore faces no incremental compliance costs. Of the 58 percent of steam generating capacity that uses once-through cooling water, some plants do not find it necessary to use chlorine and therefore do not have to engage in a chlorine minimization program or use dechlorination or other chlorine reduction technologies. For those plants that are 25 MW or greater which will require the use of dechlorination, the most expensive compliance option, to meet the chlorine limitation, costs can range as high as 0.4 mills per kilowatt hour generated, representing up to 1 percent of the baseline generating costs for that facility. However, most plants which are of larger size will bear lower costs, ranging from 0.02 mills per kwh to 0.11 mills per kwh or less than one percent of baseline generating costs, even when they must use dechlorination.

Cost increases for a utility system represent the aggregate of control cost increases for all facilities in the system. The increases in cost for installing control technologies must be compared to the costs of generating power from all plants in that system to evaluate the effects of this regulation on the costs to a utility and to the consumer. As a result, the upper bound for increases in cost for a utility system is represented by assuming that all facilities in a system would install the most expensive control option.

Utility systems will generally bear costs which are lower than those faced by individual plants, since the regulation promulgated today will not likely require all facilities in a system to install the most expensive control technology. On a national basis, 29 percent of total generating capacity of plants with once through cooling water do not add

chlorine and therefore automatically meet the TRC limitation. Forty-five percent of this capacity can meet the limit through chlorine minimization while 26 percent must use dechlorination. Industry estimates state that a greater percentage of capacity will be able to meet the TRC limit by chlorine minimization than EPA has predicted.

However, single plants with less than 25 MW of capacity are projected to experience cost increases if required to install the most expensive technology, dechlorination. Their costs will range from 0.18 mills per kwh to 4.0 mills per kwh, depending on the amount of power generated from these facilities. This represents a disproportionate increase on this segment of the industry compared to all other facilities. EPA has identified 130 such plants; they constitute less than one percent of the total industry generation. These cost increases are estimated to represent up to a 10 percent increase in generating costs for those facilities. Furthermore, since many of these facilities are owned by utilities with few other power plants, the percentage increase in generating costs for these facilities is likely to represent actual percentage cost increases to the consumer. This is because the increase in generating costs will not be diluted by other plants owned by the same utility that have lower generating costs and compliance costs. Because there is no less stringent technology option between BPT and the final BAT, BAT will be set equal to BPT for these facilities to avoid the disproportionate costs to facilities and to the consumer.

As a result of this action, EPA does not expect any adverse economic impacts on a plant level or utility level to occur as a result of this regulation. This regulation also is not expected to affect employment and will result in a minimal increase in energy requirements.

VII. Nonwater Quality Environmental Impact

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require the Agency to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, the Agency has considered the effect of these regulations on air pollution, solid waste generation, water scarcity, and energy consumption. This proposal was circulated to and reviewed by Agency personnel responsible for nonwater

quality environmental programs. While it is difficult to balance pollution problems against each other and against energy use, the Agency is proposing regulations that it believes best serve often competing national goals.

The following are the nonwater quality environmental impacts associated with the final regulations:

A. Air Pollution.—Application of dry fly ash handling may cause a higher dust loading in localized areas around the fly ash transport transfer points. A baghouse or other type of dust collection system will minimize such impacts. The costs of such dust control systems are included in the economic analysis. Dry fly ash landfill sites are subject to dusting problems, especially in arid regions. Until the site can be sealed with a cap or vegetative cover, watering to control dust may be required.

B. Solid Waste.—No additional solid wastes are expected as a result of these regulations, including for dry fly ash transport and disposal. Further, fly ash, whether wet or dry, has a wide variety of industrial uses, such as fill or cover material, soil conditioners, roadway bases, drainage media, pozzolan, structural products, aggregate, grout, and metal extraction. Usage of this material eases disposal requirements.

C. Consumptive Water Loss.—Less consumptive water loss is expected from dry fly ash handling and disposal than wet fly ash handling and disposal because of less overall water usage. The amounts of water used for dust control in dry fly ash systems should be no more than the amounts of water consumed in wet fly ash transport and disposal.

D. Energy Requirements.—Additional energy requirements imposed by these regulations are due primarily to the pumping of dechlorination chemicals. These requirements are insignificant compared to a facility's power generating capacity, as indicated by information in the Development Document. Energy costs are no greater for dry fly ash systems than for wet fly ash systems.

VIII. Pollutants and Subcategories Not Regulated

The Settlement Agreement contains provisions authorizing the exclusion from regulation, in certain circumstances, of the 126 toxic pollutants for this industry. Paragraph 8(a)(iii) specifically authorizes the Administrator to exclude toxic pollutants from regulation for the following reasons: (a) Those not detectable by Section 304(h) analytical methods or other state-of-the-art methods; (b) those present in amounts

too small to be effectively reduced by available technologies; (c) those present only in trace amounts and neither causing nor likely to cause toxic effects; (d) those detected in the effluent from only a small number of sources within a subcategory and uniquely related to those sources; and (e) those that will be effectively controlled by the technologies on which other effluent limitations and standards are based.

Paragraph 8(b) of the Settlement Agreement authorizes the Administrator to exclude from regulation a category if: (i) 95 percent or more of all point sources in the subcategory introduce into POTWs only pollutants which are susceptible to treatment by the POTW and which do not interfere with, do not pass through, or are not otherwise incompatible with such treatment works; or (ii) the toxicity and amount of the incompatible pollutants introduced by such point sources into POTWs is so insignificant as not to justify developing a pretreatment regulation.

The pollutants and waste streams excluded from regulation on the basis of Paragraph 8 considerations are presented in Appendix A of this preamble for direct dischargers and indirect dischargers. A summary of the Paragraph 8 determinations by waste stream follows:

BAT, NSPS, PSES, PSNS

Once Through Cooling Water—The seven polychlorinated biphenyl compounds are regulated. The remaining 119 pollutants are excluded from regulation.

Cooling Tower Blowdown—All 126 toxic pollutants are regulated.

Low Volume Wastes—The seven polychlorinated biphenyl compounds are regulated. The remaining 119 pollutants are excluded from regulation.

Chemical Metal Cleaning Wastes—Copper and the seven polychlorinated biphenyl compounds are regulated. The remaining 118 pollutants are excluded from regulation.

Coal Pile Runoff—The seven polychlorinated biphenyl compounds are regulated. The remaining 119 pollutants are excluded from regulation.

Non-Chemical Metal Cleaning Wastes, Ash Pile Runoff, Chemical Handling Area Runoff, Construction Area Runoff. No Paragraph 8 determinations are made at this time because regulation of these waste streams is reserved for future rulemaking.

IX. Summary of Public Participation and Responses to Major Comments on the Proposed Regulation

On October 14, 1980, the Agency published proposed rules for effluent limitations guidelines, pretreatment standards, and new source performance standards under the Clean Water Act for the Steam Electric Power Generating Point Source Category. EPA also conducted technical workshops on the proposal in Chicago on December 2, 1980; Atlanta on December 5, 1980; and Boston on December 8, 1980. A public hearing was held in Washington, D.C. during the comment period on the pretreatment standards.

All comments received have been carefully considered, and appropriate changes in the regulations have been made whenever available data and information supported those changes. Major issues raised by commenters are addressed in Section V and this section. A summary of all the comments received and our detailed responses to all comments are included in a report, "Responses to Public Comments, Proposed Steam Electric Effluent Guidelines and Standards," which is a part of the public record for this regulation.

1. *Comment:* For BPT, EPA regulated free available chlorine (FAC) and not total residual chlorine (TRC). Several commenters stated that EPA should not change to controlling TRC.

Response: Chlorine may be present in the effluent as free available chlorine (FAC) or as combined residual chlorine (CRC). It may be measured as FAC, CRC, or total residual chlorine (TRC); the latter measures both CRC and FAC. EPA has determined that TRC is a more appropriate measure for chlorine than either FAC or CRC.

FAC is the most toxic pollutant of the three. However, CRC is also toxic to aquatic life.^{1 2 3} Limits on FAC alone would ignore the toxic contribution of CRC; therefore, EPA concluded that regulation of TRC would better protect aquatic life from the toxic effects of both FAC and CRC. For this same reason EPA based the EPA water quality criteria for chlorine on TRC rather than FAC or TRC.¹

The agency recognizes that FAC is used by plants to determine the amount of chlorine used in once through cooling water to control biofouling. However,

this does not mean that FAC is the proper parameter for measuring chlorine in the effluent for pollution control purposes.

2. *Comment:* One commenter requested that EPA interpret or amend the regulations to allow concentration based limitations to be established in permits instead of mass limitation and based upon concentration and flow. The main reason given by the commenter was that the highly variable nature of waste stream flows in electric power generating facilities makes it very difficult to select an appropriate flow upon which to base a mass based limit. This was said to be particularly true for ash sluice water. The commenter also raised the problem of measuring the contribution of flow to an ash pond from contaminated and noncontaminated runoffs.

Response: After reviewing the comment and consulting with permit writers familiar with power plants, we agree that the use of mass based limits in all circumstances is undesirable. The potentially large variations in flow makes it difficult in some cases to choose a representative flow. Incorrect selection of a representative flow may result in limits that are either too stringent or too lenient.

Accordingly, we have decided to give the permit writer the authority to incorporate either concentration based limits or mass based limits into the permit. Case-by-case determinations may be made, depending on the characteristics of the particular facility. We believe giving the permitting authority this flexibility will allow the choice of the most suitable limits for each plant, thereby promoting effluent reduction benefits. The Agency plans to prepare guidance for permit writers to further clarify the instances in which setting concentration or mass-based permit limitations is appropriate for the various fuel types (nuclear, coal, etc.) as well as types of waste streams.

We have changed the regulations to this effect. See, e.g., § 423.12(b)(11). In addition, where the permit contains concentration based limits at the outfall for a combined waste treatment facility (e.g. ash ponds), the permit writer may establish numerical limits and monitoring on the individual, regulated waste stream prior to their mixing. See 40 CFR 122.63(i). The use of concentration based limits may necessitate the internal monitoring of several waste streams (i.e., cooling tower blowdown, metal cleaning wastes) to ensure that the pollutants of concern are not diluted by other waste streams where commingling occurs.

Finally, it should be noted that the "actual production" rule in 40 CFR 122.63(b)(2) does not apply to this

industry since mass limitations, where used, are based on flow and concentrations, and not on production or other measures of operation.

These changes also apply to BPT permits since BPT permits may continue to be written for conventional pollutants until BCT limits are promulgated.

3. *Comment:* The proposed regulations require zero discharge of maintenance chemicals containing the 129 priority pollutants used in cooling towers and zero discharge of fly ash water. EPA has no authority under the Act to impose these restrictions without performing a cost/benefit analysis.

Response: EPA disagrees with this contention. We believe there is no statutory requirement to conduct a cost/benefit analysis for either BAT limits or NSPS. There is a requirement, however, to show that a zero discharge NSPS is practicable. EPA has made this finding for the pertinent wastestreams.

4. *Comment:* While admitting that a .2 mg/1 TRC concentration is generally achievable through dechlorination or chlorine minimization, commenters have argued that the data do not demonstrate that the limit is consistently achievable on a national basis. They assert that one Consumers' power plant and one Detroit Edison plant do not achieve .14 mg/1 TRC with dechlorination and therefore could not be expected to meet a 0.20 mg/1 standard. Further, they identify various operational problems and assert that site-specific factors could prevent some plants from achieving compliance. One commenter argued that a special mechanism must be established to allow higher limitations for those plants that could not meet the limit.

Response: EPA has reviewed all the available data on plants using dechlorination and found that the three Consumers power plants as well as several others are attaining a .20 mg/1 TRC concentration through dechlorination. In 1980 the Detroit Edison plant exceeded .20 mg/1 on numerous occasions but by 1981 had improved its performance significantly. Therefore, its more recent experience is consistent with that of the other plants that are dechlorinating. Many other plants are achieving .20 mg/1 TRC through minimization.

We see no reason why all plants could not meet the 0.20 mg/1 standard. The operational difficulties the commenters have identified have not prevented them from attaining 0.20 mg/1 TRC, and have been fully addressed in the Development Document and Response to Comments Document. The commenters even acknowledge that these limits are attained by make-shift, primitive systems; should they improve these systems, even better performance

¹ Quality Criteria for Water, EPA, July 1976.

² Chlorine Toxicity in Aquatic Ecosystems, Turner and Thayer, 1980.

³ Chlorine Toxicity as a Function of Environmental Variables and Species Tolerance, Edison Electric Institute, November, 1981.

should be achieved. Further, because the dechlorination technology basically involves the addition of chemicals, no special geographic or site specific factors are expected to affect performance. (Indeed, plants EPA has identified as successfully achieving 0.20 mg/1 TRC are located in geographically diverse sections of the country.) Therefore, as explained more fully in the "Response to Comments" Document and Development Document, EPA has determined that the final TRC limitations can be achieved on a nationwide basis. Therefore, we believe the proposal to allow plants to exempt themselves from the TRC limitation is unnecessary and inappropriate. Variances are available for those plants which are fundamentally different from those evaluated in the course of developing the BAT regulations.

5. *Comment.* EPA has not demonstrated that the proposed standards would produce any environmental or health benefits.

Response: Under provisions of the Clean Water Act and the Settlement Agreement, EPA is required to establish technology-based limitations and standards. These regulations are applied uniformly on a national basis where there are technically and economically feasible technologies for reducing the amount of pollutants discharged. We believe the removal of the regulated pollutants will produce environmental and health benefits. Nevertheless, in setting these limits, EPA does not consider, and in fact is excluded from considering, specific impacts on receiving water quality. See *Weyerhaeuser Co. v. Costle*, 590 F.2d 1011 (D.C. Cir. 1978); *Appalachian Power Co. v. EPA*, Cir. No. 80-1663 (4th Cir. February 8, 1982).

6. *Comment.* EPA should amend the regulations to allow permits to be written on a "net" basis. This change is necessary to cover those situations where the ambient concentration of TRC in the intake water may exceed 0.2 mg/l.

Response: The Consolidated Permit Regulations allow permits to be written on a "net" basis. See 40 CFR § 122.63(h)(1)(i)(B). Thus, there is no need to address "net" limits in these regulations.

X. Best Management Practices

Section 304(e) of the Clean Water Act gives the Administrator authority to prescribe "best management practices" (BMPs).

Although EPA is establishing BMPs at this time, we are evaluating the appropriateness of BMPs specific to the steam electric industry. Numerous problem areas are known to exist,

including leaks and spills, storm water contamination, groundwater infiltration from storage areas and on-site solid waste disposal.

XI. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion", is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision is necessary in EPA's effluent limitations because such upsets will inevitably occur even in properly operated control equipment. Because technology based limitations require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co. v. EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser v. Costle*, 590 F.2d 1011 (D.C. Cir., 1978), and *Corn Refiners Association, et al. v. Costle*, 594 F.2d 1223 (8th Cir., 1979). See also *American Petroleum Institute v. EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc. v. Train*, 540 F.2d 1320 (8th Cir. 1976); and *FMC Corp. v. Train*, 539 F.2d 973 (4th Cir. 1976).

A bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented because of an emergency situation. EPA has in the past included bypass provisions in NPDES permits.

The Agency has determined that both upset and bypass provisions should be included in NPDES permits and has promulgated Consolidated Permit Regulations which include upset and bypass permit provisions [see 40 CFR 122.60, 45 FR 33290, May 19, 1980]. The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the steam electric industry will be entitled to upset and bypass provisions in NPDES permits, the final steam electric regulations do not address these issues.

XII. Variances and Modifications

Upon the promulgation of the regulations, the effluent limitations for

the appropriate subcategory must be applied in all Federal and State NPDES permits thereafter issued to direct dischargers in the steam electric industry. In addition, upon promulgation, the pretreatment limitations are applicable to any indirect dischargers.

For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" (FDF) variance. See *E. I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co. v. Costle, supra*. This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. While the BPT variance clause for all other industrial categories is contained in the NPDES regulations and referenced in the categorical regulations, there is a special BPT variance clause for the steam electric category. This clause is being amended today for the following reasons.

As originally established in 1974, the FDF provision Part 423 was identical to those contained in all other BPT effluent limitations guidelines. It was amended in 1978 (43 FR 44846-8) in obedience to an order by the Fourth Circuit Court of Appeals to allow for consideration of the cost and affordability factors listed in section 301(c) and section 304(b) of the Act. *Appalachian Power Co. v. Train*, 545 F.2d 1351, 1358-60 (4th Cir. 1976) ("*Appalachian Power I*"). This amendment applied only to this industry. The clause, as amended, was challenged again on the grounds that it should have been expanded further to permit consideration of receiving water characteristics. The Fourth Circuit refused to review the amended variance clause because of doubt whether EPA had in fact taken the position that it would not consider receiving water characteristics. *Appalachian Power Co. v. Train*, 620 F.2d 1040 (4th Cir. 1980) ("*Appalachian Power II*"). In response to the latter decision, EPA amended the clause again to state explicitly that receiving water quality may not be considered as an FDF factor. 45 FR 61619 (1980). The petitioners then returned to the Fourth Circuit, contending that the 1980 amendment violated the *Appalachian Power I* mandate.

On February 8, 1982, the Fourth Circuit decided the latest challenge and concluded that the 1980 variance clause was valid. *Appalachian Power Co. v. EPA*, Civ. No. 80-1663 (4th Cir. February 8, 1982) ("*Appalachian Power III*"). In explaining its decision the Court noted that a recent Supreme Court case made it

clear that section 301(c) factors are not to be considered in making BPT variance determinations. *National Crushed Stone Association v. EPA*, 449 U.S. 64 (1980). Since the first two *Appalachian Power* decisions suggested that the requirement to consider receiving water quality derived in part from section 301(c)(2), the Court concluded that a BPT variance clause allowing consideration of receiving water quality would have to be justified on another basis. However, the Court rejected the use of section 304(b)(1)(B) as an alternative ground explaining that the Fourth Circuit had already concluded that section 304(b)(1)(B) did not provide that authority. *Consolidation Coal Co. v. Costle*, 604 F.2d 239 (4th Cir. 1979) reviewed in part *sub nom.*, *EPA v. National Crushed Stone Association*, 449 U.S. 64 (1980). Based on the relevant court decisions and the legislative history of the Act, the Court affirmed the variance clause.

As a result of these decisions EPA is retaining the portion of the current and proposed BPT variance clause that precludes consideration of impacts on receiving water quality. In addition, EPA is deleting the reference to Section 301(c) factors in the BPT variance clause. Because *Appalachian Power III* did not affect EPA's use of "significant cost differentials" in referring to Section 304(b)(1)(B) economic factors, EPA is leaving that aspect of the variance clause in place. EPA is not providing notice and opportunity for comment on the deletion of the reference to Section 301(c) factors since the charge reflects judicial interpretation of the variance clause. Finally, EPA is deleting the reference in the BPT clause to a 1974 EPA legal interpretation since that interpretation has since been withdrawn.

With respect to BAT, EPA proposed to extend the FDF variance clause that applies to all other categories to this industry. See 40 CFR 125.30-32. No comments were received. Accordingly, EPA is retaining the proposed wording in the final rule.

BAT limitations for nonconventional pollutants are also subject to modifications under Sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. See 43 FR 40895, September 13, 1978.

Section 301(j)(1)(B) of the Act requires that application for modifications under section 301 (c) or (g) must be filed within 270 days after the promulgation of an

applicable effluent guideline. Initial applications must be filed with the Regional Administrator and, in those States that participate in the NPDES program, a copy must be sent to the Director of the State program. Initial applications to comply with 301(j) must include the name of the permittee, the permit and outfall number, the applicable effluent guideline, and whether the permittee is applying for the 301(c) or 301(g) modification or both. Applicants interested in applying for both must do so in their initial application. For further details, see 43 FR 40859, September 13, 1978.

The nonconventional pollutant limited under BAT in this regulation is total residual chlorine. No regulations establishing criteria for 301(c) and 301(g) determinations have been proposed or promulgated, but the Agency recently announced plans to propose such regulations by December, 1982 (47 FR 15702, April 12, 1982). All dischargers who file an initial application within 270 days will be sent a copy of the substantive requirements for 301(c) and 301(g) determinations once they are promulgated. Modification determinations will be considered at the time the NPDES permit is being reissued.

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTW. (See 40 CFR 403.7, 403.13). Pretreatment standards for new sources are subject only to the credits provision in 40 CFR 403.7. NSPS are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *E. I. duPont de Nemours and Co. v. Train*, *supra*.

XIII. Relationship to NPDES Permits

The BAT limitations in this regulation will be applied to individual steam electric plants through NPDES permits issued by EPA or approved state agencies, under Section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. The promulgation of this regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or

any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit such pollutant on a case-by-case basis when limitations are necessary to carry out the purposes of the Act. In addition, to the extent that State water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. Although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. EPA has exercised and intends to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts.

XIV. Availability of Technical Assistance

The major documents upon which these regulations are based are: (1) the *Development Document for Final Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Steam Electric Point Source Category* (EPA 440/1-82/029); (2) in *Economic Analysis of Final Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Steam Electric Power Generating Point Source Category*, and (3) the technical development document and record supporting the proposed regulations, and the "Responses to Public Comments, Proposed Steam Electric Effluent Guidelines and Standards."

XV. OMB Review

The regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M St. SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday-Friday excluding Federal holidays.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting and recordkeeping provisions that are included in this regulation will be submitted for approval to OMB. They are not effective until OMB approval has been obtained and the public is notified to that effect

through a technical amendment to this regulation.

List of Subjects in 40 CFR Part 419

Electric power, Water pollution control, Waste treatment and disposal.

Dated: November 7, 1982.

Anne M. Gorsuch,
Administrator.

XVII. Appendices

Appendix A—Steam Electric Point Source Category Pollutants Excluded From Regulation

Pollutants excluded from regulation based upon Paragraph 8 of the Settlement Agreement are addressed by waste streams in the following sections. No Paragraph 8 determinations are made at this time for non-chemical metal cleaning wastes, ash pile runoff, chemical handling area runoff, and construction area runoff because regulation of these waste streams is reserved for future rulemaking.

Once-Through Cooling Water, Low Volume Wastes, Chemical Metal Cleaning Wastes, Coal Pile Runoff

The following 73 toxic pollutants are excluded from national regulation because they were not detected by Section 304(h) analytical methods or other state-of-the-art methods:

Acenaphthene
Acrolein
Acrylonitrile
Benzidine
Carbon Tetrachloride
1,2,4-Trichlorobenzene
Hexachlorobenzene
Hexachloroethane
1,1-Dichloroethane
1,1,2,2-Tetrachloroethane
Chloroethane
Bis(2-Chloroethyl) Ether
2-Chloroethyl Vinyl Ether (Mixed)
2,4,6-Trichlorophenol
Parachlorometa Cresol
1,3-Dichlorobenzene
3,3-Dichlorobenzidine
1,2-Dichloropropane
1,3-Dichloropropene
2,4-Dimethylphenol
2,4-Dinitrotoluene
2,6-Dinitrotoluene
1,2-Diphenylhydrazine
Fluoranthene
4-Chlorophenyl Phenyl Ether
4-Bromophenyl Phenyl Ether
[Bis(2-Chloroisopropyl) Ether
Bis(2-Chlororethoxy) Methane
Methyl Chloride
Methyl Bromide
Hexachlorobutadiene
Hexachlorocyclopentadiene
Isophorone
Naphthalene
2-Nitrophenol
4-Nitrophenol
2,4-Dinitrophenol
4,6-Dinitro-O-Cresol
N-Nitrosodimethylamine
N-Nitrosodiphenylamine
N-Nitrosodi-N-Propylamine

Benzo(A)Anthracene
Benzo(A)Pyrene
Benzo(B)Fluoranthene
Benzo(K)Fluoranthene
Chrysene
Acenaphthylene
Anthracene
Benzo(G,H,I)Perylene
Fluorene
Phenanthrene
Dibenzo(A,H)Anthracene
Indeno(1,2,3-C,D) Pyrene
Pyrene
Vinyl Chloride
Aldrin
Dieldrin
Chlordane
4,4-DDT
4,4-DDE
Endosulfan-Alpha
Endosulfan-Beta
Endosulfan Sulfate
Endrin
Endrin Aldehyde
Heptachlor
Heptachlor Epoxide
BHC-Alpha
BHC-Beta
BHC(Lindane)-Gamma
BHC-Delta
Tosaphene
2,3,7,8-Tetrachlorodibenzo-P-Dioxin

The following seven toxic pollutants are excluded from regulation because their detection in the final effluent samples is believed to be attributed to laboratory analysis and sampling contamination. Therefore, they are detectable in the effluent from only a small number of sources or no sources within the industry.

Methylene Chloride
Bis(2-Ethylhexyl) Phthalate
Butyl Benzyl Phthalate
Di-N-Butyl Phthalate
Di-N-Octyl Phthalate
Diethyl Phthalate
Dimethyl Phthalate

Once-Through Cooling Water

The following 12 toxic pollutants are excluded from national regulation because they were not detected by Section 304(h) analytical methods or other state-of-the-art methods:

Chlorobenzene
1,2-Dichloroethane
1,1,2-Trichloroethane
2-Chlorophenol
1,4-Dichlorobenzene
1,2-Trans-Dichloroethylene
Dichlorobromomethane
Nitrobenzene
4,4-DDD
Asbestos
Beryllium
Cyanide

The following 24 toxic pollutants are excluded from national regulation because they are present in amounts too small to be effectively reduced by technologies known to the Administrator:

Benzene
1,1,1-Trichloroethane
2-Chloronaphthalene
1,2-Dichlorobenzene
1,1-Dichloroethylene

2,4-Dichlorophenol
Ethylbenzene
Pentachlorophenol
Phenol
Tetrachloroethylene
Toluene
Trichloroethylene
Antimony
Arsenic
Cadmium
Chromium
Copper
Lead
Mercury
Nickel
Selenium
Silver
Thallium
Zinc

The following three toxic pollutants are excluded from national regulation because the pollutants are detectable in only a small number of sources and are uniquely related to those sources and because the pollutants are present in amounts too small to be effectively reduced by technologies known to the Administrator:

Chloroform
Bromoform
Chlorodibromomethane

Low Volume Wastewaters

The following five toxic pollutants are excluded from national regulation because they were not detected by Section 304(h) analytical methods or other state-of-the-art methods.

2-Chloronaphthalene
1,1-Dichloroethylene
Pentachlorophenol
Asbestos
Beryllium

The following 34 toxic pollutants are excluded from national regulation because they are present in amounts too small to be effectively reduced by technologies known to the Administrator:

Benzene
Chlorobenzene
1,2-Dichloroethane
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Chloroform
2-Chlorophenol
1,2-Dichlorobenzene
1,4-Dichlorobenzene
1,2-Trans-Dichloroethylene
2,4-Dichlorophenol
Ethylbenzene
Bromoform
Dichlorobromomethane
Chlorodibromomethane
Nitrobenzene
Phenol
Tetrachloroethylene
Toluene
Trichloroethylene
4,4-DDD
Antimony
Arsenic
Cadmium
Chromium
Copper
Cyanide
Lead

Mercury
Nickel
Selenium
Silver
Thallium
Zinc

Chemical Metal Cleaning Wastewater

The following 32 toxic pollutants are excluded from national regulation because they were not detected by Section 304(h) analytical methods or other state-of-the-art methods.

Benzene
Chlorobenzene
1,2-Dichloroethane
1,1,1-Trichloroethane
1,1,2-Trichloroethane
2-Chloronaphthalene
Chloroform
2-Chlorophenol
1,2-Dichlorobenzene
1,4-Dichlorobenzene
1,1-Dichloroethylene
1,2-Trans-Dichloroethylene
2,4-Dichlorophenol
Ethylbenzene
Bromoform
Dichlorobromomethane
Chlorodibromomethane
Nitrobenzene
Pentachlorophenol
Phenol
Tetrachloroethylene
Toluene
Trichloroethylene
4,4-DDD
Antimony
Arsenic
Asbestos
Cyanide
Mercury
Selenium
Silver
Thallium

The following six toxic pollutants are excluded from national regulation because sufficient protection is already provided by the Agency's guidelines and standards under the Act.

Beryllium
Cadmium
Chromium
Lead
Nickel
Zinc

Coal Pile Runoff

The following 32 toxic pollutants are excluded from national regulation because they were not detected by Section 304(h) analytical methods or state-of-the-art methods.

Benzene
Chlorobenzene
1,2-Dichloroethane
1,1,1-Trichloroethane
1,1,2-Trichloroethane
2-Chloronaphthalene
Chloroform
2-Chlorophenol
1,2-Dichlorobenzene
1,4-Dichlorobenzene
1,1-Dichloroethylene
1,2-Trans-Dichloroethylene
2,4-Dichlorophenol

Ethylbenzene
Bromoform
Dichlorobromomethane
Chlorodibromomethane
Nitrobenzene
Pentachlorophenol
Phenol
Tetrachloroethylene
Toluene
Trichloroethylene
4,4-DDD
Antimony
Arsenic
Asbestos
Cyanide
Mercury
Selenium
Silver
Thallium

The following seven toxic pollutants are excluded from national regulation because sufficient protection is already provided by the Agency's guidelines and standards under the Act.

Beryllium
Cadmium
Chromium
Copper
Lead
Nickel
Zinc

Appendix B—Abbreviations, Acronyms and Other Terms Used in This Notice

Act—The Clean Water Act.
Agency—The U.S. Environmental Protection Agency
BAT—The best available technology economically achievable, under Section 304(b)(2)(B) of the Act.
BCT—The best conventional pollutant control technology, under Section 304(b)(4) of the Act.
BMP—Best management practices under Section 304(e) of the Act.
BOD₅—Five day biochemical oxygen demand.
BPT—The best practicable control technology currently available, under Section 304(b)(1) of the Act.
Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended by the Clean Water Act of 1977 (Pub. L. 95-217).
Direct discharger—A facility which discharges or may discharge pollutants into waters of the United States.
FAC—Free Available Chlorine
GW—gigawatts; one billion watts
Indirect discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works.
MW—megawatts; one million watts
mg/l—Milligrams per liter
NPDES permit—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act.
NSPS—New source performance standards, under Section 304 of the Act.
PCB—Polychlorinated biphenyl compound
ppb—Parts per billion.
POTW—Publicly owned treatment works.
PSES—Pretreatment standards for existing sources of indirect discharges, under section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of direct discharges, under section 307(b) and (c) of the Act.

RCRA—Resource Conservation and Recovery Act (P.L. 94-580) of 1976, Amendments to Solid Waste Disposal Act.

TRC—Total Residual Chlorine

TRO—Total Residual Oxidants

TSS—Total suspended solids

µg/l—Micrograms per liter

40 CFR Part 423 is revised to read as follows:

PART 423—STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY

Sec.

- 423.10 Applicability.
423.11 Specialized definitions.
423.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of best practicable control technology currently available (BPT).
423.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).
423.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved.]
423.15 New source performance standards (NSPS).
423.16 Pretreatment standards for existing sources (PSES).
423.17 Pretreatment standards for new sources (PSNS).

Appendix A—126 Priority Pollutants

Authority: Sec. 301; 304(b), (c), (e), and (g); 306(b) and (c); 307(b) and (c); and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended by Clean Water Act of 1977) (the "Act"; 33 U.S.C. 1311; 1314(b), (c), (e), and (g); 1316(b) and (c); 1317(b) and (c); and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217).

§ 423.10 Applicability.

The provisions of this part are applicable to discharges resulting from the operation of a generating unit by an establishment primarily engaged in the generation of electricity for distribution and sale which results primarily from a process utilizing fossil-type fuel (coal, oil, or gas) or nuclear fuel in conjunction with a thermal cycle employing the steam water system as the thermodynamic medium.

§ 423.11 Specialized definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) The term "total residual chlorine" (or total residual oxidants for intake water with bromides) means the value obtained using the amperometric

method for total residual chlorine described in 40 CFR Part 136.

(b) The term "low volume waste sources" means, taken collectively as if from one source, wastewater from all sources except those for which specific limitations are otherwise established in this part. Low volume waste sources include, but are not limited to: wastewaters from wet scrubber air pollution control systems, ion exchange water treatment system, water treatment evaporator blowdown, laboratory and sampling streams, boiler blowdown, floor drains, cooling tower basin cleaning wastes, and recirculating house service water systems. Sanitary and air conditioning wastes are not included.

(c) The term "chemical metal cleaning waste" means any wastewater resulting from the cleaning of any metal process equipment with chemical compounds, including, but not limited to, boiler tube cleaning.

(d) The term "metal cleaning waste" means any wastewater resulting from cleaning [with or without chemical cleaning compounds] any metal process equipment including, but not limited to, boiler tube cleaning, boiler fireside cleaning, and air preheater cleaning.

(e) The term "fly ash" means the ash that is carried out of the furnace by the gas stream and collected by mechanical precipitators, electrostatic precipitators, and/or fabric filters. Economizer ash is included when it is collected with fly ash.

(f) The term "bottom ash" means the ash that drops out of the furnace gas stream in the furnace and in the economizer sections. Economizer ash is included when it is collected with bottom ash.

(g) The term "once through cooling water" means water passed through the main cooling condensers in one or two passes for the purpose of removing waste heat.

(h) The term "recirculated cooling water" means water which is passed through the main condensers for the purpose of removing waste heat, passed through a cooling device for the purpose of removing such heat from the water and then passed again, except for blowdown, through the main condenser.

(i) The term "10 year, 24/hour rainfall event" means a rainfall event with a probable recurrence interval of once in ten years as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May 1961 or equivalent regional rainfall probability information developed therefrom.

(j) The term "blowdown" means the minimum discharge of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which would cause concentration in amounts exceeding limits established by best engineering practices.

(k) The term "average concentration" as it relates to chlorine discharge means the average of analyses made over a single period of chlorine release which does not exceed two hours.

(l) The term "free available chlorine" shall mean the value obtained using the amperometric titration method for free available chlorine described in "Standard Methods for the Examination of Water and Wastewater," page 112 (13th edition).

(m) The term "coal pile runoff" means the rainfall runoff from or through any coal storage pile.

§ 423.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, utilization of facilities, raw materials, manufacturing processes, non-water quality environmental impacts, control and treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall

establish for the discharger effluent limitations in the NPDES Permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The phrase "other such factors" appearing above may include significant cost differentials. In no event may a discharger's impact on receiving water quality be considered as a factor under this paragraph.

(b) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction by the application of the best practicable control technology currently available (BPT):

(1) The pH of all discharges, except once through cooling water, shall be within the range of 6.0-9.0.

(2) There shall be no discharge of polychlorinated biphenyl compounds such as those commonly used for transformer fluid.

(3) The quantity of pollutants discharged from low volume waste sources shall not exceed the quantity determined by multiplying the flow of low volume waste sources times the concentration listed in the following table:

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day (mg/l)	Average of daily values for 30 consecutive days shall not exceed (mg/l)
TSS.....	100.0	30.0
Oil and grease.....	20.0	15.0

(4) The quantity of pollutants discharged in fly ash and bottom ash transport water shall not exceed the quantity determined by multiplying the flow of fly ash and bottom ash transport water times the concentration listed in the following table:

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day (mg/l)	Average of daily values for 30 consecutive days shall not exceed (mg/l)
TSS.....	100.0	30.0
Oil and grease.....	20.0	15.0

(5) The quantity of pollutants discharged in metal cleaning wastes shall not exceed the quantity determined by multiplying the flow of metal cleaning wastes times the concentration listed in the following table:

Pollutant or pollutant property	BPT effluent limitations:	
	Maximum for any 1 day (mg/l)	Average of daily values for 30 consecutive days shall not exceed (mg/l)
TSS.....	100.0	30.0
Oil and grease.....	20.0	15.0
Copper, total.....	1.0	1.0
Iron, total.....	1.0	1.0

(6) The quantity of pollutants discharged in once through cooling water shall not exceed the quantity determined by multiplying the flow of once through cooling water sources times the concentration listed in the following table:

Pollutant or pollutant property	BPT effluent limitations	
	Maximum concentration (mg/l)	Average concentration (mg/l)
Free available chlorine.....	0.5	0.2

(7) The quantity of pollutants discharged in cooling tower blowdown shall not exceed the quantity determined by multiplying the flow of cooling tower blowdown sources times the concentration listed in the following table:

Pollutant or pollutant property	BPT effluent limitations	
	Maximum concentration (mg/l)	Average concentration (mg/l)
Free available chlorine.....	0.5	0.2

(8) Neither free available chlorine nor total residual chlorine may be discharged from any unit for more than two hours in any one day and not more than one unit in any plant may discharge free available or total residual chlorine at any one time unless the utility can demonstrate to the Regional Administrator or State, if the State has NPDES permit issuing authority, that the units in a particular location cannot operate at or below this level or chlorination.

(9) Subject to the provisions of paragraph b(10) of this section, the

following effluent limitations shall apply to the point source discharges of coal pile runoff:

Pollutant or pollutant property	BPT effluent limitations
	Maximum concentration for any time (mg/l)
TSS.....	50

(10) Any untreated overflow from facilities designed, constructed, and operated to treat the volume of coal pile runoff which is associated with a 10 year, 24 hour rainfall event shall not be subject to the limitations in paragraph (b)(9) of this section.

(11) At the permitting authority's discretion, the quantity of pollutant allowed to be discharged may be expressed as a concentration limitation instead of the mass based limitations specified in paragraphs (b)(3) through (7) of this section. Concentration limitations shall be those concentrations specified in this section.

(12) In the event that waste streams from various sources are combined for treatment or discharge, the quantity of each pollutant or pollutant property controlled in paragraphs (b)(1) through (11) of this section attributable to each controlled waste source shall not exceed the specified limitations for that waste source.

§ 423.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30-32, any existing point source subject to this part must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) There shall be no discharge of polychlorinated biphenyl compounds such as those commonly used for transformer fluid.

(b)(1) For any plant with a total rated electric generating capacity of 25 or more megawatts, the quantity of pollutants discharged in once through cooling water from each discharge point shall not exceed the quantity determined by multiplying the flow of

once through cooling water from each discharge point times the concentration listed in the following table:

Pollutant or pollutant property	BAT Effluent Limitations
	Maximum concentration (mg/l)
Total residual chlorine.....	0.20

(2) Total residual chlorine may not be discharged from any single generating unit for more than two hours per day unless the discharger demonstrates to the permitting authority that discharge for more than two hours is required for macroinvertebrate control. Simultaneous multi-unit chlorination is permitted.

(c)(1) For any plant with a total rated generating capacity of less than 25 megawatts, the quantity of pollutants discharged in once through cooling water shall not exceed the quantity determined by multiplying the flow of once through cooling water sources times the concentration listed in the following table:

Pollutant or pollutant property	BAT effluent limitations	
	Maximum concentration (mg/l)	Average concentration (mg/l)
Free available chlorine.....	0.5	0.2

(2) Neither free available chlorine nor total residual chlorine may be discharged from any unit for more than two hours in any one day and not more than one unit in any plant may discharge free available or total residual chlorine at any one time unless the utility can demonstrate to the Regional Administrator or State, if the State has NPDES permit issuing authority, that the units in a particular location cannot operate at or below this level of chlorination.

(d)(1) The quantity of pollutants discharged in cooling tower blowdown shall not exceed the quantity determined by multiplying the flow of cooling tower blowdown times the concentration listed below:

Pollutant or pollutant property	BAT effluent limitations	
	Maximum concentration (mg/l)	Average concentration (mg/l)
Free available chlorine.....	0.5	0.2

Pollutant or pollutant property	Maximum for any 1 day - (mg/l)	Average of daily values for 30 consecutive days shall not exceed - (mg/l)
The 126 priority pollutants (Appendix A) contained in chemicals added for cooling tower maintenance, except:	(¹)	(¹)
Chromium, total.....	0.2	0.2
Zinc, total.....	1.0	1.0

¹No detectable amount.

(2) Neither free available chlorine nor total residual chlorine may be discharged from any unit for more than two hours in any one day and not more than one unit in any plant may discharge free available or total residual chlorine at any one time unless the utility can demonstrate to the Regional Administrator or State, if the State has NPDES permit issuing authority, that the units in a particular location cannot operate at or below this level of chlorination.

(3) At the permitting authority's discretion, instead of the monitoring specified in 40 CFR 122.11(b) compliance with the limitations for the 126 priority pollutants in paragraph (d)(1) of this section may be determined by engineering calculations which demonstrate that the regulated pollutants are not detectable in the final discharge by the analytical methods in 40 CFR Part 136.

(e) The quantity of pollutants discharged in chemical metal cleaning wastes shall not exceed the quantity determined by multiplying the flow of chemical metal cleaning wastes times the concentration listed in the following table:

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day (mg/l)	Average of daily values for 30 consecutive days shall not exceed - (mg/l)
Copper, total.....	1.0	1.0
Iron, total.....	1.0	1.0

(f) [Reserved—Nonchemical Metal Cleaning Wastes].

(g) At the permitting authority's discretion, the quantity of pollutant allowed to be discharged may be expressed as a concentration limitation instead of the mass based limitations specified in paragraphs (b) through (e) of this section. Concentration limitations

shall be those concentrations specified in this section.

(h) In the event that waste streams from various sources are combined for treatment or discharge, the quantity of each pollutant or pollutant property controlled in paragraphs (a) through (g) of this section attributable to each controlled waste source shall not exceed the specified limitation for that waste source.

§ 423.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 423.15 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards:

(a) The pH of all discharges, except once through cooling water, shall be within the range of 6.0-9.0.

(b) There shall be no discharge of polychlorinated biphenyl compounds such as those commonly used for transformer fluid.

(c) The quantity of pollutants discharged from low volume waste sources shall not exceed the quantity determined by multiplying the flow of low volume waste sources times the concentration listed in the following table:

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day (mg/l)	Average of daily values for 30 consecutive days shall not exceed (mg/l)
TSS.....	100.0	30.0
Oil and grease.....	20.0	15.0

(d) The quantity of pollutants discharged in chemical metal cleaning wastes shall not exceed the quantity determined by multiplying the flow of chemical metal cleaning wastes times the concentration listed in the following table:

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day (mg/l)	Average of daily values for 30 consecutive days shall not exceed (mg/l)
TSS.....	100.0	30.0
Oil and grease.....	20.0	15.0
Copper, total.....	1.0	1.0
Iron, total.....	1.0	1.0

(e) [Reserved—Nonchemical Metal Cleaning Wastes].

(f) The quantity of pollutants discharged in bottom ash transport water shall not exceed the quantity determined by multiplying the flow of the bottom ash transport water times the concentration listed in the following table:

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day (mg/l)	Average of daily values for 30 consecutive days shall not exceed (mg/l)
TSS.....	100.0	30.0
Oil and grease.....	20.0	15.0

(g) There shall be no discharge of wastewater pollutants from fly ash transport water.

(h)(1) For any plant with a total rated electric generating capacity of 25 or more megawatts, the quantity of pollutants discharged in once through cooling water from each discharge point shall not exceed the quantity determined by multiplying the flow of once through cooling water from each discharge point times the concentration listed in the following table:

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum concentration (mg/l)	
Total residual chlorine.....	0.20	

(2) Total residual chlorine may not be discharged from any single generating unit for more than two hours per day unless the discharger demonstrates to the permitting authority that discharge for more than two hours is required for macroinvertebrate control. Simultaneous multi-unit chlorination is permitted.

(i)(1) For any plant with a total rated generating capacity of less than 25 megawatts, the quantity of pollutants discharged in once through cooling water shall not exceed the quantity determined by multiplying the flow of once through cooling water sources times the concentration listed in the following table:

Pollutant of pollutant property	NSPS effluent limitations	
	Maximum concentration (mg/l)	Average concentration (mg/l)
Free available chlorine.....	0.5	0.2

(2) Neither free available chlorine nor total residual chlorine may be discharged from any unit for more than two hours in any one day and not more than one unit in any plant may discharge free available or total residual chlorine at any one time unless the utility can demonstrate to the Regional Administrator or State, if the State has NPDES permit issuing authority, that the units in a particular location cannot operate at or below this level of chlorination.

(j)(1) The quantity of pollutants discharged in cooling tower blowdown shall not exceed the quantity determined by multiplying the flow of cooling tower blowdown times the concentration listed below:

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum concentration (mg/l)	Average concentration (mg/l)
Free available chlorine.....	0.5	0.2

Pollutant or pollutant property	Maximum for any 1 day (mg/l)	Average of daily values for 30 consecutive days shall not exceed
		(mg/l)
The 126 priority pollutants (Appendix A) contained in chemicals added for cooling tower maintenance, except:	(¹)	(¹)
Chromium, total.....	0.2	0.2
Zinc, total.....	1.0	1.0

¹ No detectable amount.

(2) Neither free available chlorine nor total residual chlorine may be discharged from any unit for more than two hours in any one day and not more than one unit in any plant may discharge free available or total residual chlorine at any one time unless the utility can demonstrate to the Regional Administrator or State, if the State has NPDES permit issuing authority, that the units in a particular location cannot operate at or below this level of chlorination.

(3) At the permitting authority's discretion, instead of the monitoring in 40 CFR 122.11(b), compliance with the limitations for the 126 priority pollutants in paragraph (j)(1) of this section may be determined by engineering calculations which demonstrate that the regulated pollutants are not detectable in the final

discharge by the analytical methods in 40 CFR Part 136.

(k) Subject to the provisions of § 423.15(l), the quantity or quality of pollutants or pollutant parameters discharged in coal pile runoff shall not exceed the limitations specified below:

Pollutant or pollutant property	NSPS effluent limitations for any time
TSS.....	Not to exceed 50 mg/l.

(l) Any untreated overflow from facilities designed, constructed, and operated to treat the coal pile runoff which results from a 10 year, 24 hour rainfall event shall not be subject to the limitations in § 423.15(k).

(m) At the permitting authority's discretion, the quantity of pollutant allowed to be discharged may be expressed as a concentration limitation instead of the mass based limitation specified in paragraphs (c) through (j) of this section. Concentration limits shall be based on the concentrations specified in this section.

(n) In the event that waste streams from various sources are combined for treatment or discharge, the quantity of each pollutant or pollutant property controlled in paragraphs (a) through (m) of this section attributable to each controlled waste source shall not exceed the specified limitation for that waste source.

§ 423.16 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES) by July 1, 1984:

(a) There shall be no discharge of polychlorinated biphenol compounds such as those used for transformer fluid.

(b) The pollutants discharged in chemical metal cleaning wastes shall not exceed the concentration listed in the following table:

Pollutant or pollutant property	PSES pretreatment standards
	Maximum for 1 day (mg/l)
Copper, total.....	1.0

(c) [Reserved—Nonchemical Metal Cleaning Wastes].

(d)(1) The pollutants discharged in

cooling tower blowdown shall not exceed the concentration listed in the following table:

Pollutant or pollutant property	PSES pretreatment standards
	Maximum for any time (mg/l)
The 126 priority pollutants (Appendix A) contained in chemicals added for cooling tower maintenance, except:	(¹)
Chromium, total.....	0.2
Zinc, total.....	1.0

¹ No detectable amount.

(2) At the permitting authority's discretion, instead of the monitoring in 40 CFR 122.11(b), compliance with the limitations for the 126 priority pollutants in paragraph (d)(1) of this section may be determined by engineering calculations which demonstrate that the regulated pollutants are not detectable in the final discharge by the analytical methods in 40 CFR Part 136.

§ 423.17 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and the following pretreatment standards for new sources (PSNS).

(a) There shall be no discharge of polychlorinated biphenyl compounds such as those used for transformer fluid.

(b) The pollutants discharged in chemical metal cleaning wastes shall not exceed the concentration listed in the following table:

Pollutant or pollutant property	PSNS pretreatment standards
	Maximum for 1 day (mg/l)
Copper, total.....	1.0

(c) [Reserved—Nonchemical Metal Cleaning Wastes].

(d)(1) The pollutants discharged in cooling tower blowdown shall not exceed the concentration listed in the following table:

Pollutant or pollutant property	PSNS pretreatment standards
	Maximum for any time (mg/l)
The 126 priority pollutants (Appendix A) contained in chemicals added for cooling tower maintenance, except:	
Chromium, total.....	0.2
Zinc, total.....	1.0

(2) At the permitting authority's discretion, instead of the monitoring in 40 CFR 122.11(b), compliance with the limitations for the 126 priority pollutants in paragraph (d)(1) of this section may be determined by engineering calculations which demonstrate that the regulated pollutants are not detectable in the final discharge by the analytical methods in 40 CFR Part 136.

(e) There shall be no discharge of wastewater pollutants from fly ash transport water.

Appendix A—126 Priority Pollutants

001	Acenaphthene	042	Bis(2-chloroisopropyl) ether	096	Beta-endosulfan
002	Acrolein	043	Bis(2-chloroethoxy) methane	097	Endosulfan sulfate
003	Acrylonitrile	044	Methylene chloride (dichloromethane)	098	Endrin
004	Benzene	045	Methyl chloride (dichloromethane)	099	Endrin aldehyde
005	Benzidine	046	Methyl bromide (bromomethane)	100	Heptachlor
006	Carbon tetrachloride (tetrachloromethane)	047	Bromoform (tribromomethane)	101	Heptachlor epoxide (BHC- hexachlorocyclohexane)
007	Chlorobenzene	048	Dichlorobromomethane	102	Alpha-BHC
008	1,2,4-trichlorobenzene	051	Chlorodibromomethane	103	Beta-BHC
009	Hexachlorobenzene	052	Hexachlorobutadiene	104	Gamma-BHC (lindane)
010	1,2-dichloroethane	053	Hexachloromyclopentadiene	105	Delta-BHC (PCB-polychlorinated biphenyls)
011	1,1,1-trichloroethane	054	Isophorone	106	PCB-1242 (Arochlor 1242)
012	Hexachloroethane	055	Naphthalene	107	PCB-1254 (Arochlor 1254)
013	1,1-dichloroethane	056	Nitrobenzene	108	PCB-1221 (Arochlor 1221)
014	1,1,2-trichloroethane	057	2-nitrophenol	109	PCB-1232 (Arochlor 1232)
015	1,1,2,2-tetrachloroethane	058	4-nitrophenol	110	PCB-1248 (Arochlor 1248)
016	Chloroethane	059	2,4-dinitrophenol	111	PCB-1260 (Arochlor 1260)
018	Bis(2-chloroethyl) ether	060	4,6-dinitro-o-cresol	112	PCB-1016 (Arochlor 1016)
019	2-chloroethyl vinyl ether (mixed)	061	N-nitrosodimethylamine	113	Toxaphene
020	2-chloronaphthalene	062	N-nitrosodiphenylamine	114	Antimony
021	2,4,6-trichlorophenol	063	N-nitrosodi-n-propylamin	115	Arsenic
022	Parachlorometa cresol	064	Pentachlorophenol	116	Asbestos
023	Chloroform (trichloromethane)	065	Phenol	117	Beryllium
024	2-chlorophenol	066	Bis(2-ethylhexyl) phthalate	118	Cadmium
025	1,2-dichlorobenzene	067	Butyl benzyl phthalate	119	Chromium
026	1,3-dichlorobenzene	068	Di-N-Butyl Phthalate	120	Copper
027	1,4-dichlorobenzene	069	Di-n-octyl phthalate	121	Cyanide, Total
028	3,3-dichlorobenzidine	070	Diethyl Phthalate	122	Lead
029	1,1-dichloroethylene	071	Dimethyl phthalate	123	Mercury
030	1,2-trans-dichloroethylene	072	1,2-benzanthracene (benzo(a) anthracene)	124	Nickel
031	2,4-dichlorophenol	073	Benzo(a)pyrene (3,4-benzo-pyrene)	125	Selenium
032	1,2-dichloropropane	074	3,4-Benzofluoranthene (benzo(b) fluoranthene)	126	Silver
033	1,2-dichloropropylene (1,3- dichloropropene)	075	11,12-benzofluoranthene (benzo(b) fluoranthene)	127	Thallium
034	2,4-dimethylphenol	076	Chrysene	128	Zinc
035	2,4-dinitrotoluene	077	Acenaphthylene	129	2,3,7,8-tetrachloro-dibenzo-p-dioxin (TCDD)
036	2,6-dinitrotoluene	078	Anthracene		
037	1,2-diphenylhydrazine	079	1,12-benzoperylene (benzo(ghi) perylene)		
038	Ethylbenzene	080	Fluorene		
039	Fluoranthene	081	Phenanthrene		
040	4-chlorophenyl phenyl ether	082	1,2,5,6-dibenzanthracene (dibenzo(h) anthracene)		
041	4-bromophenyl phenyl ether	083	Indeno (1,2,3-cd) pyrene (2,3-o- pheynylene pyrene)		
		084	Pyrene		
		085	Tetrachloroethylene		
		086	Toluene		
		087	Trichloroethylene		
		088	Vinyl chloride (chloroethylene)		
		089	Aldrin		
		090	Dieldrin		
		091	Chlordane (technical mixture and metabolites)		
		092	4,4-DDT		
		093	4,4-DDE (p,p-DDX)		
		094	4,4-DDD (p,p-TDE)		
		095	Alpha-endosulfan		

PART 125—[AMENDED]

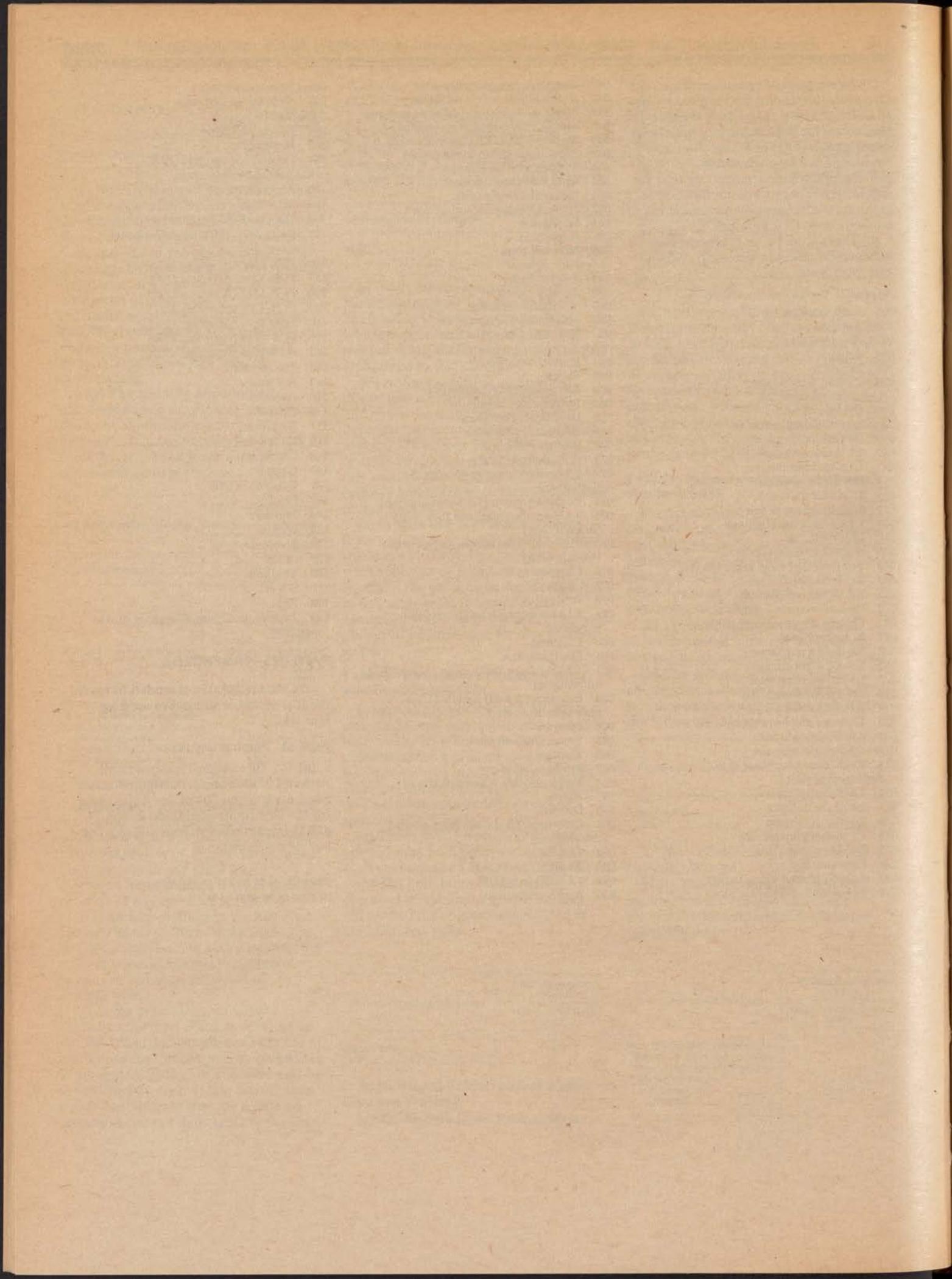
40 CFR 125.30(a) is amended to revise the last sentence thereof to read as follows:

§ 125.30 Purpose and scope.

(a) *** This subpart applies to all national limitations promulgated under Sections 301 and 304 of the Act, except for the BPT limits contained in 40 CFR 423.12 (steam electric generating point source category).

[FR Doc. 82-31271 Filed 11-18-82; 8:45 am]

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federal register

Friday
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Part III

Department of Labor

**Employment Standards Administration,
Wage and Hour Division**

**Minimum Wages for Federal and
Federally Assisted Construction; General
Wage Determination Decisions**

DEPARTMENT OF LABOR

Employment Standards
Administration, Wage and Hour
DivisionMinimum Wages for Federal and
Federally Assisted Construction;
General Wage Determination
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made 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 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of the Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). 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 procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in

effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and 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 subsequent to its publication date shall 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 contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas
Decisions to General Wage
Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made 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 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions,

as hereby modified, and/or superseded 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 in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate 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, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage
Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Alabama:	
AL82-1047	Sept. 17, 1982.
AL82-1063	Oct. 15, 1982.
Alaska: AK82-5125	
	Oct. 22, 1982.
Hawaii: HI82-5123	
	Oct. 1, 1982.
New York: NY81-3065	
	Sept. 11, 1981.
Pennsylvania: PA81-3091	
	Dec. 28, 1981.
Connecticut:	
CT81-3032	May 15, 1981.
CT82-3001	Feb. 5, 1982.
Maryland:	
MD80-3047	Aug. 29, 1980.
MD81-3031	May 15, 1981.
New York: NY81-3022	
	Apr. 3, 1981.
Pennsylvania:	
PA82-3010	Mar. 5, 1982.
PA82-3028	Sept. 10, 1982.
PA82-3027	Oct. 8, 1982.
PA81-3043	July 17, 1981.
PA81-3047	July 17, 1981.
Colorado: CO82-5127	
	Nov. 5, 1982.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama: AL82-1020(AL82-1082) Apr. 2, 1982.
Arkansas: AR79-4091(AR82-4064) Oct. 12, 1979.
Florida: FL82-1018(FL82-1083) Mar. 5, 1982.
Missouri: MO81-4057(MO82-4058) July 24, 1981.
Oklahoma:
OK81-4054(OK82-4059) July 10, 1981.
OK81-4071(OK82-4060) Sept. 11, 1981.
Tennessee:
TN80-1063(TN82-2060) Mar. 21, 1980.
TN79-1146(TN82-2059) Nov. 16, 1979.
TN81-1202(TN82-2057) May 1, 1981.
TN81-1203(TN82-2058) June 19, 1981.

Signed at Washington, D.C. this 12th day of November 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

SUPERSEDES DECISION

MODIFICATION PAGE 5

DECISION NO. C082-5127 - Mod. #1
 (47 FR 50418 - November 5, 1982)
 Las Animas, Otero and Pueblo Counties,
 Colorado

	Basic Hourly Rates	Fringe Benefits
Changes:		
Bricklayers	\$15.57	\$2.12
Carpenters	13.57	3.36
Elevator Constructors:		
Mechanics	16.98	a+2.465
Helpers	11.89	a+2.465
Probationary Helpers	8.49	
Ironworkers:		
Structural; Ornamental and Reinforcing	15.75	3.51
Sheet Metal Workers	18.03	3e+3.26
Power Equipment Operators (Other than for work in tunnels, shafts, and raises):		
Group 1	13.40	3.20
Group 2	13.75	3.20
Group 3	14.10	3.20
Group 4	14.25	3.20
Group 5	14.50	3.20
Group 6	14.55	3.20
Laborers:		
Zone 1:		
Group 1	9.95	2.59
Group 2	10.23	2.59
Group 3	10.75	2.59
Zone 2:		
Group 1	10.45	2.59
Group 2	10.73	2.59
Group 3	11.25	2.59

STATE: ALABAMA COUNTY: MADISON
 DECISION NUMBER: AL82-1082 DATE: DATE OF PUBLICATION
 Supersedes Decision No.: AL82-1020 dated April 2, 1982 in 47 FR 14341.
 DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	\$15.16	\$2.26
BRICKLAYERS	13.50	1.59
CARPENTERS	11.00	1.90
CEMENT MASONS	14.10	1.90
ELECTRICIANS		+ 4%
IRONWORKERS	12.62	1.58
LABORERS, Unskilled	7.07	1.00
MILLWRIGHTS	11.15	1.59
PAINTERS	10.65	.75
PLUMBERS & PIPEFITTERS	\$14.10	\$1.77
ROOFERS	7.50	1.96
SHEET METAL WORKERS	14.67	
TRUCK DRIVERS	5.00	
WELDERS-Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Crane	13.03	1.45
Front End Loader	13.03	1.45
Oiler (35 Ton Crane & over)	11.59	1.45

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses 29 CFR, 5.9 (a)(1)(ii).

SUPRESEDEAS DECISION

STATE: ARKANSAS
 COUNTY: PULASKI
 DECISION NO. AR82-4064
 DATE: Date of Publication
 SUPERSEDES DECISION NO. AR79-4091 dated October 12, 1979 in 44FR59059
 DESCRIPTION OF WORK: Residential projects consisting of single family homes and apartments up to and including four stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING HEATING MECHANIC	\$ 7.00	
BRICKLAYERS:		
Soft floor layers	7.38	
Tile setters	8.25	
Truck drivers	5.00	
CARPENTERS	7.00	
CEMENT MASONS	6.50	
ELECTRICIANS	8.28	
Communication technician	7.00	
Insulation installers	6.00	
Ironworkers	6.54	
LABORERS:		
General	4.00	
Pipelayers	4.25	
Mason tender	5.30	
Asphalt raker	5.60	
PAINTERS	7.00	
PLASTERERS	10.92	
PLUMBERS-STEAMFITTERS	8.32	
ROOFERS	6.05	
SHEET METAL WORKERS	6.18	

	Basic Hourly Rates	Fringe Benefits
SHEETROCK HANGERS AND FINISHERS	\$ 7.38	
SOFT FLOOR LAYERS	7.38	
TILE SETTERS	8.25	
TRUCK DRIVERS	5.00	
POWER EQUIPMENT OPERATORS:		
Backhoe	7.00	
Bulldozer	6.50	
Blade grader	6.18	
Concrete pump operator	6.25	
Forklift operator	5.25	
Front end loader	6.60	
Oiler	6.00	
Roller	5.14	

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

UNLISTED classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPRESEDEAS DECISION

STATE: FLORIDA
 COUNTY: * SEE BELOW
 DECISION NUMBER: FL82-1083
 DATE: Date of Publication
 SUPERSEDES DECISION NO.: FL82-1018 dated March 5, 1982 in 47 FR 9655.
 DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments of 4 stories or less); HEAVY CONSTRUCTION & HIGHWAY CONSTRUCTION PROJECTS.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	\$15.75	\$ 2.16
BOILERMAKERS	16.20	3.015
BRICKLAYERS		
Blocklayers		
Plasterers		
Terrazzo workers		
Tile setters		
CEMENT MASONS	10.95	1.00
CARPENTERS		
Carpenters	11.07	1.50
Piledrivermen	11.57	1.50
ELECTRICIANS:		
Wiremen	13.70	\$1.55
Cable splicers	13.95	\$1.55
ELEVATOR CONSTRUCTORS:		
Mechanic	12.47	2.69**
Helper	8.73	2.69**
IRONWORKERS	14.28	2.50
LABORERS:		
Air Tool Oper.		
Concrete Laborers		
Hod Carriers		
Mason Tenders		
Mortar Mixers		
Kettlemen (excluding roofing & waterproofing)		
Pipelayers		
Powdermen		
Form Setters		
Paving curbing & gutter		
Well Point		
2. Granite laborer	8.25	1.01
2. Granite helper	8.52	1.01
2. Unskilled laborer	9.92	1.01
1. Unskilled laborer	8.10	1.01
LINE CONSTRUCTION:		
1. Lincemen		
2. Class A Oper.		
3. Class B Oper.		
4. Crane operators		
5. Crane drivers		
6. Crane riggers		
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SUPERSEDES DECISION

STATE: Missouri

Page 2.

DECISION NUMBER: FL82-1083

POWER EQUIPMENT OPERATORS. DEFINITIONS:

Group I-Cranes, Hydraulic or derrick on structural or reinforcing iron, cranes or derrick, clam shell, dragline, piledriver operator (including auger & boring machine Oper. for drilling in piling), backhoe (including hydraulic), hydraulic crane, straddle, shovel, motor patrol, mechanic (heavy equipment), side boom cat & multi-drum hoist.

Group II-Bulldozer & Trenching machine, bridge crane, highlift, straddle bucket hoist, earth hauling scraper (regardless how powered), pump crane & front end loader.

Group III-Minch truck, concrete/asphalt paver, forklift engineer, boring machine, well drilling machine & mobile cleaning plant.

Group IV-Tractor, well point pump & installation man, lubrication engineer, equipment greaser, air compressor, & fireman.

Group V-Motor boat, oiler, mechanic helper, pumpman (other than wellpoint), roller (steel & rubber tires), self-propelled, conveyor, welding machine, 3 or more combustion engines & Pulver Mixer.

FOOTNOTES:

a. Six Paid Holidays-New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.

b. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years; 6% for employee who has worked in business less than 5 years.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses. (29 CFR, 5.5 (a)(1)(ii)).

COUNTIES: Franklin, Jefferson, Lincoln, St. Charles, Warren, & City & County of St. Louis

DATE: Date of Publication

Supersedes Decision No. M081-4057 dated July 24, 1981 in 46 FR 38264

DESCRIPTION OF WORK: Residential Projects, consisting of single family homes and apartments up to and including 4 stories

LABORERS:

Classification	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	\$18.99	2.76	\$11.175	1.70
BRICKLAYERS; STONEMASONS	13.35	2.76	11.175	1.70
BOILERMAKERS	16.27	2.825	12.85	1.70
CARPENTERS:				
ZONE I - St. Louis City & County	14.66	2.23	12.025	1.50
Carpenters (including insulation)				
Carpenters-reinsulator (not including pipe & duct insulation)	10.95	2.23	12.80	1.60
ZONE 2 - Remainder of Counties:				
Carpenters	14.66	2.23	11.50	1.35
ELECTRICIANS:				
ZONE I - City & County of St. Louis & St. Charles County	15.80	1.39+ 28%	11.70	1.35
ZONE II - Franklin, Jefferson, Lincoln, & Warren Counties	15.80	"	13.00	1.35
Cost where the electrical contracts exceeds \$15,000			13.20	1.35
ZONE III - Franklin, Jefferson, Lincoln, & Warren Counties where electrical contracts does not exceed \$15,000	14.78	"	12.525	1.50
ELEVATOR CONSTRUCTORS	14.19	2.465+ 3%+a	14.11	2.905
ELEVATOR CONSTRUCTORS HELPERS	70&JR	"	14.65	
ELEVATOR CONSTRUCTORS HELPER (PROBATIONARY)	50&JR		14.98	1.20
a. Employer contributes 8% of basic hourly rate for over 5 years, service & 6% of basic hourly rate for 6 mos. to 5 years as vacation pay credit, also 7 paid holidays.			16.98	1.20
GLAZIERS	14.79	4.13+ 13.2%	16.85	4.875
IRONWORKERS	15.325	2.24	16.65	4.875

LABORERS:

Classification	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
Zone I - St. Louis City & County	\$11.175	1.70	\$11.175	1.70
Laborers General				
Laborers, site improvement	11.175	1.70	11.175	1.70
Plumber, laborer	12.85	1.70	12.85	1.70
Zone II - Lincoln & Warren Counties	12.025	1.50	12.025	1.50
Zone III - Jefferson Co.: Laborer, General	12.80	1.60	12.80	1.60
Powderman, Mason Tenders; Plaster tender; Grade Checker; & Pipelayer	13.30	1.60	13.30	1.60
Zone IV - Franklin Co.: Contracts less than \$500,000:				
General Laborer	11.50	1.35	11.50	1.35
Mason Tenders, Plumber Laborer, Plaster Tender	11.70	1.35	11.70	1.35
Contracts \$500,000 or over:				
General Laborer	13.00	1.35	13.00	1.35
Mason tenders, Plumber laborer, plaster tender	13.20	1.35	13.20	1.35
Zone V - St. Charles Co.: Laborers	12.525	1.50	12.525	1.50
MABLE SETTERS	14.11	2.905	14.11	2.905
MABLE FINISHERS	14.65		14.65	
PAINTERS:				
Brush	14.98	1.20	14.98	1.20
Spray	16.98	1.20	16.98	1.20
PIPEFITTERS (Franklin, Jefferson, St. Charles, City & County of St. Louis & Warren Co.):	16.85	4.875	16.85	4.875
PIPEFITTERS & PLUMBERS (Lincoln County)	16.65	4.875	16.65	4.875
PLUMBERS (Franklin, Jefferson, St. Charles, City & County of St. Louis & Warren Counties)	15.465	3.35	15.465	3.35
PLASTERERS	15.555	1.62	15.555	1.62
POWER EQUIPMENT OPERATORS:				
GROUP I	14.32	2.05	14.32	2.05
GROUP II	14.32	2.95	14.32	2.95
GROUP III	13.77	2.95	13.77	2.95
GROUP IV	13.32	2.95	13.32	2.95

DECISION NO. M082-4058

POWER EQUIPMENT OPERATORS (Cont'd):

GROUP II (Cont'd)

pumps, two self-power, over 2" through 6" pumps, electric submersible, one through three, over 4" quad-track; roller, asphalt, top or subgrade; scoop tractor drawn; spreader box, subgrader; the tamper; tractor-crawler or wheel type with or without power unit, power take-offs, and attachments regardless of size; trenching machine, tunnel boring machine; vibrating machine, automatic, automatic propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine; mechanic on job site; mixer, paving; compressor (when operator run throttle); compressor-generator combination; compressor-pump combination; generator two 30 KW or over, or any number developing through three, over 4".

GROUP III - Air tugger w/plant air; boiler, for power or heating on construction projects; boiler, temporary; compressor, air-one; compressor, air (mounted on truck); concrete saw, self-propelled; conveyor, large (not self-propelled); conveyor, large (not-self-propelled) moving brick and concrete (distributing) on floor level; curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; fireman; form grader; generator, one over 30 KW or any number developing over 30 KW; greaser; hoist, one drum regardless of size (except brick or concrete); lad-a-vator, other hoisting; manlift; mixer, asphalt, over 8 cu. ft. capacity; mixer, if two or more mixers of one bag capacity or less are used by one employer on job, an operator is required; mixer, without side loader, 2 bag capacity or more; mixer with side loader, regardless of size, not paver; oiler on dredge; oiler or truck crane, pug mill operator; pump, sump-self-powered, automatic controller over 2" during use in connection with construction work; sweeper, street; welding machine, one over 400 amp.; winch operating from truck; scissor lift (used for hoisting); curb finishing machine, tractor, small wheel type 50 h.p. & under with grader, blade and similar equipment.

GROUP IV - Boat-operated-outboard motor (job-site); conveyor (such as con-vay-it), regardless of how used; oiler; sweeper, floor.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

Basic Hourly Rates	Fringe Benefits
\$13.52	76.50 per wk.
"	"
13.72	"
13.82	"

TRUCK DRIVERS:

GROUP 1
GROUP 2
GROUP 3
b-paid vacation of 3 days for 600 hours of service in any one contract year;
4 days paid vacation for 800 hours of service in any one contract year;
5 days paid vacation for 1,000 hours of service in any one contract year. Also 7 paid holidays

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS:

Group 1: Trucks or trailers of a water level capacity of 11.99 cu. yds. or less, fork lift trucks, job site ambulances & pick-up trucks and flat bed trucks
Group 2: Trucks or trailers of a water level capacity of 12.0 cu. yds. up to 22.0 cu. yds. including euclids, speedace and similar equipment of same capacity.
Group 3: Trucks or trailers of a water level capacity of 22.0 cu. yds. and over including euclids, speedace and all floats, flat bed trailers, boom trucks & similar equipment of same capacity.

POWER EQUIPMENT OPERATORS

GROUP I - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or hoiser mounted-16 tons & over; crane, locomotive; derrick, steam; derrick car or derrick boat; dragline; dredge; gradall, crawler or tire mounted; locomotive gas, steam & other power; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas electric or other power); switch boat; & whalley.
GROUP II - Air tugger w/air compressor; anchor placing barge; asphalt spreader; atty force feeder loader (self-propelled); back-filling machine; boat operator-push boat or tow boat (job site); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker; combination concrete hoist & mixer such as mixer-mobile; compressors, two, not more than 50 ft. apart; compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pumcrete machine; concrete spreader; conveyor, large (not-self-propelled) hoisting or moving brick and concrete into, or into and on floor level, one or both; crane, hydraulic rough terrain, self-propelled; crane hydraulic-truck or cruiser mounted-under 16 tons; drilling machines, self-powered, used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers, jack-excavator or barco equipment); elevating grader; engine man, dredge; excavator or powerbelt machine; finishing machine, self-propelled oscillating screed; forklift; grader, road with power blade; highlight; hoist, concrete and brick (brick cages on concrete skips operating in or on tower, tower-mobile, or similar equipment); hoist, stack; hydro-hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as barber-greenel); mixer-mobile, mucking machine, pipe cleaning machine; pipe wrapping machine; plant, asphalt; plant, concrete producing or ready-mix-job site; plant, heating-job-site; plant mixing job site; plant, power generating-job site;

DECISION NO. M082-4058

ROOFERS:

Composition: Slate & Tile	Basic Hourly Rates	Fringe Benefits
Kettleman	\$14.85	2.05
SHEET METAL WORKERS	12.65	2.05
	15.16	3.35+
		3%
SPRINKLER FITTERS	18.86	2.87
TERRAZO WORKERS	17.55	2.905
TILE SETTERS	13.98	
TILE WORKER FINISHER	11.70	1.605

WELDERS-receive rate prescribed for craft performing operation to which welding is incidental.

STATE: OKLAHOMA
 COUNTY: MUSKOGEE, ADAIR, CHEROKEE & OKMULGEE
 DATE: Date of Publication
 SUPRESEDES DECISION #081-4054 dated July 10, 1981 in 46 FR 3588
 DESCRIPTION OF WORK: Building projects (excluding single family homes and apartments up to and including four stories), and heavy construction within the City of Muskogee

CLASSIFICATION ZONE, GROUP AND/OR AREA DEFINITIONS

ELECTRICIANS:
 ZONE I - 30 mile radius from Post Office of the City of Muskogee
 ZONE II - Area outside Zone I
 ZONE III - Okmulgee County

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	\$16.45	2.08
BOILERMAKERS	16.35	2.415
BRICKLAYERS	15.60	1.75
Muskogee, Adair and Cherokee Counties	15.31	1.54
Okmulgee County		
CARPENTERS:		
Muskogee, Adair and Cherokee Counties	12.28	1.48
Okmulgee County	12.00	1.55
MILLWRIGHTS-PILEDRIVERS:		
Muskogee, Adair and Cherokee Counties	12.78	1.48
Okmulgee County	13.35	1.55
CEMENT MASONS:		
Cement masons	14.94	.76
Power tool operator	15.34	.76
ELECTRICIANS (ZONE I):		
Electricians	14.55	3 1/2+.80
Cable splicers	14.95	3 1/2+.80
ELECTRICIANS (ZONE II):		
Electricians	14.95	3 1/2+.80
Cable splicers	15.35	3 1/2+.80
ELECTRICIANS (ZONE III):		
Electricians	14.35	3 1/2+.34
Cable splicers	14.60	3 1/2+.34
ELEVATOR CONSTRUCTORS:		
Tourneymen	15.12	2.465+A
Helpers	70 1/2JR	2.465+A
PROBATIONARY HELPER	50 1/2JR	
GLAZIERS	12.62	1.11
IRONWORKERS	14.60	2.37
LABORERS (AREA I):		
Muskogee, Adair and Cherokee Counties	9.65	1.00
GROUP I	9.95	1.00
LABORERS (AREA II):		
Okmulgee County	10.65	1.00
GROUP I	10.95	1.00
GROUP II		
LINE CONSTRUCTION:		
Linemen	14.90	3 1/2+.45
Cable splicers	16.09	3 1/2+.45
Hole digger operator and heavy equipment op. (pold or cat equivalent)	13.24	3 1/2+.45
Jack Hammerman	10.61	3 1/2+.45

LABORERS:
 GROUP I - All digging and dirt work, firing of salamanders and smudge pots; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages for stock piling only, wheeling and placing of concrete; handling of lumber, steel, cement and distribution of materials all cleaning, including cleaning of windows; wrecking and razing of building and all structures, cleaning and clearing of debris; loading and unloading of materials, hoist or cages, except when the man is directly tending; and common laborers
 GROUP II - All machine tool operators that come under the jurisdiction of the laborers, all sewer and drain tile layers and handling at the ditch, excluding distribution; operators of water pumps up to four inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers, mortar mixers, hod carriers and dry mixers; highwork over 30 ft. from the ground or floors; cement finisher tenders; work on swinging scaffold; all kettle and pot men, tank cleaning, all pipe doping treating and wrapping, including all men working with dope, mortar and plaster mixing machine, pump-concrete machine, and gunite mixing machines, including placing of concrete, handling creosote or treated materials, liquid acids, or like materials when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or buggies previously used by laborers; all scale men on batch plants; all laborers screening sand, running sand drier, and feeding operating and sand blasters, except nozzle; signal men cutting torch operators in connection with laborers' work; concrete grader

POWER EQUIPMENT OPERATORS:

GROUP I
 All crane type equipment with 300' of boom or over (including jib)
 GROUP II
 All crane type equipment with 200-300' of boom (including jib)
 GROUP III
 All crane type equipment with 100-200' of boom (including jib), all tower cranes and all crane type equipment of 3 cu. yd. or more
 GROUP IV
 Side boom (booms 30' and over); Guy Derrick
 GROUP V
 Heavy duty mechanic; welder; crane-hook and overhead monorail; Whitley; Panel board batch plant operator; piledriver engineer; dragline; shovel; clamshell; backhoe (3/4 yd. & over); gradall; hoists crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade); side boom (under 30')
 GROUP VI
 Fork lift (35' and over); dozer (engine hp 65 or over; Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller & compactors with dozer blade

SUPERSEDES DECISION

STATE: OKLAHOMA COUNTY: MCINTOSH
 DECISION NO. OK82-4060 DATE: Date of Publication
 SUPERSEDES DECISION NO. OK81-4071 dated September 11, 1981 in 46 FR 45595
 DESCRIPTION OF WORK: Building Projects (excluding single family homes and
 apartments up to and including four stories).

CLASSIFICATION ZONE, GROUP AND/OR AREA DEFINITIONS

GROUP VII
 Locomotive engineer; boring machine; tug boat; mixer, 1 1/2 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. & under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; fireman; boiler operator; crushing plants; oiler distributor; pulverizer; farmer tractor-with or without attachments; batch plant operator (portable); conveyor operator-diesel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man on large whirleys when and if required; operator for rotary drilling machines when operated from console or machines

GROUP VIII
 Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back and man.

GROUP IX
 Greaser and tilt top trailer operator

TRUCK DRIVERS:
 GROUP I - Pick-up, 1 1/2 tons or 2 1/2 yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses
 GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards
 GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole truck, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers
 GROUP IV - Ready-mix concrete trucks up to but not including 3 yards
 GROUP V - Ready-mix concrete trucks 3 yards and over

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

UNLISTED classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

FOOTNOTES:
 A--6 mos to 5 yrs 6 1/2; over 5 years 8 1/2 of basic hourly rate plus SEVEN PAID HOLIDAYS - A through G.

B--SIX PAID HOLIDAYS - A through E plus G.
 PAID HOLIDAYS:
 A--New Years Day; B--Memorial Day; C--Independence Day; D--Labor Day;
 C--Thanksgiving Day; F--Friday after Thanksgiving Day; G--Christmas Day.

Basic Hourly Rates	Prime Benefits
\$15.75	2.18
15.25	2.18
14.75	2.18
14.50	2.18
14.25	2.18
14.00	2.18
13.75	2.18
13.50	2.18
13.25	2.18
13.00	2.18
12.75	2.18
12.50	2.18
12.25	2.18
12.00	2.18
11.75	2.18
11.50	2.18
11.25	2.18
11.00	2.18
10.75	2.18
10.50	2.18
10.25	2.18
10.00	2.18
9.75	2.18
9.50	2.18
9.25	2.18
9.00	2.18
8.75	2.18
8.50	2.18
8.25	2.18
8.00	2.18
7.75	2.18
7.50	2.18
7.25	2.18
7.00	2.18
6.75	2.18
6.50	2.18
6.25	2.18
6.00	2.18
5.75	2.18
5.50	2.18
5.25	2.18
5.00	2.18
4.75	2.18
4.50	2.18
4.25	2.18
4.00	2.18
3.75	2.18
3.50	2.18
3.25	2.18
3.00	2.18
2.75	2.18
2.50	2.18
2.25	2.18
2.00	2.18
1.75	2.18
1.50	2.18
1.25	2.18
1.00	2.18
0.75	2.18
0.50	2.18
0.25	2.18
0.00	2.18

Basic Hourly Rates	Prime Benefits
\$16.45	2.08
16.35	2.415
15.31	1.54
12.28	1.48
12.78	1.48
12.00	1.55
13.35	1.55
14.55	4 1/2 + .80
14.95	4 1/2 + .80
14.95	4 1/2 + .80
15.35	4 1/2 + .80
14.665	2.465+A
70 1/2 JR	2.465+A
50 1/2 JR	2.465+A
12.62	1.11
14.60	2.37
9.65	1.00
9.95	1.00
14.90	3 1/2 + .45
16.00	3 1/2 + .45
13.21	3 1/2 + .45
13.24	3 1/2 + .45
11.68	3 1/2 + .45
10.61	3 1/2 + .45
12.86	3 1/2 + .45
10.13	3 1/2 + .45
9.54	3 1/2 + .45
11.05	.70
11.65	.70
11.90	.70
12.55	.70
11.45	.70

ASBESTOS WORKERS
 BOILERMAKERS
 BRICKLAYERS-STONEMASONS
 CARPENTERS(Northern half of county)
 Carpenters
 Millwrights-piledrivermen
 CARPENTERS (Southern half of County)
 Carpenters
 Millwrights-piledrivermen
 ELECTRICIANS (ZONE I):
 A 30 mile radius from P.O. of the City of Muskogee
 Electricians
 Cable splicers
 ELECTRICIANS (ZONE II):
 AREA DESIGN ZONE I
 Electricians
 Cable splicers
 ELEVATOR CONSTRUCTORS:
 Journeyman
 Helper
 Probationary helper
 GLAZIERS
 IRONWORKERS
 LABORERS:
 GROUP I
 GROUP II
 LINE CONSTRUCTION:
 Linsmen
 Cable splicers
 Hole digger operator
 Heavy equipment operator
 Line truck driver (winch operator)
 Jack hammerman
 Powderman
 Truck driver (flat bed, ton and half and under
 Groundman
 PAINTERS:
 Brush and roller
 Highwork and stage
 Sandblasting & spray
 Hot or bituminous
 Sheet rock power tools

POWER EQUIPMENT OP. I
 GROUP I
 GROUP II
 GROUP III
 GROUP IV
 GROUP V
 GROUP VI
 GROUP VII
 GROUP VIII
 GROUP IX
 GROUP X
 PLASTERERS
 FLOWERS-STEAMFITTERS
 ROOFERS
 SHEET METAL WORKERS
 SPRINKLER FITTERS
 TERRAZZO WORKERS
 TERRAZZO FINISHERS
 TERRAZZO FLOOR MACH. OP.
 TERRAZZO BASE MACH. OP.
 TILE LAYERS
 TRUCK DRIVERS:
 GROUP I
 GROUP II
 GROUP III
 GROUP IV
 GROUP V
 FOOTNOTES (ELEVATOR CONSTRUCTORS ONLY):
 A--6 mos. to 5 yrs. 6 1/2; over 5 yrs 8 1/2 of basic hourly rate plus SEVEN PAID HOLIDAYS as follows:
 NEW YEARS DAY, MEMORIAL DAY, INDEPENDENCE DAY, LABOR DAY, THANKSGIVING DAY, DAY AFTER THANKSGIVING AND CHRISTMAS DAY.
 WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.
 UNLISTED classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

CLASSIFICATION GROUP DEFINITIONS

LABORERS:

GROUP I - All digging and dirt work, firing of salamanders and smudge pots; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages for stock piling only, wheeling and placing of concrete; handling of lumber, steel, cement and distribution of materials all cleaning, including cleaning of windows; wrecking and razing of building and all structures, cleaning and clearing of debris; loading and unloading of materials, hoist or cages, except when the man is directly tending; and common laborers

GROUP II - All machine tool operators that come under the jurisdiction of the laborers; all sewer and drain tile layers and handling at the ditch, excluding distribution; operators of water pumps up to four inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers, mortar mixers, hod carriers and dry mixers; highwork over 30 ft. from the ground or floors; cement finisher tenders; dozing treating and wrapping, including all men working with dops; mortar and plaster mixing machine, pump-crete machine, and gunite mixing machines, including placing of concrete, handling creosoted or treated materials, liquid acids, or like materials when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or buggies previously used by laborers; all scale men on batch plants; all laborers screening sand, running sand drier, and feeding operating and sand blasters, except nozzle; signal men cutting torch operators in connection with laborers' work; concrete grader

POWER EQUIPMENT OPERATORS:

GROUP I - All crane type equipment with 300' of boom or over (including jib)

GROUP II - All crane type equipment with 200-300' of boom (including jib)

GROUP III - All crane type equipment with 100-200' of boom (including jib), all tower cranes and all crane type equipment of 3 cu. yd. or more

GROUP IV - Side boom (booms 30' and over); Guy Derrick

GROUP V - Heavy duty mechanic; welder; crane-hook and overhead monorail; whalley; panel board batch plant operator; oiler/driver engineer; dragline; shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade); side boom (under 30')

GROUP VI - Fork lift (35' and over); dozer (engine hp 65 or over; Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller & compactors with dozer blade

CLASSIFICATION GROUP DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS (cont'd)

GROUP VII

Locomotive engineer; boring machine; tug; mixer, 18 cu. ft. and over; sand barge; dredging machine; tapper; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. & under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment; generator all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; fireman; boiler operator; crushing plants; oiler distributor; pulvmixer; farmer tractor-with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man on large whirleys when and if required; operator for rotary drilling machines when operated from console or machines

GROUP VIII

Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man.

GROUP IX

Greaser and tilt top trailer operator

TRUCK DRIVERS:

GROUP I - Pick-up, 1 1/2 tons or 2 1/2 yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses

GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards

GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole truck, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers

GROUP IV - Ready-mix concrete trucks up to but not including 3 yards

GROUP V - Ready-mix concrete trucks 3 yards and over

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

UNLISTED classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDES DECISION

STATE: TENNESSEE
 COUNTY: DAVIDSON
 DECISION NO.: TN82-2060
 DATE: DATE OF PUBLICATION
 SUPERSEDES DECISION NUMBER TN80-1063, dated March 21, 1980 in 45 FR 18655
 DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS - (does not include single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	\$13.20	.01
CARPENTERS	7.10	
CEMENT MASONS	5.71	
ELECTRICIANS	6.94	
ELEVATOR CONSTRUCTORS:		
Mechanics	12.06	2.46
IRONWORKERS	5.74	
LABORERS:	7.96	
Unskilled	3.72	
Asphalt Makers	4.44	
LATHERS	6.17	
PAINTERS	5.00	
PLASTERERS	6.00	
PLUMBERS & PIPEFITTERS	5.99	
ROOFERS	5.46	
SHEET METAL WORKERS	11.60	1.81
SOFT FLOOR LAYERS	7.20	
TILE SETTERS	6.00	
TRUCK DRIVERS	4.32	
WELDERS - Rate for craft.		
POWER EQUIPMENT OPERATORS:		
Backhoe	5.00	
Bulldozer	4.50	
Crane	9.50	
Fork Lift	6.00	
Front End Loader	6.55	
Motor grader	5.85	
Roller	5.30	
Scraper - Pan	4.50	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (iii)).

SUPERSEDES DECISION

STATE: TENNESSEE
 COUNTY: DAVIDSON
 DECISION NUMBER: TN82-2059
 DATE: DATE OF PUBLICATION
 SUPERSEDES DECISION NUMBER TN79-1146, dated November 16, 1979 in 44 FR 66147.
 DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	\$15.10	2.41
BOILERMAKERS	16.20	3.215
BRICKLAYERS	8.40	.25
CARPENTERS	7.09	
CEMENT MASONS	7.05	.25
ELECTRICIANS	13.60	.65+
		3%
ELEVATOR CONSTRUCTORS:		
Mechanics	11.48	2.33
Helpers	8.04	2.33
GLAZIERS	8.05	1.02
IRONWORKERS - Structural, Reinforcing, & Ornamental	8.35	.90
LABORERS:		
Unskilled	4.24	
Mason Tenders	5.00	
LATHERS	7.90	.61
MILLWRIGHTS	13.55	.51
PAINTERS:		
Brush	5.35	
FILEDRIVERMEN	12.30	.40
PLASTERERS	7.90	.61
PLUMBERS & PIPEFITTERS	13.70	1.79
ROOFERS - Composition	9.95	1.46
SHEET METAL WORKERS	8.60	.77
SPRINKLEFITTERS	14.57	2.83
TILE SETTERS	5.47	
TRUCK DRIVERS	4.97	
WELDERS - Rate for craft.		
POWER EQUIPMENT OPERATORS:		
Backhoe	5.93	
Bulldozer	5.55	
Crane, derrick, dragline	8.10	.65
Driller	5.65	
Front End Loader	5.93	
Mixer	5.15	
Oiler	6.12	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSHEDAS DECISION

STATE: Tennessee
 COUNTY: Shelby
 DATE: Date of Publication
 DECISION NUMBER: TN82-2057
 SUPERSEDING DECISION NUMBER: TN81-1202, dated May 1, 1981 in 46 FR 24886
 DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including four stories)

DECISION NO. TN82-2057

CLASSIFICATION DEFINITIONS
 POWER EQUIPMENT OPERATORS

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	15.05	2.44
BOILERMAKERS	14.50	3.105
BRICKLAYERS & STONE MASONS	15.25	1.68
CARPENTERS, PILEDRIVERS & SOFT FLOOR LAYERS	14.10	2.53
CEMENT MASONS	12.75	2.30
ELECTRICIANS: Wireman & electronic Technicians	17.48	1.45
Cable Splicers	17.58	3.558
ELEVATOR CONSTRUCTORS: Mechanics	14.505	2.69
Helpers	10.21	2.69
Probationary Helpers	7.29	1.15
GLAZIERS	14.10	1.15
IRONWORKERS	14.65	2.28
LINE CONSTRUCTION: Linemen	17.48	1.45
Cable Splicers	17.58	3.558
Special Equipment Oprs. Groundsmen	13.10	1.45
MARBLE MASONS, TERRAZZO WORKERS & TILE SETTERS	11.86	1.14
MILLWRIGHTS	13.50	2.05
PAINTERS: Commercial Industrial, spray & Sand-blasting	13.775	1.45
PIPEFITTERS & AIR CONDITIONING MECHANICS	14.225	1.45
PLASTERERS	17.37	1.05
PLUMBERS	12.15	1.75
ROOFERS	16.42	1.49
SHEET METAL WORKERS	11.50	1.95
SPRINKLER FITTERS	13.11	1.85
TRUCK DRIVERS: Truck - up to but not including 5 tons Trucks - 5 tons & over including special equipment	8.515	a
	8.915	a

CLASS A - Shovelers, backhoes, draglines, cranes, gantry, gradall, winch with boom, motor patrol, trenching machine (18" & over), pile driver, tug boat operator, mechanics (heavy), central mixing plant, locomotive engineer, straddle carriers, core drills (over 3") tower cranes, hydro cranes, Austin western and similar types cranes, arilling of piling, tugger, earth freezing equipment, 3 drum hoist, side boom, dredge operator (engineer), hopper, pumpcrete, mucking machines, cableways, central compressor plant, derrick boat, concrete pump, welders (men from the craft), helicopter operator, well point system, sweeper, bulldozers, pans, scraper, fork lift, & front end loader.

CLASS B - Trenching machines (18" and smaller), tandem roller, pavers, mobile mixers (rubber tired, mobile, mixed on job), back filler, blade graders, dinky operator over 10 tons, elevating graders, winches (operated from trucks or tractors, without booms and powered by other than the truck), distributors, bituminous surfaces, 1 and 2 drum hoist, grout pumps, motor boat, switchman, earth compactors (motorized - Buffalo-Springfield types).

CLASS C - Locomotive fire (on boilers 100 h.p. and over), air compressor (stationary), earth drills, scale operators, tractors (40 h.p. and less), motor crane driver and oiler, pumps (larger than 4"), dinky operators (10 tons and less), oilers on gantries, and greasers.

CLASS D - Air compressor operator, mechanic helper, locomotive firemen, welding machine operator, deck hand and elevator operators.

FOOTNOTES:

a. Pension Fund: Employer contribution of \$11.00 per week for employees on payroll 30 days or more.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

DECISION NO. TN82-2058

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP B - Tractors; farm type tractors (with attachments); Central compressor plants; elevators (used for hoisting building materials); central mixing plants; hoist (not handling steel or stone); Pumpcrete machine; concrete pumps; backfillers (other than cranes); tractors; crushing plant; elevating grader; earth augers; fork-lifts (8' lift or under); paving machine (blacktop/concrete); boat operator or engineer (30 tons or over); blacktop rollers; switchman; locomotive (under 20 tons); Maintainers.

GROUP C - Asphalt plant; barber-green type loader; engine tender (other than steam); mixers (over 2 bags, not to include central plants); pumps (not more than 3); sifiers; spreader box (bituminous); asphalt mixers; portable compressors (not more than 3); roller; sub-grader machine; tractors (farm type without attachments); cable head tower; engine; dredge booster pump; boat operator or engineer (under 30 tons); finishing machine; fireman & oiler (combination); motor crane oiler & driver; welding machines (not more than 3); heaters (stationary or portable, not more than 5); compressors (portable, not more than 3); greaser or fuel truck.

GROUP D - Air compressor (1 portable); fireman; portable crushers; welding machine (1); conveyors; pump (1); Oiler; heater (1).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

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Part IV

Department of
Agriculture

Food and Nutrition Service

Final Food Stamp Rules to Implement
1981 Omnibus Reconciliation Act

DEPARTMENT OF AGRICULTURE**Food and Nutrition Service****7 CFR Parts 271, 272, 273, 277, and 281**

[Amdt. No. 207]

Food Stamp Program; Household Composition, Income Standards, Adjustments, Deductions, Outreach and Technical Amendments**AGENCY:** Food and Nutrition Service, USDA.**ACTION:** Final rule.

SUMMARY: On September 4, 1981, the Department issued interim rules to implement several Food Stamp Program provisions contained in the 1981 Omnibus Budget Reconciliation Act. As required by the law, interim final changes were made in: the definition of a household, which households are income eligible for food stamps, what benefits a household will receive when it first applies and in subsequent months, when USDA will update benefit levels and allowable deductions amounts to account for changes in the cost-of-living and other parts of the Program. Taken together, these changes were aimed at restricting eligibility and reducing the Program's cost. Comments were solicited on the interim rules through January 4, 1982. This final rulemaking addresses comments received and resolves any significant issues. This final rule also addresses a provision of the Food Stamp and Commodity Distribution Amendments of 1981, which expands on the definition of a "household" enacted by the 1981 Omnibus Budget Reconciliation Act. Additionally, this final rule addresses two provisions of the 1982 Amendments to the Food Stamp Act mandating a further delay for the next cost-of-living adjustment to the standard and excess shelter/dependent care deductions until October 1, 1983 and mandating that all future adjustment amounts for such deductions shall be rounded down to the nearest lower dollar increment.

EFFECTIVE DATE: The changes in existing rules required by this final action are effective November 19, 1982. They must be fully implemented no later than January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Mr. Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Room 708, 3101 Park Center Drive, Alexandria, Virginia 22302. Phone: Area Code 703-756-3429. Copies

of the final Regulatory Impact Analysis, which is summarized in this preamble, are also available to the public from Mr. O'Connor.

SUPPLEMENTARY INFORMATION:**Classification***Executive Order 12291*

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department estimates that the rule will result in a savings of about \$500 million in fiscal year 1982. It is classified as a "major" rule because the rule will have a significant annual effect on the economy, through significant Program cost savings, of more than \$100 million. However, the rule will not result in major increases in costs or prices, will not have a significant adverse effect on competition, employment, productivity, investment, or foreign trade, and will not require significant changes in the way State and local welfare agencies administer the Program. Further, this rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises. Moreover, pursuant to section 4(a) of Executive Order 12291, the Department has determined that this rule is within the authority delegated by law and consistent with Congressional intent. Because this is a major rule, the Department has prepared a final Regulatory Impact Analysis which is summarized below.

Paperwork Reduction Act

The information collection requirements contained in §§ 273.1, 273.2 and 273.9 have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0584-0064.

Regulatory Flexibility Act

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354). The Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The action implements those provisions of the September 4, 1981 interim rules which changed due to comments received or problems in administration of the interim rules raised by State and local welfare agencies.

Regulatory Impact Analysis*Need for Action*

On September 4, 1981, the Department published interim regulations (46 FR

44712) which contained those provisions of the 1981 Omnibus Budget Reconciliation Act that would save the most money while disrupting the Program's operation the least. Those provisions addressed in the interim rules were: (1) A gross income test for eligibility determinations; (2) a reduction in the earned income deduction; (3) elimination of boarders and strikers from Program participation; (4) changing the definition of a household to require parents and children living together to apply as one household, unless at least one parent is 60 years of age or older; (5) prorating benefits that a household would receive for the initial month of application; (6) changing the schedule for annual adjustments in the standard deduction, childcare and excess shelter deductions and the Thrifty Food Plan (the food plan on which benefit levels are based); and (7) eliminating a 1980 amendment to the Food Stamp Act that would have taken effect on October 1, 1981 calling for a dependent care deduction amount separate from the excess shelter deduction amount. The interim rules also contained a provision of the Food Stamp Act Amendments of 1980 (Pub. L. 96-58) authorizing a medical deduction for Puerto Rico, Guam and the Virgin Islands which had to be implemented in those areas on October 1, 1981 in accordance with Pub. L. 96-58.

The September 4 interim regulations resulted from legislative provisions aimed at achieving cost savings through specific Program changes. The regulations contained in this final action adopt most of the cost-saving provisions of the interim rules. Although the changes will result in total savings of approximately \$500 million in fiscal year 1982, the Department was granted little discretion in the implementation of the changes. As a result, the economic effects of implementing the changes are not, for the most part, caused or created by the Department's regulations. Therefore, there were no alternatives considered by the Department which would have affected the savings achieved by the rules. The two provisions of the 1982 legislation which are incorporated in this final rule are also nondiscretionary provisions. They are expected to save an estimated \$71 million. However, \$31 million of that savings will not be realized until fiscal year 1984.

Issue Analysis

The Department has raised one issue which generated significant public comment and for which the Omnibus Budget and Reconciliation Act of 1981

(Pub. L. 97-35, 95 Stat. 358, August 13, 1981) provides sufficient discretion to consider alternatives to the interim rule.

This issue concerns the provision of law which renders strikers and their households ineligible for food stamp benefits. However, the rule allows households which were eligible to participate immediately prior to the strike to continue to participate, provided that these households do not receive an increase in benefits due to the striker's loss of income (Pub. L. 96-35, Sec. 109, 95 Stat. 361). Under the interim rule, the income a striking household member would have received from the employment subject to the strike is added to current household income, including income from strike benefits and temporary employment for determining the level of program benefits. As a result of this policy, previously eligible households could become ineligible even though the striker's current income is less than his pre-strike wages and the income of other household members has not changed. The Department considered various alternatives to resolve this approach.

One alternative is simply to freeze the striking member's income as of the day prior to the strike. While this alternative prevents an increase in benefits, it fails to address the need to adjust the household's benefits downward if other changes occur. For example, the striking member may be receiving income from strike benefits in addition to income from nonstrike-related temporary employment, and the total of these incomes may exceed the striker's income prior to the strike. As a result, the household could conceivably receive food stamp benefits to which it would not otherwise have been entitled.

The other alternative would compare pre-strike income to income at the time of application, and attribute the higher of the two to the household when calculating current eligibility and benefits. The income comparison could be done on a household basis or could be restricted to the striking member. Doing the income comparison on a household basis could be unfair to households if nonstrike related income was terminated or reduced for reasons not related to the strike. Such a household would have the nonstriking household member's non-existent income used to compute benefits. This result is avoided by restricting the income comparison to the striker's income.

The Department has chosen to compare the striker's income before the strike and at the time of application and to use the higher of the two to add to current income of nonstriking household

members for determining eligibility and the allotment level in accordance with 7 CFR 273.10(e). This alternative effectively prevents any household containing a striking member from receiving any increase in food stamp benefits due to a decrease in income as a result of the strike, while allowing household benefits to be higher or lower due to nonstrike related changes.

Comment Analysis

Although the September 4, 1981 rulemaking had the effect of final regulations, and had to be placed into operation by State welfare agencies, the Department encouraged interested parties to submit comments by January 4, 1982. Subsequently, 130 letters were received which addressed various provisions of the interim rules. The provisions involved and the commenters concerns are discussed below.

Program Informational Activities

Section 111 of the Reconciliation Act (95 Stat. 362) and the interim rules implemented two changes concerning the Food Stamp Program's outreach activities. First, they eliminated all regulatory requirements that State agencies conduct outreach activities (7 CFR 272.6). Second, they forbade the State agencies to use Federal funds to conduct outreach activities (7 CFR 277, Appendix A, *Standards for Selected Items of Cost*, (C)(14)). The Department continues to require, and to fund State agencies' activities concerning program informational (7 CFR 272.6). Program information activities explain the Program to the public. They include information about nutrition and the rights and responsibilities of applicants and participants.

Eight commenters addressed the provisions about program informational activities. Despite the majority of comments in opposition to the change, the Department cannot change this policy because the Reconciliation Act removes the requirement for outreach and forbids Federal funding of outreach activities.

In the interim rules the Department amended 7 CFR 272.3(d)(1)(ii), the regulation about publicizing waivers and Program operations by removing the third sentence of that paragraph. The Department erred in the amendatory language; the fourth sentence should have been removed. Therefore, we are republishing 7 CFR 272.3(d)(1)(ii) as it should appear. Additionally, the interim rules amended 7 CFR 272.4(b) to delete a reference to outreach. While the intent of the amendment is still relevant, this final rule does not reflect the adoption of the change as a subsequent final rule

removed 7 CFR 272.4(b) in its entirety. Also, this final rule removes references to outreach activities contained in 7 CFR 271.4(a)(3), 272.1(g)(1)(iv)(B), (g)(1)(ix) and (g)(10), 272.8(c), 273.2(c)(3) and 281.2(b) which were overlooked when the interim rules were prepared.

Household Definition

Section 101 of the Reconciliation Act of 1981 (95 Stat. 358) and the interim rules redefined "household." In accordance with Pub. L. 97-35, the rules specify that parents and children living with each other must apply for Program benefits together unless at least one parent is 60 years of age or older. The Department received 15 comment letters on this provision of the interim rules. Several State welfare agencies asked that the regulations clarify what is meant by "parent or child" and "living with". The Department has revised 7 CFR 273.1 to clarify that parents living with their natural, adopted, or step-children are subject to this parent/child rule. The Department has not defined the term "living with". A regulatory definition would be no more effective than the application of a reasonable judgment based on the circumstances of a particular living arrangement. For example, parents and children living in the same apartment building are not considered to be one household simply because they live in the same building. On the other hand, parents and children sharing the same individual apartment would be considered as one household.

Some State welfare agencies asked that the final rules clarify that the parent/child rule takes precedence over other household rules. Current rules provide that live-in attendants, roomers, and ineligible students living with a household are not to be considered household members in determining eligibility and benefit levels of applicant households. Revisions have been made to 7 CFR 273.1(a)(2) to provide that parents and children living together cannot take advantage of these "nonhousehold" member rules; they must be considered as one household when living with each other.

Two commenters requested an exemption to the parent/child rule for migrant households in the work stream. The commenters stated that normally an employer provides housing for migrants and that the housing provided often results in parents and children living together who normally live in separate households at their home base. However, Pub. L. 97-35 provided an exemption to the parent/child rule only for households in which at least one parent was 60 years old or older. The

law does not provide the Department with authority to allow additional exemptions from the rule. Therefore, no change was made.

Additionally, the Department is taking this opportunity to incorporate an amendment to the parent/child rule recently enacted by Pub. L. 97-98 (the Food Stamp and Commodity Distribution Amendments of 1981) into this final rule. As mentioned earlier, Pub. L. 97-35 provided only one exemption to the parent/child rule—those households with at least one parent age 60 or older. Pub. L. 97-98 expands the exemption to include households in which at least one parent is receiving certain Supplemental Security Income, disability or blindness payments under the Social Security Act. Since these additional exemptions are mandated by law and serve to relieve a previous restriction, it is believed that further public comment is unnecessary and would serve no useful purpose. The new exemptions have been incorporated into 7 CFR 273.1(a)(2).

The Department wishes to point out that Congress recently passed more legislation which will further change the definition of a food stamp household. These 1982 legislative provisions will be addressed in an upcoming regulation.

Boarders

Section 102 of the Reconciliation Act of 1981 (95 Stat. 358) and the interim rules deleted provisions that would allow boarders to apply for Program benefits by claiming to be separate households. The Department received 6 comment letters on this provision mostly from State welfare agencies asking for more clarification. The following clarifying changes have been made to 7 CFR 273.1(c): (1) A statement was added to clarify that boarder status cannot be granted to parents and children living together; (2) a statement was added to clarify that boarders are either ineligible to participate independent of the household providing the board, or may participate as a member of the household with whom they reside, at such household's request; and (3) the phrase "in no event shall food stamps be paid for meals and credited toward monthly payments" was deleted as unnecessary. Also, the reference to boarders contained in 7 CFR 273.1(a)(2)(iv) has been deleted.

Strikers

Determining eligibility and benefit levels. The interim rules contain provisions which deny food stamps to households containing a striking member who is not exempt from the work registration requirements, unless

the household can show that, immediately prior to the strike, it would have been eligible for or was receiving food stamps according to the applicable food stamp rules. Households in which the member on strike is exempt from work registration requirements, other than those exempt solely on the grounds that they are employed, are not affected by the striker provisions. Any increase in benefits due to the loss of income from the strike is prohibited. Income is to be calculated by assuming that an eligible household with a striking member is receiving the same amount of income from the striking member as it received immediately prior to the strike. Added to this assumed income under the interim rules are any strike benefits or income from temporary employment. If other changes occur, e.g., a change in household size, household benefits are to be adjusted.

Forty-two comment letters were received on the striker provisions. Numerous commenters objected to adding any anticipated income (i.e., strike benefits or temporary employment) to the striking member(s) pre-strike income when calculating benefits. As discussed earlier in the *Regulatory Impact Analysis* section of this preamble, these final rules provide that the striker's pre-strike income will be compared to the striker's anticipated income at the time of application and the higher of the two will be added to the household's anticipated income at the time of application for determining eligibility and allotment levels.

Miscellaneous Comments. Several commenters pointed out that the work registration provisions of the interim rules contain loopholes that could result in strikers not having the striker provisions applied to them. In order to close these loopholes, the final striker regulations have been revised to require that eligibility requirements (i.e., work registration requirements and resource levels) be judged as of the day prior to the strike and with the assumption that the strike had not occurred. As discussed in the preamble of the interim rules, strikers who remain eligible must register for work but they will not be referred to work at a struck site.

Another commenter inquired as to the period of time to use for determining a household's pre-strike eligibility. The Department has determined that a household's pre-strike eligibility will be determined based on the day prior to the strike as if it were the day of application and with the assumption that the strike had not occurred. Also, a household's pre-strike eligibility will be determined for the month of application by considering the household's

circumstances for an entire calendar month or for a fiscal month.

Gross Income Eligibility Standard

Using different standards. Section 104 of the Reconciliation Act (95 Stat. 358) and the interim rules (7 CFR 273.9(a)(1)) set a gross income eligibility standard for most households. This gross income limit is 130% of the appropriate nonfarm income poverty guideline of the Office of Management and Budget (OMB). The guidelines vary by size of household and by region (contiguous States and outlying areas). Two classes of households are not subject to the gross income standard. One class contains households with one member who is at least sixty years old. The other class contains households with one member who receives Supplemental Security Income (SSI) payments under Title XVI of the Social Security Act, or disability and blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act. These two classes have a *net* income eligibility standard (gross income minus deductions) of 100% of the poverty guideline.

Several commenters noted that there are administrative problems in having two different income standards for two different groups of households. The commenters suggested different ways to avoid these problems. However, the Department has no discretion in applying the gross and net income standards. Therefore, the Department has not changed this rule.

Technically eligible households. When the gross income eligibility standard is applied, a household may be eligible, but entitled to no benefits. This happens when a household with three or more members has a gross income below the gross standard but 30% of its net income equals or exceeds the value of the Thrifty Food Plan for the household's size. These households receive no food stamps. Households with only one or two members in the same situation receive an allotment of \$10, as required by Section 8(a) of the Food Stamp Act.

The interim rules (7 CFR 273.10(e)(2)(iii)) gave State agencies two options for handling households which are technically eligible, but which receive no benefits. Under the first option, the State agency denies certification for the household because its net income is too high for the household to receive benefits. Under the second option, the State agency certifies the household but suspends its participation until the household's net income falls.

One commenter suggested that the Department withdraw the second option which involves suspended participation. This commenter stated that this option is prone to error. The Department prefers to give State agencies the flexibility to efficiently process household applications. Each State agency can decide for itself if the option is prone to error and, therefore, if the option is suitable. The Department has revised the provision to clarify that the options apply only when a household is eligible but its income is too high for the household to receive food stamps.

Section 273.10(e)(2)(i)(A) of the interim rules seems to state that the net income eligibility standard does not apply to destitute households. One commenter said that the reference to destitute households is confusing and should be removed. The Department intended to note that State agencies do not calculate the net income of destitute households as they calculate the income of other households. The procedure for destitute households is contained in 7 CFR 273.10(e)(3). The Department has revised this rule to clarify the provision.

Minimum allotments. The preamble of the interim rules referred to the fact that eligible households with only one or two members receive a minimum allotment of \$10. Larger households do not have a minimum allotment; their calculated allotments can be as low as zero. Further, the interim rules revised 7 CFR 273.10(e)(2)(ii) to reflect the calculation of benefits for these households and households of larger sizes as it relates to proration of initial month's benefits. While paragraph (e)(2)(ii)(A) did not change from the interim final to the final rule, this final rule does not reflect adoption of the interim final language. The language of (e)(2)(ii)(A) was further revised in a subsequent final rule issued September 14, 1982.

Two commenters suggested that the Department change the minimum allotment policy. One recommended a minimum allotment of \$6, the other recommended deleting any minimum allotment. Because Section 8(a) of the Food Stamp Act sets the value of allotments, including minimum values, the Department cannot change the regulations on minimum allotments.

Becoming sixty years old in the month of application. Section 104 of the Reconciliation Act and the interim rules (7 CFR 273.9(a)(2)) state that the State agency will apply the net income eligibility standard if a household contains a member who is sixty years of age or older. It is possible that a household member would be fifty-nine on the date of application, but turn sixty before the end of the month of

application. The Program's current policy is to consider the individual as being sixty in the month of application and to apply the net income standard. One State agency recommended that FNS change this policy.

The Department is not making the change which the State agency requested. The intent of Congress was clearly to provide elderly and disabled persons with a special income eligibility standard. Since the household becomes entitled to this special treatment at some time during the month of application, there is good reason to give the household special treatment in that month. Under current policy, a household in the same situation receives the medical and separate shelter deductions in the month of application. These deductions and the net income standard are closely related. The same households are entitled to all three special considerations for the same reason.

This policy is also administratively more efficient in that it avoids a household having to file twice in the same month, once before a member turns sixty and again after. Therefore the Department is revising 7 CFR 273.10(e)(2)(i) to make explicit that State agencies are required to use the net income eligibility standard if a household member will be at least sixty years old by the last day in the month of application.

Maximum gross income eligibility table. The table contained in the interim rules (appendix A to § 273.10) which listed the Maximum Gross Monthly Income Eligibility Standards applicable in all areas is not being finalized by this rule. The income standards were recently changed to reflect a cost-of-living adjustment to become effective July 1, 1982 and the adjusted standards were published in the *Federal Register* of April 27, 1982 at 47 FR 17977. Also, the provision contained in paragraph 273.9(a)(4) of the interim rule is not being finalized by this action. That provision, which specified that the income eligibility standards applicable for all areas of Program operations can be found in the appendices of 7 CFR 273.9, was changed by rules issued October 19, 1982 (47 FR 46485). That rule deleted all appendices from 7 CFR 273.9.

Mass changes. The interim rules revised the provisions on mass changes at 7 CFR 273.12. The revisions took into account changes in the schedules for updating the Thrifty Food Plan in the income eligibility standards and similar aspects of the program. The Department is republishing these revisions without change.

Earned Income Deduction

Section 106 of the Reconciliation Act (95 Stat. 360) and the interim rules (7 CFR 273.9(d)(2)) reduced the earned income deduction from 20% to 18% of a household's earned income. This provision implements the new deduction rate as fixed by statute.

Adjusting Deductions and Rounding

Section 105 of the 1981 Reconciliation Act (95 Stat. 359) and the interim rules (7 CFR 273.9(d)(7) and (8)) froze the standard and maximum excess shelter deductions at their current levels. The law and rule also scheduled future adjustments to account for changes in the cost-of-living for July 1, 1983, October 1, 1984 and every October 1 thereafter. After the Department published the interim rules, Congress enacted the Food Stamp Act Amendments of 1982 which further delay the July 1, 1983 adjustment to the deductions (Pub. L. 97-253, Subtitle F, Sec. 148, September 8, 1982). The 1982 Amendments also change the rounding procedures for calculating the amount of future adjustments. The Department is taking this opportunity to implement the new schedule for the 1983 adjustment to the deductions and the new rounding procedure. The new schedule delays the 1983 adjustment until October 1, 1983 and is estimated to save \$40 million in fiscal year 1983. The rounding procedure as mandated by the law is to round down to the nearest lower dollar increment (Pub. L. 97-253, Sec. 143). Prior to the new legislation, adjustment calculations were rounded to the nearest \$5 increment. The Department will not realize a savings with the new rounding procedure in fiscal year 1983. However, in fiscal year 1984 the savings are estimated at \$31 million. The schedule of adjustments and the rounding procedure are fixed by statute. Since the Department has no discretion with regard to these provisions, they are being incorporated in this final rulemaking.

Deductions in Guam and the Virgin Islands

Section 106 of Pub. L. 96-249 (the Food Stamp Act Amendments of 1980) and the interim rules (7 CFR 273.9(d)(3)) extended the medical deductions to blind and disabled residents in Guam, Puerto Rico, and the Virgin Islands. Recipients of benefits to the blind and disabled made under titles I, II, X, XIV or XVI of the Social Security Act may now deduct medical expenses which exceed \$35 monthly. The interim rules (7 CFR 273.9(d)(5)) extend the separate dependent care and shelter deductions

to these same households. No one commented on these provisions. Therefore, the provisions are adopted as final by this action. However, the language of the provisions as it appears in this rulemaking not only reflects adoption of the extension of the medical deduction and the separate dependent care and shelter deduction for households in the outlying areas, as implemented by the September 4, 1981 interim rule, but also reflects changes to the provisions made by rules issued April 30, 1982 (47 FR 63460). That rule deleted any reference to Puerto Rico from these provisions effective July 1, 1982. The language of paragraph 273.9(d)(5) also reflects further changes made to that provision by rules issued October 19, 1982 (47 FR 46485). That rule removed the reference to the actual dollar amount limit allowed for the dependent care/excess shelter deductions.

Adjustment to the Thrifty Food Plan

In the interim rules, the Department delayed an expected adjustment to the Thrifty Food Plan to April 1, 1982. Section 103 of the Reconciliation Act required this delay. After the Department published the interim rules Congress enacted Pub. L. 97-98 which further delayed this adjustment (Section 1304). The Department published a final rule on March 19, 1982 at 47 FR 11815 which implemented this change.

Benefit Levels for Initial Month of Application

Final rules to resolve issues raised by commenters on this portion of the interim rules were issued in a separate rule. The rule was published in the Federal Register of May 14, 1982 at 47 FR 20739.

Technical Amendments

On October 1, 1978, the Department issued final rules (43 FR 47846) after consideration of comments from the public which, among other things, defined what shelter costs are allowed in determining a shelter deduction. This definition has appeared in the Code of Federal Regulations at 7 CFR 273.9(d)(5)(i) through (d)(5)(v). The definition had been unintentionally removed from the regulations due to the issuance of a later rule. The Department is taking this opportunity to reinstate the definition of shelter costs as regulated on October 17, 1978.

The Department is also taking this opportunity to remove any reference to the State of Massachusetts contained in 7 CFR 273.20. Under this current provision of regulations, recipients of Supplemental Security Income (SSI)

payments may not participate in the Food Stamp Program if the State includes the bonus value of food stamps in any level of State SSI payments. Such States are commonly referred to as "cash-out" States. Massachusetts terminated its cash-out status and effective October 1, 1981 recipients of SSI in that State began participating in the Food Stamp Program.

The Department is also taking this opportunity to remove any reference to the State of Massachusetts contained in 7 CFR 273.20. Under this current provision of regulations, recipients of Supplemental Security Income (SSI) payments may not participate in the Food Stamp Program if the State includes the bonus value of food stamps in any level of State SSI payments. Such States are commonly referred to as "cash-out" States. Massachusetts terminated its cash-out status and effective October 1, 1981 recipients of SSI in that State began participating in the Food Stamp Program.

In accordance with the September 4, 1981 interim rules, § 273.10(e)(1)(i)(F), (G) and (H) were relettered as (e)(1)(i)(E), (F) and (G). However, these paragraphs contained regulatory references to each other that were not revised to reflect the new designated paragraphs. Therefore, 7 CFR 273.10(e)(1)(i)(E), (F) and (G) are revised by this final action to correct this oversight.

In accordance with the September 4, 1981 interim rules, paragraph (c)(1) of § 272.4 was amended to delete a reference to "outreach" as one of the ten program areas for which State agencies solicit cost projections. However, the reference of "ten" program areas within the paragraph was not changed to "nine". Therefore, § 272.4(c)(1) is revised by this final action to correct this oversight.

Implementation

State agencies shall implement the changes in present rules required by this final rule no later than January 1, 1983. The disabled parent provision of § 273.1 was made effective September 8, 1982, by section 193 of Pub. L. 97-253. Therefore, disabled parents who requested and were denied separate household status on or after September 8, 1982 will be entitled to benefits retroactive to the dates of their applications for separate household status.

Note.—The following paragraphs in 7 CFR which had been amended or revised in accordance with the September 4 interim rules have not changed and are adopted as final in the form originally set forth in the interim rules:

§ 271.7(b), (d)(1)(ii), (d)(2)(i) and (d)(3);

§ 272.2(a)(2), (d)(1)(i) and (d)(1)(ii) which were redesignated from (d)(1)(ii) and (iii), and (e)(4) through (e)(6) which were redesignated from (e)(5) through (e)(7);

§ 272.4(c)(1) and (c)(2);

§ 272.6 in its entirety;

§ 272.8(f) through (o) which were redesignated from (g) through (p)

§ 273.1(a)(1)(i) through (a)(1)(iii), and (b)(2) through (b)(7) which were redesignated from (b)(3) through (b)(8);

§ 273.7(j);

§ 273.9(a), (a)(1), (a)(1)(ii) through (iii), (a)(2), (a)(2)(ii) through (iii), (a)(3), (a)(3)(i) through (ii), (d)(7)(ii) and (iii), (d)(8)(ii), (iii), and (iv), and Appendices B, C, and D which were redesignated from A, B, C;

§ 273.10(e)(1)(i), (e)(1)(i)(A), (e)(1)(i)(B), and (e)(1)(i)(C) and (D) which were redesignated from (e)(1)(i)(D) and (E), (e)(2)(i)(B), (e)(2)(i)(C), (e)(2)(ii) (B) and (C), and (e)(2)(vi) which was redesignated from (e)(2)(iii) and the revised (e)(2)(vi)(B), (C) and (D), the new (e)(2)(iii)(A), (e)(2)(iii)(B), (e)(2)(iv), (e)(2)(v), and (f)(3)(ii) and (iii) which were redesignated from (f)(3)(iii) and (iv);

§ 273.11(a)(2)(iii), (a)(4)(iii)(C)*, (b)(1)(iii), and (c)(3);

§ 273.12(e) and (e)(1);

§ 273.13(b)(8) through (b)(1) which were redesignated from (b)(9) through (b)(12); and

Part 277, paragraph (C)(14) of Appendix A.

These unchanged paragraphs (except for the paragraph that set forth the implementation schedule of the interim rules, and those paragraphs that were simply relettered or renumbered due to paragraph removals called for by the September 4 rules) are set out below along with paragraphs that are being amended or revised by this final action for the convenience of the reader.

*Please note further, that although § 273.11(a)(4)(iii)(C) was not changed from the interim rules it is republished below as paragraph (a)(4)(ii)(C) because an earlier rule redesignated it.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Recordkeeping and reporting requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Recordkeeping and reporting requirements, Social Security, Students.

7 CFR Part 277

Food stamps, Government procurements, Grant programs—social programs, Investigations, Recordkeeping and reporting requirements.

Accordingly, Parts 271, 272, 273 and 277 are amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.4 [Amended]

1. In § 271.4, paragraph (a)(3) is removed and paragraphs (a)(4) through (a)(8) are redesignated as (a)(3) through (a)(7), respectively.

2. In § 271.7, paragraphs (b), (d)(1)(ii), (d)(2)(i) and (d)(3) are revised to read as follows:

§ 271.7 Allotment reduction procedures.

(b) *Nature of reduction action.* Action to comply with Section 18 of the Food Stamp Act of 1977, as amended, may be a suspension or cancellation of allotments for one or more months, a reduction in allotment levels for one or more months or a combination of these three actions. If a reduction in allotments is deemed necessary, allotments shall be reduced by reducing Thrifty Food Plan amounts for each household size by the same percentage. This results in all households of a given size having their benefits reduced by the same dollar amount. The dollar reduction would be smallest for one-person households and greatest for the largest households. Since the dollar amount would be the same for all households of the same size, the rate of reduction would be lowest for zero net income households and greatest for the highest net income households. All one- and two-person households affected by a reduction action shall be guaranteed a minimum benefit of \$10 unless the action is a cancellation of benefits, a suspension of benefits, or a reduction of benefits of 90 percent or more of the total amount of benefits projected to be issued in the affected month.

(d) *Implementation of allotment reductions.*

(1) *Reductions.* * * *

(ii) Upon receiving notification that a reduction is to be made in an upcoming month's allotments, State agencies shall act immediately to implement the

reduction. Such action would differ from State to State depending on the nature of the issuance system in use. Where there are computerized issuance systems, the program used for calculating allotments shall be altered to reflect the appropriate percentage reduction in the Thrifty Food Plan for each household size and the computer program shall be adjusted to allow for a minimum benefit of \$10 for one- and two-person households. The computer program shall also be adjusted to provide for the rounding of benefit levels of \$1, \$3 and \$5 to \$2, \$4 and \$6, respectively. FNS will provide State agencies with revised issuance tables reflecting the percentage reductions to be made in the Thrifty Food Plan amounts and reduce Thrifty Food Plan levels. In States where manual issuance is used, State agencies shall reproduce the issuance tables provided by FNS and distribute them to issuance personnel. State agencies shall ensure that the revised issuance tables are distributed to issuance agents and personnel in time to allow benefit reductions during the month ordered by FNS. In an HIR card system State agencies have the option of enacting the reduction in benefits either by changing all HIR cards before issuance activity for the affected month begins or by adjusting allotments at the point of issuance as each household appears at the issuance office.

(2) *Suspensions and cancellations.* (i)

If a decision is made to suspend or cancel the distribution of food stamp benefits in a given month, FNS shall notify State agencies of the date the suspension or cancellation is to take effect. In the event of a suspension or cancellation of benefits, the provision for a \$10 minimum benefit level for households with one or two members only shall be disregarded and all households shall have their benefits suspended or cancelled. Upon receiving notification that an upcoming month's issuance is to be suspended or cancelled, State agencies shall take immediate action to effect the suspension or cancellation. This action would involve making necessary computer adjustments, and notifying issuance agents and personnel.

(3) *Affected allotments.* Whenever a reduction of allotments is ordered for a particular month, reduced benefits shall be calculated for all households for the designated month. However, any household with one or two members whose reduced benefits would be less than \$10 shall receive a minimum benefit of \$10 except as provided in

§ 273.10(e)(2). Allotments or portions of allotments representing restored or retroactive benefits for a prior unaffected month would not be reduced, suspended, or cancelled even though they are issued during an affected month.

PART 272—REQUIREMENTS OF PARTICIPATING STATE AGENCIES

3. In § 272.1, the third sentence of paragraph (g)(1)(iv)(B) is amended by removing the words " , all groups listed in the State Food Stamp Outreach Action Plan." Paragraph (g)(1)(ix) is removed and paragraph (x) is redesignated as (ix). Paragraph (g)(10) is revised to read as follows:

§ 272.1 General terms and conditions.

(g) *Implementation.* * * *

(10) *Amendment No. 207.* State agencies shall implement the changes in the rules required by Amendment 207 no later than January 1, 1983. Disabled parents who requested and were denied separate household status on or after September 8, 1982, will be entitled to benefits retroactive to the dates of their applications for separate household status.

4. In § 272.2, paragraph (a)(2) and the first sentence of (c)(1)(i) are revised to read as follows:

§ 272.2 Plan of operation.

(a) *General Purpose and Content.* * * *

(2) *Content.* The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, and the Program Activity Statement. In addition, certain attachments to the Plan are specified in this Section and in § 272.2(c) and § 272.3. The requirements for the basic components and attachments are specified in § 272.2(c) and § 272.2(d) respectively. The Federal/State Agreement is the legal agreement between the State and the Department of Agriculture. This Agreement is the means by which the State elects to operate the Food Stamp Program and to administer the program in accordance with the Food Stamp Act of 1977, as amended, regulations issued pursuant to the Act, the FNS-approved State Plan of Operation, and any State-developed manuals approved by FNS. The Budget Projection Statement and Program Activity Statement provide information on the number of actions and amounts budgeted for various functional areas such as certification and issuance. The Plan's attachments include the Disaster Plan (currently reserved) and the

optional Nutrition Education Plan. The Corrective Action Plan is considered part of the State Plan of Operation, but is submitted separately as prescribed under § 275.22.

(c) Budget Projection Statement and Program Activity Statement.

(1) * * *

(i) The Budget Projection Statement solicits projections of the total costs for nine areas of program operations (certification, issuance, performance reporting, fair hearings, training, ADP development, ADP operation, fraud control, and other). * * *

5. In § 272.3, paragraph (d)(1)(ii) is revised to read as follows:

§ 272.3 Operating guidelines and forms.

(d) Public Comment. * * *

(1) * * *

(ii) Publication (in addition to the notice of the available components) of a summary of the waiver or general Program operations. Also instructions on how to obtain more information shall be included. This publication shall be in sufficient media sources to ensure general coverage in all project areas. Public comment shall be solicited for a minimum of 30 days.

6. In § 272.4, paragraph (c)(1) and the introductory sentence to paragraph (c)(2) are revised to read as follows:

§ 272.4 Program administration and personnel requirements. * * *

(c) Bilingual requirements. (1) Based on the estimated total number of low-income households in a project area which speak the same non-English language (a single-language minority), the State agency shall provide bilingual program information and certification materials, and staff or interpreters as specified in paragraphs (c)(2) and (3) of this section. Single-language minority refers to households which speak the same non-English language and which do not contain adult(s) fluent in English as a second language;

(2) The State agency will provide materials used in Program informational activities in the appropriate language(s) as follows. * * *

7. Section 272.6, is revised in its entirety to read as follows:

§ 272.6 Program Informational Activities

(a) Definition. "Program informational activities" are those activities that convey information about the Program, including household rights and responsibilities, to applicant and recipient households through means

such as publications, telephone hotlines, and face-to-face contacts.

(b) Minimum requirements. State agencies shall comply with the following minimum information requirements.

(1) Nutrition information. (i) FNS will supply State agencies with posters and pamphlets containing information regarding foods with substantial amounts of the recommended daily allowances of protein, minerals, and vitamins; menus making use of these foods; and the relationship between health and diet;

(ii) Printed materials such as posters, fliers, and pamphlets, that explain the Special Supplemental Food Program for Women, Infants and Children (WIC) and, where available, the Commodity Supplemental Food Program (CSF) shall be supplied by agencies administering the WIC and CSF programs (where available);

(iii) State agencies shall display the posters and make the pamphlets available at all food stamp and public assistance offices.

(2) Rights and responsibilities. State agencies shall inform participant and applicant households of their Program rights and responsibilities. This information may be provided through whatever means the State agencies deem appropriate.

(3) All Program informational material shall be available in languages other than English as required in § 272.4(c) and shall include a statement that the Program is available to all without regard to race, color, sex, age, handicap, religious creed, national origin or political belief.

§ 272.8 [Amended]

8. In § 272.8, paragraph (c) is amended by removing the words "outreach and" appearing near the end of the first sentence.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

9. In § 273.1, paragraphs (a), (c) and (g) are revised and a new paragraph (5) is added to (g). The revisions and addition read as follows:

§ 273.1 Household concept.

(a) Household definition. (1) A household may be composed of any of the following individuals or groups of individuals:

- (i) An individual living alone;
- (ii) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others;
- (iii) A group of individuals who live together and customarily purchase food

and prepare meals together for home consumption.

(2) Such individuals or groups of individuals may not participate if they are residents of an institution, except as otherwise specified in paragraph (e) of this section, or residents of a commercial boarding house, or living with others and paying compensation to the others for meals and lodging, except as otherwise specified in paragraph (c) of this section.

(3) In no event shall nonhousehold member status (as described in the provisions of paragraph (b) of this section) or separate household status be granted to:

(i) Parents living with their natural, adopted, or step-children or such children living with such parents, unless at least one parent is 60 years of age or older or receiving Supplemental Security Income benefits under title XVI or disability or blindness benefits under titles I, II, X, XIV or XVI of the Social Security Act;

(ii) Children under 18 years of age under the parental control of an adult member of the household; or

(iii) A spouse of a member of the household (as defined in § 271.2).

(c) Boarders. (1) Boarders are defined as individuals or groups of individuals residing with others and paying reasonable compensation to the others for lodging and meals. Boarders are ineligible to participate in the Program independent of the household providing the boarder services to them, at such household's request. In no event shall boarder status be granted to those individuals or groups of individuals described in paragraph (a)(3) of this section.

(2) The household within which a boarder resides (including the household of the proprietor of a boarding house) may participate in the program if the household meets all the eligibility requirements for program participation.

(3) To determine if an individual is paying reasonable compensation for meals and lodging in making a determination of boarder status, only the amount paid for meals shall be used, provided that the amount paid for meals is distinguishable from the amount paid for lodging. A reasonable monthly payment shall be either of the following:

(i) Boarders whose board arrangement is for more than two meals a day shall pay an amount which equals or exceeds the Thrifty Food Plan for the appropriate size of the boarder household; or

(ii) Boarders whose board arrangement is for two meals or less per day shall pay an amount which equals or exceeds two-thirds of the Thrifty Food Plan for the appropriate size of the boarder household.

(4) An individual furnished both meals and lodging by a household but paying compensation of less than a reasonable amount to the household for such services shall be considered a member of the household providing the services.

(5) None of the income or resources of individuals determined to be boarders and who are not members of the household providing the boarder services (as prescribed in paragraph (3) of this section) shall be considered available to such household. However, the amount of the payment that a boarder gives to a household shall be treated as self-employment income to the household. The procedures for handling self-employment income from boarders (other than such income received by a household that owns and operates a commercial boarding house) are set forth in § 273.11(b). The procedures for handling income from boarders by a household that owns and operates a commercial boarding household are set forth in § 273.11(a). For Program purposes, a commercial boarding house is defined as an establishment licensed as an enterprise which offers meals and lodging for compensation. In project areas without licensing requirements, a commercial boarding house shall be defined as a commercial establishment which offers meals and lodging for compensation with the intent of making a profit. The number of boarders residing in a boarding house shall not be used to determine if a boarding house is a commercial enterprise.

(g) *Strikers.* (1) Households with striking members shall be ineligible to participate in the Food Stamp Program unless the household was eligible for benefits the day prior to the strike and is otherwise eligible at the time of application. However, such a household shall not receive an increased allotment as the result of a decrease in the income of the striking member(s) of the household.

(2) For food stamp purposes, a striker shall be anyone involved in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Any employee affected by a lockout, however, shall not be deemed to be a

striker. Further, an individual who goes on strike who is exempt from work registration, in accordance with § 273.7(b), the day prior to the strike, other than those exempt solely on the grounds that they are employed, shall not be deemed to be a striker. Examples of non-strikers who are eligible for participation in the program include but are not limited to:

(i) Employees whose workplace is closed by an employer in order to resist demands of employees (e.g., a lockout);

(ii) Employees unable to work as a result of striking employees (e.g., truckdrivers who are not working because striking newspaper pressmen prevent newspapers from being printed); and,

(iii) Employees who are not part of the bargaining unit on strike who do not want to cross a picket line due to fear of personal injury or death.

(3) Pre-strike eligibility shall be determined by considering the day prior to the strike as the day of application and assuming the strike did not occur.

(4) Eligibility at time of application shall be determined by comparing the striking member's income before the strike (as calculated for paragraph 3 above) to the striker's current income and adding the higher of the two to the current income of nonstriking members during the month of application. To determine benefits (and eligibility for households subject to the net income eligibility standard), deduction shall be calculated for the month of application as for any other household. Whether the striker's pre-strike earnings are used or his current income is used, the earnings deduction shall be allowed if appropriate.

(5) Strikers whose households are eligible to participate under the criteria in § 273.1(g) shall be subject to the work registration requirements under § 273.7 unless exempt under § 273.7(b) the day of application.

10. In § 273.7, paragraph (j) is revised to read as follows:

§ 273.7 Work registration requirements.

(j) *Participation of strikers.* Strikers whose households are eligible under the criteria in § 273.1(g) shall be subject to the work registration requirements unless exempt under paragraph (b) of this section at the time of application.

11. In § 273.9, paragraphs (a), (a)(1), (a)(2), (a)(3), (d)(2), introductory paragraph (d)(3), and paragraphs (d)(5), (d)(7), and (d)(8) are revised. The revisions read as follows:

§ 273.9 Income and Deductions.

(a) *Income eligibility standards.* Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.

(1) Except as provided in paragraph (a)(2) of this section, eligibility shall be determined on the basis of gross income. The gross income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the contiguous 48 States and the District of Columbia, Guam and the Virgin Islands shall be 130 percent of the Office of Management and Budget's (OMB) nonfarm income poverty guidelines for the 48 States and the District of Columbia.

(ii) The income eligibility standard for Alaska shall be 130 percent of the OMB nonfarm income poverty guideline prescribed for Alaska.

(iii) The income eligibility standard for Hawaii shall be 130 percent of the OMB nonfarm income poverty guideline prescribed for Hawaii.

(2) Households which contain a member who is sixty years of age or over, or a member who receives Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act, or disability and blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act, shall be determined eligible based on net income. The net income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the contiguous 48 States and the District of Columbia, Guam and the Virgin Islands shall be the Office of Management and Budget's (OMB) nonfarm income poverty guidelines for the 48 States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be the OMB nonfarm income poverty guideline prescribed for Alaska.

(iii) The income eligibility standard for Hawaii shall be the OMB nonfarm income poverty guideline prescribed for Hawaii.

(3) The income eligibility limits, as described in this paragraph, are revised each July 1, to reflect OMB's annual adjustment to the nonfarm poverty guidelines for the 48 States and the District of Columbia, for Alaska, and for Hawaii.

(i) 130 percent of the annual income poverty guidelines shall be divided by 12 to determine the monthly gross income standards, rounding the results

upward as necessary. For households greater than eight persons, the increment in the OMB guidelines is multiplied by 130 percent, divided by 12, and the results rounded upward if necessary.

(ii) The annual income poverty guidelines shall be divided by 12 to determine the monthly net income eligibility standards, rounding the results upward as necessary. For households greater than eight persons, the increment in the OMB guidelines is divided by 12, and the results rounded upward if necessary.

* * * * *

(d) *Income deductions.* * * *

(2) *Earned income deduction.* Eighteen percent of gross earned income as defined in paragraph (b)(1) of this section. Earnings excluded in paragraph (c) of this section shall not be included in gross earned income for purposes of computing the earned income deduction.

(3) *Excess medical deduction.* That portion of medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is 60 years of age or over or who receives Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act or disability and blindness benefits under titles I, II, X, XIV, and XVI of the Social Security Act. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. Allowable medical costs are:

* * * * *

(5) *Shelter costs.* Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1), (2), (3) and (4) of this section have been allowed. The shelter deduction alone, or in combination with the dependent care deduction in paragraph (d)(4) of this section shall not exceed the maximum limit established for the dependent care deduction. This is applicable unless the household contains a member who is age 60 or over, or who receives Supplemental Security Income benefits (including emergency benefits based on presumptive eligibility) under title XVI or disability and blindness payments under titles I, II, X, XIV, and XVI of the Social Security Act. Such households shall receive an excess shelter deduction for the monthly cost that exceeds 50 percent of the household's monthly income after all other applicable deductions. The shelter deduction amount applicable for use in

the 48 contiguous States and the District of Columbia, and the amounts applicable for use in Alaska, Hawaii, Guam, and the Virgin Islands are adjusted annually and will be prescribed in General notices published in the *Federal Register*. Shelter costs shall include only the following:

(i) Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(ii) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(iii) The cost of heating and cooking fuel; cooling and electricity; water and sewerage; garbage and trash collection fees; the basic service fee for one telephone, including tax on the basic fee; and fees charged by the utility provider for initial installation of the utility. One-time deposits shall not be included as shelter costs.

(iv) The shelter costs for the home if temporarily not occupied by the household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

(v) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

* * * * *

(7) *Adjustment of standard deduction.*

(i) Effective October 1, 1983, the standard deductions shall be adjusted to reflect changes in the Consumer Price Index for all urban consumers (CPI-U) for items other than food and the homeownership component of shelter costs for the fifteen months ending March 31, 1983.

(ii) Effective October 1, 1984, the standard deductions shall be adjusted to reflect changes in the CPI-U for items other than food and the homeownership

component of shelter costs for the fifteen months ending June 30, 1984.

(iii) Effective October 1, 1985, and each October 1 thereafter, the standard deductions shall be adjusted to reflect changes in the CPI-U for items other than food and the homeownership component of shelter costs for the twelve months ending the previous June 30.

(iv) These adjustments shall be based on the previous unrounded numbers, and the result rounded down to the nearest lower dollar increment.

(8) *Adjustment of shelter deduction.* (i) Effective October 1, 1983, the maximum limit for excess shelter expense deductions shall be adjusted to reflect changes in the shelter (exclusive of homeownership costs), fuel, and utilities components of the CPI-U for the fifteen months ending March 31, 1983.

(ii) Effective October 1, 1984, the maximum limit for excess shelter expense deductions shall be adjusted to reflect changes in the shelter (exclusive of homeownership costs), fuel, and utilities components of the CPI-U for the fifteen months ending June 30, 1984.

(iii) Effective October 1, 1985, and each October 1 thereafter, the maximum limit for excess shelter expense deductions shall be adjusted to reflect changes in the shelter (exclusive of homeownership costs), fuel, and utilities components of the CPI-U for the twelve months ending the preceding June 30.

(iv) These adjustments shall be based on the previous unrounded numbers, and the result rounded down to the nearest lower dollar increment.

* * * * *

12. In §273.10:

(a) Introductory paragraph (e)(1)(i), paragraphs (e)(1)(i)(A) and (e)(1)(i)(B) are revised:

(b) Paragraph (e)(1)(i)(E) is amended by changing the reference appearing at the end of that paragraph from (e)(1)(i)(G) to (e)(1)(i)(F);

(c) Paragraph (e)(1)(i)(F) is amended by changing the reference appearing at the end of the paragraph from (e)(1)(i)(H) to (e)(1)(i)(G);

(d) Paragraph (e)(1)(i)(G) is amended by changing the reference appearing in the middle of that paragraph from (e)(1)(i)(F) to (e)(1)(i)(E);

(e) Paragraphs (e)(2)(i), (e)(2)(ii)(B), (e)(2)(ii)(C), (e)(2)(iii), (e)(2)(iv), (e)(2)(v), (e)(2)(vi)(B), (e)(2)(vi)(C), and (e)(2)(vi)(D) are revised.

The revisions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) *Calculating net income and benefit levels.*—(1) *Net monthly income.* * * *

(i) To determine a household's net monthly income, the State agency shall:

(A) Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income.

(B) Multiply the total gross monthly earned income by 18 percent and subtract that amount from the total gross income; or multiply the total gross monthly earned income by 82 percent and add that to the total monthly unearned income, minus income exclusions.

* * * * *

(2) *Eligibility and benefits.* (i)(A)

Households containing a member who is sixty years of age or over, or a member who receives Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act or disability and blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act shall have their net income, as calculated in paragraph (e)(1) of this section (except for households considered destitute in accordance with paragraph (e)(3) of this section), compared to the monthly income eligibility standards defined in § 273.9(a)(2) for the appropriate household size to determine eligibility for the month.

(B) For all other households, the State agency shall compare a household's gross income, as calculated in accordance with paragraph (e)(1)(i)(A) of this section, to the monthly income eligibility standards defined in § 273.9(a)(1) for the appropriate household size to determine eligibility for the month.

(C) For households considered destitute in accordance with paragraph (e)(3) of this section, the State agency shall determine a household's eligibility by computing its gross and net income according to paragraph (e)(3) of this section, and comparing, as appropriate, either the gross or net income to the corresponding income eligibility standard in accordance with § 273.9(a)(1) or (2).

(D) If a household contains a member who is fifty-nine years old on the date of application, but who will become sixty before the end of the month of application, the State agency shall determine the household's eligibility in accordance with paragraph (e)(2)(i)(A) of this section.

(ii) * * *

(B) All eligible one- and two-person households shall receive minimum

monthly allotments of \$10. In the initial month of application, these households shall receive a pro rata share of the \$10, depending on the day on which they applied, in accordance with paragraph (a)(1) of this section.

(C) All eligible households whose benefits are prorated to \$1, \$3, and \$5 in accordance with paragraph (a)(1) of this section, and eligible households with three or more members which are entitled to \$1, \$3, and \$5 allotments shall receive allotments, of \$2, \$4, and \$6, respectively, to correspond with current coupon book denominations.

(iii) For an eligible household with three or more members which is entitled to no benefits (except because of the proration requirements of paragraph (a)(1) of this section) the State agency shall take either of the following actions:

(A) The State agency shall deny the household's application on the grounds that its net income exceeds the level at which benefits are issued; or

(B) The State agency shall certify the household but suspend its participation, subject to the following conditions:

(1) The State agency shall inform the suspended household, in writing, of its suspended status, and of its rights and responsibilities while it is in that status.

(2) The State agency shall set the household's change reporting requirements and the manner in which those changes will be reported and processed.

(3) The State agency shall specify which changes shall entitle the household to have its status converted from suspension to issuance, and which changes shall require the household to reapply for participation.

(4) The household shall retain the right to submit a new application while it is suspended.

(5) The State agency shall convert a household from suspension to issuance status, without requiring an additional certification interview, and issue its initial allotment, within ten days of the date the household reports the change.

(6) The State agency shall prorate the household's benefits, in the first month after the suspension period, from the date the household reports a change, in accordance with paragraph (a)(1) of this section.

(7) The State agency may delay the work registration of the household's members until the household is determined to be entitled to benefits.

(8) Whether a household member registers for work at the time of application or when the household is determined to be entitled to benefits, the State agency shall submit the member's work registration form to the State Employment Security Agency (SESA)

within five days after the household is determined to be entitled to benefits.

(9) The household shall not be subject to the job search requirements of § 273.7(f) until it has been determined to be entitled to benefits.

(iv) For those eligible households which are entitled to no benefits in their initial month of application, in accordance with paragraph (a)(1) of this section, but are entitled to benefits in subsequent months, the State agency shall certify the households beginning with the month of application.

(v) When a household's circumstances change and it becomes entitled to a different income eligibility standard, the State agency shall apply the different standard at the next recertification or whenever the State agency changes the household's eligibility, benefit level or certification period, whichever occurs first.

(vi) * * *

(B) Except as provided in paragraph (e)(2)(vi)(C) of this section, if the amount of benefits obtained by the calculation in paragraph (e)(2)(ii)(A) of this section is less than \$10 for one- and two-person households only, the household shall be provided a minimum benefit of \$10.

(C) In the event that the national reduction in benefits is 90 percent or more of the benefits projected to be issued for the affected month, the provision for a minimum benefit for households with one or two members only may be disregarded and all households may have their benefits lowered by reducing Thrifty Food Plan amounts by the percentage specified by the Department. The benefit reduction notice issued by the Department to effectuate a benefit reduction will specify whether minimum benefits for households with one or two members only are to be provided to households.

(D) If the action in effect is a suspension or cancellation, eligible households shall have their allotment levels calculated according to the procedures in paragraph (e)(2)(ii) of this section. However, the allotments shall not be issued for the month the suspension or cancellation is in effect. The provision for a \$10 minimum benefit for households with one or two members only shall be disregarded and all households shall have their benefits suspended or cancelled for the designated month.

* * * * *

13. In § 273.11, paragraphs (a)(2)(iii), (a)(4)(ii)(C), (b)(1)(iii), and (c)(3) are revised and paragraph (c)(4) is amended by removing the word "net" appearing between the words "household's" and

"monthly". The revision reads as follows:

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* * * *
 (2) *Determining monthly income from self-employment.* * * *
 (iii) The monthly net self-employment income shall be added to any other earned income received by the household. The total monthly earned income, less the 18-percent earned income deduction, shall then be added to all monthly unearned income received by the household. The standard deduction, dependent care, and shelter costs shall be computed as for any other household and subtracted to determine the monthly net income of the household.

(4) *Allowable costs of producing self-employment income.* * * *

(ii) * * *
 (C) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 18-percent earned income deduction specified in § 273.9(d)(2).

(b) *Boarders.*
 (1) *Households with boarders.* * * *
 (iii) *Deductible expenses.* The net income from self-employment shall be added to other earned income and the 18-percent earned income deduction shall be applied to the total. Shelter costs the household actually incurs, even if the boarder contributes to the household for part of the household's shelter expenses, shall be computed to determine if the household will receive a shelter deduction. However, the shelter costs shall not include any shelter expenses paid directly by the boarder to a third party, such as to the landlord or utility company.

(c) *Treatment of income and resources of disqualified members.* * * *

(3) *Deductible expenses.* The 18-percent earned income deduction shall apply to the prorated income earned by the disqualified member which is attributed to the household. That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the disqualified member shall be divided evenly among the household members, including the disqualified member. All but the disqualified member's share is counted as a deductible shelter expense for the remaining household members.

14. In § 273.12, introductory paragraph (e) and (e)(1)(i) are revised to read as follows:

§ 273.12 Reporting changes.

(e) *Mass changes.* Certain changes are initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include adjustments to the income eligibility standards, the shelter and dependent care deductions, the Thrifty Food Plan, and the standard deduction; annual and seasonal adjustments to Social Security, SSI, and other Federal benefits; periodic adjustments to AFDC or GA payments; and other changes in the eligibility criteria based on legislative or regulatory actions.

(1) *Federal adjustments to eligibility standards, allotments, and deductions, and State adjustments to utility standards.*

(i) These adjustments shall go into effect for all households at a specific point in time. State agencies may wish to consider timing the annual adjustments of their utility standards to coincide with the Federal shelter deduction adjustment, when such timing is permitted by § 273.9(d)(8).

(A) Adjustments in the Thrifty Food Plan shall be effective in accordance with § 273.10(e)(4)(ii).

(B) Adjustments in the standard deduction shall be effective in accordance with § 273.9(d)(7).

(C) Adjustments in the shelter/dependent care deduction shall be effective in accordance with § 273.9(d)(8).

(D) Adjustments in the income eligibility standards shall be effective in accordance with § 273.9(a)(3).

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

Appendix A—[Amended]

15. In Part 277, paragraph (C)(14) of Appendix A under the section entitled "Standards for Selected Items of Costs" is revised to read as follows:

Appendix A

Standards for Selected Items of Cost. * * *

(C) *Unallowable costs.* * * *

(14) Costs incurred as result of State agencies' outreach programs. This does not include costs associated with program information activities specified in § 272.6.

PART 281—ADMINISTRATION OF THE FOOD STAMP PROGRAM ON INDIAN RESERVATIONS

§ 281.2 [Amended]

16. In § 281.2, paragraph (b) is amended by removing the words "outreach plans" in the first sentence.

(91 Stat. 958 (7 U.S.C. 2011-2029)
 (Catalog of Federal Domestic Assistance Program No. 10.551, Food Stamps)

Dated: November 15, 1982.

John R. Block,
 Secretary.

[FR Doc. 82-31520 Filed 11-18-82; 8:45 am]

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Federal Register

Friday
November 19, 1982

Part V

Department of Education

Office of Elementary and Secondary
Education

Chapter 1 of the Education Consolidation
and Improvement Act of 1981; Financial
Assistance to Local Educational Agencies
to Meet Special Educational Needs of
Disadvantaged Children

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 76, 78, 200, and 201

Chapter 1 of the Education Consolidation and Improvement Act of 1981—Financial Assistance to Local Educational Agencies To Meet Special Educational Needs of Disadvantaged Children

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: Under Chapter 1 of the Education Consolidation and Improvement Act of 1981, the Department provides financial assistance to State and local educational agencies to meet the special educational needs of educationally deprived children on the basis of allocations calculated under Title I of the Elementary and Secondary Education Act of 1965. The Secretary issues final regulations implementing that portion of Chapter 1 that provides financial assistance to local educational agencies to meet the special educational needs of educationally deprived children in attendance areas with high concentrations of children from low-income families. These regulations replace the final regulations published on July 29, 1982.

Users of these regulations should be aware that the Secretary is issuing proposed regulations under 34 CFR Part 204 which contain general provisions applicable to all agencies receiving Chapter 1 funds. The provisions in Part 204, if published in final form as currently proposed, will supersede certain sections in these regulations.

EFFECTIVE DATE: Unless Congress takes certain adjournments, these regulations will take effect 45 days after publication in the *Federal Register* except § 200.56 which contains information collection requirements under review by OMB. If you want to know the effective date of these regulations, call or write the Department of Education contact person. At a later date the Secretary will publish a notice in the *Federal Register* stating the effective date of § 200.56.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas W. Fagan, Director, Division of Grants, Policy, and Administration, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3636, ROB-3), Washington, D.C. 20202. Telephone: (202) 245-9877.

SUPPLEMENTARY INFORMATION:**A. Overview of Chapter 1**

Chapter 1 of the Education Consolidation and Improvement Act of

1981 (Chapter 1) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Chapter 1 supersedes Title I of the Elementary and Secondary Education Act of 1965, as amended (Title I). The purpose of Chapter 1 is to continue to provide financial assistance to State and local educational agencies to meet the special educational needs of educationally deprived children, on the basis of allocations calculated under Title I, but to do so in a manner which will eliminate burdensome, unnecessary, and unproductive paperwork and free the schools of unnecessary Federal supervision, direction, and control.

The programs authorized by Chapter 1 provide financial assistance to—

- Local educational agencies (LEAs) for projects designed to meet the special educational needs of educationally deprived children and children in local institutions for neglected or delinquent children;
- State agencies for projects designed to meet the special educational needs of handicapped children;
- State agencies for projects designed to meet the special educational needs of children in institutions for neglected or delinquent children, or in adult correctional institutions;
- State educational agencies (SEAs) for projects designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishermen; and
- The Secretary of the Interior to meet the special educational needs of Indian children.

These regulations apply only to that portion of Chapter 1 that provides financial assistance to LEAs. The Secretary proposes to issue separate regulations to govern the other Chapter 1 programs.

On July 29, 1982, the Secretary issued final regulations governing financial assistance to LEAs under Chapter 1 (47 FR 32856). The final regulations in this document revise 34 CFR Part 200 published on July 29 to read as described below. The revised regulations reflect the Secretary's decision that the General Education Provisions Act (GEPA) generally applies to Chapter 1. This decision is discussed below in the "Application of other statutes and regulations" section.

B. Overview of these regulations

These regulations relate to—

- Applying for Chapter 1 Funds for Grants to Local Educational Agencies (Subpart A).

- Allocation of Chapter 1 Funds for Grants to Local Educational Agencies (Subpart B).
- Project Requirements (Subpart C).
- Fiscal Requirements (Subpart D).
- Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools (Subpart E).
- Due Process Procedures (Subpart F).

C. Summary of regulatory provisions**1. Applying for Chapter 1 Funds for Grants to Local Educational Agencies.**

Subpart A contains definitions of several key terms and explains the procedures for applying for Chapter 1 funds. As indicated in § 200.10, a State that wishes to receive Chapter 1 funds for LEA projects designed to meet the special educational needs of educationally deprived children must have on file with the Secretary assurances that meet the requirements in Section 435 of GEPA pertaining to fiscal control and fund accounting procedures. Sections 200.12-200.13 describe the procedures for submission of an LEA'S project application for approval by an SEA. Section 200.14 provides that an SEA shall approve an LEA'S application if that application meets the requirements in Section 556 of Chapter 1. Section 596(a) of Chapter 3 makes applicable the parts of Section 436 of GEPA that require LEA assurances with respect to fiscal control and fund accounting. The Secretary has decided that an undue administrative burden would be placed on LEAs and SEAs were separate assurances on these items required for LEAs to receive Chapter 1 allocations for FY 1983. Accordingly, the Secretary has determined that an LEA'S initial Chapter 1 project application, once approved by the SEA, is deemed to meet the applicable provisions of Section 436 of GEPA. For all succeeding Chapter 1 applications, however, LEA'S must submit the specific assurances required by the applicable provisions in Section 436 of GEPA.

2. Allocation of Chapter 1 Funds for Grants to Local Educational Agencies.

Subpart B describes the method of allocating Chapter 1 funds to LEAs for basic grants, special incentive grants, and concentration grants. Sections 200.45-200.46 specify procedures for the reallocation, under certain circumstances, of Chapter 1 funds by SEAs and the Secretary.

3. Project Requirements.

Although the Chapter 1 statute retains most of the basic project design characteristics found in Title I, it reflects the congressional intent to simplify the requirements. Subpart C contains the

requirements that apply to the design and operation of local Chapter 1 projects.

These requirements relate to—

- Selection of attendance areas (§ 200.49).
- Annual needs assessment (§ 200.50).
- Sufficient size, scope, and quality of project (§ 200.50).
- Prohibition against using Chapter 1 funds to provide general aid (§ 200.52).
- Consultation with parents and teachers (§ 200.53).
- Evaluation (§ 200.54).
- Allowable costs (§ 200.55).
- Recordkeeping requirements (§ 200.56).
- Audits and access to records (§ 200.57).
- Compromise of audit claims (§ 200.58).
- SEA rulemaking and other responsibilities (§ 200.59).

It should be emphasized that the provisions in Subpart C reflect the new flexibility provided by Chapter 1. For example, under § 200.53, an LEA is required to consult with parents and teachers of children being served, but is no longer required to have parent advisory councils. Although § 200.54 requires an LEA to evaluate its Chapter 1 project, it is not required to use any particular evaluation models.

4. Fiscal Requirements.

Subpart D contains the fiscal requirements that apply to LEAs that receive Chapter 1 funds. The provisions in this subpart relate to—

- Maintenance of effort (§§ 200.60–200.61).
- Supplement, not supplant (§ 200.62).
- Comparability of services (§ 200.63).
- Availability of funds (§ 200.64).

Chapter 1 retains the underlying principles of equity that were reflected in the fiscal requirements of Title I. However, Chapter 1 has significantly streamlined and modified those requirements so as to reduce the burden on LEAs and provide greater flexibility in determining compliance. The final regulations reflect these changes.

Under § 200.60, SEAs determine an LEA's compliance with the maintenance of effort requirement. Section 200.60(a) allows a ten percent leeway in meeting the maintenance of effort requirement by requiring that the LEA's fiscal effort for the preceding fiscal year be not less than 90 percent of that effort for the second preceding year. In addition, § 200.61 permits an SEA, rather than the Secretary, to waive the maintenance of effort requirement for one fiscal year if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial

resources of the LEA. The Conference Report indicates that Congress considers declining resources as a result of severe economic conditions, natural disaster, or similar circumstances as grounds for a waiver. However, the report also indicates that tax initiatives or referenda are not to be considered grounds for a waiver. 127 Cong. Rec. H5645 (daily ed. July 29, 1981).

Section 200.62 provides that an LEA may use Chapter 1 funds only to supplement, and to the extent practical, increase the level of funds that would, in the absence of Chapter 1 funds, be made available from non-Federal sources for the education of pupils participating in Chapter 1 projects, and in no case may Chapter 1 funds be used to supplant non-Federal funds. However, as indicated in § 200.62(b), in determining compliance with this supplement, not supplant requirement, an LEA may now exclude State and local funds expended for special programs designed to meet the educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1. Section 200.62(c) specifically provides that an LEA shall not be required to provide Chapter 1 services outside the regular classroom or school program in order to demonstrate compliance with the supplement, not supplant requirement.

Section 200.63 provides that State and locally-funded services in project areas must be at least comparable to services in nonproject areas. If all attendance areas are selected as project areas, State and locally funded services must be substantially comparable in each project area. However, as indicated in § 200.63(e), an LEA is deemed to have met the comparability requirement if it has filed with the SEA a written assurance that it has established: (1) A districtwide salary schedule; (2) a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and (3) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies. Section 200.63(d) permits an LEA, in determining compliance with the comparability requirement, to exclude State and local funds expended for special programs designed to meet the educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1. In addition, § 200.63(c) provides that unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year are not included as a factor in determining compliance with the comparability requirement.

Section 200.64 implements Section 412(b) of GEPA, specifically made applicable by Section 596(b) of the ECIA. Section 200.64 provides that an SEA or LEA may obligate funds during the fiscal year for which the funds were appropriated and during the succeeding fiscal year.

5. Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools.

Chapter 1 makes extensive provision for the participation of educationally deprived children in private schools. Subpart E clarifies the following areas regarding the participation of these children: responsibility of LEAs to provide Chapter 1 services; factors used in determining equitable participation; use of public school employees on other than public school premises; and public supervision and control of funds and equipment.

6. Due Process Procedures.

Subpart F contains specific procedures to afford due process protections to SEAs and LEAs concerning—

- Bypass determinations under Section 557(b) of Chapter 1.
- Final audit determinations.
- Determinations to withhold funds.
- Cease and desist complaints.

The bypass procedures in §§ 200.80–200.85 specify procedures for an affected SEA or LEA to challenge a determination by the Secretary to implement a bypass.

Sections 200.90–200.106 provide SEAs with procedures for challenging adverse final audit determinations, decisions to withhold funds, and cease and desist complaints. Under these regulations, these proceedings will be conducted before the Education Appeal Board. However, proceedings regarding final audit determinations and cease and desist complaints will be conducted in accordance with the practice and procedure of the Education Appeal Board whereas proceedings regarding the withholding of funds will be conducted in accordance with the provisions of the Administrative Procedure Act.

D. Additional guidance

Consistent with the Administration's efforts to reduce regulatory burden while increasing State and local flexibility, these regulations address a limited number of issues. As a result, these regulations do not prescribe specific methods for implementing each of the changes that Chapter 1 makes in previous Title I requirements (e.g., changes in requirements concerning

comparability of services, selection of project areas, needs assessment, and parental involvement). To the extent feasible, the Secretary will give deference to an SEA's interpretation of a Chapter 1 requirement if that interpretation is not inconsistent with the Chapter 1 statute, legislative history, and regulations.

Although the Secretary chooses not to impose any additional regulatory requirements concerning Chapter 1 program design, the Secretary is aware that many State and local officials have requested guidance regarding implementation of Chapter 1 programs. As a result, the Secretary is preparing a final document designed to provide further nonregulatory guidance to assist State and local officials in implementing Chapter 1. This guidance will be binding on all officials of the Department. It will not be binding, however, on SEAs or LEAs. It will clearly indicate that State and local officials are free to develop—indeed, are encouraged to develop—alternative approaches that are consistent with the statute and regulations but may be more in keeping with their particular needs and circumstances.

E. Application of other statutes and regulations

1. Recipients of funds under Chapter 1 are recipients of Federal financial assistance and therefore must comply with Federal civil rights laws generally applicable to recipients of Federal financial assistance. Consequently, those statutes, as well as the regulations that implement them, apply to Chapter 1 programs. The applicable civil rights regulations are found in 34 CFR Parts 100, 104, and 106. Although regulations implementing the Age Discrimination Act of 1975 have not yet been published, recipients of Chapter 1 funds must comply with the provisions of that Act.

2. The preamble of the regulations published on July 29, 1982 indicated that, except for the sections of GEPA that were specifically made applicable by Section 596 of the ECIA, the provisions of GEPA did not apply to Chapter 1. This determination was made because Section 596 of the ECIA is ambiguous on the issue of GEPA applicability and because of the concern that Chapter 1 be kept as free as possible from the imposition of detailed and sometimes conflicting requirements in GEPA that would decrease the flexibility and increase the burden of SEAs and LEAs in carrying out their Chapter 1 responsibilities.

In light of all comments received the Secretary has now reconsidered this determination following publication of

the regulations on July 29. In reconsidering the matter, the Secretary has been concerned that continuing controversy over the issue of GEPA applicability to Chapter 1 would impair the smooth and efficient implementation of the program. Therefore, subject to the exceptions stated below, the Secretary adopts the interpretation that GEPA is applicable to Chapter 1. The Department will carry out its administrative role under Chapter 1 in light of that determination.

Even though GEPA generally applies to Chapter 1, some specific provisions of GEPA are inapplicable as a matter of law because they are specifically made inapplicable by the ECIA, because they are superseded by specific provisions of the ECIA, or for other reasons explained below. Other provisions of GEPA, though not inapplicable, have been superseded by the Department of Education Organization Act or are otherwise irrelevant to the operation of the Chapter 1 program. After a careful reconsideration of the ECIA and its legislative history, the Secretary interprets the following sections of GEPA as inapplicable to Chapter 1 as a matter of law:

(a) Section 408(a)(1) of GEPA (authorizing the Secretary to promulgate regulations), 20 U.S.C. 1221e-3(a)(1), is superseded by Section 591(a) of the ECIA.

(b) Section 425 of GEPA, 20 U.S.C. 1231b-2, provides complex procedures regarding certain actions by an SEA that affect applicants or recipient under an applicable program. Section 425 also provides for Federal review of an SEA's action under that section. The Secretary believes that this provision was not intended to apply to Chapter 1. Section 425 only applies to programs in which assistance is provided "in accordance with a State plan approved by the Secretary." Chapter 1 is not such a program. Further, Section 425 of GEPA is clearly inconsistent with Section 552 of Chapter 1 which provides: "The Congress declares it to be the policy of the United States to continue to provide financial assistance to State and local educational agencies to meet the special needs of educationally deprived children * * * but to do so in a manner which will * * * free the schools of unnecessary Federal supervision, direction, and control."

(c) Section 426(a) of GEPA (relating to technical assistance from the Department), 20 U.S.C. 1231(a), is superseded by Section 591(b) of the ECIA.

(d) Section 427 of GEPA, 20 U.S.C. 1231d, directs the promulgation of Federal regulations or criteria relating to

parental participation where the Secretary determines that such participation at the State or local level will increase the effectiveness of a Federal program. The Secretary believes that Section 427 should not be invoked with respect to Chapter 1 even in the context of a determination of general GEPA applicability. The matter of parental involvement is covered in Section 556(b)(3) of Chapter 1, and the Secretary regards this section as preemptive and rendering unnecessary the issuance of regulations or criteria under Section 427 of GEPA.

(e) Section 430 of GEPA (regarding applications to receive Federal financial assistance), 20 U.S.C. 1231g, is superseded by Section 556 (Application by local educational agency) of Chapter 1.

(f) Section 431A of GEPA (relating to maintenance of effort determinations), 20 U.S.C. 1232-1, is inapplicable by its terms and, in any event, is superseded by Section 558(a) of Chapter 1 relating to the same topic.

(g) In accordance with Section 596(a) of the ECIA, Sections 434 (SEA monitoring and enforcement), 435 (single State application), and 436 (single LEA application) do not apply except to the extent that they relate to fiscal control and fund accounting procedures (including the title to property acquired with Federal funds).

The provision in Section 434 of GEPA which applies to Chapter 1 is in paragraph (a)(2) pertaining to the Secretary's discretionary authority to request a plan on audits. The Secretary is considering the issuance of an amendment to 34 CFR § 74.62 addressing the requirement of an audit plan in § 434(a)(2) of GEPA. This amendment would apply to Chapter 1 as well as other education programs.

Section 435 of GEPA applies to Chapter 1 only with respect to paragraphs (b)(2) and (b)(5), which pertain to two assurances concerning fiscal control and fund accounting procedures. Section 436 of GEPA applies to Chapter 1 with regard to similar assurances in paragraphs (b)(2) and (b)(3).

(h) Section 437(b) of GEPA (relating to access to records), 20 U.S.C. 1232f(b), is superseded by Section 1744 of the Omnibus Budget Reconciliation Act of 1981.

(i) Section 453 of GEPA (relating to withholding), 20 U.S.C. 1234b, is superseded by Section 592 of the ECIA relating to the same topic.

(j) The judicial review provisions of Section 593 of the ECIA are controlling with respect to judicial review of

withholding actions under Section 592 of the ECIA. Therefore, Section 455 of GEPA, 20 U.S.C. 1234d, is superseded to the extent that it applies to withholding actions under Chapter 1.

3. Sections 1741 (distribution of block grant funds), 1742 (reports on the proposed use of funds and public hearings), 1743 (transition provisions), and 1745 (State audit requirements) of the Omnibus Budget Reconciliation Act of 1981 do not apply to Chapter 1. However, Section 1744 regarding access to records by the Comptroller General does apply, and its provisions have been incorporated in § 200.57 of this part.

4. The Education Department General Administrative Regulations (EDGAR), with the exception noted in paragraph 5 below, do not apply to programs under Chapter 1. EDGAR includes 34 CFR Part 74, which implements OMB Circulars A-21, A-87, A-102, and A-110, and 34 CFR Part 76, which deals with State-administered programs. Rather than complying with the provisions contained in these parts, States may apply equivalent procedures of their own for financial management and control of their programs. However, States continuing to comply with the provisions in 34 CFR 74 will be considered to be in compliance with the fiscal control and fund accounting procedures required by Sections 435 and 436 of GEPA that apply to Chapter 1. The parts of EDGAR that do not apply to Chapter 2 also include 34 CFR Part 77 (definitions in EDGAR that apply generally to education programs) and Part 78 (Education Appeal Board).

5. 34 CFR 74.62 relating to non-Federal audits applies to Chapter 1. This section implements the audit requirements contained in Attachment P to OMB Circular A-102.

Public Participation

During the 60-day comment period, over 300 letters containing more than 1200 individual comments were received. Comments were also received in the course of briefing sessions conducted by the Department for State and local officials. A summary of significant comments and responses to them are contained in the appendix to these regulations. Responses have been revised as appropriate to reflect the Secretary's interpretation regarding the applicability of GEPA. The appendix will not appear in the Code of Federal Regulations.

The Department has carefully considered all comments received and has made changes warranted by the comments. The appendix summarizes these changes. In addition, since publication of the July 29 regulations, the

Secretary has made a number of changes in the citations of legal authority and other technical amendments to reflect the Secretary's decision that GEPA generally applies to Chapter 1. Because these changes are only technical, no further public comment is being requested. In any case, the issue of GEPA applicability has been fully debated in the rulemaking process just completed, and further comment is therefore unnecessary under 5 U.S.C. 553.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291 and are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered small entities under the Regulatory Flexibility Act.

These regulations will affect all small LEAs receiving Federal financial assistance under Chapter 1. However, the regulations will not have a significant economic impact on the small LEAs affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision.

The regulations impose minimal requirements to ensure the proper allocation and expenditure of program funds. Wherever possible, SEAs will have maximum authority and responsibility for supervising the LEAs and administering the program. Program funds may be used for LEA administrative expenses. For these reasons, the regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects

34 CFR Part 76

Grant programs—education, Grants administration, Intergovernment relation, State administered programs.

34 CFR Part 78

Administrative practice and procedure, Grant programs—education, Grants administration.

34 CFR Part 200

Education, Education of disadvantaged, Elementary and

secondary education, Grant programs—education, Juvenile delinquency, Neglected, Private schools, State-administered programs.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of the regulations. Unless otherwise noted, the citations refer to sections of the Education Consolidation and Improvement Act of 1981.

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children—Local Educational Agencies and No. 84.012, Educationally Deprived Children—State Administration)

Dated: November 9, 1982.

T. H. Bell,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

1. Part 200 is revised to read as follows:

PART 200—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

Subpart A—Applying for Chapter 1 Funds for Grants to Local Educational Agencies

General

- Sec.
200.1 Purpose.
200.2 Applicability of regulations in this part.
200.3 Definitions.
200.4 Acronyms that are frequently used.
200.5 Amount of funds available for chapter 1 grants.
200.6–200.9 [Reserved]

Application Procedure

- 200.10 State assurances.
200.11 Payments for State administration.
200.12 LEAs that may receive chapter 1 funds.
200.13 Submission of LEA project applications to the SEA.
200.14 SEA approval of applications.
200.15–200.19 [Reserved]

Subpart B—Allocation of Chapter 1 Funds for Grants to Local Educational Agencies

Basic Grants

- 200.20 Eligibility of LEAs for basic grants.
200.21 Determination by the secretary of basic grants.
200.22 Allocation of county aggregate amounts by SEAs.
200.23 Exceptions to county aggregate amounts.
200.24–200.29 [Reserved]

Special Incentive Grants

- 200.30 Eligibility for special incentive grants.
200.31 Amount of special incentive grants.

- Sec.
200.32 Method of making special incentive grants.
200.33 Use of special incentive grant funds.
200.34-200.39 [Reserved]

Concentration Grants

- 200.40 States to receive concentration grant funds.
200.41 Determinations of State and county concentration grants.
200.42 Determinations of LEA allocations.
200.43 Method of awarding concentration grant funds.
200.44 Use of concentration grant funds.

Reallocation

- 200.45 Reallocation of chapter 1 funds by SEAs.
200.46 Reallocation of chapter 1 funds by the Secretary.
200.47-200.48 [Reserved]

Subpart C—Project Requirements

- 200.49 Selection of attendance areas.
200.50 Annual needs assessment.
200.51 Sufficient size, scope, and quality of project.
200.52 Prohibition against using chapter 1 funds to provide general aid.
200.53 Consultation with parents and teachers.
200.54 Evaluation.
200.55 Allowable costs.
200.56 Recordkeeping requirements.
200.57 Audits and access to records.
200.58 Compromise of audit claims.
200.59 SEA rulemaking and other responsibilities.

Subpart D—Fiscal Requirements

- 200.60 Maintenance of effort.
200.61 Waiver of the maintenance of effort requirement.
200.62 Supplement, not supplant.
200.63 Comparability of services.
200.64 Availability of funds.
200.65-200.69 [Reserved]

Subpart E—Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools

- 200.70 Responsibility of LEAs.
200.71 Factors used in determining equitable participation.
200.72 Funds not to benefit a private school.
200.73 Use of public school employees.
200.74 Equipment and supplies.
200.75 Construction.
200.76-200.79 [Reserved]

Subpart F—Due Process Procedures

Procedures for Bypass

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Authority: Secs. 552-558, 591-596 of Pub. L. 97-35, 95 Stat. 464-469, 480-482 (20 U.S.C. 3801-3807, 3871-3876), unless otherwise noted.

Subpart A—Applying for Chapter 1 Funds for Grants to Local Educational Agencies

General

§ 200.1 Purpose.

Under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1), the Secretary provides financial assistance to local educational agencies (LEAs) for projects designed to meet the special educational needs of—

(a) Educationally deprived children selected in accordance with Section 556 of Chapter 1; and

(b) Children in local institutions for neglected or delinquent children.

(Sec. 552, 20 U.S.C. 3801; Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805)

§ 200.2 Applicability of regulations in this part.

(a) The regulations in this part apply to projects for which the Secretary provides financial assistance to LEAs under Chapter 1.

(b) The regulations do not apply to Chapter 1 projects operated by State agencies for handicapped children, neglected or delinquent children, or migratory children of migratory agricultural workers or migratory fishermen.

(Secs. 552-558, 20 U.S.C. 3801-3807)

§ 200.3 Definitions.

(a) The definitions in Section 595 of the Education Consolidation and Improvement Act of 1981 apply to the programs covered by this part.

(b) In addition to the definitions referred to in paragraph (a), the following definitions apply to this part: "Attendance area" means, in relation to a particular public school, the geographical area in which the children who are normally served by that school

reside. However, if a child's school attendance area cannot be determined on a geographical basis, the child is considered to be in the school attendance area of the school to which the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis.

"Chapter 1" means Chapter 1 of the Education Consolidation and Improvement Act of 1981.

"Children" means persons—

(1) Up to age 21 who are entitled to a free public education not above grade 12; or

(2) Who are of preschool age.

"Educationally deprived children" means children whose educational attainment is below the level that is appropriate for children of their age.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another twelve-month period normally used by the State educational agency (SEA) for recordkeeping.

"Institution for delinquent children" means, as determined by the SEA, a public or private residential facility that is operated for the care of children who have been determined to be delinquent or in need of supervision.

"Institution for neglected children" means, as determined by the SEA, a public or private residential facility—other than a foster home—that is operated for the care of children who have been committed to the institution—or voluntarily placed in the institution under applicable State law—because of the abandonment by, neglect by, or death of parents.

"Preschool children" means children who are—

(1) Below the age and grade level at which the LEA provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

"Private," as applied to an agency, organization, or institution, means that it is not under Federal or public supervision or control.

"Project area" means an attendance area in which a high concentration of children from low-income families reside, and that is selected by an LEA under Section 556(b) of Chapter 1, without regard to the locality of the project itself, as an area from which children are to be selected to participate in a Chapter 1 project.

"Public," as applied to an agency, organization, or institution, means under the administrative supervision or control

of a government other than the Federal Government.

"Title I" means Title I of the Elementary and Secondary Education Act of 1965, as amended.

(c) Additional definitions pertaining to the due process procedures in §§ 200.90-200.106 are contained in § 200.92 of these regulations.

(d) Any term used in the provisions of Title I referenced in Section 554 of Chapter 1 and not defined in Section 595 of Chapter 1 has the same meaning as that term was given in Title I.

(e) The definitions in 34 CFR Part 77 (definitions in EDGAR that apply generally to education programs) do not apply to programs covered by this part.

(Secs. 552-558; 20 U.S.C. 3801-3807; Sec. 595, 20 U.S.C. 3875)

§ 200.4 Acronyms that are frequently used.

The following acronyms are used frequently in this part:

"LEA" stands for local educational agency.

"SEA" stands for State educational agency.

(Secs. 552-558, 20 U.S.C. 3801-3807; Sec. 595, 20 U.S.C. 3875)

§ 200.5 Amount of funds available for Chapter 1 grants.

(a) *Grants to SEAs.* The Secretary annually notifies an SEA of the amount of funds the SEA is eligible to receive for the next fiscal year for—

(1) Allocation to LEAs under paragraph (b) of this section; and

(2) State administration of Chapter 1 programs.

(b) *Grants to LEAs.* The SEA, on the basis of county allocations provided by the Secretary or, if necessary, on the basis of other data, shall annually—

(1) Determine, in accordance with §§ 200.21-200.23, 200.31, and 200.42, the amount of Chapter 1 funds that each LEA is eligible to receive under this part for the next fiscal year; and

(2) Notify each LEA of the amount determined under paragraph (b)(1) of this section.

(Sec. 554, 20 U.S.C. 3803)

§§ 200.6-200.9 [Reserved]

Application Procedure

§ 200.10 State assurances.

(a) A State that wishes to receive Chapter 1 funds for LEA projects designed to meet the special educational needs of educationally deprived children shall file with the Secretary assurances that meet the requirements in Section 435 (b)(2) and (b)(5) of the General Education Provisions Act

(GEPA) relating to fiscal control and fund accounting procedures.

(b) When an SEA files the assurances required in paragraph (a) of this section, the assurances will remain in effect for the duration of the SEA's participation in Chapter 1.

(Sec. 596(a), 20 U.S.C. 3876(a))

§ 200.11 Payments for State administration.

The Secretary pays each State an amount to be spent by it for the proper and efficient performance of its duties under Chapter 1, provided that the amount paid by the Secretary for any fiscal year does not exceed the limits imposed by Section 554 (b) and (d) of Chapter 1.

(Sec. 554(b), 20 U.S.C. 3803(b); Sec. 554(d), 20 U.S.C. 3803(d))

§ 200.12 LEAs that may receive Chapter 1 funds.

An LEA that is eligible to receive funds for a fiscal year may receive those funds through a grant from the SEA, if the LEA has on file with the SEA a Chapter 1 project application that—

(a) Describes the projects to be conducted with the Chapter 1 funds; and

(b) Has been approved by the SEA.

(Sec. 556, 20 U.S.C. 3805)

§ 200.13 Submission of LEA project applications to the SEA.

(a) *Frequency of submission.* An LEA shall submit to the SEA an application for a Chapter 1 project to be conducted during a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that application.

(b) *Contents of the application.* The LEA's Chapter 1 project application must include—

(1) A description of the Chapter 1 project to be conducted;

(2) The assurances required under Section 556(b) of Chapter 1; and

(3) The assurances required by Section 436(b)(2) and (b)(3) of GEPA.

(c) *Annual updating of information in the Chapter 1 application.* An LEA shall annually update its Chapter 1 project application by submitting to its SEA—

(1) Data showing that the LEA has maintained its fiscal effort as required by Section 558(a) of Chapter 1; and

(2) A budget for the expenditure of Chapter 1 funds.

(d) *Further updating of information in the application.* When there are substantial changes in the number or needs of the children to be served or the services to be provided, the LEA shall submit a description of those changes to the SEA.

(Sec. 556, 20 U.S.C. 3805)

§ 200.14 SEA approval of applications.

(a) *Standards for approval.* An SEA shall approve an LEA's application for Chapter 1 funds, if that application meets the requirements in Section 556 of Chapter 1.

(b) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA of its responsibility to comply with all applicable requirements.

(Sec. 556, 20 U.S.C. 3805)

§§ 200.15-200.19 [Reserved]

Subpart B—Allocation of Chapter 1 Funds for Grants to Local Educational Agencies

Basic Grants

§ 200.20 Eligibility of LEAs for basic grants.

(a) Each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible for a basic Chapter 1 grant for a fiscal year if—

(1) The Secretary determines, on the basis of satisfactory available data, that there are at least 10 children counted under Section 111(c) of Title I (Children to be counted) in the school district of the LEA; or

(2) The Secretary does not have available satisfactory data on a school district basis, but the school district served by the LEA is located, in whole or in part, in a county in which the Secretary determines there are at least 10 children counted under Section 111(c) of Title I.

(b) The Secretary allocates funds appropriated for basic Chapter 1 grants among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands on the basis of their respective needs for Chapter 1 funds, and to the Secretary of the Interior for programs for Indian children.

(Sec. 554, 20 U.S.C. 3803)

§ 200.21 Determination by the Secretary of basic grants.

(a) If satisfactory census data by LEA are available from the Department of Commerce, the Secretary determines the amount of the basic Chapter 1 grant that each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible to receive for a fiscal year under the method in Sections 111(a)(2)(A) (relating to amounts when data are available) and 111(c) of Title I.

(b)(1) If satisfactory census data by LEA are not available from the Department of Commerce, the Secretary determines the county aggregate amount of basic Chapter 1 grant funds that all LEAs in a county are eligible to receive under the method in Sections 111(a)(2)(B) (relating to amounts when data by LEA are not available and 111(c) of Title I.

(2) The county aggregate amount referred to in paragraph (b)(1) of this section includes an amount based on the number of children aged 5 through 17 who—under the criteria in Section 111(c)(2)(B) of Title I (relating to determining numbers of children)—are living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, but who are not counted under Subpart 3 of Part B of Title I (Programs for neglected or delinquent children operated by State agencies) for purposes of a grant to a State agency.

(c) If the amount appropriated for basic grants for any fiscal year exceeds the amount appropriated for basic grants in fiscal year 1979, the Secretary—under Section 111(a)(3)(D) of Title I (relating to allocating amounts over the amounts available for fiscal year 1979)—allocates an amount equal to one-half of the excess amount to SEAs on the basis of data from the 1975 Survey of Income and Education conducted by the Bureau of the Census.

(d) If the funds appropriated by Congress for any fiscal year are not sufficient to pay the full amount that all LEAs are eligible to receive under basic Chapter 1 grants, the Secretary ratably reduces, using the procedures in Section 193 of Title I (Adjustments where necessitated by appropriations), the amount available to each LEA or county.

(Sec. 554, 20 U.S.C. 3803)

§ 200.22 Allocation of county aggregate amounts by SEAs.

Except as provided in § 200.23, an SEA shall allocate the county aggregate amounts, determined by the Secretary under § 200.21, by using the following procedures:

(a) *Allocations based on children in local institutions for neglected or delinquent children.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, the SEA shall first allocate to a particular LEA that portion, if any, of the county aggregate amount that is based—

(i) On the number of children, aged 5 through 17, in the LEA's district who resided in a local institution for neglected or delinquent children—and were not counted under Subpart 3 of

Part B of Title I (Programs for neglected or delinquent children operated by State agencies)—for at least 30 consecutive days, at least one of which was in the month of October of the preceding fiscal year; or

(ii) On the most recent reliable data available at the time of the determination, if the data referred to in paragraph (a)(1)(i) of this section are not available before January of the calendar year in which the Secretary's determination under § 200.21 is made.

(2) If the SEA determines that the LEA is unable or unwilling to provide for the special educational needs of the children referred to in paragraph (a)(1) of this section, the SEA shall—

(i) Reduce the LEA's allocation by the amount that is based on children in local institutions for neglected or delinquent children; and

(ii) Assign that portion of the LEA's grant to—

(A) The SEA if the SEA assumes educational responsibility for those children; or

(B) Another State or local public agency if that agency agrees to assume educational responsibility for those children.

(3) If no public agency is willing to assume educational responsibility for the children referred to in paragraph (a)(1) of this section, the SEA may not reallocate that portion of the LEA's grant that is based on children in local institutions for neglected or delinquent children to any other agency.

(4) If a local institution for neglected or delinquent children closes and the children are transferred to an institution in the school district of another LEA, the SEA shall adjust the allocations of the two LEAs to reflect that transfer.

(b) *Allocations based on the distribution of children from low-income families.* (1) *General rule.* After following the procedures in paragraph (a) of this section, the SEA shall allocate the remaining county aggregate amount to LEAs in the county on the basis of the best available data on the number of children from low-income families in the school districts of those LEAs.

(2) *Special circumstances.* The SEA shall adjust the allocations that it makes under paragraph (b)(1) of this section to reflect the following special circumstances:

(i) *LEAs in more than one county.* If a school district of an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to that LEA from the county aggregate amount for each county in which that district is located provided the aggregate number of children in the LEA is 10 or more.

(ii) *LEAs serving children from another LEA.* If an LEA serves a substantial number of children from the school district of another LEA or serves different children within the same geographical area as another LEA, the SEA may adjust the allocations of those LEAs, among them, in a manner that it determines will best carry out the purposes of Chapter 1.

(iii) *Changes in LEAs.* If an LEA's school district is merged or consolidated, or a portion of the district is transferred to another LEA, the SEA may—

(A) Adjust the allocations of those LEAs to reflect the number of children from low-income families for whom each remaining LEA is providing a free public education; or

(B) Permit an LEA that submitted a previously approved project application to carry out the approved project, by itself or in cooperation with another LEA, during the remainder of the fiscal year.

(3) *Minimum allocation.* The SEA is not required to allocate to an LEA a basic grant of Chapter 1 funds generated by fewer than 10 children.

(Sec. 554, 20 U.S.C. 3803)

§ 200.23 Exceptions to county aggregate amounts.

In any State in which a large number of LEAs overlap county boundaries, the SEA may make allocations of basic grants and special incentive grants directly to LEAs without regard to counties, if such allocations were made during fiscal year 1982, except that—

(a) Precisely the same factors are to be used to determine the amount as were used to compute the county aggregate amount under § 200.21(b); and

(b) An LEA dissatisfied with the determination is to be afforded an opportunity for a hearing on the matter by the SEA.

(Sec. 558(e), 20 U.S.C. 3807(e))

§§ 200.24–200.29 [Reserved]

Special Incentive Grants

§ 200.30 Eligibility for special incentive grants.

(a) An LEA that is eligible to receive a basic Chapter 1 grant for any fiscal year shall be entitled to an additional grant under Section 116 of Title I (relating to special incentive grants) if the LEA is located in a State that has in effect for that fiscal year a State program that meets the requirements in Section 131(c) of Title I (which describes certain State and local compensatory education programs that are similar to Title I) and Section 116(a)(2)(B) of Title I (relating to

the percentage of State funds expended in low-income areas).

(b)(1) An SEA that desires to have its LEAs be eligible to receive an additional grant shall develop a system for determining the eligibility data required by Section 116(b)(4) of Title I and the amount of State funds expended under the State program referred to in paragraph (a) of this section.

(2) Upon request, the SEA shall submit to the Secretary information on the system developed in paragraph (b)(1) of this section.

(Sec. 554, 20 U.S.C. 3803)

§ 200.31 Amount of special incentive grants.

The amount of special incentive grants which the LEAs in a State will receive for any fiscal year is determined under the procedures in Section 116(b) and (c) of Title I.

(Sec. 554, 20 U.S.C. 3803)

§ 200.32 Method of making special incentive grants.

The Secretary includes that amount of special incentive grant funds that a State will receive during a particular fiscal year in the amount of Chapter 1 funds paid to that State for that fiscal year.

(Sec. 554, 20 U.S.C. 3803)

§ 200.33 Use of special incentive grant funds.

An LEA that receives special incentive grant funds shall use those funds to carry out activities described in the approved project application for Chapter 1 funds that the LEA submits to the SEA under § 200.13.

(Sec. 554, 20 U.S.C. 3803)

§§ 200.34-200.39 [Reserved]

Concentration Grants

§ 200.40 States to receive concentration grant funds.

A State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under Chapter 1 for any fiscal year receives concentration grant funds from the amount of concentration grant funds available for that fiscal year.

(Sec. 554, 20 U.S.C. 3803)

§ 200.41 Determinations of State and county concentration grants.

(a) The Secretary determines the amount of concentration grant funds that each county and State is eligible to receive by using the procedures in Section 117 of Title I (relating to the amount of the concentration grant).

(b) Each State that receives concentration grant funds receives at least one-quarter of one percent of the total concentration grant funds available for the fiscal year.

(1) A county that meets the statutory eligibility criteria and is located in a State that receives the minimum allocation of concentration grant funds is allocated the same proportion of the total concentration grant allocation as an eligible county that is located in a State that receives more than the minimum allocation. After each county has been allocated its proportionate share, the Secretary allocates to the SEA any concentration grant funds that remain unallocated.

(2) If no county in a State that receives the minimum allocation of concentration grant funds meets the statutory eligibility criteria, the Secretary allocates the total amount of the minimum allocation of concentration grant funds to the SEA.

(3) The SEAs that receive the minimum allocation of concentration grant funds may distribute the amount that has been allocated to the SEA under (b) (1) and (2) of this section—

(i) Among only those counties that receive basic grants and have high concentrations of children from low-income families. The SEA shall use the best available data on the current distribution of children from low-income families for selecting these counties; or

(ii) Among all counties in the State that receive basic grant funds based on the total number of children counted in each county for purposes of the basic grant statutory formula under the criteria in Section 111(c) of Title I.

(Sec. 554, 20 U.S.C. 3803)

§ 200.42 Determination of LEA allocations.

(a) The SEA shall distribute concentration grant funds among the LEAs in each county that receives those funds in accordance with § 200.41, on the basis of the current distribution within each of those counties of children aged 5 through 17. In making this distribution, the SEA shall use either of the following procedures, as applicable:

(1) Each LEA in which 20 percent or more of the children are counted as being from low-income families under the Chapter 1 basic grant formula receives a portion of the county's concentration grant allocation based on the number of children counted under the basic grant formula.

(2) Each LEA in which less than 20 percent of the children are counted as being from low-income families under the basic grant formula receives a portion of the county's concentration grant allocation based on (A) the

number of children counted under the Chapter 1 basic grant formula multiplied by (B) a fraction in which the numerator is the percentage of children in the LEA that are counted under the basic grant formula and the denominator is 20.

(Sec. 554, 20 U.S.C. 3803)

§ 200.43 Method of awarding concentration grant funds.

The Secretary includes the amount of concentration grant funds that a State is entitled to receive during a particular fiscal year in the amount of Chapter 1 funds paid to that State for that fiscal year.

(Sec. 554, 20 U.S.C. 3803)

§ 200.44 Use of concentration grant funds.

An LEA that receives concentration grant funds shall use those funds to carry out activities that are described in an approved project application for Chapter 1 funds that the LEA submits to the SEA under § 200.13.

(Sec. 554, 20 U.S.C. 3803)

Reallocation

§ 200.45 Reallocation of chapter 1 funds by SEAs.

(a) During each fiscal year, an SEA shall—

(1) Determine which, if any, LEAs have received allocations of Chapter 1 funds that exceed the amount required to—

(i) Operate their Chapter 1 projects effectively during the current fiscal year; and

(ii) Provide a prudent and justifiable reserve of Chapter 1 funds for operating their Chapter 1 projects effectively during the next fiscal year; and

(2) Notify each LEA identified under paragraph (a)(1) of this section of—

(i) The amount of that LEA's Chapter 1 funds that the SEA is considering reallocating to other LEAs under paragraph (b) of this section; and

(ii) The opportunity for that LEA to amend its Chapter 1 application to include approvable proposals for use of the excess funds.

(b)(1) If the LEA fails to amend properly its Chapter 1 application in response to the opportunity provided under paragraph (a) of this section, the SEA shall reallocate the excess Chapter 1 funds to LEAs that have the greatest need for such funds for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the allocation provisions in Section 111(a) of Title I as a result of factors like population shifts and changing economic circumstances.

(2) The SEA shall notify the Secretary of those reallocations.

(Sec. 554, 20 U.S.C. 3803)

§ 200.46 Reallocation of Chapter 1 funds by the Secretary.

If excess amounts of Chapter 1 funds remain after an SEA has completed the process in § 200.45, the Secretary distributes those excess funds among other States on the basis of need.

(Sec. 554, 20 U.S.C. 3803)

§ 200.47-200.48 [Reserved]

Subpart C—Project Requirements

§ 200.49 Selection of attendance areas.

An LEA that receives Chapter 1 funds shall operate Chapter 1 projects that are—

(a) Conducted in attendance areas of the LEA having the highest concentrations of low-income children;

(b) Located in all attendance areas of the LEA if the LEA has a uniformly high concentration of low-income children; or

(c) Designed to utilize part of the Chapter 1 funds for services that promise to provide significant help for all educationally deprived, low-income children served by the LEA.

(Sec. 556(b)(1), 20 U.S.C. 3805(b)(1))

§ 200.50 Annual needs assessment.

An LEA that receives Chapter 1 funds shall base its Chapter 1 project on an annual assessment of educational needs that—

(a) Identifies educationally deprived children in all eligible attendance areas, including educationally deprived children in private schools;

(b) Permits the selection of those educationally deprived children in the greatest need of special assistance; and

(c) Determines the educational needs of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(Sec. 556(b)(2); 20 U.S.C. 3805(b)(2))

§ 200.51 Sufficient size, scope, and quality of project.

An LEA that receives Chapter 1 funds shall use those funds for a project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served.

(Sec. 556(b)(3), 20 U.S.C. 3805(b)(3))

§ 200.52 Prohibition against using chapter 1 funds to provide general aid.

An LEA may use chapter 1 funds only for projects that are designed and implemented to meet the special educational needs of educationally deprived children, identified in

accordance with Section 556(b)(2) of Chapter 1, and who are included in an application for assistance approved by the SEA.

(Sec. 552, 20 U.S.C. 3801; Sec. 555(c), 20 U.S.C. 3804(c); Sec. 556(b)(2), 20 U.S.C. 3805(b)(2))

§ 200.53 Consultation with parents and teachers.

(a) An LEA that receives Chapter 1 funds shall design and implement its Chapter 1 project in consultation with parents and teachers of the children being served, including parents and teachers of children in private schools.

(b) To meet the consultation requirement in paragraph (a) of this section, an LEA may, but is not required to, establish and use parent advisory councils.

(Sec. 556(b)(3), 20 U.S.C. 3805(b)(3); 127 Cong. Rec. H5645 (daily ed. July 29, 1981))

§ 200.54 Evaluation.

An LEA that receives Chapter 1 funds shall, at least once every three years, evaluate its Chapter 1 project in terms of its effectiveness in achieving the goals set for it. This evaluation must include—

(a) Objective measurements of educational achievement in basic skills; and

(b) A determination of whether improved performance is sustained over a period of more than one year.

(Sec. 556(b)(4), 20 U.S.C. 3805(b)(4))

§ 200.55 Allowable costs.

(a) An LEA may use Chapter 1 funds only to meet the costs of project activities that—

(1) Are designed to meet the special educational needs of educationally deprived children identified under Section 556(b)(2) of Chapter 1;

(2) Are included in an application approved by an SEA under § 200.14; and

(3) Comply with all applicable Chapter 1 requirements, including the assurances required under Section 556(b) of Chapter 1.

(b) The project activities referred to in paragraph (a) of this section may include the activities in Section 555(c) of Chapter 1.

(Sec. 555(c), 20 U.S.C. 3804(c))

§ 200.56 Recordkeeping requirements.

(a) An SEA or LEA that receives Chapter 1 funds shall use fiscal control and fund accounting procedures that will ensure proper disbursement of an accounting for Chapter 1 funds.

(b) The SEA or LEA shall keep—

(1) Records of the amount and disposition of all Chapter 1 funds, including records that show the share of

the cost provided from non-chapter 1 sources;

(2) Other records that are needed to facilitate an effective audit of the Chapter 1 project and that show compliance with Chapter 1 requirements; and

(3) Evaluation data collected under § 200.54.

(c) All records required under this section must be retained—

(1) For five years after completion of the activity for which the funds were used;

(2) Until all pending audits or reviews concerning the Chapter 1 project have been completed; and

(3) Until all findings and recommendations arising out of any audits or reviews concerning the Chapter 1 project have been finally resolved.

(Sec. 555(d); 20 U.S.C. 3804(d); Sec. 556(b); 20 U.S.C. 3805(b); Sec. 596(a), 20 U.S.C. 3876(a); Sec. 437(a) of GEPA, 20 U.S.C. 1232(a))

§ 200.57 Audits and access to records.

(a) *Federal responsibilities.* (1) For the purpose of evaluating and reviewing the use of Chapter 1 funds—

(i) The Inspector General of the Department, authorized Department officials, and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that—

(A) Are related to programs assisted with Chapter 1 funds; and

(B) Are in the possession, custody, or control of SEAs or LEAs; and

(ii) The Inspector General of the Department and the Comptroller General are authorized to conduct audits.

(2) An SEA shall repay to the Department the amount of Chapter 1 funds determined by the audit not to have been spent in accordance with applicable law.

(b) *State and local responsibilities.* (1) Any State or local government that receives Chapter 1 funds shall comply with the audit requirements in 34 CFR 74.62.

(2)(i) An LEA shall repay to the SEA the amount of Chapter 1 funds determined by the State not to have been spent in accordance with applicable law.

(ii) If the SEA recovers funds under paragraph (2)(i) of this section during the period in which the misspent Chapter 1 funds are still available for obligation under the terms of Section 412(b) of GEPA (relating to the availability of appropriations), the SEA shall treat the recovered funds as Chapter 1 funds and—

(A) Reallocate those funds to eligible LEAs—other than the agency that was found to have misspent the funds—under the procedures in § 200.45; or

(B) Return the funds for proper use to the LEA from which they were received.

(iii) If the Chapter 1 funds that an SEA recovers under paragraph (b)(2)(i) of this section are no longer available for obligation under the terms of Section 412(b) of GEPA, the SEA shall return those funds to the Department.

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 556(b), 20 U.S.C. 3805(b); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 1744 of the Omnibus Budget Reconciliation Act of 1981, 31 U.S.C. 1243 note; Secs. 3, 4, and 6 of the Inspector General Act of 1978, Pub. L. 95-452 (5 U.S.C. App.); Sec. 202 of the Intergovernmental Cooperation Act of 1968, Pub. L. 90-577 (42 U.S.C. 4212))

§ 200.58 Compromise of audit claims.

In deciding whether to compromise audit claims, or in recommending possible compromises to the Department of Justice, the Secretary may take into account—

(a) The cost of collecting the claim;

(b) The probability of the claim being upheld;

(c) The nature of the violation involved;

(d) Whether the practices of the SEA or LEA that resulted in the audit finding have been corrected;

(e) Whether the SEA or LEA is in all other respects in compliance with Chapter 1; and

(f) The extent to which the SEA or LEA agrees to use non-Federal funds to supplement Chapter 1 programs.

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 556(b), 20 U.S.C. 3805(b); Sec. 452 of GEPA, 20 U.S.C. 1234a; Federal Claims Collection Act, 31 U.S.C. 951 *et seq.*; 4 CFR Part 103)

§ 200.59 SEA rulemaking and other responsibilities.

(a) *General responsibilities of an SEA.* An SEA is responsible for ensuring that its LEAs comply with all applicable statutory and regulatory provisions pertaining to Chapter 1.

(b) *SEA rulemaking.* To carry out its responsibilities, an SEA may, in accordance with State law, adopt rules, regulations, procedures, guidelines, and criteria regarding the use of Chapter 1 funds, provided that those rules, regulations, procedures, guidelines, and criteria do not conflict with the provisions of—

(1) Chapter 1;

(2) The regulations in this part; or

(3) other applicable Federal statutes and regulations.

(Sec. 556, 20 U.S.C. 3805; Sec. 591, 20 U.S.C. 3871)

Subpart D—Fiscal Requirements

§ 200.60 Maintenance of effort.

(a) *Basic standard.* (1) Except as provided in § 200.61, an LEA may receive its allocation of funds under Chapter 1 for any fiscal year only if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, "preceding fiscal year" means the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year for which funds are available.

Example. For funds first made available on July 1, 1982, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1981 (which began on October 1, 1980). If a State is using a fiscal year that begins on July 1, 1982, the "preceding fiscal year" is the 12-month fiscal period ending on June 30, 1981.

(b) *Failure to maintain effort.* (1) If an LEA fails to maintain effort and a waiver under § 200.61 is not appropriate, the SEA shall reduce the LEA's allocation of funds under Chapter 1 in the exact proportion to which the LEA fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA may consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example. In fiscal year 1983, an LEA fails to maintain effort because its fiscal effort in 1981 is less than 90 percent of its fiscal effort in 1980; then, in the following fiscal year (1984), the LEA's fiscal effort in the second preceding year (1981) could be considered to be no less than 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 558(a), 20 U.S.C. 3807(a))

§ 200.61 Waiver of the maintenance of effort requirement.

(a)(1) An SEA may waive, for one fiscal year only, the maintenance of

effort requirement in § 200.60 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include—

(i) A natural disaster;

(ii) A precipitous and unforeseen decline in the financial resources of the LEA; or

(iii) Other exceptional or uncontrollable circumstances.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall not reduce the amount of Chapter 1 funds the LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA may consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example. An LEA secures a waiver because its fiscal effort in the preceding fiscal year (1981) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1980) due to exceptional or uncontrollable circumstances; then, in the following fiscal year, the LEA's fiscal effort in the second preceding fiscal year (1981) could be considered to be no less than 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 558(a)(3), 20 U.S.C. 3807(a)(3); 127 Cong. Rec. H5645 (daily ed. July 29, 1981))

§ 200.62 Supplement, not supplant.

(a) Except as provided in paragraph (b) of this section, an LEA may use Chapter 1 funds only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of Chapter 1 funds, be made available for the education of pupils participating in Chapter 1 projects, and in no case may Chapter 1 funds be used to supplant those non-Federal funds.

(b) An LEA may exclude, for the purpose of determining compliance with the supplement, not supplant requirement in paragraph (a) of this section, State and local funds spent in carrying out special programs to meet the special educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1.

(c) In order to demonstrate compliance with the supplement, not supplant requirement in paragraph (a) of this section, an LEA shall not be

required to provide Chapter 1 services outside the regular classroom or school program.

(Sec. 558(b), 20 U.S.C. 3807(b); Sec. 558(d), 20 U.S.C. 3807(d))

§ 200.63 Comparability of services.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, an LEA may receive Chapter 1 funds only if it uses State and local funds to provide services in project areas that, taken as a whole, are at least comparable to services being provided in school attendance areas that are not receiving Chapter 1 funds.

(b) Except as provided in paragraphs (c) and (d) of this section, if an LEA selects all its school attendance areas as project areas, the LEA may receive Chapter 1 funds only if it uses State and local funds to provide services that, taken as a whole, are substantially comparable in each project area.

(c) Unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year shall not be included as a factor in determining compliance with the comparability of services requirements in paragraphs (a) and (b) of this section.

(d) An LEA may exclude, for the purpose of determining compliance with the comparability requirements in paragraphs (a) and (b) of this section, State and local funds spent in carrying out special programs to meet the educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1.

(e) An LEA shall be deemed to have met the comparability requirements in paragraphs (a) and (b) of this section if it has filed with the SEA a written assurance that it has established—

- (1) A districtwide salary schedule;
- (2) A policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and
- (3) A policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

(Sec. 558(c), 20 U.S.C. 3807(c); Sec. 558(d), 20 U.S.C. 3807(d))

§ 200.64 Availability of funds.

(a) An SEA or LEA may obligate funds during the fiscal year for which the funds were appropriated and during the succeeding fiscal year.

(b) The SEA or LEA shall return to the Department any funds not obligated by the end of the succeeding fiscal year.

(c)(1) Chapter 1 funds are obligated when an SEA or LEA—

(i) Commits funds, according to State law or practice, to the support of specific programmatic or administrative activities; and

(ii) Identifies Chapter 1 funds allocated for a particular fiscal year as supporting those specific programmatic or administrative activities.

(2) For purposes of this section, the SEA's distribution of funds to LEAs is not the obligation of those funds.

(Sec. 596, 20 U.S.C. 3876; Sec. 412(b) of GEPA, 20 U.S.C. 1225(b))

§§ 200.65–200.69 [Reserved]

Subpart E—Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools

§ 200.70 Responsibility of LEAs.

(a)(1) In consultation with private school officials, an LEA shall provide educationally deprived children residing in a project area of the LEA who are enrolled in private elementary and secondary schools with special educational services and arrangements as will assure participation on an equitable basis of those children in accordance with the requirements in §§ 200.70–200.75 and Section 557(a) of Chapter 1.

(2) If the LEA decides to serve educationally deprived, low-income children under Section 556(b)(1)(C) of Chapter 1, the LEA shall also provide Chapter 1 services to educationally deprived, low-income children in private schools as will assure participation on an equitable basis of those children in accordance with the requirements in §§ 200.70–200.75 and Section 557(a) of Chapter 1.

(b) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and special educational needs of the educationally deprived children in private schools.

(c) The LEA shall exercise administrative direction and control over Chapter 1 funds and property that benefit educationally deprived children in private schools.

(d)(1) Provision of services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, an association, agency or corporation who or which, in the provision of those services, is independent of the private school and of any religious organizations.

(2) This employment or contract must be under the control and supervision of the public agency.

(e) In its application for Chapter 1 funds, the LEA shall make provision for

services to educationally deprived children attending private elementary and secondary schools.

(Sec. 555, 20 U.S.C. 3804; Sec. 556(b)(5), 20 U.S.C. 3805(b)(5); Sec. 557(a), 20 U.S.C. 3806(a); Sec. 591(a), 20 U.S.C. 3871(a); Sec. 596(a), 20 U.S.C. 3876(a))

§ 200.71 Factors used in determining equitable participation.

(a) *Equal expenditures.* Expenditures for educational services and arrangements for educationally deprived children in private schools must be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the LEA.

(b) *Services on an equitable basis.* The Chapter 1 services that an LEA provides for educationally deprived children in private schools must be equitable (in relation to the services provided to public school children) and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the private school children to be served.

(Sec. 557(a), 20 U.S.C. 3806(a); Sec. 556(b)(3), 20 U.S.C. 3805(b)(3))

§ 200.72 Funds not to benefit a private school.

(a) An LEA shall use Chapter 1 funds to provide services that supplement the level of services that would, in the absence of Chapter 1 services, be available to children in private schools.

(b) An LEA shall use Chapter 1 funds to meet the special educational needs of children in private schools, but not for—

- (1) The needs of the private schools; or
- (2) The general needs of the children in the private schools.

(Sec. 557(a), 20 U.S.C. 3806(a))

§ 200.73 Use of public school employees.

An LEA may use Chapter 1 funds to make public employees available in other than public facilities—

(a) To the extent necessary to provide equitable Chapter 1 services designed for children in a private school; and

(b) If those services are not normally provided by the private school.

(Sec. 557(a), 20 U.S.C. 3806(a))

§ 200.74 Equipment and supplies.

(a) To meet the requirements of Section 557(a) of Chapter 1, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with Chapter 1 funds.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used for Chapter 1 purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for Chapter 1 purposes; or

(2) Removal is necessary to avoid use of the equipment or supplies for other than Chapter 1 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

(Sec. 557(a), 20 U.S.C. 3806(a); Sec. 596(a), 20 U.S.C. 3876(a))

§ 200.75 Construction.

No Chapter 1 funds may be used for repairs, minor remodeling, or construction of private school facilities.

(Sec. 557(a), 20 U.S.C. 3806(a))

§§ 200.76–200.79 [Reserved]

Subpart F—Due Process Procedures

Procedures for Bypass

§ 200.80 Bypass—General.

(a) The Secretary implements a bypass if an LEA—

(1) Is prohibited by law from providing Chapter 1 services for private school children on an equitable basis; or

(2) Has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools.

(b) If the Secretary implements a bypass, the Secretary waives the LEA's responsibility for providing Chapter 1 services for private school children and arranges to provide the required services. Normally, the Secretary hires a contractor to provide the Chapter 1 services for private school children under a bypass. The Secretary deducts the cost of these services, including any administrative costs, from the appropriate allocations of Chapter 1 funds provided to the affected LEA and SEA. In arranging for these services, the Secretary consults with appropriate public and private school officials.

(Sec. 557(b), 20 U.S.C. 3806(b))

§ 200.81 Notice by the Secretary.

(a) Before taking any final action to implement a bypass, the Secretary

provides the affected LEA and SEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed bypass in sufficient detail to allow the LEA and SEA to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the LEA and SEA that they have at least 45 days from receipt of the written notice to submit written objections to the proposed bypass and may request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the LEA and SEA by certified mail with return receipt requested.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.82 Bypass procedures.

Sections 200.83–200.85 contain the procedures that the Secretary uses in conducting a show cause hearing. These procedures may be modified by the hearing officer if all parties agree it is appropriate to modify them for a particular case.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.83 Appointment and functions of a hearing officer.

(a) If an LEA or SEA requests a show cause hearing, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery, or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the LEA, SEA, and representatives of the private school children of the time and place of the hearing.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.84 Hearing procedures.

(a) At the hearing, a transcript is taken. The LEA, SEA, and representatives of the private school children each may be represented by legal counsel, and each may submit oral or written evidence and arguments at the hearing.

(b) Within ten days after the hearing, the hearing officer indicates that a decision will be issued on the basis of the existing record, or requests further information from the LEA, SEA, representatives of the private school children, or Department of Education officials.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.85 Post hearing procedures.

(a) Within 120 days after the hearing record is closed, the hearing officer issues a written decision on whether the proposed bypass should be implemented. The hearing officer sends copies of the decision to the LEA, SEA, representatives of the private school children, and the Secretary.

(b) The LEA, SEA, and representatives of the private school children each may submit written comments on the decision to the Secretary within 30 days from the receipt of the hearing officer's decision.

(c) The Secretary may adopt, reverse, or modify the hearing officer's decision.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§§ 200.86–200.89 [Reserved]

Other Due Process Procedures

§ 200.90 General.

Sections 200.91–200.106 contain rules for the conduct of proceedings arising under Chapter 1 regarding—

(a) The review of final audit determinations;

(b) Withholding hearings; and

(c) Cease and desist proceedings.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 200.91 Jurisdiction.

Under Chapter 1, the Education Appeal Board has jurisdiction to—

(a) Review final audit determinations;

(b) Conduct withholding hearings; and

(c) Conduct cease and desist proceedings.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 200.92 Definitions.

For the purposes of §§ 200.90–200.106, the following definitions apply:

"Appellant" means an SEA that requests—

(a) A review of a final audit determination; or

(b) A withholding hearing.

"Authorized Department official" means—

(a) The Secretary; or

(b) A person employed by the Department who has been designated to act under the Secretary's authority.

"Board" means the Education Appeal Board of the Department.

"Board Chairperson" means the Board member designated by the Secretary to serve as administrative officer of the Board.

"Cease and desist" means to discontinue a prohibited practice or initiate a required practice.

"Final audit determination" means a written notice issued by an authorized Department official disallowing expenditures made by a recipient under Chapter 1.

"Hearing" means any review proceeding conducted by the Board.

"Panel" means an Education Appeal Board Panel consisting of at least three members of the Board designated by the Board Chairperson to sit in any case.

"Panel Chairperson" means the person designated by the Board Chairperson to serve as the presiding officer of a Panel.

"Party" means—

(a) The recipient requesting or appearing at a hearing under these regulations;

(b) The authorized Department official who issued the final audit determination being appealed, the notice of an intent to withhold funds, or the cease and desist complaint; or

(c) Any person, group, or agency that files an acceptable application to intervene.

"Recipient" means the named party or entity that initially received Federal funds under Chapter 1.

"Withholding" means stopping payment of Federal funds under Chapter 1 to a recipient and stopping the recipient's authority to charge costs under Chapter 1 for the period of time the recipient is in violation of a requirement.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 200.93 Eligibility for review.

Review under these regulations is available to a recipient of Chapter 1 funds that receives a written notice from an authorized Department official of—

- (a) A final audit determination;
- (b) An intent to withhold funds; or
- (c) A cease and desist complaint.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 200.94 Written notice.

(a) *Written notice of a final audit determination.* (1) An authorized Department official issues a written notice of a final audit determination to a recipient in connection with Chapter 1.

(2) In the written notice, the authorized Department official—

- (i) Lists the disallowed expenditures made by the recipient;
- (ii) Indicates the reasons for the final audit determination in sufficient detail to allow the recipient to respond;

(iii) Cites the requirements that are the basis for the alleged failure to comply; and

(iv) Advises the recipient that it must repay the disallowed expenditures to the Department or, within 30 calendar days of its receipt of the written notice, request a review by the Board of the final audit determination.

(3) The authorized Department official sends the written notice to the recipient by certified mail with return receipt requested.

(b) *Written Notice of an intent to withhold funds.*

(1) An authorized Department official issues a written notice to a recipient under Chapter 1 of an intent to withhold funds.

(2) In the written notice, the authorized Department official—

(i) Indicates the reasons why the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement that is the basis for the alleged failure to comply; and

(iii) Advises the recipient that it may, within 30 calendar days of its receipt of the written notice, request a hearing before the Board.

(3) The authorized Department official sends the written notice to the recipient by certified mail with return receipt requested.

(c) *Written notice of a cease and desist complaint.* (1) The Secretary issues a written notice of a cease and desist complaint to a recipient under Chapter 1. The cease and desist proceeding may be used as an alternative to a withholding hearing.

(2) In the written notice, the Secretary—

(i) Indicates the reasons why the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement that is the basis for the alleged failure to comply; and

(iii) Gives notice of a hearing that is to be held at least 30 calendar days after the date the recipient receives the written notice.

(3) The Secretary sends the written notice to the recipient by certified mail with return receipt requested.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(a) of GEPA, 20 U.S.C. 1234a(a); Sec. 454(a) of GEPA, 20 U.S.C. 1234c(a))

§ 200.95 Filing an application for review of a final audit determination or a withholding hearing.

(a) An appellant seeking review of a final audit determination or a

withholding hearing shall file a written application with the Board Chairperson no later than 30 calendar days after the date it receives written notice.

(b) In the application, the appellant shall attach a copy of the written notice and shall, to the satisfaction of the Board Chairperson—

(1) Identify the issues and facts in dispute; and

(2) State the appellant's position, together with the pertinent facts and reasons supporting that position.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 200.96 Review of the written notice.

(a) The Board Chairperson reviews the written notice of the final audit determination or the intent to withhold funds after an application is received under § 200.95 to ensure that the written notice meets the applicable requirements in § 200.94.

(b) If the Board Chairperson decides that the written notice does not meet the applicable requirements in § 200.94, the Board Chairperson—

(1) Returns the determination to the official who issued it so that the determination may be properly modified; and

(2) Notifies the recipient of that decision.

(c) If the official makes the appropriate modifications and the recipient wishes to pursue its appeal to the Board, the recipient shall amend its application within 30 calendar days of the date it receives the modification.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 200.97 Acceptance of the application.

If the appellant files an application that meets the requirements of § 200.95, the Board Chairperson—

(a) Issues, within 45 days of receiving the application, a notice of the acceptance of the application to the appellant and the authorized Department official who issued the written notice;

(b) Publishes a notice of acceptance of the application in the *Federal Register* prior to the scheduling of initial proceedings;

(c) Refers the appeal to a Panel;

(d) Arranges for the scheduling of initial proceedings; and

(e) Forwards to the Panel and parties an initial hearing record that includes—

- (1) The written notice;
- (2) The appellant's application; and
- (3) Other relevant documents, such as audit reports.

(Sec. 592(a), 20 U.S.C. 372(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 200.98 Rejection of the application.

(a) If the Board Chairperson determines that an application does not satisfy the requirements of § 200.95, the Board Chairperson, within 45 days of receiving the application, returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application is rejected twice, the Department may take appropriate administrative action to—

- (1) Collect the expenditures disallowed in the final audit determination; or
- (2) Withhold funds.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 200.99 Intervention.

(a) A person, group, or agency with an interest in and having relevant information about a case before the Board may file with the Board Chairperson an application to intervene.

(b) The application to intervene shall contain—

- (1) A statement of the applicant's interest; and
- (2) A summary of the relevant information.

(c)(1) If the application is filed before a case is assigned to a Panel, the Board Chairperson decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(2) If the application is filed after the Board Chairperson has assigned the case to a Panel, the Panel decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(d) The Board Chairperson notifies the applicant seeking to intervene and the other parties of the approval or disapproval of the application to intervene.

(e) If an application to intervene is approved, the intervenor becomes a party to the proceedings.

(f) If an application to intervene is disapproved, the applicant may submit to the Board Chairperson an amended application to intervene.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e))

§ 200.100 Practice and procedure.

(a) Practice and procedure before the Board in a proceeding for review of a

final audit determination or a cease and desist complaint are governed by the rules in Subpart E of 34 CFR Part 78.

(b) Practice and procedure before the Board in a withholding hearing are governed by the procedures in the Administrative Procedure Act, 5 U.S.C. 554 and 556.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(e) of GEPA, 20 U.S.C. 1234(e))

§ 200.101 The Panel's decision.

(a) The Panel issues a decision, based on the record as a whole, in an appeal from a final audit determination, or an intent to withhold funds, within 180 days after receiving the parties' final submissions, unless the Board Chairperson, for good cause shown, grants the Panel an extension of this deadline.

(b) The Board Chairperson submits the Panel's decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 200.102 Opportunity to comment on the Panel's decision.

(a) *Initial comments and recommendations.* Each party has the opportunity to file comments and recommendations on the Panel's decision in § 200.101 with the Board Chairperson within 15 calendar days of the date the party receives the Panel's decision.

(b) *Responsive comments and recommendations.* The Board Chairperson sends a copy of a party's initial comments and recommendations to each of the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Board Chairperson within 7 days of the date the party receives the initial comments and recommendations.

(c) The Board Chairperson forwards the parties' initial and responsive comments on the Panel's decision to the Secretary.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 200.103 The Secretary's decision.

(a) The Panel's decision in § 200.101 becomes the final decision of the Secretary 60 calendar days after the date the recipient receives the Panel's decision unless the Secretary, for good cause shown, modifies or sets aside the Panel's decision.

(b) If the Secretary modifies or sets aside the Panel's decision within the 60

days, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Secretary's final decision 60 calendar days after it is issued.

(c) The Board Chairperson sends a copy of the Secretary's final decision and statement of reasons, or a notice that the Panel's decision has become the Secretary's final decision, to the Panel and to each party.

(d) The final decision of the Secretary is the final decision of the Department.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 200.104 Cease and desist hearing.

(a) *Right to appear at the cease and desist hearing.* The recipient has the right to appear at the cease and desist hearing, which is held before a Panel of the Board on the date specified in the complaint.

(b) *Opportunity to show cause.* At the hearing, the recipient may present reasons why a cease and desist order should not be issued by the Board based on the violation of law stated in the complaint.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454(b) of GEPA, 20 U.S.C. 1234c(b))

§ 200.105 Cease and desist written report and order.

(a) If, after the hearing, the Panel decides that the recipient has violated a legal requirement as stated in the complaint, the Panel—

- (1) Makes a written report stating its findings of fact; and
- (2) Issues a cease and desist order.

(b) The Board Chairperson sends the report and order to the recipient by certified mail with return receipt requested.

(c) The order becomes final 60 calendar days after the date the order is received by the recipient.

(d) The Secretary does not review the order issued by the Board under this section.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454(c), (d) of GEPA, 20 U.S.C. 1234c(c), (d))

§ 200.106 Enforcement of a cease and desist order.

(a) If the Panel issues a cease and desist report and order, the recipient shall take immediate steps to comply with the order.

(b) If, after a reasonable period of time, the Secretary determines that the recipient has not complied with the

cease and desist order, the Secretary may—

(1) Withhold funds payable to the recipient under Chapter 1 without any further proceedings before the Board; or

(2) Certify the facts of the matter to the Attorney General for enforcement through appropriate proceedings.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454(e) of GEPA, 20 U.S.C. 1234c(e))

PART 74—ADMINISTRATION OF GRANTS

2. Section 74.4 is amended by revising paragraph (a) to read as follows:

§ 74.4 Applicability of this part.

(a) *General.* (1) Except as provided in paragraphs (a)(2) and (a)(3) of this section or where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all ED grants.

(2) With the exception of 34 CFR 74.62, which applies to Chapter 1, this part does not apply to the programs authorized under Chapter 1 and Subchapters A through C of Chapter 2 of the Education Consolidation and Improvement Act of 1981.

(3) Unless expressly made applicable by ED, this part does not apply when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for profit organization, or individual.

PART 76—STATE-ADMINISTERED PROGRAMS

3. Section 76.1 is amended by revising paragraph (c) to read as follows:

§ 76.1 Programs to which Part 76 applies.

(c) The regulations in Part 76 do not apply to the programs authorized under Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act of 1981.

PART 78—EDUCATION APPEAL BOARD

4. Section 78.42 is amended by revising paragraphs (b) and (c) to read as follows:

§ 78.42 Applicability to other laws and regulations.

(b) Except as provided in paragraph (c), other provisions of the Administrative Procedure Act and the Federal Rules of Civil Procedure do not apply to proceedings before the Board.

(c) In conducting hearings concerning expenditures under the Education Consolidation and Improvement Act of 1981, the Board applies the regulations in—

(1) 34 CFR 200.90–200.106 for expenditure under Chapter 1; and

(2) 34 CFR 298.41–298.57 for expenditures under Subchapters A through C of Chapter 2.

(Sec. 451(e) of GEPA, 20 U.S.C. 1234(e))

PART 201—[REMOVED]

5. Part 201 is removed.

Note.—This Appendix will not appear in the Code of Federal Regulations.

Appendix—Comments and Responses from NPRM

Subpart A—Applying for Chapter 1 Funds for Grants to Local Educational Agencies

§ 200.1 Purpose.

Comment. One commenter questioned why this section included a reference to children in local institutions for neglected or delinquent children when the declaration of policy in the law does not.

Response. No change has been made. Section 554(a) of Chapter 1 incorporates Section 111 of Title I, which indicates clearly that these children may be served under the program.

§ 200.2 Applicability of regulations in this part.

Comment. One commenter recommended that this section be expanded to specify which provisions from Title I have been incorporated into Chapter 1.

Response. No change has been made. This section is intended only to specify the programs to which 34 CFR Part 200 applies, not which statutory provisions apply to those programs. The information requested by the commenter is contained in the preamble to these regulations, as well as in Section 554 of the Chapter 1 statute. Moreover, the final version of the nonregulatory guidance that the Department is preparing will contain all pertinent sections of the Title I statute.

§ 200.3 Definitions.

Comment. One commenter recommended clarifying whether the definition of "children" means under age 21, up to age 21 or through age 21.

Response. A change has been made. The words "not above age 21" in the definition of "children" have been changed to "up to age 21" to include only those individuals who have not yet reached their twenty-first birthday.

Comment. In the preamble to the proposed regulations, the Secretary requested comments on whether the historical definition of "educationally deprived children" should continue to be used. Nearly every comment received in response to that request recommended that the definition of "educationally deprived children" not be changed.

The commenters indicated a concern that a change in the definition would result in services being provided to a different population than has been served under Title I. The commenters felt that such a change would be contrary to congressional intent as stated in the declaration of policy for Chapter 1. The few commenters who recommended changing the historical definition felt it was too broad and should be restricted to exclude certain types of children, such as those with severe learning disabilities, severe emotional problems, or those whose educational attainment is only moderately below that appropriate for their age.

Response. No change has been made. None of the suggested alternatives were adopted because of the overwhelming support for continuing to use the historical definition and because the alternatives would have made the selection of participants under Chapter 1 more restrictive than under Title I, which appears to be contrary to congressional intent.

Comment. One commenter suggested substituting the term "educationally needy" for "educationally deprived."

Response. No change has been made. The term "educationally deprived" has been used since the inception of Title I in 1965. Changing the term now could be interpreted incorrectly as indicating a significant change in meaning.

Comment. One commenter recommended that this section be amended to include all definitions in Section 595(a) of the ECIA.

Response. No change has been made. The intent of the Secretary is to provide clear and concise regulations. However, the Department is preparing a final version of the nonregulatory guidance which will include copies of the statute, including the definitions in Section 595(a), and the regulations.

Comment. Several commenters questioned the inclusion of a definition of "preschool children" since these children are not mentioned in the statute.

Response. No change has been made. Preschool children were permitted to be served under Title I. Nothing in Chapter 1 indicates a desire to limit the children who are eligible for services only to

those children of school age. As a result, the definition in the regulations is necessary to ensure that if a Chapter 1 project serves preschool children, they are children who can benefit from an organized instructional program provided in a school or instructional setting.

Comment. One commenter recommended including in this section a definition of the term "private school."

Response. A change has been made. A definition of "private" has been added to § 200.3(b). In addition, Section 595(a)(7) of the ECIA defines "elementary school" and "secondary school" for purposes of Chapter 1. This definition governs a determination by an LEA as to whether a particular private institution is a private school for the purposes of Chapter 1.

Comment. One commenter felt the term "Fiscal Year" was unclear and confusing and recommended deleting from its definition the phrase "or another twelve-month period normally used by the State educational agency for reporting." The same commenter recommended adding to the list of definitions the terms "program year" and "carryover period."

Response. No change has been made. Allowing the use of the same fiscal year that the State normally uses for recordkeeping eases the paperwork burden on SEAs and applicant agencies without being inconsistent with any Chapter 1 requirement. The terms "program year" and "carryover period" are not used in the Chapter 1 statute or regulations and, for that reason, have not been defined.

Comment. Several commenters questioned why the regulations use the term "attendance area" when the statute uses the term "school attendance areas." A commenter also questioned why the definition referred to a "public school" rather than simply a "school" as did the definition of "school attendance area" in Section 198 of Title I. The commenter also questioned the necessity of the final sentence of the definition.

Response. No change has been made. Because the term "attendance area" is used in Section 556(b)(1) of Chapter 1, it is also used in these regulations. The term has the same meaning as the term "school attendance area" had under Title I. The term "public school" was used in the definition of "attendance area" in § 200.3(b) because that was the understood meaning from Section 198(a)(13) of Title I and because private schools do not have attendance areas that have significance for Chapter 1 purposes. The final sentence of the definition of "attendance area" is

included so that LEAs operating under open enrollment policies can determine which attendance areas are eligible for Chapter 1 services. Under open enrollment, students are permitted to attend any school they chose.

Comment. Two commenters recommended that the definition of "project area" be changed to "all attendance areas served with Chapter 1 funds."

Response. No change has been made. The definition of the term "project area" is consistent with the definition in Section 198(a)(12) of Title I, which is incorporated into Chapter 1.

Comment. One commenter questioned the justification and the effects of the change in the definitions of "institution for neglected children" and "institution for delinquent children" from the way those terms were defined under Title I.

Response. No change has been made. The definitions do not require that these institutions be designed to serve at least ten children as was required under Title I. Rather, the definitions permit SEAs greater flexibility to define institutions for neglected or delinquent children. This change is intended to allow additional institutionalized children to receive Chapter 1 services.

Comment. One Commenter questioned whether § 200.3(d), which states that certain terms have the same meaning under Chapter 1 as under Title I, conflicts with Sections 554(b) (2) (B) and 554(c) of Chapter 1.

Response. No change has been made. No conflict with Section 554 of Chapter 1 is intended. Section 200.3(d) merely restates Section 595(b) of the ECIA. This section is consistent with Section 554(b) (2) (B) which incorporates, for Chapter 1 purposes, those definitions in Section 198 of Title I that are applicable to Chapter 1. In addition, § 200.3(d) is consistent with Section 554(c), which makes inapplicable to Chapter 1 any sections of Title I not specifically made applicable, because § 200.3(d) only deals with terms in applicable sections of Title I.

Comment. Two Commenters questioned why this section was written so as to require a user to consult documents other than these regulations in order to find all applicable definitions.

Response. No change has been made. Because these regulations are designed to be clear and concise, they are not intended to include a complete set of all Federal requirements and definitions that apply to Chapter 1. When issued in final form, the nonregulatory guidance will contain copies of relevant statutes.

§ 200.5 Amount of funds available for Chapter 1 grants.

Comment. One Commenter questioned what was meant by the reference in § 200.5(b) to the use of "other data" by the SEA in determining LEA allocations. The commenter recommended that the term be clarified.

Response. No change has been made. The term "other data" is used with reference to allocations made when LEA's overlap county boundaries and, for that reason, county aggregate amounts alone cannot be used to make LEA allocations.

§ 200.10 State assurances.

Comment. One Commenter questioned why this section did not require that State assurances comply with the applicable parts of Section 434 of the General Education Provisions Act (GEPA) since Section 596 of Chapter 3 makes part of that section applicable to Chapter 1.

Response. A change has been made. The provision in Section 434 of GEPA which applies to Chapter 1 is in paragraph (a)(2) pertaining to the Secretary's discretionary authority to request a plan on audits. The Secretary is considering the issuance of an amendment to EDGAR addressing the requirement of an audit plan in Section 434(a)(2) of GEPA. This amendment would apply to Chapter 1 as well as other education programs.

Comment. Two Commenters questioned why this section did not specifically state that only paragraphs (b)(2) and (b)(5) of Section 435 of GEPA apply to Chapter 1. One commenter questioned the authority of the Secretary to require SEAs to submit assurances. Another commenter questioned how frequently SEAs must submit the assurances.

Response. A change has been made. Section 596(a) of the ECIA made applicable to Chapter 1 those portions of Section 435 of GEPA that pertain to fiscal control and fund accounting procedures. Section 200.10 has been revised to indicate that only the assurances in paragraph (b)(2) and (b)(5) of Section 435 of GEPA apply to Chapter 1. In addition, paragraph (b) has been added to indicate that once an SEA has filed the assurances required in § 200.10(a), the assurances will remain in effect for the duration of the SEA's participation in Chapter 1.

Comment. One commenter recommended that the phrase "properly submitted," as used in paragraph (a), be clarified in the regulations.

Response. A change has been made. Paragraph (a) of § 200.10, which included the term "properly submitted," has been eliminated.

Comment. One Commenter recommended that the regulations state that an SEA must both comply with the assurances required by this section and keep records demonstrating its compliance.

Response. No change has been made. Section 200.56 contains the recordkeeping requirements applicable both to SEAs and applicant agencies.

Comment. One Commenter questioned why the Secretary interpreted Section 596 of Chapter 1 as making only paragraph (a)(2) of GEPA applicable. The commenter felt that Sections 434(b)(2) and (3) which authorize withholding of funds by an SEA also relate to fiscal control and should therefore apply.

Response. No change has been made. The Secretary interprets the terms "fiscal control" and "fund accounting" to refer only to activities that relate to the manner in which accountability is maintained for the expenditure of Chapter 1 funds. Withholding of funds by an SEA is essentially an enforcement activity not directly related to accountability for program funds.

§ 200.11 Payments for State administration.

Comment. One commenter recommended revising this section to include the substance of Section 554(b) and (d) of Chapter 1 and Section 194 of Title I.

Response. No change has been made. The regulations are not designed to be used independent of the statute, but to be read along with it. The nonregulatory guidance, when issued in final form, will contain a copy of the relevant statutory provisions to which the reader may refer.

Comment. Several commenters questioned the inclusion of the phrase "for the proper and efficient performance of its duties."

Response. No change has been made. That phrase is taken from Section 194 of Title I, which is made applicable to Chapter 1 by Section 554(b)(1)(D) of Chapter 1.

§ 200.13 Submission of LEA project applications to the SEA.

Comment. Several commenters recommended that this section be revised to require LEA applications and annual updates to include various specific assurances and other information related to the planning, implementation, and evaluation of projects.

Response. No change has been made. In the interest of preserving maximum flexibility for SEAs and LEAs, the Secretary has decided not to specify information to be included in an LEA application beyond that which is required by Section 556 of Chapter 1. An SEA may decide what specific information it needs to determine that an LEA's assurances are satisfactory.

Comment. One commenter recommended that this section be revised to include both the assurances in Section 556(b) of Chapter 1 and language that specifically authorizes SEAs to require additional information beyond what is listed in Section 556(b).

Response. No change has been made. Because the regulations are designed to be used in conjunction with the Chapter 1 statute, the Secretary has decided not to repeat in the regulations the statutory assurances set forth in Section 556(b) of Chapter 1. Each SEA, in accordance with its rulemaking authority in § 200.59, may determine what, if any, additional information it needs to approve LEA applications.

Comment. One commenter recommended that paragraph (c) be revised to require an LEA to submit an amendment to its application whenever major changes are made in activities to be conducted under the application.

Response. A change has been made. Paragraph (d) has been added to § 200.13 to require an LEA to amend its Chapter 1 application when there are substantial changes in the number or needs of the children to be served or the services to be provided.

Comment. One commenter recommended that applications be required on an annual basis, rather than every three years with annual updates.

Response. No change has been made. Section 556 of Chapter 1 provides that SEAs may approve an application for a period not to exceed three years.

§ 200.14 SEA approval of applications.

Comment. One commenter questioned why paragraph (b), "Effect of SEA approval," was included.

Response. No change has been made. That paragraph is intended to make it clear that LEAs may not use SEA approval of an application to justify noncompliance with Chapter 1 requirements.

Comment. One commenter recommended that the regulations be revised to state specifically that an SEA is responsible for monitoring LEAs' compliance with the application assurances in Section 556 of Chapter 1.

Response. No change has been made. This section is intended to address application approval by the SEA only.

The statute does not require the Secretary to issue regulations relating to monitoring by the SEA, and the Secretary believes that this matter is best left to State determination.

Comment. One commenter recommended that this section indicate whether an SEA may disapprove the annual updates required by paragraph (c).

Response. No change has been made. The standards that apply to SEA approval of local applications apply also to annual updates.

Subpart B—Allocation of Chapter 1 funds for Grants to Local Educational Agencies

§ 200.20 Eligibility of LEAs for basic grants.

Comment. One commenter noted that this section restates paragraphs (b)(1) and (b)(2) of Section 111 of Title I, but does not implement paragraph (b)(3) of that section. The commenter questioned the omission of a reference to Section 111(b)(3) since that section directs the Secretary to develop certain criteria in the regulations.

Response. No change has been made. The criteria required by Section 111(b)(3) are set forth in § 200.22(b)(2)(i) which directs SEAs to make, on a proportionate basis, a separate allocation to an LEA in more than one county from each county in which the LEA is located.

Comment. One commenter interpreted paragraph (a)(2) of this section as precluding the award of Chapter 1 grants to LEAs with fewer than 10 children. The commenter stated that Chapter 1 authorized no such provision.

Response. No change has been made. This section defines LEAs which are eligible for Chapter 1 grants in accordance with Section 111(b) of Title I, made applicable to Chapter 1 by Section 554(a).

§ 200.21 Determination by the Secretary of basic grants.

Comment. One commenter questioned why this section set out the procedure for counting children in local institutions for neglected or delinquent children but not low-income children.

Response. No change has been made. The Secretary determines the number of low-income children based on data from the Bureau of the Census. The count of children in local institutions is based on an annual survey done by each institution and approved and submitted by SEAs. For this reason, the regulations specify how the count is determined.

Comment. One commenter questioned why paragraph (c) of this section specified only how to allocate one-half of any available Chapter 1 funds that are in excess of amounts available for basic grants in fiscal year (FY) 1979.

Response. A change has been made. The provision in paragraph (c) restates the provisions of Section 111(a)(3)(D) of Title I. A clarifying change in the regulatory language of § 200.21(c) has been made. For any amounts that are available for Chapter 1 LEA basic grants in excess of the amount available for FY 1979, one-half will be allocated as prescribed by § 200.21(c) and the other one-half according to the formula used to allocate funds not in excess of amounts available for FY 1979.

Comment. One commenter recommended deletion of paragraph (a) because the Secretary does not make sub-county allocations.

Response. No change has been made. The Secretary would determine the amount of LEA grants if satisfactory census data were available from the Bureau of the Census. However, because satisfactory census data are only available by county, the Secretary determines allocations only for LEAs whose districts are coterminous with counties.

Comment. One commenter recommended that this section be revised to eliminate the provision in paragraph (b)(1) that allows the Secretary to determine county aggregate grant amounts on a basis of other than satisfactory census data when those data are not available.

Response. A change has been made. That provision is intended to restate Section 111(a)(2)(B) of Title I which is made applicable to Chapter 1 by Section 554 of Chapter 1. Section 200.21 (a) and (b) have been clarified. See Section 111(c) of Title I requiring the Secretary to use satisfactory data to determine the children to be counted.

§ 200.22 Allocation of county aggregate amounts by SEAs.

Comment. One commenter questioned the rationale for first allocating funds generated by children in institutions, and then distributing funds based on the number of low-income children.

Response. No change has been made. Section 111(a)(3) of Title I indicates that funds generated by children in institutions for neglected or delinquent children may, in certain cases, be transferred to agencies other than the LEA of the school district in which the institution is located. In order to make such a transfer of funds, it is necessary first to determine what portion of an LEA's allocation is based on the number

of neglected or delinquent children in institutions.

Comment. Two commenters recommended adding clarifying language to this section specifying criteria to be used by an SEA in the event it must adjust LEA allocations under either paragraph (b)(2)(ii) or (b)(2)(iii).

Response. No change has been made. Section 111(a)(3)(B) of Title I provides only that an SEA is to make these adjustments in such a manner as the SEA determines will best carry out the purposes of the program. By establishing criteria that SEAs would have to use, the Secretary would be limiting authority accorded the SEA by the statute and reducing SEA flexibility in a manner inconsistent with the purpose of Chapter 1.

Comment. One commenter recommended revising this section to specify that any portion of an LEA's allocation that is generated by children in local institutions and remaining at the end of a project year may be expended for other authorized Chapter 1 purposes.

Response. No change has been made. An LEA that receives Chapter 1 funds generated by children in local institutions must provide services to the children in the institutions. It is not necessary that an LEA determine the exact cost of providing Chapter 1 services to children in local institutions. As long as the SEA is satisfied that the LEA has assessed the needs of and is providing adequate services for the institutionalized children, the LEA is entitled to its full allocation of funds based on the number of children in the institutions and need not account for those funds separately.

Comment. One commenter questioned why the month of October was used in conducting the survey of children in local institutions for neglected or delinquent children. The commenter recommended January as a more representative month.

Response. No change has been made. Section 111(c)(2)(B) of Title I requires the use of the October caseload to count these children.

§ 200.23 Exceptions to county aggregate amounts.

Comment. Several commenters recommended that paragraph (a) be revised to allow SEAs to make allocations without regard to county boundaries using "to the extent possible" (rather than "precisely") the same factors that were used to compute county aggregate amounts.

Response. No change has been made. Section 558(e) of Chapter 1 requires that "precisely" the same factors be used.

§ 200.41 Determinations of State and county concentration grants.

Comment. One commenter questioned the statutory authority for the provisions in paragraphs (b)(1), (b)(2), and (b)(3).

Response. No change has been made. Section 117(b)(1) of Title I requires that each State receive no less than one quarter of one percent of the total funds available for concentration grants. Because some States do not have enough eligible counties to distribute all their concentration grant funds according to the statutory formula, criteria were developed for the distribution of concentration grant funds in those States. Those criteria are contained in § 200.41(b)(1)-(b)(3).

§ 200.45 Reallocation of Chapter 1 funds by SEAs.

Comment. One commenter questioned why this section does not contain criteria to be used by an SEA in determining which LEAs have excess funds and in redistributing any excess determined to exist. Another commenter recommended that this section set a date by which an LEA must be notified that the SEA is considering reallocating a portion of the LEA's funds.

Response. No change has been made. In keeping with the overall purpose of maximizing flexibility, returning authority to the States, and eliminating Federal control and supervision, the Secretary has decided not to regulate on these matters, but to leave the determinations up to individual SEAs.

Comment. Several commenters recommended revising paragraph (b)(1) to provide that the determination of which LEAs have the greatest need for extra funds be made by the SEA. The commenters also recommended deletion of the language requiring that the determination be based on redressing inequities and the hardships inherent in the application of the basic formula for distributing funds to LEAs.

Response. No change has been made. The determination referred to is made by the SEA. The language the commenter recommended deleting restates Section 194(b) of Title I, which is made applicable to Chapter 1 by Section 554(b) of Chapter 1.

Comment. One commenter objected that this section allowed an SEA only one opportunity to reallocate, after which funds that could otherwise be made available to other LEAs in the State revert to the Secretary for allocation to other States. The commenter recommended revising the section to allow an SEA to develop State procedures for reallocation.

Response. No change has been made. The procedures set out in this section do not limit an SEA to a one-time reallocation. Rather, an SEA has the flexibility to determine its own procedures for reallocation.

Comment. One commenter recommended that §§ 200.45 and 200.46 be revised to make reallocation by the SEA and the Secretary optional. The commenter objected that the section required reallocation even though the statute places no restrictions on the amount of funds an LEA may carry over, and that it requires the use of, but fails to explain, the term "prudent and justifiable reserve."

Response. No change has been made. Section 194 of Title I requires reallocation both by the SEA and the Secretary. The language in § 200.45 allowing LEAs to retain a prudent and justifiable reserve of Chapter 1 funds protects an LEA's right to carry over funds without limiting an SEA's authority and responsibility to reallocate excess Chapter 1 funds.

Subpart C—Project Requirements.

§ 200.49 Selection of attendance areas.

Comment. Several commenters recommended that LEAs be allowed to serve some, but not necessarily all, children eligible under the option set forth in § 200.49(c).

Response. No change has been made. The use of the word "all" in § 200.49(c) reflects the statutory language. Further clarification will be provided in the next regulatory guidance.

Comment. Several commenters recommended that § 200.49 be revised to include standards for determining "highest concentration" and "uniformly high concentration" as those terms are used in this section. Commenters also recommended the use of school data rather than attendance area data, and the selection and application of different types of data to determine eligibility under this section.

Response. No change has been made. In accordance with Section 591(b), matters relating to the details of planning, developing, implementing, and evaluating programs are to be left to the States, with the Secretary providing consultation and, upon request, technical assistance, information and suggested guidance. The matters on which commenters sought further regulations are better left to State and local discretion.

As noted in the preamble to these regulations, however, the Secretary does recognize that many State and local program personnel have requested guidance regarding the implementation

of Chapter 1 programs. As a result, consistent with Section 591(b), the issues raised by many commenters on this and other sections in these regulations were addressed in the nonregulatory guidance issued by the Secretary in draft form, and will be included when that guidance is issued in final form.

Comment. One commenter recommended that this section be revised to provide that the selection of project areas be based, in part, on an educational needs assessment and that the number of areas served not exceed the number for which the LEA can provide services of sufficient size, scope, and quality.

Response. No change has been made. The statute makes selection of project areas a matter of local discretion. LEAs may consider data on educational deprivation when selecting project areas from eligible attendance areas. The nonregulatory guidance addresses this issue in the chapter on needs assessment. Similarly, LEAs must comply with the size, scope, and quality requirement in Section 556(b)(3) of Chapter 1. In some cases, the number of project areas an LEA serves will be limited because the LEA does not have enough Chapter 1 funds to provide services meeting the size, scope, and quality provision in all eligible attendance areas.

Comment. One commenter recommended that language be added to this section specifically authorizing SEAs to adopt rules and guidelines related to the designation and selection of eligible attendance areas. The commenters also recommended that the section explain what interpretations are unacceptable.

Response. No change has been made. The general authority for State rulemaking in § 200.59 is sufficiently comprehensive to cover attendance area selection.

Comment. One commenter questioned whether schoolwide projects were authorized under this or any other section.

Response. No change has been made. Nothing in the Chapter 1 statute expressly authorizes the use of Chapter 1 funds for schoolwide projects.

Comment. A large number of commenters recommended that paragraph (c) be expanded to clarify and provide guidelines on the option offered under that paragraph. Many commenters recommended that only educationally deprived low-income children be eligible.

Response. A change has been made. Section 555(c) of Chapter 1 makes clear that funds made available under

Chapter 1 may only be used to provide "programs and projects . . . which are designed to meet the special educational needs of educationally deprived children." This applies to services provided to children under § 200.49(c). Therefore, § 200.49(c) has been clarified to indicate that the children served under that option must also be educationally deprived.

Comment. Several commenters recommended adding language to this section to clarify that an LEA need not exercise the option offered in paragraph (c) and that, if that option is taken, the LEA must expend the rest of its Chapter 1 allocation under either paragraph (a) or (b). Other commenters recommended that the regulations establish a percentage limit on the amount of an LEA's funds that may be used under § 200.49(c).

Response. No change has been made. The statute and the regulations, by joining paragraphs (b) and (c) with the conjunction "or," already do what several of the commenters have requested. The Secretary believes that State and local educational agencies are better able to determine the amount of funds, if any, that should be used under paragraph (c).

Comment. One commenter, interpreting the regulations as not allowing LEAs to concentrate Chapter 1 services at particular grade levels, recommended that this section be revised to restore that flexibility.

Response. No change has been made. The language in the regulations does not prohibit the practice of selecting grade spans to be served and providing services at those levels. Additional clarification on this point will be provided in the nonregulatory guidance.

§ 200.50 Annual needs assessment.

Comment. A large number of commenters questioned the legal authority and programmatic justification for adding the phrase "but does not require" to the provision stating that an LEA's needs assessment must permit the selection of those educationally deprived children in greatest need of special assistance.

Response. A change has been made. The phrase "but does not require" has been removed. By inserting the phrase in the proposed regulations, the Secretary sought to make clear that flexibility included in the Title I statute—for example, allowing certain children, such as those receiving services from other sources, to be bypassed in selecting students for participation in Title I programs—is available under Chapter 1. However, commenters have pointed out

that the phrase "but does not require" is an addition to the statutory language, and could be read to allow services to be provided to children with lesser needs, while leaving more severely educationally deprived children with no services from any source. In addition, the Secretary believes that the addition of the phrase removes flexibility from the States in the operation of Chapter 1 programs in that it could be read to preclude SEAs from regulating on the issue.

Comment. One commenter recommended that this section be revised to require LEAs to identify and establish goals and objectives, involve parents in the needs assessment, and use needs assessment data to update applications.

Response. No change has been made. For reasons stated previously, the Secretary believes that these matters are better left to State and local discretion.

Comment. One commenter recommended that language be added to this section requiring an LEA to allocate its Chapter 1 funds on the basis of the number and needs of the children to be served.

Response. No change has been made. The Chapter 1 statute and regulations require that projects be based on an educational needs assessment and concentrate on the special educational needs of the children to be served.

Comment. One commenter recommended adding to this section language expressly prohibiting the use of Chapter 1 funds for projects that are not designed to meet the special educational needs of educationally deprived children.

Response. A change has been made. Section 200.52 has been added to express this requirement.

Comment. One commenter recommended deleting the reference in § 200.50(a) to children in private schools.

Response. No change has been made. The reference to children in private schools is consistent with Section 557(a) of Chapter 1, which requires that LEA projects include services for eligible private school students and that such projects meet the requires of Section 556(b)(2) (relating to needs assessment of Chapter 1). The reference in § 200.50(a) is included as a convenience to users of the regulations.

Comment. One commenter recommended adding to this section language expressly authorizing an LEA to continue to serve a child who qualified for services in the previous year and is still educationally deprived, though above the LEA's cut-off criteria for selection of participants.

Response. No change has been made. The Secretary believes that the regulations should include as little detail as necessary, thus maximizing State and LEA flexibility. The language in the regulations does not preclude the option recommended by the commenter.

Comment. One commenter recommended that this section specify which steps in the needs assessment may be paid for with Chapter 1 funds and which may not.

Response. No change has been made. It is the responsibility of the SEA, within the constraints imposed by Section 555(c) of Chapter 1 and § 200.55 of these regulations, to determine what costs are allowable under Chapter 1.

Comment. Two commenters questioned whether use of the term "educational needs" in § 200.50(c) was intended to preclude LEAs from identifying and designing services to meet non-educational needs such as health, social, and nutritional needs.

Response. No change has been made. The language in the regulations is not intended to preclude an LEA from providing support services which relate to meeting educational needs under an application approved by the SEA.

Comment. One commenter recommended that language be added to this section requiring an individualized educational plan to be prepared for each Chapter 1 participant.

Response. No change has been made. Nothing in the Chapter 1 statute or its legislative history authorizes the Secretary to require such a plan. Moreover, the requirement would be inconsistent with the intent of Chapter 1 to continue financial assistance based on Title I but to do so with less Federal supervision and control.

Comment. Several commenters recommended that language be added to the regulations specifying what types of data LEAs must use in conducting needs assessments.

Response. No change has been made. The Secretary believes that such specificity would be inconsistent with the intent of Chapter 1.

§ 200.53 Consultation with parents and teachers.

Comment. A large number of commenters made various recommendations that language be added to this section to clarify and provide guidance for the implementation of the parent consultation requirement. Many commenters recommended that the regulations include standards for determining whether an LEA has complied with the consultation requirement. Suggested standards included requirements that the

consultation be meaningful, systematic, and ongoing. A number of commenters recommended that the regulation guarantee parental access to records. Other commenters recommended that the regulations require LEAs to establish parent advisory councils such as those required under Title I.

Response. No change has been made. The Secretary has declined to establish additional requirements or criteria not stated in the statute regarding consultation. The Secretary believes that Chapter 1 was designed to afford SEAs and LEAs greater discretion in this area by avoiding, for example, a requirement that local parent advisory councils be established. The precise steps needed to achieve parent and teacher consultation are, in the Secretary's view, best left to local determination. The Secretary, however, agrees with the congressional conferees that parental and teacher involvement is an important component of Title I programs and wishes to make clear that it is an option of LEAs to continue using parent advisory councils to comply with the consultation requirement. See 127 Cong. Rec. H5645 (daily ed. July 29, 1981).

Comment. One commenter questioned the authority for requiring that LEAs consult with teachers and parents of children in private schools.

Response. No change has been made. Section 557(a) of Chapter 1 requires that LEAs provide services to eligible children in private schools and that these services meet the requirements of, among others, Section 556(b)(3) of Chapter 1. Section 556(b)(3) requires consultation with teachers and parents.

Comment. Several commenters recommended that this section be revised to provide expressly that LEAs may use Chapter 1 funds to support parental involvement activities.

Response. No change has been made. Section 555(c) of Chapter 1 states that LEAs may use Chapter 1 funds for "expenditures authorized under Title I * * *." Because LEAs were authorized to use program funds for certain expenditures related to Title I parent involvement activities, those same expenditures are allowable under Chapter 1.

§ 200.54 Evaluation.

Comment. One commenter questioned why this section specified three years as the maximum period over which an LEA must evaluate its Chapter 1 project.

Response. No change has been made. The three year period was selected because it is consistent with the LEA application cycle.

Comment. One commenter recommended that this section be revised to require LEAs to use evaluation data in planning future projects.

Response. No change has been made. For reasons stated previously, the Secretary believes that this matter is best left to State and local discretion. The use of evaluation data in planning future projects is appropriate, however, and nothing in these regulations is intended to discourage the practice.

Comment. One commenter, noting that Section 556(b) of Chapter 1 requires LEAs to provide information to SEAs for program evaluation purposes, questioned why the regulations did not clarify this requirement.

Response. No change has been made. The requirement cited by the commenter is incorporated by reference in § 200.14(a) which requires LEA applications to meet the requirements in Section 556 of Chapter 1.

Comment. Several commenters questioned why the regulations did not include the statutory language requiring LEAs to evaluate their Chapter 1 projects "in terms of their effectiveness in achieving the goals set for them."

Response. A change has been made. The language has been added to § 200.54.

Comment. One commenter recommended adding language to this section specifying LEAs' reporting responsibility and SEAs' analysis, technical assistance, and reporting responsibilities relative to evaluation. A number of commenters recommended that language be added to this section requiring LEA evaluation data to be recorded in a common standard of measurement to allow data to be aggregated by State and nationally.

Response. No change has been made. By establishing evaluation standards, the Secretary would be limiting authority afforded to SEAs and LEAs under Chapter 1, thereby reducing flexibility in a manner inconsistent with the purpose of Chapter 1. There is nothing to prevent SEAs, however, from adopting a common standard of measurement in order to allow data to be aggregated by State and nationally.

§ 200.55 Allowable costs.

Comment. Several commenters questioned why this section did not include the itemized list of allowable expenditures, or the reference to "other expenditures authorized under Title I" contained in Section 555(c) of Chapter 1. The commenter also felt the regulations should clarify the latter reference.

Response. No change has been made. Because users of these regulations will

normally have a copy of the Chapter 1 statute available, the Secretary felt it was unnecessary to repeat that statutory language.

Comment. A number of commenters questioned whether non-instructional duties were authorized under Chapter 1 as an "expenditure authorized under Title I."

Response. No change has been made. As indicated in the draft nonregulatory guidance, non-instructional duties are allowable under Chapter 1 on the same basis that they were allowable under Title I.

§ 200.56 Recordkeeping requirements.

Comment. A number of commenters recommended that language be added to this section clarifying what specific records are required by this section, and particularly what is meant by the reference in § 200.56(b)(2) to "other records needed to facilitate an effective audit and that show compliance with Chapter 1 requirements."

Response. No change has been made. As indicated in the preamble, each State is left to develop its own procedures for assuring accountability for Chapter 1 funds and program requirements.

Comment. One commenter questioned why this section treated LEAs and SEAs the same with respect to recordkeeping requirements. The commenter noted that the statute treats them separately.

Response. No change has been made. The statute requires both LEAs and SEAs to keep such records as may be required for fiscal audit and program evaluation. The Secretary has decided not to prescribe more specific recordkeeping requirements for SEAs. An SEA may, however, under its application approval authority in Section 556(b) of Chapter 1, prescribe specific recordkeeping requirements for its LEAs.

Comment. Several commenters questioned why this section required that records be kept only three years when the statute of limitations in GEPA is five years. One commenter pointed out that this will result in LEAs keeping FY 1981 and 1982 Title I records longer than FY 1983 Chapter 1 records.

Response. No change has been made. Consistent with Section 437(a) of GEPA, § 200.56(c) has been revised to require that records be retained for five years after completion of the activity for which the funds were used.

Comment. One commenter recommended deletion of the reference in § 200.56(b)(1) to records that show the share of costs provided from non-Chapter 1 sources.

Response. A change has been made. In cases where a single project is funded

from more than one source, it is not possible to conduct an effective audit unless there are records showing the share of costs provided from each source.

Comment. One commenter questioned whether the reference in § 200.56(b)(1) to "funds from other sources" referred to State and local funds used to pay portions of costs covered under an indirect cost plan.

Response. No change has been made. "Funds from other sources" as used in this section does not refer to State and local funds used to pay for services covered for Chapter 1 in an indirect cost plan. SEAs and LEAs may continue to use indirect cost plans under Chapter 1 on the same basis as they did under Title I, except that departmental approval is not required.

§ 200.57 Audits and access to records.

Comment. One commenter questioned why the citation of authority for this section included a part but not all of Title XVII of the Omnibus Budget Reconciliation Act.

Response. No change has been made. The citation of authority for § 200.57 is to Section 1744 of the Omnibus Budget Reconciliation Act of 1981. Certain sections of Title XVII of that Act apply only to block grant funds. Chapter 1 is not a block grant program. However, Section 1744 applies to both block grant funds as well as "other grant programs established or provided for by * * * the Omnibus Budget Reconciliation Act. Hence, Section 1744 applies to Chapter 1.

Comment. Two commenters questioned the statutory authority for making Attachment P to OMB Circular A-102 applicable to Chapter 1. The commenters also questioned which requirements in Attachment P pertained to Chapter 1.

Response. A change has been made. The Secretary has amended EDGAR by adding a new section 74.62 which implements the audit requirements contained in Attachment P. These requirements apply to Chapter 1 programs. Authority to require audits is derived from several sources: Sections 555(d) and 556(b) of the ECIA; Section 452 of GEPA, Section 1744 of the Omnibus Budget Reconciliation Act of 1981; Sections 3, 4, and 6 of the Inspector General Act of 1978; and Section 202 of the Intergovernmental Cooperation Act of 1968.

Comment. Several commenters recommended adding language to this section to specify that parents and the general public also must be provided access to records.

Response. No change has been made. The statutory language authorizing this section is intended to ensure access to records by independent auditors and State and Federal officials evaluating and reviewing Chapter 1 programs. For this reason, this section does not list parents or the general public among those who must be provided access to records.

Comment. Two commenters recommended deletion of the word "any" from paragraph (a) where it is used to modify the terms "books, accounts, records, correspondence or other documents." The commenters felt that its inclusion was unnecessary and overly intrusive.

Response. No change has been made. The phrase "any books, accounts, records, correspondence, or other documents" is taken directly from Section 1744 of Title XVII.

§ 200.58 *Compromise of audit claims.*

Comment. One commenter questioned the citations of authority for this section, noting that Section 555(d) of Chapter 1 does not address this issue.

Response. No change has been made. Section 555(d) contains authority for the Secretary to conduct audits. The Secretary has included these standards for carrying out his authority under the Federal Claims Collection Act, 31 U.S.C. 951 *et seq.*; 4 CFR Part 103, to compromise claims arising in connection with those audits. See also Sections 591(a)(1) and (2) of the ECLIA.

Comment. One commenter recommended revising this section to provide that the Secretary may not compromise an audit claim unless the Secretary is satisfied that the agency has met the conditions in paragraphs (d), (e), and (f). That is, the agency must have corrected the practices that resulted in the finding, it must in all other respects be in compliance with Chapter 1 requirements, and it must agree to use non-Federal funds to supplement Chapter 1 programs.

Response. No change has been made. The factors listed in paragraphs (a) through (f) are merely points for the Secretary to consider. In the interest of maintaining flexibility in the compromise of audit claims, the Secretary wishes to avoid imposing rigid requirements.

Comment. One commenter recommended adding language to this section providing that an SEA shall recover from non-Federal sources all funds determined to have been misspent under an audit.

Response. A change has been made. Paragraph (d) has been added to § 200.57 permitting an SEA to recover

funds determined by an audit to have been misspent.

§ 200.59 *SEA rulemaking and other responsibilities.*

Comment. Several commenters questioned the statutory authority for SEA rulemaking.

Response. No change had been made. Section 556(b) of Chapter 1, which deals with applications by LEAs, provides that the SEA will approve an application from an LEA only if it contains certain assurances that are "satisfactory to the SEA." Sections 555(c) and 556(a) of Chapter 1 also state the SEA's approval authority. Sections 557 and 558 impose important administrative duties on the SEA under Chapter 1. Thus, taken as a whole, Chapter 1 is regarded as a State-administered program. The State rulemaking authority in § 200.59 is designed to implement these statutory provisions and is consistent with pertinent case law.

Comment. One commenter recommended adding language to this section to prohibit an SEA from either requiring any practice not expressly required by the statute or regulations or prohibiting any practice that is authorized by the statute or regulations.

Response. No change has been made. A categorical prohibition on this point is not required by the statute and would unduly restrict the SEA's administration of a State-administered program.

Comment. One commenter recommended that the phrase "or an appropriate entity thereof" be deleted from this section. The commenter felt that only the SEA should be authorized to make State rules.

Response. A change has been made. The phrase "or an appropriate entity thereof" has been deleted. When SEAs are legally empowered by the State to make rules, they may do so in order to carry out their responsibilities. This does not preclude other State agencies, with the legal authority to do so, from issuing regulations related to the Chapter 1 program.

Comment. One commenter questioned whether this section authorizes SEAs to enter into compliance agreements with applicant agencies.

Response. No change has been made. There is no specific authority in Chapter 1 authorizing SEAs to enter into compliance agreements with LEAs.

Subpart D—Fiscal Requirements

§ 200.60 *Maintenance of effort.*

Comment. One commenter questioned why the regulations use the language "an SEA shall pay an LEA its allocation * * *" rather than the statutory language "an LEA may receive funds * * *"

Response. A change has been made. The language of the statute has been incorporated into the regulations.

Comment. One commenter objected to the language in § 200.60(b)(2) as not accurately reflecting the statutory language regarding the level of expenditures to be considered when determining maintenance of effort two and more years after a failure to maintain effort.

Response. No change has been made. The only reference in the statute to this issue is a prohibition, in Section 558(a)(2), against using "such lesser amount" in computing future maintenance of effort. "Such lesser amount" clearly refers to an amount which falls below the 90 percent standard, not to amounts which meet or exceed the 90 percent standard. The regulations accurately reflect this in § 200.60. It is true that the language in the regulations permits agencies to meet the maintenance of effort requirement while using progressively lower levels of effort each year, as long as they do not drop by more than ten percent each year. The Secretary does not believe that it would be equitable to allow agencies which never fall below the 90 percent level to decrease fiscal effort indefinitely while holding an agency that once failed to maintain effort to a particular level, below which it could never drop without either a waiver or penalty.

Comment. One commenter objected to the language in paragraph (b)(2) that the SEA "may" consider an LEA's effort to be 90 percent of its expenditures for the third preceding year. The commenter felt that the use of the term "may" implied that an SEA may also consider an LEA's effort to be less than 90 percent of its effort for the third preceding year.

Response. A change has been made. To make clear that the 90 percent is the minimum requirement, the sentence has been changed to read "to be no less than 90 percent." Section 200.61(b)(2), relating to waivers, has also been changed to conform with the new language of § 200.60 (b)(2).

Comment. One commenter recommended that maintenance of effort be computed in constant dollars.

Response. No change has been made. The Secretary does not believe that the statute affords authority to measure maintenance of effort in terms of "constant" rather than "inflated" dollars.

§ 200.61 *Waiver of the maintenance of effort requirement.*

Comment. One commenter objected to the use of the term "full entitlement" in

paragraph (b)(1) of this section, noting that it could be incorrectly interpreted to refer to an LEA's allocation prior to adjustments necessitated by appropriations (ratable reductions).

Response. A change has been made. To clarify this paragraph, it has been reworded to state that the SEA "shall not reduce the amount of Chapter 1 funds the LEA is otherwise entitled to receive."

Comment. One commenter recommended revising this section by adding language to paragraph (a)(2) to expressly provide that, except for tax initiatives and referenda, the determination of whether particular circumstances are exceptional and uncontrollable is at the complete discretion of the SEA. Another commenter suggested that the criteria for granting a waiver be expanded to include prudent use of local funds, reduced tax revenues, and reduction in State support.

Response. No change has been made. Subject to the Chapter 1 statute and legislative history, the SEA has the responsibility of determining whether to grant maintenance of effort waivers.

Comment. Two commenters recommended that this section be revised to allow tax initiatives or referenda to be considered exceptional and uncontrollable when they cause drastic reductions in the level of services an agency can provide.

Response. No change has been made. In the conference report accompanying Chapter 1, the conferees expressly stated that they "do not consider tax initiatives or referenda as exceptional or uncontrollable circumstances." 127 Cong. Rec. H5645 (daily ed. July 29, 1981).

§ 200.62 Supplement, not supplant.

Comment. A number of comments were received requesting guidance in interpreting the supplement, not supplant requirement. Several commenters recommended that this section be revised to include tests for determining compliance with the supplement, not supplant requirement.

Two commenters recommended adding language to the section expressly prohibiting LEAs from using Chapter 1 funds to provide services otherwise required by law, programs of bilingual education, English as a second language programs, or programs for handicapped children. The commenters also recommended that the regulations expressly state that State and local funds expended for programs of the types listed above may not be excluded for the purpose of determining compliance with the supplement, not

supplant and comparability requirements. Two additional commenters recommended adding language to paragraph (c) stating that Chapter 1 services provided within the regular classroom must be supplemental and that an LEA that provides Chapter 1 services within the regular classroom must retain some type of records showing that the services are supplementary and are provided only to children eligible and properly selected for Chapter 1 services.

Response. No change has been made. The Department's draft nonregulatory guidance offers extensive, though not exclusive, standards for determining compliance with the supplement, not supplant requirement. It is anticipated that information on this issue will also be included in the final document. Under these circumstances, the Secretary does not feel that the inclusion of Federal standards for supplement, not supplant are necessary in the regulations.

Comment. Two commenters recommended that the regulations clarify what is meant in paragraph (b) by "programs * * * consistent with the purposes of Chapter 1." That term is used in both this section and in § 200.63 (Comparability of services) as a standard for determining whether funds may be excluded in determining compliance with the supplement, not supplant and comparability requirements.

Response. No change has been made. The term can be understood by referring to the declaration of policy in Section 552 of Chapter 1. That section provides that Chapter 1 programs are to address the special needs of educationally deprived children. In order to be consistent with the purposes of Chapter 1, a program would have to be designed and implemented on the basis of the factors mentioned in Section 552 of Chapter 1.

Comment. One commenter objected to the provision in § 200.62(b) allowing the exclusion of State and local funds for certain special programs. The commenter felt that excluding these funds would reduce the level of services Chapter 1 participants would otherwise receive.

Response. No change has been made. Section 558(b) of Chapter 1 specifically authorizes the exclusion of these funds.

Comment. One commenter recommended that the supplement, not supplant requirement be waived for secondary schools so that these children could be provided Chapter 1 services in place of regular State and locally funded services.

Response. No change has been made. Without waiving the supplement, not

supplant requirement for secondary schools, the draft nonregulatory guidance illustrates how Chapter 1 programs can be operated in secondary schools in compliance with the supplement, not supplant requirement. The Secretary expects that this flexibility will also be contained in the final document.

§ 200.63 Comparability of services.

Comment. One commenter questioned why the regulations use the term "attendance area" where the statute uses the term "area."

Response. No change has been made. The terms "area" and "school attendance area" are both used in Section 558(c) of Chapter 1. Based on the context in which the terms are used and the history of the comparability provision, it is clear that both the terms "area" and "school attendance area" mean "attendance area" as that term is defined in § 200.3.

Comment. Several commenters recommended that language be added to the regulations explaining what standards will be used by auditors to determine whether an LEA has complied with the comparability requirement. The commenters specifically recommended that definitions be provided for such terms as "comparable," "substantially comparable," "unpredictable changes," "equivalence among schools in teachers, administrators, and auxiliary personnel," and "equivalence among schools in the provision of curriculum materials and instructional supplies."

Response. No change has been made. An SEA has the responsibility of ensuring that LEAs in its State implement the comparability provisions as those provisions are interpreted by the SEA. As long as an SEA's interpretation is not inconsistent with the language of the statute and regulations, it will not be challenged in final audit determinations. The Secretary does not believe that a single mandatory interpretation in the regulations would further most effectively the intent of the comparability provision. The Department's draft nonregulatory guidance does, however, offer acceptable, though not exclusive, means of determining compliance with the comparability provision. It is anticipated that similar guidance will also be contained in the final document.

Comment. One commenter recommended that language be added to the regulations expressly stating that the comparability assurances must be implemented and records maintained documenting the implementation.

Response. No change has been made. Implicit in the concept of a required assurance is the requirement that the assurance be implemented. That this is true for comparability is borne out by the statement in Section 558(c)(2)(C) of Chapter 1 that certain changes after the beginning of the school year are not considered in determining comparability. It would not have been necessary to exclude these certain changes unless general conditions after the beginning of the school year are to be considered in determining compliance.

Comment. One commenter recommended that language be added to this section specifying procedures for excluding State and local funds for certain special programs in determining compliance with the comparability provisions.

Response. No change has been made. An LEA is free to implement the exclusion using whatever procedures the LEA or SEA establishes. Because these may differ among States, it would not be appropriate to require all States to use a single procedure.

Comment. One commenter recommended that regulations require an LEA to file comparability assurances annually.

Response. No change has been made. Section 558(c)(2) of Chapter 1 only appears to require an LEA to file one-time assurances. These will continue in effect unless the LEA submits revised assurance.

Comment. One commenter recommended adding language specifying the SEA's responsibility with respect to LEAs' compliance with the comparability requirements.

Response. No change has been made. The SEA's responsibility in this regard is no different than with respect to any other required assurance. The SEA is responsible for ensuring that LEAs comply with the comparability requirement.

Comment. One commenter recommended that the regulations be revised to require LEAs to continue to determine comparability on the same basis as under Title I, except that they may exclude high cost students.

Response. No change has been made. Although the basic comparability requirement in Chapter 1 is almost identical to that of Title I, the means of complying with it can be different. Chapter 1 states that LEAs shall be deemed to be in compliance with the comparability requirement by filing certain assurances. An SEA, however, may accept other means of demonstrating comparability, including

use of the method that was used under Title I.

Subpart E—Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools

Comment. A number of commenters recommended that language be added to the regulations to clarify the issue of which, if any, civil rights requirements should apply to private schools whose students receive Chapter 1 services.

Response. No change has been made. The applicability of Title VI of the Civil Rights Act of 1964 is set forth in the Office for Civil Rights "Report on Nonpublic Schools Participating in Federal Programs," published at 41 FR 35553 (Aug. 23, 1976), and remains in effect. Issues pertaining to the applicability of other civil rights requirements as they relate to the participation of children in private schools are under study and, as appropriate, will be clarified in Chapter 1 nonregulatory guidance or by other means.

§ 200.70 Responsibility of LEAs.

Comment. Two commenters questioned why the regulations require that private school children must reside in project areas to be eligible to receive Chapter 1 services.

Response. A change has been made. With the exception of services offered under Section 556(b)(1)(C), public school students must reside in a project area to receive Chapter 1 services. The provisions governing Chapter 1 services for children in private schools are intended to ensure that Chapter 1 services are provided to those children who would have been served had they attended the public school serving the attendance area in which they reside. Accordingly, services to private school children must be provided with regard to area of residence, unless the LEA chooses to serve all students under Section 556(b)(1)(C). This approach is consistent with that followed under Section 130 of Title I (20 U.S.C. 2740) on which Section 557 of Chapter 1 is based. However, if an LEA serves educationally deprived, low-income public school children under Section 556(b)(1)(C) of Chapter 1, the LEA must also serve such children in private schools. Section 200.71(b) reflects this situation.

Comment. One commenter questioned why this section required that private school students' opportunity to participate take into account their number and needs. The commenter noted that the statute requires that expenditures for such children take those factors into account.

Response. No change has been made. The requirement that private school students' opportunity to participate in Chapter 1 projects be based on the number and needs of such children is implicit in the requirement that Chapter 1 services be based on an assessment of educational need.

Comment. One commenter questioned the statutory authority for paragraph (d), which requires that Chapter 1 services for private school students be provided by either public employees or by a contractor independent of the private school and any religious organization.

Response. No change has been made. That provision is based on Section 436(b)(2) of GEPA, made applicable to Chapter 1 by Section 596(a) of the ECIA. Section 436(b)(2) requires that control of funds provided to an LEA under Chapter 1 be in a public agency and that a public agency administer those funds. The requirement that a contractor be independent of the private school and any religious organization is intended to ensure maintenance of the requisite public control.

Comment. One commenter recommended adding language to this section expressly requiring LEAs to consult with private school officials in planning and implementing Chapter 1 projects.

Response. A change has been made. Language has been added to require consultation with private school officials. The Secretary believes that this change is needed to ensure that Section 557(a) of Chapter 1 will be carried out effectively.

Comment. One commenter recommended that the regulations be revised to clarify LEAs' responsibilities for children who reside in one district and attend a private school located in another district.

Response. No change has been made. As indicated in § 200.70(a), the responsibility for providing Chapter 1 services to an eligible child rests with the LEA in whose district the child resides. If it is not feasible for an LEA to provide services either in a private school outside its own district or to have children attending such schools brought back into its district to receive services, the LEA should consider entering into an agreement with the LEA in whose district the private school is located.

§ 200.71 Factors used in determining equitable participation.

Comment. One commenter questioned whether paragraph (a) required a dollar-to-dollar comparison of services for public and private school children.

Response. No change has been made. Section 557 of Chapter 1 requires expenditures be equal, taking into account the number of children and their educational needs. Therefore some type of dollar comparison is involved. An SEA may provide guidance to its LEAs regarding how, in accordance with Section 557(a) of Chapter 1 and § 200.71(a) of these regulations, the comparison is to be made.

Comment. Two commenters questioned the authority for the equitable services requirement in paragraph (b).

Response. No change has been made. Section 557(b)(2) of Chapter 1 requires the Secretary to implement a bypass if an LEA has substantially failed to provide for the participation "on an equitable basis" of educationally deprived children in private schools. If the standard for a bypass is failure to provide services on an equitable basis, then it follows that an LEA is required to provide such services. In addition, Section 557(a) of Chapter 1 refers to equal expenditures for services to private school children and to services being provided "to the extent consistent with the number of educationally deprived children." The Secretary believes this language also requires that Chapter 1 services be provided to private school children on an equitable basis.

Comment. Several commenters recommended that paragraph (b) of this section be revised to clarify whether services for private school children must be provided at the same grade levels and in the same instructional areas as services for children in public schools.

Response. No change has been made. In general, an LEA will provide services for private school children in the same instructional areas and grade levels as in the public schools. An LEA considers the needs of all educationally deprived children in eligible areas, including those attending private schools, in designing its Chapter 1 project. If the needs of the children in private schools are different than those of the children in public schools, the LEA should consider that in designing its project. An LEA designs a project based on its needs assessment and provides project services to participants that meet the LEA's selection criteria. This applies to all participants, those in public and those in private schools alike.

Comment. One commenter questioned why the language requiring that Chapter 1 services be of sufficient size, scope, and quality was repeated in this section when § 200.52 applies to all Chapter 1 projects.

Response. No change has been made. That language is included in § 200.71 to emphasize its applicability to services for private school children. The standard is also used, in part, to determine whether private school children are receiving services on an equitable basis.

Comment. One commenter questioned the omission of standards and criteria for determining whether private school children are receiving Chapter 1 services on an equitable basis.

Response. No change has been made. Equitable participation is measured against the services provided to children attending public schools. Because of the wide variety in types of services provided by different LEAs, the Secretary has determined that a single set of standards for determining equitable participation would not be practical.

Comment. One commenter recommended that language be added to this section limiting the amount of Chapter 1 funds an LEA must expend to provide services for private school children.

Response. No change has been made. The statute requires expenditures for private school children to be equal, taking into account the number and needs of such children, to expenditures for public school children.

§ 200.72 Funds not to benefit a private school.

Comment. One commenter recommended revising paragraphs (a) and (b) to clarify that the private school children who may receive services must be educationally deprived.

Response. No change has been made. Section 200.70 of the regulations specifically limits services to "educationally deprived children residing in project areas."

Comment. One commenter questioned how an LEA can ensure that Chapter 1 funds are used to provide services to private school children that supplement the level of services the children would otherwise receive without becoming unduly entangled with the private schools.

Response. No change has been made. An LEA must design its Chapter 1 project so that the services provided to private school children are limited to those which meet the special educational needs of eligible private school children; the services must not benefit the private school. Chapter 1 participants attending private schools should be selected on a basis identical or comparable to that used to select children attending public schools. As long as these conditions are met, the

LEA's Chapter 1 services comply with § 200.72.

Comment. One commenter questioned whether an LEA could allow Chapter 1 personnel to perform non-instructional duties in private schools.

Response. No change has been made. Section 200.72(b) prohibits the use of Chapter 1 funds to meet the needs of a private school or the general needs of children in a private school. Performance of non-instructional duties, the benefits of which are not limited to Chapter 1 participants, are prohibited by this language.

§ 200.73 Use of public school employees.

Comment. One commenter recommended adding language to this section explaining under what circumstances private school personnel may be employed part-time by an LEA to provide Chapter 1 services.

Response. No change has been made. Such an arrangement would be allowable as long as the SEA is satisfied that the LEA is able to supervise effectively the employee and to maintain administrative direction and control of that portion of its project.

§ 200.74 Equipment and supplies.

Comment. One commenter questioned the authority for this section, particularly paragraphs (b) through (e).

Response. No change has been made. The Secretary believes that the provisions in § 200.74 are reasonable and necessary to ensure that LEAs maintain adequate administrative control over Chapter 1 funds and property as required by Section 436(b)(2) of GEPA. In addition, the provisions in § 200.74 are necessary to carry out the general purpose of Section 557 of Chapter 1 to provide equitable services to private school children but not to provide funds or services to private schools.

Comment. One commenter recommended that language be added to this section to provide guidelines concerning the use of equipment and supplies in private schools.

Response. No change has been made. The Secretary believes that LEAs and SEAs are able to comply with the requirement without additional Federal regulation.

§ 200.75 Construction.

Comment. One commenter questioned the statutory authority for prohibiting the use of Chapter 1 funds for the construction of private school facilities.

Response. No change has been made. Section 436(b)(2) of GEPA requires LEAs

to maintain administrative control over Chapter 1 funds and title to property acquired with Chapter 1 funds. It would not be possible to comply with that requirement if Chapter 1 funds were used to construct private school facilities.

Subpart F—Due Process Procedures

§ 200.80 Bypass—General.

Comment. One commenter questioned why paragraph (a)(2) of this section uses the phrase "failed to provide services" when the statute uses the term "failed to provide for participation."

Response. No change has been made. The statutory language has been incorporated into the regulations.

Comment. One commenter questioned why the regulations do not contain criteria for determining whether an LEA has substantially failed to provide for the participation of educationally deprived children attending private schools.

Response. No change has been made. That determination would be based on a close examination of the particular circumstances in an LEA. Because the nature of these circumstances could vary greatly among LEAs, the Secretary does not believe that meaningful criteria could be developed to apply to all possible circumstances. Note that § 200.81 does require the Secretary to detail the reasons for an intended bypass in a written notice to the LEA before taking any final action to implement a bypass.

Comment. One commenter, noting that Section 557(b)(3)(B) of Chapter 1 authorized the Secretary to withhold funds pending final resolution of an investigation that could result in a bypass, recommended that strict time limits be placed on all steps in the bypass procedure. This would protect an LEA that was ultimately not bypassed from having funds withheld for a lengthy period of time.

Response. No change has been made. The Secretary will process all bypass proceedings as expeditiously as possible. It is expected that the Secretary will only very infrequently, if ever, exercise his withholding authority pending final action on a bypass.

Comment. One commenter recommended that language be added to the regulations limiting the amount of Chapter 1 funds that an LEA would have to contribute to pay for a bypass. The commenter felt that this amount should not exceed the amount, on a per pupil basis, expended on Chapter 1 participants from public schools.

Response. No change has been made. The statute requires that the actual cost

of a bypass action be paid for with Chapter 1 funds from the allocations of the affected State or LEA.

Comment. One commenter questioned why paragraph (b) did not include a reference to the statutory requirement that the Secretary consult with appropriate public and private school officials in arranging for Chapter 1 services under a bypass.

Response. A change has been made. That requirement has been added to § 200.80(b).

§ 200.81 Notice by the Secretary.

Comment. One commenter felt that the language in the regulations did not accurately reflect the statutory language which states that the Secretary will take no final action on a bypass until the affected SEA and LEA have had 45 days from when they received written notice from the Secretary to submit written objections to the Secretary's written notice.

Response. A change has been made. Section 200.81(a)(3) has been modified to indicate that an LEA and an SEA have at least 45 days from receipt of the written notice to respond to the Secretary's intended bypass.

§ 200.82 Bypass procedures.

Comment. Several commenters recommended that language be added to the regulations stating that the burden of proof in any bypass or other due process procedure would be on the Secretary rather than the affected SEA or LEA.

Response. No change has been made. Section 557(b)(4)(A) of Chapter 1 indicates that the Secretary shall not take final action on a bypass without affording the LEA or SEA an opportunity to show cause why that action should not be taken. At this stage, the burden of proof, therefore, would be on the LEA or SEA to show cause. The Secretary would not propose to take action to implement a bypass at all, however, unless he was presented with substantial evidence that such action was warranted.

§ 200.83 Appointment and functions of a hearing officer.

Comment. One commenter questioned what the statutory authority was for §§ 200.83–200.85.

Response. No change has been made. The Secretary believes that the provisions contained in these sections are reasonably necessary both to ensure compliance with Section 557(b) of Chapter 1 and to protect the due process rights of SEAs and LEAs.

Comment. One commenter recommended revising this section to provide that the hearing officer has the

authority to conduct and require discovery.

Response. No change has been made. The bypass provisions contained in Section 557(b) of Chapter 1 were originally enacted as part of the Education Amendments of 1978. As the House Report accompanying these amendments indicated, it was the intent of Congress that the bypass authority be exercised "in a manner which will assure a prompt resolution of complaints from representatives of nonpublic school children * * *." Accordingly, the Commissioner was directed "to adopt and publicize systematic procedures for the prompt processing of complaints." H.R. Rep. No. 1137, 95th Cong., 2d Sess. 33 (1978). In keeping with this congressional mandate to devise prompt and expedited bypass procedures, the Secretary has decided that to permit the hearing examiner to conduct discovery would result in time-consuming delays in the proceedings.

§ 200.90 General.

Comment. A number of commenters recommended that sections be added to the regulations containing complaint resolution procedures and due process procedures for situations other than bypass, withholding, and final audit determinations. The commenters felt that procedures should be set out so that if parents and the general public raise questions about Chapter 1 projects, they can be assured that their concerns will be taken up. Several commenters recommended that LEAs be covered under these sections and that they also be given appeal rights, to the Department, of SEA determinations regarding application disapproval and State audits.

Response. A change has been made. The statute does not authorize the Secretary to prescribe complaint resolution procedures for SEAs and LEAs. That such statutory authority existed under Title I and was not included in Chapter 1 further supports the decision not to prescribe procedures here. The Secretary does not believe that requiring SEAs to defend their application approval and audit determinations to the Department is in keeping with the general intent of reducing the Federal role in the Chapter 1 program. Finally, LEAs are not covered by these sections because withholding and final audit determinations are made with respect to SEAs, not LEAs. Several sections, however, have been changed or added to provide due process procedures for cease and desist complaints. *See, e.g.,* §§ 200.90 (general), 200.91 (jurisdiction),

200.92 (definitions), 200.93 (eligibility for review), 200.94 (written notice), 200.104 (cease and desist hearing), 200.105 (cease and desist written report and order), and 200.106 (enforcement of a cease and desist order). As noted in § 200.94, cease and desist complaints) unlike final audit determinations and withholdings, which are issued by the Assistant Secretary for Elementary and Secondary Education—will only be issued by the Secretary. Before the Secretary issues a complaint, he will make every reasonable effort to discuss the circumstances giving rise to the complaint with the SEA and afford the SEA an opportunity to explain its position.

Comment. One commenter recommended that all references in §§ 200.90–200.106 to final audit determinations be deleted. The commenter did not believe that the Secretary has the authority to make audit findings under Chapter 1.

Response. No change has been made. Section 452 of GEPA specifically authorizes the Secretary to make final audit determinations and to afford review of these determinations by the Education Appeal Board. In addition, Section 202 of the Intergovernmental Cooperation Act of 1968, Section 555(d) of Chapter 1, and Section 4(a)(1) of the Inspector General Act of 1978 authorize the Department to perform audits of Chapter 1 programs.

Comment. One commenter recommended deletion of all provisions relating to the involvement of the Education Appeal Board with Chapter 1.

Response. No change has been made. The Secretary has determined that Sections 451–452 and 454–456 of GEPA are applicable to Chapter 1. As a result, the Secretary believes that the provisions contained in §§ 200.90–200.106 are appropriate means of implementing these statutory requirements and protecting SEAs' due process rights. The Secretary shares the concern of commenters that lengthy and time-consuming proceedings, with attendant burden, be avoided, particularly under the ECIA. On the other hand, the Secretary does not believe that administrative efficiency would be served by establishing a parallel and duplicatory appeal mechanism for appeals under the ECIA. Instead the Secretary has decided to use the EAB mechanism, with which considerable experience has been gained since 1974, while streamlining its

procedures and applying new techniques to ensure more expeditious proceedings.

Comment. One commenter recommended that specific timeframes be attached to all steps in the procedures in §§ 200.90–200.106.

Response. No change has been made. Specific time limits for many steps are already included in the regulations. Due to significant variations in scope and complexity of issues raised in these proceedings, further specific timeframes would not allow the flexibility necessary for orderly conclusion of the procedures.

Comment. One commenter questioned whether the Secretary could enter into a compliance agreement with an SEA under the procedures contained in §§ 200.90–200.106.

Response. No change has been made. The Chapter 1 statute does not afford the Secretary the authority to enter into compliance agreements.

§ 200.92 Definitions.

Comment. One commenter questioned whether the definition of the term "recipient" as "the named party or entity that initially received Federal funds under Chapter 1" meant that only an SEA was a recipient and LEAs were not therefore responsible for complying with civil rights requirements that apply to recipients of Federal funds.

Response. No change has been made. The definitions in § 200.92 apply only for purposes of the due process provisions in §§ 200.90–200.106. For those purposes, only an SEA is considered a recipient. However, both SEAs, LEAs, and State applicant agencies are considered recipients of Federal funds under Federal civil rights statutes and regulations.

§ 200.99 Intervention.

Comment. One commenter recommended that this section be revised to specify whether a panel will temporarily postpone its proceedings upon receiving an application for intervention.

Response. No change has been made. An application for intervention received after a panel has begun its proceedings would be processed as expeditiously as possible and, if accepted, considered in the final decision.

§ 200.103 The Secretary's decision.

Comment. One commenter recommended that language be added to

the regulations stating that the Secretary's decision is subject to judicial review under Section 593 of Chapter 3.

Response. No change has been made. Because judicial review is a procedure that is not under the administration of the Department, the Secretary has decided not to include it in the regulations.

Applicability of Other Statutes: General Education Provisions Act

Comment. The preamble to the Chapter 1 NPRM indicates that it had been determined that the General Education Provisions Act (GEPA), 20 U.S.C. 1221–1234e, is not applicable to Chapter 1 except for those sections of GEPA specifically made applicable by Section 596 of the ECIA. A considerable number of commenters objected to this interpretation, contending that GEPA was generally applicable to Chapter 1, and urged the Secretary to revise his interpretation.

Response. A change has been made. Both the NPRM and the preamble to the final Chapter 1 regulations published on July 29, 1982 indicated that, except for the sections of GEPA that were specifically made applicable by Section 596 of the ECIA, the provisions of GEPA did not apply to Chapter 1. This determination was made because Section 596 of the ECIA is ambiguous on the issue of GEPA applicability and because of the concern that Chapter 1 be kept as free as possible from the imposition of detailed and sometimes conflicting requirements in GEPA that would decrease the flexibility and increase the burden of SEAs and LEAs in carrying out their Chapter 1 responsibilities.

In light of comments subsequently received, the Secretary has now reconsidered this determination. In reconsidering this matter, the Secretary has been concerned that continuing controversy over the issue of GEPA applicability to Chapter 1 would impair the smooth and efficient implementation of the program. Therefore, subject to the exceptions described in the preamble to these regulations, the Secretary adopts the interpretation that GEPA is applicable to Chapter 1. The Department will carry out its administrative role under Chapter 1 in light of that determination.

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Part VI

Department of Education

Activities Under Chapter 2 of the
Education Consolidation and
Improvement Act of 1981; Final
Regulations

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 298

Chapter 2 of the Education Consolidation and Improvement Act of 1981

AGENCY: Education Department.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for activities authorized under Subchapters A, B, and C of Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA). These regulations allow State and local educational agencies maximum flexibility to administer funds and design programs under these subchapters of Chapter 2. These regulations replace the final regulations published on July 29, 1982.

EFFECTIVE DATE: Unless Congress takes certain adjournments, these regulations will take effect 45 days after they are published in the *Federal Register*. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**A. Purpose of Chapter 2 Consolidation**

Chapter 2 of the ECIA ("Chapter 2") was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Chapter 2 consolidates 28 education grant programs funded in fiscal year 1981 into a single authorization of grants to States. As stated in Section 561(a) of the ECIA, the programs consolidated are:

- (1) titles II, III, IV, V, VI, VIII, and IX (except part C) of the Elementary and Secondary Education Act of 1965;
- (2) the Alcohol and Drug Abuse Education Act;
- (3) part A and section 532 of title V of the Higher Education Act of 1965;
- (4) the Follow Through Act (on a phased basis);
- (5) section 3(a)(1) of the National Science Foundation Act of 1950 relating to precollege science teacher training; and
- (6) the Career Education Incentive Act.

Section 561(b) of Chapter 2 declares the legislative purpose of Chapter 2 to be the transfer of authority and

responsibility to State and local educational agencies. It states:

The basic responsibility for the administration of funds made available under this chapter is in the State educational agencies, but it is the intent of Congress that this responsibility be carried out with a minimum of paperwork and that the responsibility for the design and implementation of programs assisted under the chapter shall be mainly that of local educational agencies, school superintendents and principals, and classroom teachers and supporting personnel because they have the most direct contact with students and are most directly responsible to parents.

The final regulations are designed to implement these purposes.

B. Authority to Issue Chapter 2 Regulations

Chapter 2 does not require the Secretary to publish regulations to implement any of its provisions. In fact, Section 591(a) of the ECIA substantially limits the authority of the Secretary to issue regulations under Chapter 2. The Secretary is authorized to issue regulations only if they—

- (1) Relate to the discharge of duties specifically assigned to the Secretary;
- (2) Relate to proper fiscal accounting and payment methods; or
- (3) Are deemed necessary "to reasonably insure that there is compliance with the specific requirements and assurances" in Chapter 2.

In accordance with these provisions, the Secretary concludes that regulations for the Chapter 2 program are needed only to cover the following subjects:

- How a State or local educational agency obtains funds under Chapter 2 (Subpart A);
- Fiscal requirements that a State or local educational agency must meet (Subpart B);
- How children enrolled in private schools participate in Chapter 2 programs (Subpart C); and
- Due process procedures (Subpart D).

On July 29, 1982, the Secretary issued final regulations governing the activities authorized under Subchapters A, B, and C of Chapter 2 (47 FR 32884). The final regulations in this document revise 34 CFR Part 298 published on July 29 to read as set forth below. The revised regulations reflect the Secretary's decision that the General Education Provisions Act (GEPA) generally applies to Chapter 2. This decision is discussed below in the "Application of other statutes and regulations" section.

The following paragraphs provide a summary description of the Chapter 2 statute and final regulations.

C. Summary of Program: Distribution of Funds to SEAs and LEAs

Before a State may receive Chapter 2 funds, the State must meet two requirements. First, it must establish a State Advisory Committee that meets the requirements for representation in Section 564(a)(2) of Chapter 2. Section 564(a)(2) describes the composition and functions of the committee. The final regulations add no requirements to this statutory process. However, they do describe circumstances under which a State may use an existing organization to serve as the advisory committee.

Previously, the Secretary encouraged Governors to appoint their State Advisory Committees as early as possible. He indicated that any pre-grant costs incurred for expenses of State Advisory Committees prior to July 1, 1982 could be paid from available resources and those accounts reimbursed after July 1 from a State's Chapter 2 funds. In addition, those costs could be paid from funds appropriated in fiscal year 1981 to implement Title V-B of the Elementary and Secondary Education Act of 1965.

Second, the State must submit an application to the Secretary. The application must designate the State educational agency (SEA) as the State agency responsible for the administration and supervision of programs assisted under Chapter 2, set forth the planned allocation of funds in accordance with Section 564(a)(3), and meet other minimum statutory requirements contained in Section 564(a)(4)-(7). The Secretary requires no particular form of application.

After the Secretary checks to ensure that the application meets the statutory requirements, the Secretary provides a grant award to the State for an amount computed on the basis of the school-age population in the State compared to the school-age population of all States in accordance with Section 563 of Chapter 2.

Under Section 565, the SEA must distribute at least 80 percent of the funds it receives to the local educational agencies (LEAs) in the State in proportion to the relative enrollments in public and private schools in those agencies, "adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to local educational agencies which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child. . .". Section 565(a) lists several examples of "high-cost" children but the examples are not exclusive. The Secretary issues

no regulatory requirements or standards for evaluating State criteria under Section 565. In carrying out this function, the Secretary approves criteria that are reasonably calculated to produce an equitable distribution of funds with reference to the factors listed in Section 565(a).

To receive its allocation from the SEA, an LEA must have on file with the SEA an application which "sets forth the planned allocation of funds . . ." in accordance with Section 566(a)(1) and meets other minimum statutory requirements stated in Section 566. An SEA or LEA may use Chapter 2 funds for the purposes described in Subchapters A through C of Chapter 2. These three Subchapters are titled—

Subchapter A—Basic Skills Development;

Subchapter B—Educational Improvement and Support Services; and
Subchapter C—Special Projects.

Chapter 2 contains no set-asides or other requirements that an SEA or LEA allocate a particular portion of its funds to any of the purposes stated in Subchapters A through C. An SEA or LEA is free to distribute its funds among the range of purposes stated in these subchapters as it sees fit.

In general, the SEA is responsible for the administration and supervision of programs assisted with Chapter 2 funds. However, under Section 566(c), each LEA has "complete discretion, subject only to the provisions of [Chapter 2], in determining how funds the agency receives . . . shall be divided among the purposes of [Chapter 2] in accordance with the application submitted under [Section 566(a)]."

D. Fiscal Requirements

Section 585 of Chapter 2 contains provisions regarding maintenance of effort and use of Federal funds to supplement and not supplant State and local funds. Under Section 585(a)(1), the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education for the preceding fiscal year may not be less than 90 percent of the combined fiscal effort per student or aggregate expenditures for the second preceding fiscal year. Section 585(a)(2) calls for proportional reduction of a State's Chapter 2 allocation if a State fails to meet this requirement. Section 585(a)(3) allows the Secretary to waive the requirement, for one year, if the waiver is equitable due to exceptional or uncontrollable circumstances. The Conference Report, however, indicates that the Secretary may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances. 127

Cong. Rec. H5645 (daily ed. 1981). Section 585(b) states the supplement, not supplant principle that applies to Chapter 2.

Section 596(b) of the ECIA specifically made Section 412(b) of GEPA applicable to Chapter 2. Section 412(b) allows SEAs and LEAs to "carry over" Chapter 2 funds—that is, to use them either in the fiscal year for which the funds were appropriated or in the succeeding fiscal year.

Because representatives of SEAs and LEAs, in meetings with staff members of the Department, have been particularly concerned regarding the need for guidance on these provisions and because Section 585(c) of Chapter 2 specifically invites the issuance of regulations, the Secretary issues minimal regulations on a number of key points on these subjects. These regulations are designed to afford greater flexibility and maximum discretion to SEAs and LEAs in meeting the fiscal requirements described above. The pertinent regulations are contained in Subpart B.

E. Participation of Children Enrolled in Private Schools

Chapter 2 makes extensive provision for the equitable participation of children enrolled in private schools. Sections 586 (d) and (e) provide that the Secretary may arrange for services to private school children if an SEA or LEA is prohibited by law or "has substantially failed or is unwilling" to provide services on an equitable basis for them.

Because Chapter 2 assigns to the Secretary a special duty regarding the equitable provision of Chapter 2 services to children enrolled in private schools, the Secretary gives guidance in these final regulations regarding a limited number of questions which have been frequently raised and which knowledgeable persons, including representatives of private school children, believe require clarification. This clarification is needed to ensure full compliance with the specific provisions which Congress has enacted to protect the rights of private school children to share in Chapter 2 services.

Among the matters clarified in Subpart C of these final regulations are: responsibility of SEAs and LEAs to provide services; consultation with private school officials; determination of needs, number of children, and types of services; factors used in determining equitable participation; use of public school employees on other than public school premises; and public supervision and control of funds and equipment.

F. Due Process Procedures

As indicated above, the Secretary issues final regulations to afford due process protections to SEAs and LEAs in the event that disputes arise in the following areas:

- By-pass determinations under Section 568(d)–(h).
- Final audit determinations under Section 452 of GEPA.
- Determinations to withhold funds under Section 592.
- Cease and desist complaints under Section 454 of GEPA.

By-pass procedures contained in the final regulations are designed to provide a brief procedural guide to enable an affected SEA or LEA to challenge a by-pass determination by the Secretary.

Procedures regarding adverse audit determinations and cease and desist complaints are modeled on current regulations providing SEAs with highly-developed appeal rights before the Education Appeal Board. However, the final regulations shorten and simplify these procedures and specifically tailor them for the Chapter 2 program.

The final regulations provide for withholding proceedings under Section 592 before the Education Appeal Board but require, in keeping with the mandate of Section 592, that these proceedings be conducted in accordance with the provisions of the Administrative Procedure Act.

G. Additional Guidance

The Secretary has recognized a need and a responsibility to provide further nonregulatory guidance with respect to various questions that have been frequently raised by representatives of SEAs and LEAs. The Secretary, therefore, is preparing, and plans to distribute widely, a final document designed to provide further nonregulatory guidance with respect to the provisions in Chapter 2. This material will provide information to enable SEAs and LEAs to meet the requirements of the statute.

The guidance in the document will be binding on all officials of the Department. It will not, however, be binding on SEAs and LEAs. It will clearly indicate that State and local officials are free to develop—indeed are encouraged to develop—alternative approaches that are consistent with the statute and regulations but may be more in keeping with their particular needs and circumstances.

H. Application of Other Statutes and Regulations

(1) As the Secretary interprets other applicable statutes, recipients of grant funds under Chapter 2 are recipients of Federal financial assistance under the civil rights laws. Therefore, those statutes, as well as regulations implementing those statutes, apply to Chapter 2 programs. The civil rights regulations are found in 34 CFR Parts 100, 104, and 106. Although regulations implementing the Age Discrimination Act of 1975 have not yet been published, recipients of Chapter 2 funds must comply with the provisions of that Act.

(2) The preamble of the regulations published on July 29, 1982 indicated that, except for the sections of GEPA that were specifically made applicable by Section 596 of the ECIA, the provisions of GEPA did not apply to Chapter 2. This determination was made because Section 596 of the ECIA is ambiguous on the issue of GEPA applicability and because of the concern that Chapter 2 be kept as free as possible from the imposition of detailed and sometimes conflicting requirements in GEPA that would decrease the flexibility and increase the burden on SEAs and LEAs in carrying out their Chapter 2 responsibilities.

In light of all comments received, the Secretary has now reconsidered this determination following publication of the regulations on July 29. In reconsidering the matter, the Secretary has been concerned that continuing controversy over the issue of GEPA applicability to Chapter 2 would impair the smooth and efficient implementation of the program. Therefore, subject to the exceptions stated below, the Secretary adopts the interpretation that GEPA is applicable to Chapter 2. The Department will carry out its administrative role under Chapter 2 in light of that determination.

Even though GEPA generally applies to Chapter 2, some specific provisions of GEPA are inapplicable as a matter of law because they are specifically made inapplicable by the ECIA, because they are superseded by specific provisions of the ECIA, or for other reasons explained below. Other provisions of GEPA, though not inapplicable, have been superseded by the Department of Education Organization Act or are otherwise irrelevant to the operation of the Chapter 2 program. After a careful reconsideration of the ECIA and its legislative history, the Secretary interprets the following sections of GEPA as inapplicable to Chapter 2 as a matter of law:

(a) Section 403(a)(1) of GEPA (authorizing the Secretary to promulgate regulations), 20 U.S.C. 1221e-3(a)(1), is superseded by Section 591(a) of the ECIA.

(b) Section 425 of GEPA, 20 U.S.C. 1232b-2, provides complex procedures regarding certain actions by an SEA that affect applicants or recipients under an applicable program. Section 425 also provides for Federal review of an SEA's action under that section. The Secretary believes that this provision was not intended to apply to Chapter 2. Section 425 only applies to programs in which assistance is provided "in accordance with a State plan approved by the Secretary." Chapter 2 is not such a program. Further, Section 425 of GEPA is clearly at odds with Section 561 of Chapter 2 which provides: "The basic responsibility for administration of funds made available [under Chapter 2] is in the State educational agencies." It is also inconsistent with the general congressional objective to reduce Federal involvement in the administration of this program.

(c) Section 426(a) of GEPA (relating to technical assistance from the Department), 20 U.S.C. 1231c(a), is superseded by Section 591(b) of the ECIA.

(d) Section 427 of GEPA, 20 U.S.C. 1231d, directs the promulgation of Federal regulations or criteria relating to parental participation where the Secretary determines that such participation at the State or local level will increase the effectiveness of a Federal program. The Secretary believes that Section 427 should not be invoked with respect to Chapter 2 even in the context of a determination of general GEPA applicability. The matter of parental involvement is covered in Sections 564(a)(2)(C) and 566(a)(4) of Chapter 2, and the Secretary regards these sections as preemptive and rendering unnecessary the issuance of regulations or criteria under Section 427 of GEPA.

(e) Section 430 of GEPA (regarding applications to receive Federal financial assistance), 20 U.S.C. 1231g, is superseded by Sections 564 (State applications) and 566 (Local applications) of Chapter 2.

(f) Section 431A of GEPA (relating to maintenance of effort determinations), 20 U.S.C. 1232-1, is inapplicable by its terms and, in any event, is superseded by Section 585(a) of Chapter 2 relating to the same topic.

(g) In accordance with Section 596(a) of the ECIA, Sections 434 (SEA monitoring and enforcement), 435 (single State application), and 436 (single LEA

application) do not apply except to the extent that they relate to fiscal control and fund accounting procedures (including the title to property acquired with Federal funds).

The provision in Section 434 of GEPA which applies to Chapter 2 is in paragraph (a)(2) pertaining to the Secretary's discretionary authority to request a plan on audits. The Secretary has decided not to require such a plan for audits of the Chapter 2 program. Section 435 of GEPA applies to Chapter 2 only with respect to paragraphs (b)(2) and (b)(5), which pertain to two assurances concerning fiscal control and fund accounting procedures that are required to be filed in a "single State application." Section 436 of GEPA applies to Chapter 2 with regard to similar assurances in paragraphs (b)(2) and (b)(3) filed in "single local applications." If SEAs and LEAs have filed these applications, the assurances do not have to be filed again.

(h) Section 437(b) of GEPA (relating to access to records), 20 U.S.C. 1232f(b), is superseded by Section 1744 of the Omnibus Budget Reconciliation Act of 1981.

(i) Section 453 of GEPA (relating to withholding), 20 U.S.C. 1234b, is superseded by Section 592 of the ECIA relating to the same topic.

(j) The judicial review provisions of Section 593 of the ECIA are controlling with respect to judicial review of withholding actions under Section 592 of the ECIA. Therefore, Section 455 of GEPA, 20 U.S.C. 1234d, is superseded to the extent that it applies to withholding actions under Chapter 2.

(3) Sections 1741 (relating to the distribution of block grant funds), 1742 (relating to reports on the proposed use of funds and public hearings), and 1743 (relating to transition provisions) of the Omnibus Budget Reconciliation Act of 1981 do not apply to Chapter 2. Sections 1744 (relating to access to records by the Comptroller General) and 1745 (relating to State auditing requirements) do apply, and their provisions have been incorporated in §§ 298.16 and 298.17 of this Part.

(4) The Education Department General Administrative Regulations (EDGAR) do not apply to programs under Chapter 2. EDGAR includes 34 CFR Part 76, which deals with State-administered programs, and 34 CFR Part 74, which implements OMB Circulars A-21, A-87, A-102, and A-110. Rather than complying with the provisions contained in these parts, States may apply equivalent procedures of their own for financial management and control of their programs. However, States

continuing to comply with the provisions in 34 CFR Part 74 will be considered to be in compliance with the fiscal control and fund accounting procedures required by Sections 435 and 436 of GEPA that are applicable to Chapter 2. In addition, States may follow the provisions in 34 CFR 74.62, which implements Attachment P to OMB Circular A-102, to satisfy the audit requirements in Section 1745 of the Omnibus Budget Reconciliation Act of 1981 and § 298.17 of these final regulations. The parts of EDGAR that do not apply to Chapter 2 also include 34 CFR Part 77 (definitions in EDGAR that apply generally to education programs) and Part 78 (Education Appeal Board).

I. Use of "Carryover Funds" From Programs Being Consolidated

The Secretary interprets Section 514(b)(2)(B) of the Omnibus Education Reconciliation Act of 1981 to permit SEAs and LEAs that had unobligated funds on July 1, 1982 that were appropriated in an appropriation act for Fiscal Year 1981 and were intended for their use under the antecedent programs to retain these funds for expenditure and use. These funds are available for obligation until September 30, 1983 under Section 412(b) of GEPA. Although Section 514 requires SEAs and LEAs to expend and use their unobligated funds in accordance with the purposes of Chapter 2, the Secretary does not interpret this section to require these agencies to allocate their unobligated funds according to the formula in Section 565(a) of Chapter 2. As a result, SEAs that have unobligated funds intended for their use under the antecedent programs, such as "State strengthening" funds under Title V of the Elementary and Secondary Education Act of 1965, may expend and use those funds in accordance with the purposes of Chapter 2 without distributing at least 80 percent of them to LEAs. Likewise, LEAs do not need to return their unobligated funds to the SEA for distribution under the Chapter 2 formula.

Under the Secretary's interpretation, unobligated funds are to be expended and used by those agencies for whose use under the antecedent programs the funds were intended. Thus, any categorical funds intended for LEAs in the 1981 appropriation but not awarded by SEAs as of July 1, 1982 shall be awarded to LEAs. These funds may be allocated in accordance with the distribution formula for the LEA portion of Chapter 2 funds or to those LEAs that would have received them under the antecedent programs.

Because Section 514(b)(2)(B) only pertains to SEAs and LEAs, any institutions of higher education or other recipients of subgrants or contracts under the antecedent programs are not affected by Section 514. Therefore, these subgrantees or contractors shall continue to operate their grants or contracts according to the terms and conditions under which they were received.

Public Participation

Over fifty letters containing more than 200 individual comments were received. Comments were also received in the course of briefing sessions conducted by the Department for State and local officials. Comments, responses to comments, and a summary of changes made in the final regulations are described in the Appendix to these regulations. Responses have been revised as appropriate to reflect the Secretary's interpretation regarding the applicability of GEPA. The Appendix will not appear in the Code of Federal Regulations.

Comments received from SEAs and their representatives were favorable and generally indicated a recognition that the Secretary had accomplished the goal of substantially reducing regulatory burden. As one commenter noted, "We applaud the efforts of the U.S. Department of Education to reflect in its proposed regulations for Chapter 2 of ECIA the intent of Congress in granting State and local educational agencies greater flexibility to address Federal education priorities."

The Secretary has carefully considered all comments received and has made changes warranted by the comments. The changes made are relatively limited in nature and are designed to clarify technical matters raised by the commenters. The basic approach of the regulations and the objective of providing maximum flexibility to SEAs and LEAs have been preserved.

In addition, since publication of the July 29, 1982 regulations, the Secretary has made a number of changes in legal citations and other technical amendments to reflect the Secretary's determination that GEPA generally applies to Chapter 2. Since the changes are only technical, no further public comment is being requested. In any case, the issue of GEPA applicability has been fully debated in the rulemaking process just completed, and further comment is therefore unnecessary under 5 U.S.C. 553.

Paperwork Reduction Act of 1980

Information collection requirements contained in § 298.15 of these regulations have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 18100053. This control number appears as a citation following the appropriate paragraphs.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291 and are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect all small LEAs receiving Federal Financial assistance under Chapter 2. However, the regulations will not have a significant economic impact on the small LEAs affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision.

The regulations impose minimal requirements to ensure the proper allocation and expenditure of program funds. Wherever possible, SEAs will have maximum authority and responsibility for supervising LEAs and administering the program. Program funds may be used for LEA administrative expenses. For these reasons the regulations will not have a significant economic impact on the small entities affected.

Education Impact Statement

The Secretary has examined the record of the rulemaking proceeding for these regulations and has determined that the regulations do not require any information to be transmitted that is already being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 298

Administrative practice and procedure, Education, Elementary and secondary education, Grant programs—

education, Private schools, State administered programs.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of the regulations. Unless otherwise noted, the citations refer to sections of the Education Consolidation and Improvement Act of 1981.

(Catalog of Federal Domestic Assistance No. 84.151; Chapter 2 of the Education Consolidation and Improvement Act of 1981)

Dated: November 9, 1982.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 298 of Title 34 of the Code of Federal Regulations to read as follows:

PART 298—CHAPTER 2 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

Subpart A—How a State or Local Educational Agency Obtains Funds Under Chapter 2

- Sec.
- 298.1 Purpose.
- 298.2 Definitions.
- 298.3 General responsibilities of State and local educational agencies.
- 298.4 State applications.
- 298.5 Allotments to States of Chapter 2 funds.
- 298.6 State advisory committee.
- 298.7 LEA applications.
- 298.8 Allocation of Chapter 2 funds to LEAs.
- 298.9 Reallocation.
- 298.10 Use of Chapter 2 funds.

Subpart B—Fiscal Requirements That a State or Local Educational Agency Must Meet

- 298.11 Maintenance of effort.
- 298.12 Waiver of the maintenance of effort requirement.
- 298.13 Supplement, not supplant.
- 298.14 Availability of funds.
- 298.15 Recordkeeping requirements.
- 298.16 Federal audits and access to records.
- 298.17 State audits.
- 298.18 Compromise of audit claims.
- 298.19 Commingling of funds.
- 298.20 [Reserved]

Subpart C—How Children Enrolled in Private Schools Participate in Chapter 2 Programs

- 298.21 Responsibility of SEAs and LEAs.
- 298.22 Consultation with private school officials.
- 298.23 Needs, number of children, and types of services.
- 298.24 Factors used in determining equitable participation.
- 298.25 Funds not to benefit a private school.
- 298.26 Use of public school employees.
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Procedures for By-Pass

- 298.31 By-pass—General.
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Other Due Process Procedures

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- 298.43 Definitions.
- 298.44 Eligibility for review.
- 298.45 Written notice.
- 298.46 Filing an application for review of a final audit determination or a withholding hearing.
- 298.47 Review of the written notice.
- 298.48 Acceptance of the application.
- 298.49 Rejection of the application.
- 298.50 Intervention.
- 298.51 Practice and procedure.
- 298.52 The Panel's decision.
- 298.53 Opportunity to comment on the Panel's decision.
- 298.54 The Secretary's decision.
- 298.55 Cease and desist hearing.
- 298.56 Cease and desist written report and order.
- 298.57 Enforcement of a cease and desist order.

Authority: Secs. 561–596 of Pub. L. No. 97–35, 95 Stat. 469–482 (20 U.S.C. 3811–3876), unless otherwise noted.

Subpart A—How a State or Local Educational Agency Obtains Funds Under Chapter 2

§ 298.1 Purpose.

The regulations in this Part implement the consolidation of Federal program activities for elementary and secondary education at the State and local level contained in Subchapters A, B, and C of Chapter 2 of the Education Consolidation and Improvement Act of 1981 (Chapter 2).

(Sec. 561, 20 U.S.C. 3811)

§ 298.2 Definitions.

(a) The following definitions contained in Section 595 of Chapter 3 of the Education Consolidation and Improvement Act of 1981 apply to the regulations in this part:

- State
- Secretary
- State educational agency
- Local educational agency
- Parent
- Free public education
- Elementary school
- Secondary school
- Construction
- Equipment
- School facilities

(b) Additional definitions pertaining to the due process procedures in

§§ 298.41–298.57 are found in § 298.43 of these regulations.

(c) The definitions in 34 CFR Part 77 (definitions in EDGAR that apply generally to education programs) do not apply to the regulations in this part.

(Sec. 595, 20 U.S.C. 3875)

§ 298.3 General responsibilities of State and local educational agencies.

(a)(1) Except as provided in paragraph (b) of this section, a State educational agency (SEA)—

(i) Has the basic responsibility for the administration of funds made available under Chapter 2; and

(ii) Is the State agency responsible for the administration and supervision of programs assisted with Chapter 2 funds.

(2) To carry out its responsibilities, an SEA may, in accordance with State law, adopt rules, regulations, procedures, guidelines, and criteria regarding the use of Chapter 2 funds, provided that those rules, regulations, procedures, guidelines, and criteria do not conflict with the provisions of—

- (i) Chapter 2;
- (ii) The regulations in this Part; or
- (iii) Other applicable Federal statutes and regulations.

(b) Section 566(c) of Chapter 2 provides that each local educational agency (LEA) has complete discretion, subject only to the provisions of Chapter 2, in determining how funds the agency receives under Section 565(a) of Chapter 2 are divided among the purposes of Chapter 2 in accordance with the LEA's Chapter 2 application.

(Sec. 561(b), 20 U.S.C. 3811(b); Sec. 564, 20 U.S.C. 3814; Sec. 566(c), 20 U.S.C. 3816(c))

§ 298.4 State applications.

(a) (1) Any State that desires to receive a grant under Chapter 2 shall file an application with the Secretary that meets the requirements in Section 564 of Chapter 2.

(2) The application may be submitted in any form that the State determines is appropriate.

(b)(1) A State shall file its Chapter 2 application for a period not to exceed three years.

(2) If a State that submits an application covering more than one year makes any substantial changes in its application, the State shall—

- (i) File a new application; or
- (ii) Annually amend its current application to reflect those changes.

(c) In addition to the other requirements in Section 564 of Chapter 2, a State's application must provide, beginning with fiscal year 1984, for an annual evaluation of the effectiveness of programs assisted under Chapter 2,

which shall include comments of the State Advisory Committee, and shall be made available to the public. The first evaluation covers the school year 1983-1984.

(Sec. 564, 20 U.S.C. 3814)

§ 298.5 Allotments to States of Chapter 2 funds.

(a) From the funds appropriated under Chapter 2 for any fiscal year, the Secretary—

(1) Reserves an amount that does not exceed one percent of the Chapter 2 appropriation for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs. If no more reliable data are available, the Secretary determines respective needs according to the relative enrollments in public and private schools within each territory;

(2) Reserves an additional amount that does not exceed six percent of the Chapter 2 appropriation to carry out the purposes of Subchapter D of Chapter 2 (Secretary's Discretionary program); and

(3) Allots to each State an amount that bears the same ratio to the amount remaining after the funds in paragraphs (a) and (b) of this section are reserved as the school-age population of the State bears to the school-age population of all States, except that no State receives less than 0.5 percent of the remaining funds.

(b) For purposes of this section, the term—

(1) "School-age population" means the population aged five through seventeen; and

(2) "States" include the fifty States, the District of Columbia, and Puerto Rico.

(Sec. 563, 20 U.S.C. 3813)

§ 298.6 State advisory committee.

(a) Any State that desires to receive funds under this program shall establish an advisory committee that meets the requirements in Section 564(a)(2) of Chapter 2.

(b) The Secretary interprets Section 564(a)(2) of Chapter 2 to permit any existing organization, including a State board of education, to be the advisory committee for the purpose of paragraph (a) of this section if the organization—

(1) Is not the SEA under State law;

(2) Is appointed by the Governor to be the advisory committee; and

(3) Meets the representation requirements of Section 564(a)(2) of Chapter 2.

(c) The State advisory committee advises the SEA on—

(1) The allocation among authorized functions of funds reserved for State use under Section 565(a) of Chapter 2;

(2) The formula for the allocation of funds to LEAs; and

(3) The planning, development, support, implementation, and evaluation of State programs assisted under Chapter 2.

(Sec. 564, 20 U.S.C. 3814)

§ 298.7 LEA applications.

(a) An LEA may receive its allocation of funds under Chapter 2 for any year for which it has on file with the SEA an application that meets the requirements in Section 566 of Chapter 2.

(b)(1) An LEA shall file its Chapter 2 application for a period not to exceed three years.

(2) If an LEA that submits an application covering more than one year makes any substantial changes in its application, the LEA shall—

(i) File a new application; or

(ii) Annually amend its current application to reflect those changes.

(c) In addition to the other requirements in Section 566 of Chapter 2, and LEA's application must provide for systematic consultation, in the allocation of funds for programs authorized by Chapter 2 and in the design, planning, and implementation of these programs, with—

(1) Parents of children attending elementary and secondary schools in the area served by the LEA;

(2) Teachers and administrative personnel in those schools; and

(3) Other groups as the LEA deems appropriate.

(Sec. 566, 20 U.S.C. 3816)

§ 298.8 Allocation of Chapter 2 funds to LEAs.

(a) An SEA shall distribute to each LEA that has submitted an application as required in § 298.7 the amount of its allocation as determined under paragraph (b) of this section.

(b) From the funds made available each year under Chapter 2, an SEA shall distribute not less than 80 percent to LEAs within the State according to the relative enrollments in public and nonpublic schools within the school districts of those agencies, adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to LEAs that have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as—

(1) Children from low-income families;

(2) Children living in economically depressed urban and rural areas; and

(3) Children living in sparsely populated areas.

(c) In accordance with Section 565 of Chapter 2 and paragraph (b) of this section, an SEA must adjust its formula to provide higher allocations to LEAs with the greatest numbers or percentages of "high-cost" children. The Secretary interprets Section 565 of Chapter 2 to require a State to provide an allocation to an LEA otherwise eligible even though it has no "high-cost" children.

(d) The Secretary approves the SEA's criteria for adjusting allocations to LEAs if the criteria are consistent with Section 565 of Chapter 2 and reasonably calculated to produce an equitable distribution of funds with reference to the factors contained in paragraph (b) of this section.

(Sec. 565, 20 U.S.C. 3815)

§ 298.9 Reallocation.

(a) An SEA may reallocate to other LEAs Chapter 2 funds—

(1) From an LEA that—

(i) Does not participate in the Chapter 2 program; or

(ii) Has Chapter 2 funds that exceed the amount required to—

(A) Operate its Chapter 2 projects effectively during the current fiscal year; and

(B) Provide a prudent and justifiable reserve of Chapter 2 funds for operating its Chapter 2 projects effectively during the next fiscal year; or

(2) That are recovered by the State based on a determination by the State that the LEA has failed to spend Chapter 2 funds in accordance with applicable law.

(b) A reallocation of funds under this section—

(1) May be made only during the fiscal year for which the funds were appropriated or during the succeeding fiscal year;

(2) Must be reallocated consistent with the purposes of Chapter 2; and

(3) Must be spent consistent with the requirements in Chapter 2 and the regulations in this part.

(Sec. 565, 20 U.S.C. 3815)

§ 298.10 Use of Chapter 2 funds.

SEAs and LEAs may use Chapter 2 funds for any activities that are consistent with the purposes of Chapter 2, including—

(a) Basic skills development under Subchapter A;

(b) Educational improvement and support services under Subchapter B; and

(c) Special projects under Subchapter C.

(Sec. 571-582, 20 U.S.C. 3821-3842)

Subpart B—Fiscal Requirements That a State or Local Educational Agency Must Meet**§ 298.11 Maintenance of effort.**

(a) *Basic standard.* Except as provided in § 298.12, the Secretary pays a State its full allocation of funds under Chapter 2 if the Secretary finds that either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or aggregate expenditures for the second preceding fiscal year.

(1) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the twelve-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1982, if a State is using the Federal fiscal year, the "preceding fiscal year" is fiscal year 1981 (which began on October 1, 1980). If a State is using a fiscal year that begins on July 1, 1982, the "preceding fiscal year" is the twelve-month fiscal period ending on June 30, 1981.

(2)(i) *Expenditures to be considered.* The expenditures the Secretary considers in determining a State's compliance with the maintenance of effort requirement in this paragraph are State and local expenditures for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student activities.

(ii) *Expenditures not to be considered.* The Secretary does not consider the following expenditures in determining a State's compliance with the maintenance of effort requirement in this paragraph:

(A) Any expenditures for community services, capital outlay, or debt services.

(B) Any expenditures of Federal funds.

(b) *Failure to maintain effort.* (1) If a State fails to maintain effort and a waiver under § 298.12 is not appropriate, the Secretary reduces the State's allocation of funds under Chapter 2 in the exact proportion to which the State fails to meet 90 percent of both the State's combined fiscal efforts per student or aggregate expenditures (using

the measure most favorable to the State) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the State failed to maintain effort, the Secretary considers the fiscal effort for the second preceding fiscal year to be 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State) for the third preceding fiscal year.

Example: In Federal fiscal year 1983, a State fails to maintain effort because its fiscal effort in the preceding fiscal year (1981) (see § 298.11(a)(1)) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1980); then, in the following fiscal year (1984), the State's fiscal effort in the second preceding year (1981) would be considered to be 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 585(a), 20 U.S.C. 3861(a))

§ 298.12 Waiver of the maintenance of effort requirement.

(a) *Waiver request.* A State that has not maintained its fiscal effort as required in § 298.11(a) may ask the Secretary to grant a waiver of that requirement by submitting a waiver request that includes—

(1) A statement of the combined fiscal effort per student and the aggregate expenditures for the two fiscal years being compared; and

(2) A description of the circumstances that the State considers to be exceptional or uncontrollable.

(b) *Secretary's criteria.* (1) The Secretary may grant a waiver, for one year only, of the maintenance of effort requirement in § 298.11(a) if the Secretary determines that the waiver is equitable due to exceptional or uncontrollable circumstances. Exceptional or uncontrollable circumstances include—

(i) A natural disaster;

(ii) A precipitous and unforeseen decline in the financial resources of the State; or

(iii) Other exceptional or uncontrollable circumstances.

(2) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(c) *Effect of a waiver.* (1) If the Secretary grants a waiver under paragraph (b) of this section, the Secretary allocates to the affected State its full allocation of Chapter 2 funds.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the Secretary considers the fiscal effort for the second preceding fiscal year to be 90 percent of

the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State) for the third preceding fiscal year.

Example: In Federal fiscal year 1983, a State secures a waiver because its fiscal effort in the preceding fiscal year (1981) (see § 298.11(a)(1)) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1980) due to exceptional or uncontrollable circumstances; then, in the following fiscal year (1984), the State's fiscal effort in the second preceding fiscal year (1981) would be considered to be 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 585(a)(3), 20 U.S.C. 3861(a)(3))

§ 298.13 Supplement, not supplant.

An SEA or LEA that receives Chapter 2 funds—

(a) May use and allocate those funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds made available under Chapter 2, be made available from non-Federal sources; and

(b) May not use Chapter 2 funds to supplant funds from non-Federal sources.

(Sec. 585(b), 20 U.S.C. 3861(b))

§ 298.14 Availability of funds.

(a) An SEA or LEA may obligate funds during the fiscal year for which the funds were appropriated and during the succeeding fiscal year.

(b) The SEA or LEA shall return to the Department any funds not obligated by the end of the succeeding fiscal year.

(c)(1) Chapter 2 funds are obligated when as SEA or LEA—

(i) Commits fund, according to State law or practice, to the support of specific programmatic or administrative activities; and

(ii) Identifies Chapter 2 funds allocated for a particular fiscal year as supporting those specific programmatic or administrative activities.

(2) For purposes of this section, the SEA's distribution of funds to LEAs under Section 565(a) of Chapter 2 is not the obligation of those funds.

(Sec. 596, 20 U.S.C. 3876; Sec. 412(b) of GEPA, 20 U.S.C. 1225(b))

§ 298.15 Recordkeeping requirements.

(a) Section 564(a)(6) of Chapter 2 requires each State to keep records and provide information to the Secretary as may be required for fiscal audit and program evaluation, consistent with the responsibilities of the Secretary under Chapter 2.

(b) Under Section 566(a)(3) of Chapter 2, each LEA, in its application, must agree to keep records and provide

information to the SEA as may reasonably be required for fiscal audit and program evaluation, consistent with the responsibilities of the SEA under Chapter 2.

(c) All records required under this section must be retained—

(1) For five years after completion of the activity for which the funds were used;

(2) Until all pending audits or reviews concerning the Chapter 2 project have been completed; and

(3) Until all findings and recommendations arising out of any audits or reviews concerning the Chapter 2 project have been finally resolved.

(Sec. 564(a)(6), 20 U.S.C. 3814(a)(6); Sec. 566(a)(3), 20 U.S.C. 3816(a)(3); Sec. 437(a) of GEPA, 20 U.S.C. 1232f(a); OMB Control No. 18100053)

§ 298.16 Federal audits and access to records.

(a) For the purpose of evaluating and reviewing the use of Chapter 2 funds—

(1) The Inspector General of the Department, authorized Department officials, and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that—

(i) Are related to programs assisted with Chapter 2 funds; and

(ii) Are in the possession, custody, or control of SEAs, LEAs, or any grantees of SEAs or LEAs; and

(2) The Inspector General of the Department and the Comptroller General are authorized to conduct audits.

(b)(1) An SEA shall repay to the Department the amount of Chapter 2 funds determined by a Federal audit not to have been spent in accordance with applicable law.

(2) If the Department recovers funds under paragraph (b)(1) of this section during the period in which the misspent Chapter 2 funds are still available for obligation under the terms of Section 412(b) of GEPA (relating to the availability of appropriations), the Department treats the recovered funds as Chapter 2 funds and—

(i) Reallocates those funds to eligible SEAs other than the agency that was found to have misspent the funds; or

(ii) Returns the funds for proper use to the SEA from which they were received.

(Sec. 564(a)(6), 20 U.S.C. 3814(a)(6); Sec. 566(a)(3), 20 U.S.C. 3816(a)(3); Sec. 1744 of the Omnibus Budget Reconciliation Act of 1981, 31 U.S.C. 1243 note; Sec. 3, 4, and 6 of the Inspector General Act of 1978, Pub. L. No. 95-452 (5 U.S.C. App); Sec. 202 of the Intergovernmental Cooperation Act of 1968, Pub. L. No. 90-577 (42 U.S.C. 4212))

§ 298.17 State audits.

(a) *Basic requirement.* (1) In accordance with Section 1745 of the Omnibus Budget Reconciliation Act of 1981, each State shall conduct financial and compliance audits of Chapter 2 funds. These audits may be performed by independent State auditors or independent public accountants who meet the standards set out by the Comptroller General.

(2) A State may choose to follow the principles and procedures in 34 CFR 74.62 to meet the audit requirements in this paragraph. If the State does so, it will be deemed to be in compliance with this paragraph.

(b) *Frequency of audit.* A State shall conduct the audits required by paragraph (a) of this section every two years. The first two-year period begins on July 1, 1982.

(c) *Audit standards.* Insofar as is practicable, a State shall conduct the audits required by paragraph (a) of this section in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, activities, and functions.

(d) *Audit remedy.* (1) An LEA or any other subgrantee shall repay to the SEA the amount of Chapter 2 funds determined by the State not to have been spent in accordance with applicable law.

(i) If the SEA recovers funds under paragraph (d)(1) of this section during the period in which the misspent Chapter 2 funds are still available for obligation under the terms of Section 412(b) of GEPA (relating to the availability of appropriations), the SEA shall treat the recovered funds as Chapter 2 funds and—

(A) Reallocate those funds to eligible LEAs—other than the agency that was found to have misspent the funds—under the procedures in § 298.9; or

(B) Return the funds for proper use to the LEA from which they were received.

(ii) If the Chapter 2 funds that an SEA recovers under paragraph (d)(1) of this section are no longer available for obligation under the terms of Section 412(b) of GEPA, the SEA shall return those funds to the Department.

(2) An SEA that is found under paragraph (a) of this section to have misspent Chapter 2 funds reserved for State use—

(i) May use those funds for proper Chapter 2 purposes if the funds are still available for obligation under the terms of Section 412(b) of GEPA; or

(ii) Shall return those funds to the Department if the funds are no longer available for obligation under the terms of Section 412(b) of GEPA.

(Sec. 1745, 31 U.S.C. 1243 note)

§ 298.18 Compromise of audit claims.

In deciding whether to compromise audit claims, or in recommending possible compromises to the Department of Justice, the Secretary may take into account—

(a) The cost of collecting the claim;

(b) The probability of the claim being upheld;

(c) The nature of the violation involved;

(d) Whether the practices of the SEA or LEA that resulted in the audit finding have been corrected;

(e) Whether the SEA or LEA is in all other respects in compliance with Chapter 2; and

(f) The extent to which the SEA or LEA agrees to use non-Federal funds to supplement Chapter 2 programs.

(Sec. 564(a)(6), 20 U.S.C. 3814(a)(6); Sec. 566(a)(3), 20 U.S.C. 3816(a)(3); Sec. 452 of GEPA, 20 U.S.C. 1234a; Federal Claims Collection Act, 31 U.S.C. 951 *et seq.*; 4 CFR Part 103)

§ 298.19 Commingling of funds.

The funds provided under Chapter 2 may not be commingled with State or local funds.

(Sec. 586(c)(2), 20 U.S.C. 3862(c)(2))

§ 298.20 [Reserved]

Subpart C—How Children Enrolled in Private Schools Participate in Chapter 2 Programs

§ 298.21 Responsibility of SEAs and LEAs.

(a)(1) An LEA shall provide children enrolled in private schools in that LEA with secular, neutral, and nonideological services, materials, and equipment or other benefits as will assure equitable (as compared to children enrolled in public schools) participation of such private school children in the purposes and benefits of Chapter 2 in accordance with the requirements in §§ 298.22–298.28 and Section 586 of Chapter 2.

(2) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and needs of private school children in the school district of the LEA.

(3) The LEA shall exercise administrative direction and control over Chapter 2 funds and property that benefit children enrolled in private schools.

(4)(i) Provision of services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, association, agency, or corporation who or which, in the provision of those services, is

independent of the private school and of any religious organization.

(ii) This employment or contract must be under the control and supervision of the public agency.

(b)(1) An SEA shall—

(i) Ensure that each LEA complies with the requirements in §§ 298.22–298.28; or

(ii) If no Chapter 2 project is carried out by an LEA, make arrangements—such as through contracts with nonprofit agencies or organizations—under which children in private schools in that LEA are provided with services and materials to the extent that would have occurred if the LEA had received Chapter 2 funds.

(2) If an SEA conducts instructional programs or personnel training programs, it shall comply with these requirements as if it were an LEA.

(c) Under sections 564(a)(3) and 566(a)(1) of Chapter 2, an application by an SEA or LEA must contain the planned allocation of funds required to implement Section 586.

(d) In accordance with Section 586(a)(1) of Chapter 2, the regulations in this subpart only apply to children enrolled in private nonprofit elementary and secondary schools.

(Sec. 586, 20 U.S.C. 3862)

§ 298.22 Consultation with private school officials.

In accordance with Sections 586(a)(1) and 586(b), an LEA receiving Chapter 2 funds shall consult with appropriate private school officials regarding the development and implementation of the Chapter 2 program before the LEA makes any decision that affects the opportunities of private school children to participate in the program.

(Sec. 586(a), (b), 20 U.S.C. 3862(a), (b))

§ 298.23 Needs, number of children, and types of services.

An LEA shall determine the following matters on a basis comparable to that used by the LEA in providing for participation of public school children:

(a) The needs of children enrolled in private schools.

(b) The number of those children who will participate in a Chapter 2 program.

(c) The Chapter 2 services that the LEA will provide to those children.

(Sec. 586, 20 U.S.C. 3862)

§ 298.24 Factors used in determining equitable participation.

(a) *Equal expenditures.* (1) Expenditures for Chapter 2 programs for children enrolled in private schools must be equal (consistent with the number of children to be served) to expenditures for Chapter 2 programs for children

enrolled in the public schools of an LEA, taking into account the needs of the individual children and other factors that relate to such expenditures.

(2) As the Secretary interprets Chapter 2, in determining whether expenditures are equal under paragraph (a)(1) of this section, an LEA—

(i) May not take into account the extent to which children in private schools generated a portion of the LEA's allocation under § 298.8(b) (relating to "high-cost" children); but

(ii) May take into account differences in the costs per child of meeting the needs of the individual children to be served and other factors that relate to these expenditures, as provided in paragraph (a)(1) of this section.

(b) *Services on an equitable basis.* (1) In addition to meeting the equal expenditures requirement in paragraph (a) of this section, an LEA shall provide for the participation in the Chapter 2 program of children enrolled in private schools on an equitable basis.

(2)(i) In determining whether an LEA is providing for participation on an equitable basis, the services provided to private school children and the services provided to public school children are considered.

(ii) If an LEA uses Chapter 2 funds to concentrate programs for public school children on a particular group, attendance area, or grade or age level, the LEA shall ensure equitable opportunities for participation by children enrolled in private schools who—

(A) Have the same needs as the public school children to be served; and

(B) Are in that group, attendance area, or grade or age level.

(iii) If the needs of children enrolled in private schools are different from the needs of children enrolled in public schools, an LEA shall provide Chapter 2 services for the private school children that address their needs on an equitable basis.

(Sec. 586, 20 U.S.C. 3862)

§ 298.25 Funds not to benefit a private school.

(a) An LEA may only use Chapter 2 funds to provide services that supplement the level of services that would, in the absence of Chapter 2 services, be available to children enrolled in a private school.

(b) An LEA shall use Chapter 2 funds to meet the needs of children enrolled in private schools, but not for the purpose of aiding the private school.

(Sec. 586, 20 U.S.C. 3862)

§ 298.26 Use of public school employees.

An LEA may use program funds to make public employees available in other than public facilities—

(a) To the extent necessary to provide equitable Chapter 2 services designed for children enrolled in a private school; and

(b) If those services are not normally provided by the private school.

(Sec. 586, 20 U.S.C. 3862)

§ 298.27 Equipment and supplies.

(a) To meet the requirements of Section 586(c) of Chapter 2, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with Chapter 2 funds.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used for Chapter 2 purposes;

(2) Are used for secular, neutral, and nonideological purposes; and

(3) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for Chapter 2 purposes; or

(2) Removal is necessary to avoid use of the equipment or supplies for other than Chapter 2 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

(Sec. 586, 20 U.S.C. 3862)

§ 298.28 Construction.

(a) No Chapter 2 funds may be used to perform repairs, minor remodeling or construction of private school facilities.

(b) An LEA may use Chapter 2 funds to perform repairs, minor remodeling, or construction of public facilities as may be necessary to carry out its responsibilities under this subpart.

(Sec. 586, 20 U.S.C. 3862)

§§ 298.29–298.30 [Reserved]

**Subpart D—Due Process Procedures
Procedures For By-Pass**

§ 298.31 By-pass—General.

(a) The Secretary implements a by-pass if an SEA or LEA—

(1) Is prohibited by law from providing Chapter 2 services for private school children on an equitable basis; or

(2) Has substantially failed, or is unwilling, to provide services for private school children on an equitable basis.

(b) If the Secretary implements a by-pass, the Secretary waives an SEA's or LEA's responsibility for providing Chapter 2 services for private school children and arranges to provide the required services. Normally, the Secretary hires a contractor to provide the Chapter 2 services for private school children under a by-pass. The Secretary deducts the cost of these services, including any administrative costs, from the appropriate allotment of Chapter 2 funds provided to the State. In arranging for these services, the Secretary consults with appropriate public and private school officials.

(Sec. 586(d), (e), and (g), 20 U.S.C. 3862 (d), (e), and (g))

§ 298.32 Notice by the Secretary.

(a) Before taking any final action to implement a by-pass, the Secretary provides the affected SEA and LEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA and LEA to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the SEA and LEA that they have at least 45 days from receipt of the written notice to submit written objections to the proposed by-pass and to request in writing the opportunity for a hearing to show cause why the by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA and LEA by certified mail with return receipt requested.

(Sec. 586(h), 20 U.S.C. 3862(h))

§ 298.33 By-pass procedures.

Sections 298.34–298.36 contain the procedures which the Secretary uses in conducting a show cause hearing. These procedures may be modified by the hearing officer if all parties agree it is appropriate to modify them for a particular case.

(Sec. 586(h), 20 U.S.C. 3862(h))

§ 298.34 Appointment and functions of a hearing officer.

(a) If an SEA or LEA requests a show cause hearing, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery, or the rule on to validity of any statute or regulation.

(c) The hearing officer notifies the SEA, LEA, and representatives of the private school children of the time and place of the hearing.

(Sec. 586(h), 20 U.S.C. 3862(h))

§ 298.35 Hearing procedures.

(a) At the hearing, a transcript is taken. The SEA, LEA, and representatives of the private school children each may be represented by legal counsel, and each may submit oral or written evidence and arguments at the hearing.

(b) Within ten days after the hearing, the hearing officer indicates that a decision will be issued on the basis of the existing record, or requests further information from the SEA, LEA, representatives of the private school children, or Department officials.

(Sec. 586(h), 20 U.S.C. 3862(h))

§ 298.36 Post hearing procedures.

(a) Within 120 days after the hearing record is closed, the hearing officer issues a written decision on whether the proposed by-pass should be implemented. The hearing officer sends copies of the decision to the SEA, LEA, representatives of the private school children, and the Secretary.

(b) The SEA, LEA, and representatives of the private school children each may submit written comments on the decision to the Secretary within thirty days from receipt of the hearing officer's decision.

(c) The Secretary may adopt, reverse, or modify the hearing officer's decision.

(Sec. 586(h), 20 U.S.C. 3862(h))

§§ 298.37–298.40 [Reserved]

Other Due Process Procedures

§ 298.41 General.

Sections 298.41–298.57 contain rules for the conduct of proceedings arising under Chapter 2 regarding—

(a) The review of final audit determinations;

(b) Withholding hearings; and

(c) Cease and desist proceedings.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 298.42 Jurisdiction.

Under Chapter 2, the Education Appeal Board has jurisdiction to—

(a) Review final audit determinations;

(b) Conduct withholding hearings; and

(c) Conduct cease and desist proceedings.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 298.43 Definitions.

For the purposes of §§ 298.41–298.57, the following definitions apply:

"Appellant" means an SEA that requests—

(a) A review of the final audit determination; or

(b) A withholding hearing.

"Authorized Department official" means—

(a) The Secretary; or

(b) A person employed by the Department who has been designated to act under the Secretary's authority.

"Board" means the Education Appeal Board of the Department.

"Board Chairperson" means the Board member designated by the Secretary to serve as administrative officer of the Board.

"Cease and desist" means to discontinue a prohibited practice or initiate a required practice.

"Final audit determination" means a written notice issued by an authorized Department official disallowing expenditures made by a recipient under Chapter 2.

"Hearing" means any review proceeding conducted by the Board.

"Panel" means an Education Appeal Board Panel, consisting of at least three members of the Board, designated by the Board Chairperson to sit in any case.

"Panel Chairperson" means the person designated by the Board Chairperson to serve as the presiding officer of a Panel.

"Party" means—

(a) The recipient requesting or appearing at a hearing under these regulations;

(b) The authorized Department official who issued the final audit determination being appealed, the notice of an intent to withhold funds, or the cease and desist complaint; or

(c) Any person, group, or agency that files an acceptable application to intervene.

"Recipient" means the named party or entity that initially received Federal funds under Chapter 2.

"Withholding" means stopping payment of Federal funds under Chapter 2 to a recipient and stopping the recipient's authority to charge costs under Chapter 2 for the period of time the recipient is in violation of a requirement.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 298.44 Eligibility for review.

Review under these regulations is available to a recipient of Chapter 2

funds that receives a written notice from an authorized Department official of—

- (a) A final audit determination;
- (b) An intent to withhold funds; or
- (c) A cease and desist complaint.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 298.45 Written notice.

(a) *Written notice of a final audit determination.* (1) An authorized Department official issues a written notice of a final audit determination to a recipient in connection with Chapter 2.

(2) In the written notice, the authorized Department official—

- (i) Lists the disallowed expenditures made by the recipient;
- (ii) Indicates the reasons for the final audit determination in sufficient detail to allow the recipient to respond;
- (iii) Cites the requirements that are the basis for the alleged failure to comply; and

(iv) Advises the recipient that it must repay the disallowed expenditures to the Department or, within 30 calendar days of its receipt of the written notice, request a review by the Board.

(3) The authorized Department official sends the written notice to the recipient by certified mail with return receipt requested.

(b) *Written notice of an intent to withhold funds.* (1) An authorized Department official issues a written notice to a recipient under Chapter 2 of an intent to withhold funds.

(2) In the written notice, the authorized Department official—

- (i) Indicates the reasons why the recipient failed to comply substantially with a requirement that applies to the funds;
- (ii) Cites the requirement that is the basis for the alleged failure to comply; and

(iii) Advises the recipient that it may, within 30 calendar days of its receipt of the written notice, request a hearing before the Board.

(3) The authorized Department official sends the written notice to the recipient by certified mail with return receipt requested.

(c) *Written notice of a cease and desist complaint.* (1) The Secretary issues a written notice of a cease and desist complaint to a recipient under Chapter 2. The cease and desist proceeding may be used as an alternative to a withholding hearing.

(2) In the written notice, the Secretary—

- (i) Indicates the reason why the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement that is the basis for the alleged failure to comply; and

(iii) Gives notice of a hearing that is to be held at least 30 calendar days after the date the recipient receives the written notice.

(3) The Secretary sends the written notice to the recipient by certified mail with return receipt requested.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(a) of GEPA, 20 U.S.C. 1234a(a); Sec. 454(a) of GEPA, 20 U.S.C. 1234c(a))

§ 298.46 Filing an application for review of a final audit determination or a withholding hearing.

(a) An appellant seeking review of a final audit determination or a withholding hearing shall file a written application with the Board Chairperson no later than 30 calendar days after the date it receives written notice.

(b) In the application, the appellant shall attach a copy of the written notice and shall, to the satisfaction of the Board Chairperson—

- (1) Identify the issues and facts in dispute; and
- (2) State the appellant's position, together with the pertinent facts and reasons supporting that position.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 298.47 Review of the written notice.

(a) The Board Chairperson reviews the written notice of the final audit determination or the intent to withhold funds after an application is received under § 298.46 to ensure that the written notice meets the applicable requirements in § 298.45.

(b) If the Board Chairperson decides that the written notice does not meet the applicable requirements in § 298.45, the Board Chairperson—

- (1) Returns the determination to the official who issued it so that the determination may be properly modified; and
- (2) Notifies the recipient of that decision.

(c) If the official makes the appropriate modifications and the recipient wishes to pursue its appeal to the Board, the recipient shall amend its application within 30 calendar days of the date it receives the modification.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 298.48 Acceptance of the application.

If the appellant files an application that meets the requirements of § 298.46, the Board Chairperson—

(a) Issues, within 45 days of receiving the application, a notice of the acceptance of the application to the appellant and the authorized Department official who issued the written notice;

(b) Publishes a notice of acceptance of the application in the *Federal Register* prior to the scheduling of initial proceedings;

(c) Refers the appeal to a Panel;

(d) Arranges for the scheduling of initial proceedings; and

(e) Forwards to the Panel and parties an initial hearing record that includes—

- (1) The written notice;
- (2) The appellant's application; and
- (3) Other relevant documents, such as audit reports.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 298.49 Rejection of the application.

(a) If the Board Chairperson determines that an application does not satisfy the requirements of § 298.46, the Board Chairperson, within 45 days of receiving the application, returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application is rejected twice, the Department may take appropriate administrative action to—

- (1) Collect the expenditure disallowed in the final audit determination; or
- (2) Withhold funds.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 298.50 Intervention.

(a) A person, group, or agency with an interest in and having relevant information about a case before the Board may file with the Board Chairperson an application to intervene.

(b) The application to intervene shall contain—

- (1) A statement of the applicant's interest; and
- (2) A summary of the relevant information.

(c)(1) If the application is filed before a case is assigned to a Panel, the Board Chairperson decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(2) If the application is filed after the Board Chairperson has assigned the case to a Panel, the Panel decides whether approval of the application to

intervene will aid the Panel in its disposition of the case.

(d) The Board Chairperson notifies the applicant seeking to intervene and the other parties of the approval or disapproval of the application to intervene.

(e) If an application to intervene is approved, the intervenor becomes a party to the proceedings.

(f) If an application to intervene is disapproved, the applicant may submit to the Board Chairperson an amended application to intervene.

(Sec. 45(a), (e) of GEPA, 20 U.S.C. 1234(a), (e))

§ 298.51 Practice and procedure.

(a) Practice and procedure before the Board in a proceeding for review of a final audit determination or a cease and desist complaint are governed by the rules in Subpart E of 34 CFR Part 78.

(b) Practice and procedure before the Board in a withholding hearing are governed by the procedures in the Administrative Procedure Act, 5 U.S.C. 554 and 556.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(e) of GEPA, 20 U.S.C. 1234(e))

§ 298.52 The Panel's decision.

(a) The Panel issues a decision, based on the record as a whole, in an appeal from a final audit determination, or from a notice of an intent to withhold funds, within 180 days after receipt of the parties' final submissions, unless the Board Chairperson, for good cause shown, grants the Panel an extension of this deadline.

(b) The Board Chairperson submits the Panel's decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 298.53 Opportunity to comment on the Panel's decision.

(a) *Initial comments and recommendations.* Each party has the opportunity to file comments and recommendations on the Panel's decision in § 298.52 with the Board Chairperson within 15 calendar days of the date the party receives the Panel's decision.

(b) *Responsive comments and recommendations.* The Board Chairperson sends a copy of a party's initial comments and recommendations to each of the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Board Chairperson within 7 days of the date the party receives the initial comments and recommendations.

(c) The Board Chairperson forwards the parties' initial and responsive comments on the Panel's decision to the Secretary.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 298.54 The Secretary's decision.

(a) The Panel's decision in § 298.52 becomes the final decision of the Secretary 60 calendar days after the date the recipient receives the Panel's decision unless the Secretary, for good cause shown, modifies or sets aside the Panel's decision.

(b) If the Secretary modifies or sets aside the Panel's decision within the 60 days, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Secretary's final decision 60 calendar days after it is issued.

(c) In proceedings involving an appeal from a final audit determination or an intent to withhold funds, to the extent feasible, but consistent with the Secretary's obligation to enforce compliance with Chapter 2, the Secretary defers to a State's interpretation of the statutory requirements under Chapter 2.

(d) The Board Chairperson sends a copy of the Secretary's final decision and statement of reasons, or a notice that the Panel's decision has become the Secretary's final decision, to the Panel and to each party.

(e) The final decision of the Secretary is the final decision of the Department.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 298.55 Cease and desist hearing.

(a) *Right to appear at the cease and desist hearing.* The recipient has the right to appear at the cease and desist hearing, which is held before a Panel of the Board on the date specified in the complaint.

(b) *Opportunity to show cause.* At the hearing, the recipient may present reasons why a cease and desist order should not be issued by the Board based on the violation of law stated in the complaint.

(Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 454(b) of GEPA, 20 U.S.C. 1234c(b))

§ 298.56 Cease and desist written report and order.

(a) If, after the hearing, the Panel decides that the recipient has violated a legal requirement as stated in the complaint, the Panel—

(1) Makes a written report stating its findings of fact; and

(2) Issues a cease and desist order.

(b) The Board Chairperson sends the report and order to the recipient by certified mail with return receipt requested.

(c) The order becomes final 60 calendar days after the date the order is received by the recipient.

(d) The Secretary does not review the order issued by the Board under this section.

(Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 454 (c), (d) of GEPA, 20 U.S.C. 1234 (c), (d))

§ 298.57 Enforcement of a cease and desist order.

(a) If the Panel issues a cease and desist report and order, the recipient shall take immediate steps to comply with the order.

(b) If, after a reasonable period of time, the Secretary determines that the recipient has not complied with the cease and desist order, the Secretary may—

(1) Withhold funds payable to the recipient under Chapter 2 without any further proceedings before the Board; or

(2) Certify the facts of the matter to the Attorney General for enforcement through appropriate proceedings.

(Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 454(e) of GEPA, 1234c(e))

Appendix—Summary of Revisions, Comments, and Responses

Note.—This appendix will not appear in the Code of Federal Regulations

The following paragraphs summarize significant public comments received on the notice of proposed rulemaking (NPRM) for Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA), and the Secretary's responses to those comments, as well as changes made in the final regulations in response to continuing staff review following publication of the NPRM. The summary relating to the text of the regulations is organized according to the order of the subparts and sections in the NPRM. Where a section number in the final regulations differs from the section number in the NPRM, the comparable provision in the final regulations is indicated. In general, the Secretary has not attempted to respond in this document to comments which objected to the appropriateness of legislative decisions made by the Congress in enacting Chapter 2.

Preamble

Comments on the preamble to the Chapter 2 regulations were concentrated on the following matters:

- The format of the regulations and the use of nonregulatory guidance.
- The applicability of the General Education Provisions Act to the Chapter 2 program.
- The applicability of Sections 1742 and 1743 of Title XVII of the Omnibus Budget Reconciliation Act to the Chapter 2 program.

These issues are taken up in sequence.

Format and Nonregulatory Guidance

Considerable comment was received on matters of style and format related to the NPRM. A number of commenters objected that the regulations did not contain all relevant statutory provisions or did not provide more extensive guidance on various interpretive issues under Chapter 2. While several of these commenters understood the Secretary's intent to issue shorter regulations and to avoid limitations on State and local administrators, they requested that all statutory provisions be contained in the text of the regulations so as to avoid compelling the reader to consult independent sources and urged that further clarification be provided on various issues as discussed more fully in the following paragraphs. Some commenters either objected to the length of the regulations or proposed deletion of those provisions which paraphrased statutory materials. A number of commenters, representing State educational agencies (SEAs), applauded the intent and effect of the regulations and requested neither major additions nor major deletions. As one commenter representing an SEA observed, "[w]e sincerely believe that the effort of the U.S. Department of Education in issuing the proposed regulations for Chapter 2 is a step in the right direction, as the new set has considerably reduced the length and complexity of former regulations."

The Secretary believes that the abbreviated regulations carry out congressional intent as stated in Section 591 of the ECIA and implement the objective of the Administration to limit regulations to those absolutely necessary to carry out Federal statutory requirements, leaving the details of administration to State and local discretion. To provide a framework to inform State and local educational agencies of the basic provisions of the Chapter 2 statute, a limited number of statutory references in the regulations are essential, and the Secretary has not deleted these. On the other hand, with limited exceptions in response to

specific comments calling for necessary clarification, the Secretary has not added significantly to the length of the final regulations. The Secretary notes that, in general, comments calling for greater length and specificity in the regulations did not come from State or local educational agencies—agencies that are charged with the administration of Chapter 2. Instead, as indicated, commenters from these agencies and their representatives did not call for substantial revision in the Secretary's approach under Chapter 2.

In order to avoid a burden on readers who would otherwise need to find statutory material outside the regulations, the Secretary has included in the nonregulatory guidance copies of all relevant statutes and regulations. This document, when issued in final form, should alleviate the concern expressed by commenters regarding the difficulty of finding relevant statutory material.

A variety of comments concerned the nonregulatory guidance itself. While applauding the effort to afford greater flexibility and discretion at the State and local levels, a commenter expressed concern that, in the future, auditors might not be guided by this intent. Several commenters asked for an opportunity to comment on the nonregulatory guidance before it became final. Others urged that nonregulatory guidance was no substitute for regulations.

The Secretary has distributed in draft form copies of the nonregulatory guidance for Chapter 2. This document made clear that, when finalized, it would be binding on the U.S. Department of Education but *not* on State and local educational agencies, and that it would not foreclose the development of alternative approaches that are consistent with the statute and regulations but may be more in keeping with local needs and circumstances. The Secretary emphasized in this draft guidance that State and local officials are free to develop—indeed are encouraged to develop—alternative approaches.

The draft document was distributed with an invitation to readers to submit suggestions for additions or deletions as well as other reactions. Moreover, the preamble to the February 12 NPRM notified the public of the prospective issuance of the document and requested suggestions for matters which should be included in it. Finally, it should be noted, the draft nonregulatory guidance had been discussed at a number of open meetings for administrators of Chapter 2 programs and others—meetings in which comments on the material and

subjects for possible treatment in the material have been suggested by participants.

Under these circumstances, the Secretary believes that he has been responsive to comments calling for sharing this document and affording opportunity for comment. In this context, the Secretary notes that a number of commenters on the NPRM indicated familiarity with the nonregulatory guidance and submitted comments on it. Moreover, the Secretary recognizes that nonregulatory guidance is not a substitute for regulations. Where regulations have been needed and are authorized under the standards of Section 591 of the ECIA, they have been issued and are included in these final regulations. The nonregulatory guidance, on the other hand, responds to the invitation in Section 591(b) of the ECIA to provide "technical assistance, information, and suggested guidelines designed to promote the development and implementation of effective instructional programs and to otherwise assist in carrying out the purposes of [Chapter 2]." The informal comments which have been received by staff of the Education Department (in connection with conferences which have been held) suggest that this approach has been well received in the field and that the nonregulatory guidance was generally regarded as helpful without imposing extensive substantive requirements on State and local educational agencies. One commenter—on behalf of an SEA—commended the work of the Department in preparing both the proposed regulations and the nonregulatory guidance. This commenter observed that, because consolidation is an experiment in government, "SEAs and LEAs deserve the benefit of the doubt whenever and wherever possible." The Secretary agrees with this assessment, and the Secretary's development of both Chapter 2 regulation and Chapter 2 nonregulatory guidance reflects this approach.

Other commenters—also representing SEAs—referred to the document as "an extremely helpful guide" or as "most helpful." Still others expressed favorable disposition toward various portions of the nonregulatory guidance. No commenters appeared to suggest that the guidance should not be finally issued. Under these circumstances, the Secretary has decided to issue in final form the nonregulatory guidance, revised to take into account various comments, and to distribute that document following the publication of these final regulations. Responses to a

number of comments calling for explanation or clarification of specific, technical matters will be provided in the nonregulatory guidance when issued in final form.

Treatment of "Carry-Over" Funds

SEAs generally agreed with information on the treatment of "carry-over" funds contained in the preamble to the NPRM. This information is included in the preamble to this document.

Applicability of Other statutes

General Education Provisions Act. The preamble to the Chapter 2 NPRM indicated that it had been determined that the General Education Provisions Act (GEPA), 20 U.S.C. 1221-1234e, is inapplicable to Chapter 2 except for those sections of GEPA specifically made applicable by Section 596 of the ECIA.* A considerable number of commenters objected to this interpretation, contending that GEPA was generally applicable to Chapter 2, and urged the Secretary to revise his interpretation.

The preamble to the final Chapter 2 regulations published on July 29, 1982 also indicated that, except for the sections of GEPA that were specifically made applicable by Section 596 of the ECIA, the provisions of GEPA did not apply to Chapter 2. This determination was made because Section 596 of the ECIA is ambiguous on the issue of GEPA applicability and because of the concern that Chapter 2 be kept as free as possible from the imposition of detailed and sometimes conflicting requirements in GEPA that would decrease the flexibility and increase the burden of SEAs and LEAs in carrying out their Chapter 2 responsibilities.

In light of comments subsequently received, the Secretary has now reconsidered this determination. In reconsidering this matter, the Secretary has been concerned that continuing controversy over the issue of GEPA applicability to Chapter 2 would impair the smooth and efficient implementation of the program. Therefore, subject to the

exceptions described in the preamble to these regulations, the Secretary adopts the interpretation that GEPA is applicable to Chapter 2. The Department will carry out its administrative role under Chapter 2 in light of that determination.

Sections 1742-1745 of the Omnibus Budget Reconciliation Act. Questions were raised regarding the basis for the Secretary's determinations (contained in the preamble to the NPRM) that Sections 1744 and 1745 of Title 17 of the Omnibus Budget Reconciliation Act ("Reconciliation Act") apply to Chapter 2 but that Sections 1742 and 1743 do not. Section 1744, concerning access to records by the Comptroller General, states that it applies to any grant program established or provided for by the Reconciliation Act. It is thus clearly applicable to Chapter 2, and the Secretary has so indicated. Section 1745, concerning State auditing requirements, applies to any funds which a State receives under "any consolidated assistance program" established or provided for by the Reconciliation Act. Because Chapter 2 is clearly a "consolidated assistance program," the Secretary concluded that Section 1745 applies to Chapter 2. Sections 298.16 and 298.17 implement these sections of the Reconciliation Act. Commenters did not generally dispute these determinations of applicability.

On the other hand, Section 1743 of the Reconciliation Act is a transition provision applicable to Fiscal Year 1982 only; it requires a State to certify that it has met certain public reporting and public hearing requirements of Section 1742. Because Chapter 2 does not take effect until July 1, 1982 and Section 1743 applies only to Fiscal Year 1982, the Secretary concluded that Section 1743 was not intended to apply to Chapter 2.

Section 1742 provides for certain reports and hearings. Section 1742 applies only to "block grant" programs as narrowly defined in Section 1741. If applicable at all, Section 1742 would apply only to the State agency portion of the Chapter 2 grant because the definition excludes the portion of funds that are paid to a State with a requirement that they be passed through to sub-State entities under a statutory formula. (127 Cong. Rec. H5696 (daily ed. July 29, 1981)). Ambiguities in Section 1742 and the extent to which its provisions overlap those of Chapter 2 convince the Secretary that Section 1742 was not clearly intended to apply even to State funds.

For example, the definition of block grant funds in Section 1741 of the Reconciliation Act indicates that only

those programs supporting activities previously funded "by Federal Government allocations to local units of Government or other eligible entities" are covered under the definition and, therefore, by Section 1742. However, the activities supported by Chapter 2 were in large measure previously funded by Federal discretionary grant programs not by allocations, in the sense of payments made under a statutory-based formula to eligible recipients.

These and other differences between Section 1742 and Chapter 2 indicate that the conditions imposed by Section 1742 were not clearly intended to be imposed on Chapter 2 recipients by the Congress. The Secretary does not regard himself as empowered to impose them by regulatory interpretation.

Subpart A—How a State or Local Educational Agency Obtains Funds Under Chapter 2

(1) *Sections 298.1 Purpose; 298.2 Definitions; 298.3 General responsibilities of State and local educational agencies.*

Relatively few comments were received on these sections and no substantive changes have been made.

One commenter suggested that a definition of the term "gifted and talented" be included in § 298.2. No change has been made because the term is not used in the text of the regulations. See Section 582(3)(A) of Chapter 2.

A commenter objected to the breadth of the statement of the SEA's responsibilities in § 298.3(a) and sought clarification on the types of monitoring procedures necessary to the SEA role. However, the statement in § 298.3(a) reflects statutory language and monitoring procedures should be left to the SEA.

(2) *Section 298.4—State applications.*

A number of commenters suggested that the regulations should specify application requirements in greater detail and clarify certain requirements or that a standard application format should be required, particularly with respect to matters such as reporting on the allocation of funds among Chapter 2 purposes. One commenter observed that this standardization would be most important for the annual evaluation of effectiveness required by Section 564(a)(5) of Chapter 2. Another commenter thought the State application should contain information on recommendations by the State advisory committee. General clarification of SEA and LEA evaluation responsibilities was requested in another comment.

The Secretary believes that a State's obligation to file an application should

* Section 596 of the ECIA states:

(a) Sections 434, 435, and 436 of the General Education Provisions Act (relating to "State Educational Agency Monitoring and Agency Application") shall not apply to programs authorized under this subtitle except to the extent that they relate to fiscal control and fund accounting procedures (including the title to property acquired with Federal funds), and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this subtitle.

(b) Section 412 of the General Education Provisions Act shall apply to any funds appropriated for any fiscal year pursuant to this subtitle.

be confined to the statutory requirements in Section 564 of Chapter 2 and that the increased flexibility for State administration which Congress intended in enacting Chapter 2 would best be achieved by leaving the format of the State application to individual State determination. The draft nonregulatory guidance contains information designed to assist State educational agencies in meeting State application requirements, including a copy of the relevant statutory provisions.

The Secretary does not believe that these regulatory decisions will produce noncompliance with the statutory requirements. As indicated in the nonregulatory guidance, the Secretary will check to ensure that a State's application meets the statutory requirements in Section 564 of Chapter 2.

A change has been made in the final regulations to clarify that a State is responsible to amend an application which covers more than one year only when substantial changes are made and then only on an annual basis. In addition, the final regulations clarify the State's evaluation responsibilities.

(3) *Section 298.5—Allotments to States of Chapter 2 funds.*

Section 563 of Chapter 2 defines the terms "school-age population" and "State" for purposes of determining the allocation of Chapter 2 funds to States. Section 298.5 of the NPRM dealing with the same subject did not include definitions of these terms. At the suggestion of a commenter and in the interest of further clarity, the Secretary has included these definitions in the final regulations.

A commenter representing one of the outlying territories described in § 298.5(a)(1) of the final regulations questioned whether the use of enrollment data best meets the unique needs of that jurisdiction because of its low enrollment level. Because a more satisfactory uniform standard for determining allotments among the five territories named in § 298.5(a) has not been suggested and no other objections have been received, the Secretary has decided to retain the standard set forth in § 298.5(a)(1).

Questions were raised as to whether the Chapter 2 statute provides a reservation of funds for the Secretary of Defense and the Secretary of the Interior for the benefit of schools operated by their respective Departments. The statute does not provide set-asides for these purposes. Clarifying information to this effect will be included in the nonregulatory guidance.

(4) *Section 298.6—State advisory committee.*

A number of comments focused on the State advisory committee (SAC) requirement of Chapter 2. State educational agency comments generally supported the proposed regulations or declined to recommend changes in them. A number of LEA commenters inquired as to the steps to be taken if the SEA ignored the advice of the State advisory committee.

Some comments from educational organizations objected to the interpretation in the NPRM that the State Board of Education could be the State advisory committee if the conditions stated in § 298.6(b) are satisfied. These commenters expressed concern that a State Board could not perform the functions contemplated for the advisory committee and that the Secretary's approach would defeat the purpose of Section 564(a)(2) to have a cross-section of the community providing guidance and having input into how funds are allocated to LEAs and how the State uses those funds reserved for State use. One commenter suggested that the regulations should make clear that the State Board could not serve as the SAC if it was the governing board of the SEA.

Several commenters suggested the addition of other categories of members for the State advisory committee such as representatives of the gifted and talented. Other commenters urged that the regulations provide more specificity on the representative nature of SAC membership or restrict SAC membership to persons who are either members of the group they represent or are selected by a membership organization composed of that group.

No change in § 298.6 has been made. The basic role of the SAC, as contemplated in Section 564(a)(2) of Chapter 2, is advisory. Therefore, the Secretary sees no need to establish regulatory devices to require an SEA to follow a SAC's advice. Because a SAC's role is advisory, it would not be in a position to designate LEAs eligible to receive allocations, as suggested by one commenter.

The Secretary's interpretation regarding the use of a State Board of Education as a SAC was provided in response to numerous questions on the subject posed during briefing meetings on Chapter 2 and is designed to indicate the flexibility available to a Governor in establishing a SAC. Because the representation requirements of Section 564(a)(2) of Chapter 2 must still be met when using the State Board, the appointment must be made by the Governor, and the State Board may not

be the SEA under State law, the Secretary believes that there is no basis for denying this degree of administrative flexibility if the stated conditions are met. The requirement that the State board, if used, meet the representation requirement of Section 564(a)(2) is designed to ensure compliance with the statutory purpose of drawing community input into the decisions on which the SAC provides advice.

Addition to a SAC of representative groups not mentioned in the statute, such as the gifted and talented, is a matter for State determination. Similarly, the Secretary believes that regulatory restrictions on the manner in which a State may determine whether an individual meets the representation requirements of Section 564(a)(2) of Chapter 2 would unduly restrict the flexibility of a State to make these determinations and would be inconsistent with Section 591, as well as the broad authority vested in the Governor by Section 564(a)(2) of Chapter 2.

Comment was also received regarding the manner in which teachers should participate in a SAC. The commenter suggested that appointment of surrogates for teachers should be discouraged. Although effective participation of teachers in a SAC is an important element in ensuring the success of Chapter 2, the Secretary believes that the manner in which participation is achieved should be left to State determination.

(5) *Section 298.7—LEA applications.*

Section 298.7 has been amended in the final regulations to state, rather than merely cross-reference, Chapter 2 requirements regarding LEA consultation with parents, teachers, and other groups. While no more than the statutory requirements are included, this change should aid in focusing the attention of LEAs on their statutory responsibilities relating to parent and teacher consultation. The Secretary received a number of comments expressing concern that this requirement was not clear. On the other hand, the Secretary has declined to establish additional requirements or criteria not stated in the statute regarding consultation, although a number of commenters, including organizations interested in promoting consultation, recommended minimum criteria or further definition to describe minimum standards for meeting the "systematic consultation" requirement. The Secretary believes that Chapter 2 was specifically designed to afford SEAs and LEAs greater discretion in this area by avoiding, for example, a requirement

that local advisory committees be established. The precise steps needed to achieve parent and teacher consultation are, in the Secretary's view, best left to local determination. As indicated in the Senate report, "[n]o mention is made of local educational agency advisory committees, and the [Senate] Committee considers the use and role of advisory committees to be purely a matter of local discretion." S. Rep. No. 139, 97th Cong., 1st Sess. 896 (1981).

The Secretary has declined to describe other LEA application requirements in further detail, believing that this is a matter properly left to State administration under the ECIA. Nor has the Secretary deemed it appropriate as urged by some commenters to mandate formal complaint (or "right to petition") procedures at the Federal level, believing such a step is inconsistent with the thrust of Section 561 of Chapter 2 to vest administrative responsibility in State educational agencies.

A change has also been made in § 298.7, parallel to the change in § 298.4 for State applications, to reflect the circumstances under which an LEA must amend its application. (§ 298.7(b)(1) in the final regulations).

(6) *Section 298.8—Allocation of Chapter 2 Funds to LEAs.*

SEAs and their representatives generally applauded the flexibility inherent in § 298.8(d) and cautioned against the use of unpublished or informal standards in the review of State criteria.

A number of comments received from LEAs suggested that the factors for identification of "high-cost" children should recognize LEAs with children in desegregation programs. The following legislative history in the Senate Report on this subject was cited in favor of including regulatory language. S. Rep. No. 139, 97th Cong., 1st Sess. 896 (1981).

At least 80 percent of the funds under this subpart are to be allocated directly to local educational agencies on a needs basis as described in the legislation. Since funds previously earmarked by school desegregation assistance have been consolidated into this subpart, the committee expects that recognition of additional costs incurred by the efforts to alleviate the isolation of minority group children where appropriate will be included among the needs factors considered in the allocation of funds to local educational agencies. However, consistent with existing law, such funds are not to be used for the transportation of students or teachers or for acquisition of pupil transportation equipment.

In light of these comments and the quoted legislative history, language will be included in the nonregulatory guidance to the effect that children in school districts seeking to overcome

minority group isolation may be a "high-cost" factor for purposes of Section 565. A similar change will also be made with respect to the gifted and talented population.

Comments that the State formula must give particular weight to particular factors, that regulations should provide more detailed guidance regarding the standards the Secretary will use in determining whether State criteria meet the requirements of Section 565, and that the Secretary define certain terms used in § 298.8(b) have not produced changes in the regulations. The Secretary agrees with the thrust of comments urging that maximum regulatory restraint should be exercised in this area and that States should be given maximum flexibility to make these determinations according to their priorities, subject only to the conditions of the statute. A number of the issues which commenters suggested be resolved under § 298.8 are addressed in the draft nonregulatory guidance.

(7) *Section 298.9—Reallocation.*

Some commenters questioned the authority for this section. The Secretary believes that reallocation authority is inherent in the nature of the allocation process as a means of carrying out a State's statutory duties regarding the distribution of funds. Standards for reallocation are needed in order to inform affected LEAs so that they may plan. The Secretary believes that this exercise of regulatory authority is in keeping with Section 591 of Chapter 2.

Several commenters have requested clarification of the relationship between § 298.14(a) regarding the availability of funds and the reallocation authority. This relationship is clarified in a revision made to § 298.9(a)(1).

Several other technical and editorial revisions have been made in § 298.9.

(8) *Section 298.10—Use of Chapter 2 funds.*

Few comments were received on this section and no change has been made. One commenter asked for clarification that funds can be used for gifted and talented children. The Secretary concludes that no further clarification is needed since Section 582(3)(A) of Chapter 2 clearly authorizes the use of funds for programs serving gifted and talented children.

Comment was received regarding the interpretation given Section 573(a), with respect to the requirement in that section that an LEA participate in all five program activities or none. One commenter suggested that if SEAs and LEAs are already satisfying these requirements through other programs, they may use funds for Subpart A purposes. A clarification to this effect

will be provided in the nonregulatory guidance.

Some commenters expressed concern that, in light of the broad statement of purposes for which funds can be used and the apparent failure of the proposed regulations to contain limitations on the use of funds, States could divert funds to purposes other than those authorized. The regulations in § 298.10 provide that Chapter 2 funds are to be used for activities consistent with the purposes of Chapter 2, including purposes described in Subchapters A, B, and C of Chapter 2. Appropriately, the regulations neither limit nor expand the purposes for which funds may be used as contained in the statute. The conduct of audit responsibilities by the State under § 298.17 and by the Inspector General, where appropriate, can be expected to prevent or redress uses which are beyond the purview of the statute.

Subpart B—Fiscal requirements that a State or local educational agency must meet.

(9) *Sections 298.11–298.12—Maintenance of effort.*

Several commenters urged that § 298.11(a)(2) be changed to provide that certain expenditures connected with initial acquisition or establishment of libraries or media centers may be taken into account in determining maintenance of effort. This issue will be addressed in the nonregulatory guidance. In addition, clarification will be provided in that document as to how the Secretary may respond to computational problems arising when education programs in a State are funded on other than an annual basis.

The Secretary does not believe that the statute affords authority to measure maintenance of effort in terms of "constant" rather than "inflated" dollars, as suggested by one commenter.

Editorial changes in § 298.11 have been made to conform it more closely to the language of Section 585(a) of Chapter 2.

(10) *Section 298.13—Supplement, not supplant.*

A number of commenters urged that more specific guidance be provided in the regulations on the subject of the supplement, not supplant requirement because, as one commenter urged, Chapter 2 provides "general" assistance and the potential for abuse is great.

Nonregulatory guidance on the issue of the supplement, not supplant requirement is provided in the draft nonregulatory guidance and responds, in part, to some of the requests for clarification. As revised, this material

will be included in the final nonregulatory guidance.

Section 298.14—Availability of Funds, Section 298.15—Recordkeeping Requirements, Section 298.16—Access to Records and Audits, Section 298.17—State Audits, and Section 298.18—Compromise of Claims.

Substantial clarifying changes have been made in § 298.14 to advise SEAs and LEAs more clearly concerning the manner in which the Tydings Amendment affects their use of Chapter 2 funds. Section 298.15 has also been revised to add a new paragraph on record retention (§ 298.15(c)). As indicated in this paragraph, records must be retained for five years after completion of the activity for which the funds were used.

A considerable number of comments addressed § 298.17. (State audits). Many comments expressed a need for clarification of the State's role in conducting audits under Section 1745 of the Omnibus Budget Reconciliation Act of 1981, and some objected to the cost and consumption of time associated with that requirement. One commenter observed that the State should not be required to conduct duplicatory local audits where the State normally provides for audits to be conducted by certified public accountants. One commenter inquired as to whether the State must conduct an audit of every LEA, and another sought confirmation that State auditors can be used to audit LEA expenditures. Still other commenters questioned the applicability of Attachment P to OMB Circular A-102 and the standards of the Comptroller General for the audit of governmental organizations, programs, activities, and functions, both of which are mentioned in § 298.17. Commenters sought clarification as to whether both documents should apply and, if so whether there are conflicts between the two. Finally, commenters requested more regulatory guidance on optimal financial and compliance records.

Recognizing the need for some further clarification in this area, the Secretary has addressed a number of these questions either by clarifying language in the regulations or in the nonregulatory guidance. The Secretary believes that further regulatory requirements are not needed.

In particular, the Secretary confirms that neither Section 1745 of the Omnibus Budget Reconciliation Act nor § 298.17 of the regulations requires that a State directly conduct the required audits; it may perform audits itself or permit the LEA to arrange for the conduct of audits through independent public accountants as defined by the Comptroller General.

Section 298.17(a) has been revised to express this point. In short, the regulations are not designed to impose duplicatory audit requirements on State agencies. As to whether each LEA must be audited under Section 1745, the Inspector General has advised that each LEA must be audited either by the State or by an independent public accountant.

With respect to the applicability of Attachment P to OMB Circular A-102 and the Comptroller General's standards, the Secretary notes that Section 1745 provides for the applicability of the Comptroller General's audit standards. These are now contained in *Standards for Audits of Governmental Organizations, Programs, Activities, and Functions* by the Comptroller General of the United States (1981 Revision), obtainable from the Superintendent of Documents. They contain general, across-the-board standards for the conduct of governmental audits. These standards will be used by the Inspector General in the review of State audits.

Attachment P to OMB Circular A-102 (now incorporated in Section 74.62 of EDGAR)—the applicability of which is at the discretion of the State under § 298.17 of the final regulations—contains the requirements for organization-wide audits under Federal grant programs. Attachment P also makes applicable the Comptroller General's standards described in the preceding paragraph. Therefore, the two documents are consistent.

The Secretary believes that further requirements on optimal financial and compliance records requested by some commenters would restrict State flexibility on these matters. The Secretary notes that States may use their authority to issue rules, see § 298.3(a)(2) of the final regulations, to provide clarification regarding recordkeeping for State audit purposes.

A number of commenters noted with approval the statement which appeared in the nonregulatory guidance to the effect that the Education Department will rely on a State's independent audits and build on audits when a Federal audit is deemed necessary. This language will be included in the final nonregulatory guidance.

With respect to the suggestion that the Secretary require under Chapter 2 public access to records covered by § 298.16, the Secretary concludes that Chapter 2 provides no specific authority on this subject and the matter is properly left to State law.

A number of commenters raised questions as to the authority for § 298.18 regarding compromise of claims. Because Chapter 2 contemplates audits,

the possibility that audit exceptions—leading to audit claims—will be taken must be considered by the Secretary. Under the Federal Claims Collection Act and Chapter 2, the Secretary may be called upon to compromise, or recommend the compromise, of these claims. Under those circumstances, it is proper and appropriate that the Secretary state in advance standards that will guide him in carrying out this function, as the Secretary is invited to do by Section 591(a)(1) of Chapter 2. Section 298.18 has, therefore, been retained.

Subpart C—How Children Enrolled in Private Schools Participate in Chapter 2 Programs (§§ 298.21-298.28)

Comments on this subpart fall into two general categories: those of commenters who accept or support the requirement for equitable participation in Chapter 2 programs of children in private schools and who seek clarification in the regulations on substantive or procedural matters; and those of commenters who generally question the appropriateness or legality of the requirement or regard its burdens as excessive and unworkable. The latter category submitted comments indicating that the provisions of the regulations go beyond case law under the Establishment Clause of the Constitution; that the responsibility of SEAs and LEAs to ensure compliance under Subpart C is unreasonable; that LEAs do not have the capacity to provide "different" services to private school children; and that LEAs are not in a position to monitor the activities of private schools to achieve the objectives of Section 586 of Chapter 2. A number of commenters, noting that Chapter 2 might result in decreased funding to support their desegregation efforts, also objected to participation of private schools not involved in a district's desegregation plan.

To the extent that these comments suggest that the requirement for equitable participation of private school children should be deleted, or substantially curtailed, they are inconsistent with Section 586 of the Chapter 2 statute which clearly states that requirement as a basic condition of Chapter 2 participation. The regulations which the Secretary proposed in the NPRM reflected regulatory provisions previously adopted under the antecedent statutory provisions—regulations with which Congress was familiar when it enacted Chapter 2. Provisions such as those in § 298.26 of the NPRM (relating to the provision of services by public school employees on

the premises of a private school) are long-standing; in fact, an analogous provision was sustained in constitutional litigation under Title I. See *National Coalition for Public Education and Religious Liberty v. Harris*, 489 F. Supp. 1248 (S.D.N.Y., 1980). While the Secretary recognizes that SEAs and LEAs may find that compliance with obligations under Section 586 requires the making of difficult administrative determinations, compliance with these obligations is mandatory under Chapter 2. Within the framework of the Secretary's limited authority under Section 591(b) of Chapter 2, the Secretary will seek to assist SEAs and LEAs in addressing these problems.

Commenters from organizations knowledgeable about the participation of children in private schools suggest a view that the provisions of the regulations are intended to ensure the equitable participation of children in private schools and, if adopted, should achieve this result. The Secretary agrees with these comments and believes that the regulations should go far toward promoting the statutory goal of equitable participation. On the other hand, the Secretary agrees that some additional clarification may be needed in some of the provisions in Subpart C. A number of these are discussed in the following paragraphs; others will be addressed in the final nonregulatory guidance.

A number of commenters urged standards to limit expenditures for private school children or sought specific clarification of the factors to be used in determining equitable participation. Considerable concern was expressed—both in comments on the NPRM and in questions posed to staff—on the relationship between the provisions of Section 565 regarding the counting of "high-cost" children for purposes of determining allocations and the equal expenditures provision of Section 586(b) of Chapter 2. More specifically, commenters wished to know if an LEA may take into account the locus of "high-cost" children as between public and private schools in determining whether expenditures are equal for purposes of Section 586(b). After careful consideration, the Secretary has included an interpretation in § 298.24(a)(2) of the final regulations regarding this issue. The Secretary sees no justification to establish mechanical tests to limit expenditures for private school children in a manner not contemplated in Section 586.

Many commenters requested clarification regarding the applicability of the civil rights laws, including Title VI

of the Civil Rights Act of 1964, to Chapter 2 programs in which children enrolled in private schools participate. The Education Department has advised that the Department's policy as set forth in the Office for Civil Rights' "Report on Nonpublic Schools Participating in Federal Programs", published at 41 Fed. Reg. 35553 (August 23, 1976, remains in effect. Issues pertaining to civil rights applicability to participation of children in private schools are under study and, as appropriate, will be clarified in Chapter 2 nonregulatory guidance or by other means.

A question was raised as to the legal basis for § 298.24(b)(3) providing that if the needs of children enrolled in private schools are different, an LEA must provide services which address their needs. This provision is based on language in Section 586(a)(1) of Chapter 2 requiring that an LEA must provide "other arrangements" to assure equitable participation if the services, materials, and equipment that the LEA would generally provide are not feasible or necessary in one or more private schools.

A change has been made in § 298.28(b) to indicate that Chapter 2 funds may be used for repair, minor remodeling, or construction of public facilities as may be necessary for the provision of Chapter 2 services to children enrolled in private schools. Conversely, § 298.28(a) has been modified to indicate that not only construction of private school facilities but also repairs and minor remodeling are prohibited with Chapter 2 funds.

Further clarification in the nonregulatory guidance will also be provided in response to comments which emphasized the key role of consultation with private school officials in ensuring participation and/or suggested the need for guidance regarding examples of subjects as to which consultation should take place, comments calling for clarification of the role of the LEA under § 298.23, and comments that the interests of handicapped children in private schools are not recognized.

Finally, in response to the suggestions of commenters, a number of technical amendments are made in the regulations to conform them more closely to the statute. Those changes are found in the following sections: § 298.21(a)(1); § 298.21(a)(4); § 298.21(b); § 298.21(d), and § 298.22.

The Secretary has declined to provide further regulations on a number of matters related to Subpart C although commenters requested them. Thus, the Secretary has not added a definition of

"nonprofit private school" and has not included minimum guidelines for determining the eligibility of private schools. In view of the statutory definition of "elementary school" and "secondary school" contained in section 595 of the ECIA, the Secretary does not believe he has authority to establish minimum requirements. Material in the nonregulatory guidance relates to the authority of the State to limit participation in this manner.

Similarly, several commenters suggested that private schools should be required to submit assurances of compliance with the Chapter 2 provisions to their respective LEAs. The Secretary emphasizes that the private schools themselves are not recipients of funds or services under the program and are not directly bound by Chapter 2 requirements. The obligation which the statute imposes on SEAs and LEAs is to serve children in private schools. Therefore, the private schools are not directly responsible to the Secretary or to the SEAs and LEAs for compliance with Chapter 2.

Other technical and editorial changes are reflected in the body of the regulations; further clarification is contained in the nonregulatory guidance.

Subpart D—Due Process Procedures (§§ 298.41–298.57)

Several commenters questioned the Secretary's authority to effect audit recoveries or use the Education Appeal Board (EAB) to hear audit disputes under Chapter 2. Others, while not questioning the Secretary's authority, called for less cumbersome and time-consuming procedures than they expected from the EAB.

One commenter asked for explanation of the differences between the proposed regulations in Subpart D and the rules of the EAB applicable to programs other than Chapters 1 and 2 of the ECIA (34 CFR Part 78), as well as inconsistencies between the proposed Subpart D and analogous provisions under the proposed Chapter 1 regulations. Major provisions of Subpart D not reflected in 34 CFR Part 78 which generated concern were the timelines for certain procedural steps and the provision in § 298.54(d) of the NPRM calling for the Secretary to defer to a State's interpretation of the statutory requirements under Chapter 2.

In light of the determination discussed above that GEPA is applicable to the ECIA, subject to specified exclusions, it follows that Part E of GEPA, 20 U.S.C. 1234–1234e (relating to hearings before the Education Appeal Board) generally applies to Chapters 1 and 2.

Conforming changes have been made in the citations of authority under Subpart D of the regulations to reflect the applicability of GEPA, Part E. These changes are consistent with the comments of a number of commenters who regarded Part E of GEPA as the basic authority for the due process provisions in Subpart D of the regulations, including commenters who urged appropriate modifications in the citations of authority contained in the NPRM.

Withholding is authorized in Section 592 of Chapter 2 and the regulations continue to implement the statutory direction (through the use of the words "on the record" in Section 592) that a due process hearing, meeting the requirements of the Administrative Procedure Act, be provided.

The Secretary shares the concern of commenters that lengthy and time-consuming proceedings, with attendant burden, be avoided, particularly under the ECIA—an act specifically designed to reduce administrative burden. In applying the EAB mechanism to the ECIA, the Secretary has endeavored to streamline its procedures and apply new techniques to ensure more expeditious proceedings.

The Secretary has also recently named a full Board membership and has directed that steps be taken to reduce the backlog of cases before the Board under antecedent programs. The Secretary is prepared to consider other administrative steps necessary to achieve this result so that, if cases come before the Board under Chapter 2, the Board can address them expeditiously. The Secretary emphasizes that cooperation of all parties, including State educational agencies with appeals before the Board, will be needed to achieve these goals.

A number of other changes have been made in Subpart D of the regulations to take into account GEPA applicability.

For example, Section 454 of GEPA, which authorizes cease and desist complaints, applies to Chapter 2. Unlike final audit determinations and withholdings, which are issued by the Assistant Secretary for Elementary and Secondary Education, cease and desist complaints will only be issued by the Secretary. Before the Secretary issues a complaint, he will make every reasonable effort to discuss the circumstances giving rise to the complaint with the SEA and afford the SEA an opportunity to explain its position.

To implement Section 454 of GEPA, changes have been made in § 298.41 (general); § 298.42 (jurisdiction); § 298.43 (definitions); § 298.44 (eligibility for

review); § 298.45 (written notice); § 298.51 (practice and procedure) to take into account the applicability of the cease and desist provision. New sections 298.55 (cease and desist hearing), 298.56 (cease and desist written report and order) and 298.57 (enforcement of a cease and desist order) have been added for the same reason.

Other changes have been made to comport with GEPA. In particular, the timelines in § 298.53 (opportunity to comment on the Panel's decision) and § 298.54 (Secretary's decision) have been revised. A fifteen-day period for initial comments and a seven-day period for responsive comments are provided for in § 298.53 and a 60-day period for the Secretary's decision is provided for in § 298.54. These changes are also responsive to comments on the NPRM which questioned the timelines in these sections.

No substantive changes have been made in § 298.48 (acceptance of the application) and § 298.49 (rejection of the application) which require that certain decisions of the Board Chairperson on an application for review be made within 45 days, or in § 298.52 (Panel's decision) which requires that a Panel's decision be issued within 180 days after receipt of the parties' final submissions unless the Board Chairperson grants the Panel an extension. These provisions are designed to facilitate prompt decision-making in the appeals process and to assist SEAs and LEAs in obtaining timely resolution of appeals so as to aid them in orderly educational planning. These provisions are responsive to comments received from commenters expressing concern regarding the timelines and complexity of EAB procedures.

A number of other conforming changes have been made in Subpart D to respond to comments which questioned the consistency of the due process sections under Chapters 1 and 2 and their consistency with 34 CFR Part 78. As revised, the two subparts contain identical language to deal with similar issues. In particular, changes of this nature (from the NPRM) have been made in the following sections of the Chapter 2 regulations: § 298.43 (definition of "withholding"); § 298.47 (notification of decision); § 298.48 (publication of acceptance of appeal in Federal Register) § 298.52 (basis for extension of 180-day deadline); and § 298.54(a) (basis for Secretary's decision).

The provision for due deference to State interpretations of the Chapter 2 statute described in § 298.54(c) of the

final regulations is, in the Secretary's view, consistent with Chapter 2 as a whole and with the intent of Section 561(b) of Chapter 2 which provides that "the basic responsibility for the administration of funds made available under this chapter is in the State educational agencies."

Deference to a State's interpretation in cases of doubt has been an element in the Department's decisional processes in the past. That expression is now given this consideration in regulations under Chapter 2 should not be a basis for a conclusion that the Secretary will abandon or abrogate responsibilities for carrying out duties specifically vested in him by Chapter 2. Under § 298.54(c), the Secretary defers to a State's interpretation only "to the extent feasible" and "consistent with the Secretary's obligation to enforce compliance with Chapter 2". The Secretary does not believe a change is warranted in the final regulations on this point.

Although some commenters questioned the authority vested in the Board Chairperson under § 298.49 (rejection of application) and § 298.50 (intervention), the authority is confined to procedural matters and questions of timing, and is ultimately subject to review within the Department.

With respect to the by-pass provisions, a commenter's concern that by-pass contracts involve relatively high proportions of administrative costs is well taken. However, the Secretary does not believe that a strict limitation on these costs should be contained in the regulations. Instead, steps should be taken administratively to address the problem.

A suggestion that due process procedures analogous to the by-pass procedures in Subpart D be established for public school children appears to the Secretary to be beyond the scope of Chapter 2. Section 586(d)-(h) of Chapter 2 provides for the by-pass remedy only where private school children do not obtain equitable services. The Secretary has implemented those statutory provisions by issuing procedural rules in §§ 298.31-298.36. Section 586(h), taken with Section 591(a) of Chapter 2, provides a legal basis for these procedural rules. The due process procedures in §§ 298.54-298.57 are designed to protect the interests of State and local educational agencies as well as the beneficiaries of the Chapter 2 program—children in public and private schools.

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federal register

Friday
November 19, 1982

Part VII

Department of the Interior

Office of the Secretary

**Coastal Barrier Resource Act;
Interpretative Guidelines and General
Statement of Policy**

DEPARTMENT OF THE INTERIOR**Office of the Secretary****43 CFR Subtitle A****Coastal Barrier Resources Act****AGENCY:** Office of the Secretary, Interior.**ACTION:** Interpretative guidelines and general statement of policy.

SUMMARY: On October 18, 1982, President Reagan signed the Coastal Barrier Resources Act (CBRA) into law, Pub. L. 97-348. The new law establishes the Coastal Barrier Resources System as referred to and adopted by Congress, and prohibits the expenditure of most new Federal financial assistance within the units of that System. These provisions of the Act became effective immediately. The Act also amends and conforms the Federal flood insurance provisions of the Omnibus Budget Reconciliation Act of 1981 (OBRA) pertaining to undeveloped coastal barriers. The statutory ban on Federal flood insurance will go into effect on October 1, 1983.

All Federal agencies administering programs within the System are affected by the Act. Significant responsibilities are also assigned to the Secretary of the Interior by the legislation. This interpretative guideline and general statement of policy describes the approach the Department of the Interior will adopt to interpret a portion of these responsibilities and to implement CBRA.

Two specific actions are being undertaken at this time. (1) Notice is being provided of the filing, distribution and availability of the maps entitled "Coastal Barrier Resources System", numbered A01 through T12 and dated September 30, 1982, which identify the Coastal Barrier Resources System. (2) The Department's interpretation of CBRA and a general statement of policy which the Department will follow in administering the Coastal Barrier Resources System maps, as required by the Act, are being issued.

DATES: Except as indicated below, the actions the Department of the Interior will take to interpret the Coastal Barrier Resources Act and to implement its responsibilities under this legislation, as provided herein, are effective November 19, 1982.

ADDRESS: Comments should be directed to Mr. Ric Davidge, Chairman, Coastal Barriers Task Force, U.S. Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Lanzone, Manager, Coastal Barriers Task Force, U.S. Department of

the Interior, Washington, D.C. 20240, (202-343-4905).

SUPPLEMENTARY INFORMATION: The maps of the Coastal Barrier Resources System, as approved by Congress with passage of CBRA, have been filed with the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate as required.

Copies of these same maps have been distributed to the Chief Executive Officer of (a) each State and county (or equivalent jurisdiction) in which a System unit is located, (b) each State coastal zone management agency in those States which have a coastal zone management plan approved pursuant to 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) and in which a System unit is located, and (c) each appropriate Federal agency. Copies are now also available for inspection through the Assistant Secretary for Fish and Wildlife and Parks as well as through the U.S. Fish and Wildlife Service of the Department of the Interior. Other interested organizations and individuals may inspect those maps or they may purchase Coastal Barrier Resource System maps from the U.S. Geological Survey.

Each State, and each appropriate State coastal zone management agency, may submit suggested minor and technical modifications to the boundaries of System units, as depicted on the maps referred to above, consistent with the guidelines provided in this document, on or before February 1, 1983. Public comments with regard to suggested minor and technical boundary modifications will also be accepted throughout this period.

In enacting the Coastal Barrier Resources Act, Congress achieved two specific goals. First, the Act establishes and identifies a Coastal Barrier Resources System based upon a specific set of maps that were referred to and adopted as a part of this legislation. These are the maps entitled "Coastal Barrier Resources System", numbered A01 through T12, and dated September 30, 1982, referred to in section 4(a) of CBRA. Second, the Act eliminates the availability of new expenditures and new financial assistance under authority of any other Federal law, except as otherwise provided in CBRA, with regard to these areas.

Section 5 of the Coastal Barrier Resources Act provides that:

Except as provided in section 6, no new expenditure or new financial assistance may be made available under authority of any

Federal law for any purpose within the Coastal Barrier Resources System * * *

There are several key factors in understanding this aspect of the legislation. First, the financial prohibitions of the Coastal Barrier Resources Act apply to actions taken "under authority of any Federal law". Absent a provision within the Coastal Barrier Resources Act itself, all other existing Federal laws permitting these expenditures have been modified and pre-empted as of the date of enactment.

Second, the prohibitions of section 5 are further explained through a definition of the term "financial assistance" and an explanation of the reference to "new" expenditures. The term "financial assistance" is clarified in subsection 3(3) of CBRA to mean any form of direct or indirect assistance. The only exceptions are those provided by the definition itself. These include general revenue-sharing grants; FDIC-type bank account insurance; the Federal purchase of mortgages or loans; funding incident to a Federal permit process; or, assistance pursuant to programs entirely unrelated to development, such as any Federal or Federally assisted public assistance program or any Federal old-age survivors or disability insurance program. An exception is also provided for Federal flood insurance (consistent with OBRA) until October 1, 1983.

Consistent with section 5(b), an expenditure or financial assistance under authority of any Federal law will be "new", and therefore prohibited, if money for the project was not appropriated before the date of enactment, or if there was no legally binding commitment for the expenditure or financial assistance made before that date.

Third, section 6 provides a series of key exceptions to the prohibitions of section 5. These exceptions are only available, however, "after consultation with the Secretary (of the Interior) * * *".

Beyond the overall impact of CBRA on each Federal agency, the Act assigns three major responsibilities to the Department of the Interior. First, the Act requires the Department to manage the maps adopted by the Congress that depict the Coastal Barrier Resources System. Second, the Act creates an immediate prohibition against the expenditure of Federal financial assistance within the units of the Coastal Barrier Resources System subject to several exceptions available to Federal agencies only "after consultation with the Secretary". Third, the Department is directed to undertake

a three year study with regard to areas within or that may be appropriate for inclusion in the Coastal Barrier Resources System. It is important to stress that major modification or additions and deletions to the System will only be considered within the context of that study. Following the study, such actions will be a Legislative, not an Executive Branch, responsibility.

This document concerns implementation of only the first of the Interior responsibilities—the administration of the Coastal Barrier Resources System maps. This is a limited role. Interior will manage the maps provided by Congress; consider minor and technical boundary modifications within the first 180 days; and consider additions to the System within the first year at the specific request of those who own or control such property. Unlike the provisions of the Omnibus Budget Reconciliation Act, however, which required the Secretary of the Interior to designate undeveloped coastal barriers, CBRA establishes the System as a matter of law. Therefore, this Department's previously proposed designations have now been withdrawn. See, 47 FR 47025, October 22, 1982. The Coastal Barrier Resources System was created by CBRA and no further action is required by the Executive Branch to achieve that result. It is within this context that the Department of the Interior's implementation of its map responsibilities must be evaluated.

(1) *Environmental Effects.* The environmental impacts of administering the action actually being undertaken pursuant to this document have been carefully considered. Based upon the draft environmental impact statement issued on May 21, 1982, concerning the same type of resource considerations, and the public comments on that document, it has been determined that this Action will have no significant impact on the environment. A Finding of No Significant Impact has been prepared and may be obtained by contacting the Coastal Barriers Task Force (see Addresses).

(2) *Statement of Effects.* The Department of the Interior has determined that this document is not a major rule under E.O. 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A copy of the combined document supporting these determinations may be obtained through the Coastal Barriers Task Force (see Addresses). The boundary modifications contemplated by CBRA are, by

definition, minor and technical and will not be of any significant impact. The Coastal Barrier Resources System has been established by Congress pursuant to Pub.L. 97-348.

(3) *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

(4) *Authorship Statement.* This document has been prepared by the Coastal Barriers Task Force within the Department of the Interior. The Chairman of the Task Force is Mr. Ric Davidge, Office of the Assistant Secretary for Fish and Wildlife and Parks.

(5) *Public Participation.* The Department's interpretation of CBRA and the general statement of policy which the Department will follow with regard to the administration of the Coastal Barrier Resources System maps are effective immediately. While the policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the development of interpretive guidelines and policies, public participation has not been determined to be required or beneficial in this case. First, the Act provides extremely limited flexibility and explicit direction to the Department in exercising these responsibilities. The Department is simply adopting, as guidelines and policy, that which Congress indicated should be done. Second, the severe time constraints imposed by the Act with regard to map distribution and minor and technical boundary modifications make public participation infeasible at this stage. Finally, under 5 U.S.C. 553 such participation is not required in issuance of interpretive rules. Interested persons will be encouraged, however, to submit written comments, suggestions or objections regarding proposed boundary modifications once they become available for public review after February 1, 1983.

(6) *Identification of Subjects.* An identification of subjects is not necessary because this document is not designed to be codified in the Code of Federal Regulations. Under CBRA, the Secretary's responsibilities with regard to map filing, distribution, and minor and technical boundary modifications must occur within 180 days. Accordingly, the Department does not propose to codify this proposed course of action.

(7) *Ordering of Maps.* Coastal Barrier Resources System maps can be purchased from the U.S. Geological Survey at the address indicated below.

To cover reproduction and handling costs, a fee of \$3.25 will be charged per map for each 36 in. x 42 in. paper ozalid copy. Requests for copies can be made using the Order Form provided in Appendix A (or a copy thereof) and must be prepaid by check or money order (no cash or stamps) made payable to: United States Geological Survey. The Order Form and check or money order should be sent to: Eastern National Cartographic Information Center (ENCIC), U.S. Geological Survey, 536 National Center, Reston, Virginia 22092. Aerial photography at a scale of 1:24,000 is also available for many of the System units. Further information requiring purchase of the imagery is available from the U.S. Geological Survey in Reston, Virginia as noted previously.

The aerial photographs and maps may be inspected at the Office of the Assistant Secretary for Fish and Wildlife and Parks, Main Interior Building, 18th and C Streets, N.W., Room 3149, Washington, D.C. 20240 or through local offices of the U.S. Fish and Wildlife Service. The offices of the U.S. Fish and Wildlife Service that have been provided copies of the Coastal Barrier Resources System maps are listed in Appendix B.

Coastal Barrier Resources System Maps—Issuance of Interpretive Guidelines and General Statement of Policy

The Coastal Barrier Resources Act is based upon a series of maps entitled "Coastal Barrier Resources System", numbered A01 through T12, and dated September 30, 1982. These maps identify and depict those undeveloped coastal barriers located on the Atlantic and Gulf Coasts that Congress included within the Coastal Barrier Resources System and that are subject to the limitations outlined in the Act. Pursuant to a letter of October 15, 1982, from Senator John H. Chafee and Congressman Walter B. Jones, as Chairman of the Senate Subcommittee on Environmental Pollution and Chairman of the House Committee on Merchant Marine and Fisheries respectively, these maps are now in the official custody of the Department of the Interior. These final maps completely supersede and replace the draft or proposed maps previously circulated by this Department under the provisions of the Omnibus Budget Reconciliation Act of August 13, 1981. In this regard, the Department of the Interior officially withdrew its proposed rulemaking of August 16, 1982 (47 FR 35696), pursuant to Federal Register notice of October 22, 1982 (47 FR 47025). Consistent with the Coastal Barrier

Resources Act, no further action will be taken on these earlier Departmental efforts.

Section 4 of the Coastal Barrier Resources Act defines the Department's responsibilities regarding the System maps. These responsibilities include: Filing the maps with the Committees (subsection 4(b)(1)); distributing copies of the maps (subsection 4(b)(2)); considering minor and technical boundary modifications to the maps (subsection 4(c)); and considering additions to the Coastal Barrier Resources System at the request of those who own or control the property in question (subsection 4(a)(2)).

(A) Filing Maps with Committees

As required by subsection 4(b)(1), the Coastal Barrier Resources System maps have been filed with the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate. Using the original maps submitted to the Department by the Congress, the Department has reproduced copies of these maps for mass distribution. The boundaries of the Coastal Barrier Resources System on these copies are identical with the original boundaries of the set of maps adopted by Congress pursuant to the Coastal Barrier Resources Act. Changes are minor. The Interior copies do not reproduce the notations, initials or seals of the Congressional copies. In several situations, the number of map sheets necessary to depict a unit have been consolidated and reduced, or a slightly different scale map has been utilized as a base. In addition, the collar information around the edge of the maps has been modified to reflect the present origin and purpose of the maps and to facilitate production and distribution of the copies. In a few cases, the unit number has also been changed to establish a logical geographic order. The original maps adopted by the Congress are on file within the Department of the Interior and may be inspected there. Appendix A has a listing of each unit map by name and number.

(B) Map Distribution

Pursuant to subsection 4(b)(2), the Department of the Interior is required to distribute the maps to the States; to each county or equivalent jurisdiction in which a System unit is located; to State coastal zone management agencies; and to each appropriate Federal agency. Copies of the original maps have been reproduced and are being distributed.

(C) Minor and Technical Boundary Modifications

The Department of the Interior's third map responsibility concerns minor and technical boundary modifications. As provided by subsection 4(c), these modifications must be completed within 180 days from the date of enactment. The Secretary's authority lapses thereafter except with regard to changes in the size or location of System units as a result of natural forces. See, subsection 4(c)(3). In addition, this modification process must be closely coordinated with State coastal zone management agencies and with the Congress within that period.

There are two distinct elements in this effort: the process that will be followed and the guidelines that will be used to establish which minor and technical modifications should be adopted. As indicated previously, the application of the process and the guideline outlined herein are effective immediately.

The process that the Department of the Interior will follow to make minor and technical boundary modifications is governed by the Act. With map distribution completed, the initial responsibility to consider and propose minor and technical boundary modifications rests with the States and their State coastal zone management agencies. Pursuant to section 4(c)(1)(A), each State coastal zone management agency is provided 90 days from the date of enactment to submit proposals for such minor and technical boundary modifications to the Secretary. Under the Act, this period runs through January 18, 1983. Because of the importance of the State role in this process, however, the Secretary has extended this period through February 1, 1983.

The Secretary has requested that each State, particularly those States with approved CZM plans, rigorously undertake this responsibility. Each State has been asked by letter from the Secretary to coordinate submission of comments and/or recommendations within its jurisdiction; to contact the public; to alert those affected by the Coastal Barrier Resources Act of the guidelines applicable to such changes adopted by this Department; and to provide this Department with its proposals by February 1, 1983. The Department requests that all local governments and interested individuals contact their Governor or State CZM office before submitting comments or requesting a meeting with the Department. Thereafter, comments should be directed to the Chairman, Coastal Barriers Task Force, at the address indicated herein. Other

concerns should be raised with the Coastal Barriers Task Force Manager, as provided by the Further Information heading. Further, in its consultations with the States, the Department will assure that all local and/or private submissions are available to the States.

The Secretary has also advised the States that, based upon a review of existing undeveloped coastal barrier data, the Department has established that 120 of the Coastal Barrier Resources System units have been already subject to intensive Departmental review and some degree of public comment. These units were adopted without change by the Congress from the Department's proposed designations of August 16, 1982.

Following the close of the initial comment period on February 1, 1983, the Department will review all submissions and select modifications for further consideration based upon the criteria discussed below. The Department will then submit these proposed modifications to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate, to the chief executive officer of each State and county or equivalent jurisdiction in which a System unit is located, to each State coastal zone management agency with an approved plan, and to each appropriate Federal agency. A thirty (30) day review period is required. Public review and comment will also be provided pursuant to notice in the *Federal Register*. Following the close of that final opportunity for comment, a final decision will be made by this Department within the 180 day review period established by the Coastal Barrier Resources Act. Thereafter, the maps will be adjusted accordingly and republished as necessary. Justifications concerning these changes will also be provided to the degree appropriate under CBRA.

The guidelines that will be used to establish which proposed minor and technical boundary modifications should be adopted have been strictly established by the Congress. See section 4(c) of the Act. The Senate Report, the House Report and the Conference Report all interpret these limited provisions rigorously. See the Senate Report (S. Rept. 97-419). Similarly, see the House Report (H. Rept. 97-841). Finally, see the Conference Report (H. Rept. 97-928).

Based upon the Act and its legislative history, it is clear that boundary modifications must be minor and technical, consistent with CBRA, and

serve to clarify boundaries. First, any proposed change must be truly minor and technical. Second, any proposed change must be consistent with the purpose of the Act as established by section 2(b).

Absent a strong showing that the few feet in question are not the type of resource Congress intended to restrict from future Federal expenditures, most changes would expand boundaries rather than contract them. That is, clarification of the boundaries of system units, when necessary, will be accomplished, in most cases, by adding property to the unit in question rather than deleting it.

The third and final criterion is that any change must serve to clarify boundaries. This means that the boundaries of the unit should be clear. However, it does not mean that the boundaries should be geometric or be restricted to following roadways or property lines. As with the FEMA Flood Insurance Rate Maps, the Coastal Barrier Resources System maps are not generally based upon property or political lines—they are based upon geomorphic factors to the greatest degree practicable. As a result they do not and should not necessarily follow traditional legal descriptions or existing manmade features. To achieve precision, two key conventions will be followed. First, Interior intends to use the precise center of the boundary line as the boundary. Consistent with established cartographic standards, the precise center of the line enclosing the unit on the maps establishes the unit boundary. The width (or thickness) of the line will not be a factor. There is one exception. In those cases where the boundary line covers and was obviously intended to follow an established property line or geographic feature, the property line or geographic feature will be the boundary of the unit. Second, Interior also intends to transcribe these final lines onto the Department's coastal barrier aerial photography so that the boundary can be referenced to an image as well as to a map. While the map will be the official document, our experience has shown that use of aerial photographs permits quicker identification of landmarks and orientation of the unit to specific parcels.

In addition to these criteria, the relationship with State Coastal Zone Management plans will also be considered. The impact of the Coastal Barrier Resources Act is typically more restrictive and more protective of the coastal zone than existing CZM plans; it also has the effect of stopping new

Federal expenditures and programs. Accordingly, slight expansion of the System through minor and technical boundary modifications would appear to be in general agreement with those plans. Similarly, to the degree an area is scheduled for protection under an approved CZM plan, modifications out (i.e., expansion) rather than in would also be consistent with such a plan. Conversely, a modification to slightly limit the size of a given unit might be inappropriate if the area in question was being protected for conservation purposes under an approved State plan. Therefore, expansion of System units will be generally favored and will be followed in all cases in which the area in question is scheduled for conservation protection under an approved CZM plan and a modification is appropriate.

(D) Additions to the Coastal Barrier Resources System

The final Interior responsibility with regard to the Coastal Barrier Resources System maps concerns additions to the System. Subsection 4(a)(2) specifically provides for this possibility. This provision also requires that such an election "shall be made in compliance with regulations established for this purpose by the Secretary not later than one hundred and eighty days after the date of enactment of this Act". Consistent with this requirement, the Department of the Interior will issue proposed regulations consistent with this provision and its legislative history as quickly as possible pursuant to a separate document in the **Federal Register**. This provision will be the only legislative rulemaking directed by the Coastal Barrier Resources Act.

Dated: November 16, 1982.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

Appendix A—Order Form; Coastal Barrier Resources System Maps

This form will enable you to obtain copies of some or all of the 177 Coastal Barrier Resources System maps adopted by Congress pursuant to the Coastal Barrier Resources Act (CBRA) of 1982 (Pub. L. 97-348). Each paper print which measures 36 inches by 42 inches will cost \$3.25 to cover reproduction, shipping, and handling costs.

Please indicate the number of maps of each unit you want to order on the appropriate space from the following list of maps. If you mark the State space, the number of maps indicated for the entire State will be mailed to the address provided.

Map Number(s) and Unit Names(s)

- State of Maine (12 maps)
 - A01 Lubec Barriers
 - A01A Baileys Mistake
 - A03 Jasper
 - A03B Starboard
 - A03C Popplestone Beach/Rogue Island
 - A05A Seven Hundred Acre Island
 - A05B Head Beach
 - A05C Jenks Landing/Waldo Point
 - A06 Cape Elizabeth
 - A07 Scarborough Beach
 - A08 Crescent Surf
 - A09 Seapoint
- State of Massachusetts (39 maps)
 - C00 Clark Pond
 - C01 Wingersheek
 - C01A and C01B Good Harbor Beach and Brace Cove
 - C01C West Head Beach
 - C02 North Scituate
 - C03 Rivermoor
 - C03A Rexhame
 - C04 Plymouth Bay
 - C06 Center Hill Complex
 - C08 Scorton
 - C09 Sandy Neck
 - C10 Freemans Pond
 - C11 Namskaket Spits
 - C11A Boat Meadow
 - C12 Chatham Roads
 - C13 Lewis Bay
 - C14 Squaw Island
 - C15 and C16 Centerville and Dead Neck
 - C17 Popponessett Spit
 - C18 and C18A Waquoit Bay and Falmouth Ponds
 - C19 Black Beach
 - C19A Buzzards Bay Complex Sheet 1 of 2
 - C19A Buzzards Bay Complex Sheets 2 of 2
 - C20 Coatue
 - C21 Sesachacha Pond
 - C22 Cisco Beach
 - C23 and C24 Esther Island Complex and Tuckernuck Island
 - C25 Muskeget Island
 - C26 Eel Pond Beach
 - C27 Cape Poge
 - C28 South Beach
 - C29 Squibnocket Complex
 - C29 and C29B James Pond and Mink Meadows
 - C31 Elizabeth Islands
 - C31A West Sconticut Neck
 - C31B Harbor View
 - C32 Mishaum Point
 - C33 and C34 Little Beach and Horseneck Beach
 - C34A Cedar Cove
- State of Rhode Island (9 maps)
 - D01 Little Compton Ponds
 - D02 Fogland Marsh
 - D02B Prudence Island Complex
 - D02C West Narragansett Bay Complex
 - D03, D04, and D05 Card Ponds, Green Hill Beach and East Beach
 - D06 Quonochontaug Beach
 - D07 Maschaug Ponds
 - D08 Napatree
 - D09 Block Island

- State of Connecticut (8 maps)
 - E01 and E01A Wilcox Beach and Ram Island
 - E02, E03, and E03A Goshen Cove, Jordan Cove and Niantic Bay
 - E03B Lynde Point
 - E04 Menunketesuck Island
 - E05 Hammonasset Point
 - E07 Milford Point
 - E08A Fayerweather Island
 - E09 Norwalk Islands
- State of New York (11 maps)
 - F01 Fishers Island Barriers
 - F02 Eatons Neck
 - F04 Crane Neck
 - F05 Old Field Beach
 - F06 Shelter Island Barriers
 - F08A and F08B Sammys Beach and Acabonack Harbor
 - F09 Gardiners Island Barriers
 - F10 Napeaque
 - F11 Mecox
 - F12 Southampton Beach
 - F13 Tiana Beach
- State of Delaware (2 maps)
 - H00 Broadkill Beach Complex
 - H01 North Bethany Beach
- State of Virginia (4 maps)
 - K01 Assawoman Island
 - K03 Cedar Island
 - K04 Little Cobb Island
 - K05 Fishermans Island
- State of North Carolina (7 maps)
 - L01 Currituck Banks
 - L03 Hatteras Island
 - L03A Shackleford Banks
 - L05 Onslow Beach Complex
 - L06 Topsail
 - L07 and L08 Lea Island Complex & Wrightsville Beach
 - L09 Masonboro Island
- State of South Carolina (13 maps)
 - M01 Waites Island Complex
 - M02 Litchfield Beach
 - M03 Pawleys Inlet
 - M04 Debidue Beach
 - M05 Dewees Island
 - M06 Morris Island Complex
 - M07 Bird Key Complex
 - M08 Captain Sams Inlet
 - M09 Edisto Complex
 - M10 Otter Island
 - M11 Harbor Island
 - M12 St. Phillips Island
 - M13 Daufuskie Island
- State of Georgia (6 maps)
 - N01 Little Tybee Island
 - N01A Wassaw Island
 - N03 Little St. Simons Island
 - N04 Sea Island
 - N05 Little Cumberland Island
 - N06 Cumberland Island
- State of Florida (33 maps)
 - P02 Talbot Islands Complex
 - P04A Usinas Beach
 - P05 Conch Island
 - P05A Matanzas River
 - P07 Ormond-by-the-Sea
 - P08 Ponce Inlet
 - P09A Coconut Point
 - P10 Vero Beach
 - P10A Blue Hole
 - P11 Hutchinson Island
 - P12 Hobe Sound
 - P14A North Beach

- P15 Cape Romano
- P16 Keewaydin Island
- P17 Lovers Key Complex
- P17A Bodwitch Point
- P18 Sanibel Island
- P19 North Captiva Island
- P20 Cayo Costa
- P21 Bocilla Island
- P21A Manasota Key
- P22 Casey Key
- P23 Longboat Key
- P24 The Reefs
- P24A Mandalay Point
- P25 Atsena Otie Key
- P26 Peppercorn Keys
- P27A Ochlockonee Complex
- P28 Dog Island
- P30 Cape San Blas
- P31 St. Andrew Complex
- P31A Four Mile Village
- P32 Moreno Point
- State of Alabama (3 maps)
 - Q01 Mobile Point
 - Q01A Pelican Island
 - Q02 Dauphin Islands
- State of Mississippi (4 maps)
 - R01 Round Island
 - R01A Belle Fontaine Point
 - R02 Deer Island
 - R03 Cat Island
- State of Louisiana (13 maps)
 - S01 Bastian Bay Complex
 - S01A Bay Joe Wise Complex
 - S02 Grande Terre Islands
 - S03 Caminada
 - S04 Bay Champagne
 - S05 Timbalier Island
 - S06 (sheet 1 of 2) Isles Dernieres
 - S06 (sheet 2 of 2) Isles Dernieres
 - S07 Point Au Fer
 - S08 Chenier Au Tigre
 - S09 Rollover
 - S10 Mermentau River
 - S11 Sabine
- State of Texas (13 maps)
 - T01 Sea Rim
 - T02 High Island
 - T03 Bolivar Peninsula
 - T04 Follets Island
 - T05 Brazos River Complex
 - T06 Sargent Beach
 - T07 (sheet 1 of 2) Matagorda Peninsula
 - T07 (sheet 2 of 2) Matagorda Peninsula
 - T08 (sheet 1 of 2) San Jose Island Complex
 - T08 (sheet 2 of 2) San Jose Island Complex
 - T10 North Padre Island
 - T11 South Padre Island
 - T12 Boca Chica

A complete set of CBRA maps is 177 maps. Copies of the CBRA maps are available from the U.S. Geological Survey. Reproduction, shipping, and handling costs are \$3.25 for each 36 in. x 42 in. paper ozalid copy. Requests for copies must be prepaid by check or money order (no cash or stamps) and directed to:
 Eastern-National Cartographic Information Center (E-NCIC), U.S. Geological Survey, 536 National Center, Reston, Virginia 22092 (Telephone: (703) 860-6336 or FTS 928-6336.
 Make checks payable to: United States Geological Survey.

Please indicate where the maps should be sent:
 Name _____
 Street Address _____
 City _____
 State _____
 Zip code _____
 Organization _____

Please include a telephone number where you can be reached weekdays between 8 a.m. and 4 p.m. EST. Telephone: Area code () Number _____

Appendix B

USFWS Stations Where CBRA Maps May Be Inspected

Offices and CBRA maps available for inspection

1. U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, Tel: 617-965-5100—All Units.
2. U.S. Fish and Wildlife Service, P.O. Box 1518, Concord, New Hampshire 03301, Tel: 603-224-2585—Maine, Massachusetts, Rhode Island, Connecticut.
3. Moosehorn National Wildlife Refuge, Box X, Calais, Maine 04619, Attn: Douglas M. Mullen, Refuge Manager, Tel: 207-454-3521—Maine.
4. Rachel Carson National Wildlife Refuge, Route 2, Box 98, Wells, Maine 04090, Attn: Maurice Mills, Jr., Refuge Manager, Tel: 207-646-9226—Maine.
5. Parker River National Wildlife Refuge, Northern Boulevard, Plum Island, Newburyport, Massachusetts 01950, Attn: George W. Gavutis, Refuge Manager, Tel: 617-465-5753—Massachusetts.
6. Trustum Pond National Wildlife Refuge, Box 307, Charlestown, Rhode Island 02813, Attn: Don Tiller, Refuge Manager, Tel: 401-364-3106—Rhode Island, Connecticut.
7. U.S. Fish and Wildlife Service, Brookhaven National Laboratory, Building 134, Upton, New York 11973, Tel: 516-345-3300—New York, Rhode Island, Connecticut.
8. U.S. Fish and Wildlife Service, 100 Grange Place, Room 202, Cortland, New York 13045, Tel: 607-753-9334—New York.
9. Wertheim National Wildlife Refuge, P.O. Box 21, Shirley, New York 11967, Attn: Roger Spaulding, Refuge Manager, Tel: 516-286-0485—New York.
10. Bombay Hook National Wildlife Refuge, Route 1, Box 147, Smyrna, Delaware 19977, Attn: Don R. Perkuchin, Refuge Manager, Tel: 302-653-9345—Delaware.
11. Chincoteague National Wildlife Refuge, Box 62, Chincoteague, Virginia 23336, Attn: Dennis Holland, Refuge Manager, Tel: 804-336-6122—Virginia.
12. Back Bay National Wildlife Refuge, Pembroke Office Park, Pembroke No. 2, Suite 218, Virginia Beach, Virginia 23462, Attn: Glen Bond, Refuge Manager, Tel: 804-490-0505—Virginia.
13. U.S. Fish and Wildlife Service, 1825-B Virginia Street, Annapolis, Maryland 21401, Tel: 301-269-5448—Delaware, Virginia.
14. U.S. Fish and Wildlife Service, P.O. Box 729, Gloucester Point, Virginia 23062, Tel: 804-642-4800—Virginia.
15. U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street

S.W., Suite 1276, Atlanta, Georgia 30303, Tel: 404-221-6343—All Units.

16. Pea Island National Wildlife Refuge, Box 150, Rodanthe, North Carolina 27968, Attn: Albert Hight, Refuge Manager, Tel: 919-987-2394—North Carolina.

17. U.S. Fish and Wildlife Service, Federal Building, Room 468, 310 New Bern Avenue, Raleigh, North Carolina 27601, Tel: 919-755-4520—North Carolina.

18. U.S. Fish and Wildlife Service, P.O. Box 12559, Charleston, South Carolina 29412, Tel: 803-724-4707—South Carolina.

19. U.S. Fish and Wildlife Service, 801 Gloucester Street, Brunswick, Georgia 31520, Tel: 912-265-9336—Georgia.

20. Georgia Coastal Complex, Box 8487, Savannah, Georgia 31402, Attn: John P. Davis, Refuge Manager, Tel: 712-232-4321—Georgia, South Carolina.

21. South Florida Refuges, Route 1, Box 278, Boynton Beach, Florida 33437, Attn: Burkett S. Neely, Refuge Manager, Tel: 305-732-3684—Florida.

22. J. N. "Ding" Darling National Wildlife Refuge, P.O. Drawer B, Sanibel, Florida 33957, Attn: Delano A. Pierce, Refuge Manager, Tel: 813-472-1100—Florida.

23. Chassahowitzka National Wildlife Refuge, Route 2, Box 44, Homosassa, Florida 32646, Attn: Edward Collinsworth, Refuge Manager, Tel: 904-382-2201—Florida.

24. National Wetland Inventory, Suite 217, Dade Building, 9620 Executive Center Drive, St. Petersburg, Florida 33702, Tel: 813-893-3624—All Units.

25. U.S. Fish and Wildlife Service, P.O. Box 2676, Vero Beach, Florida 32960, Tel: 305-562-3909—Florida.

26. U.S. Fish and Wildlife Service, 1612 June Avenue, Panama City, Florida 32405, Tel: 904-769-0552—Florida.

27. U.S. Fish and Wildlife Service, P.O. Drawer 1197, Daphne, Alabama 36526, Tel: 205-626-1880—Alabama, Mississippi.

28. Mississippi Sandhill Crane Complex, Box 699, Gautier, Mississippi 39553, Attn: Bill A. Grabill, Refuge Manager, Tel: 601-497-6322—Mississippi, Alabama.

29. Delta-Breton National Wildlife Refuge, Venice, Louisiana 70091, Attn: Emil T. Heuer, Jr., Refuge Manager, Tel: New Orleans Marine Operator 3-3232—Louisiana.

30. Sabine National Wildlife Refuge, MRH 107, Hackberry, Louisiana 70645, Attn: John R. Walther, Refuge Manager, Tel: 318-762-4620—Louisiana.

31. National Coastal Ecosystems Team, NASA/Slidell Computer Complex, 1010 Gause Boulevard, Slidell, Louisiana 70458, Tel: 504-255-6511—All Units.

32. U.S. Fish and Wildlife Service, P.O. Box 4305, Lafayette, Louisiana 70502, Tel: 318-234-7478—Louisiana.

33. U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, Tel: 505-766-2932—All Units.

34. U.S. Fish and Wildlife Service, 17629 El Camino Real, Suite 211, Houston, Texas 77058, Tel: 713-229-3682—Texas.

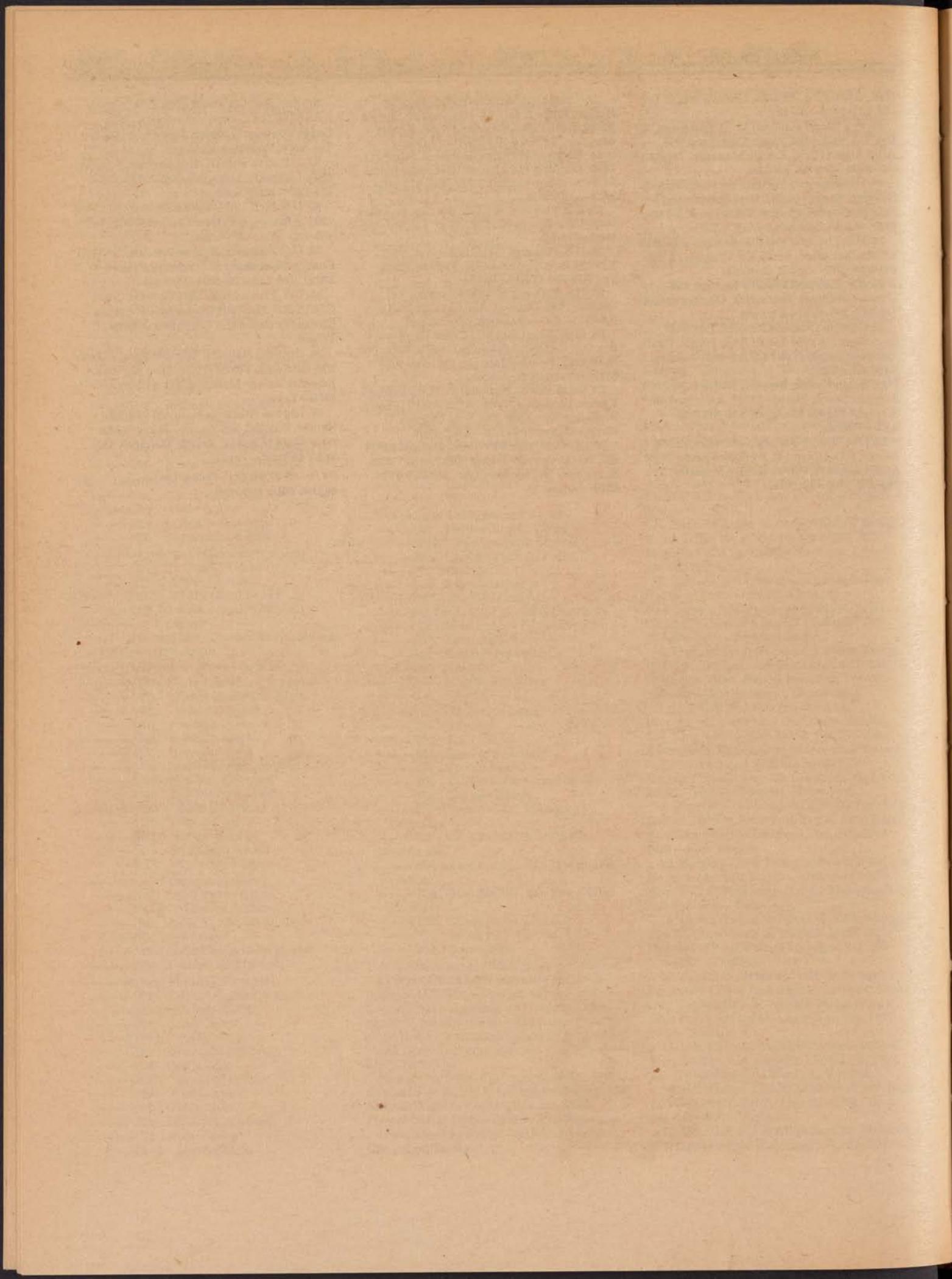
35. U.S. Fish and Wildlife Service, c/o CCSU, Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412, Tel: 512-888-3346—Texas.

36. Aransas National Wildlife Refuge, Box 100, Austwell, Texas 77950, Attn: F. Frank Johnson, Refuge Manager, Tel: 512-286-3559—Texas.

37. Laguna Atascosa National Wildlife Refuge, Box 450, Rio Hondo, Texas 78583, Attn: Gary N. Burke, Refuge Manager, Tel: 512-748-3607—Texas.

[FR Doc. 82-31775 Filed 11-18-82; 8:45 am]

BILLING CODE 4310-70-M



federal register

Friday
November 19, 1982

Part VIII

Department of the Interior

Minerals Management Service

**Site Security; Onshore Federal and Indian
(Except Osage) Oil and Gas Leases**

DEPARTMENT OF THE INTERIOR**Minerals Management Service****30 CFR Part 221****Site Security; Onshore Federal and Indian (Except Osage) Oil and Gas Leases**

AGENCY: Minerals Management Service, Interior.

ACTION: Revocation of interim rule.

SUMMARY: On October 15, 1982, the Minerals Management Service (MMS) published an Interim Rule pertaining to the minimum site security standards for onshore Federal and Indian oil and gas leases. Based on the comments received to date, this document revokes the provisions of that Interim Rule which became effective on November 15, 1982.

DATE: Effective November 19, 1982.

ADDRESS: Associate Director for Onshore Minerals Operations, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 650, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Daniels, (703) 860-7535, (FTS) 928-7535.

SUPPLEMENTARY INFORMATION: The Minerals Management Service published Interim Rulemaking in the *Federal Register* on October 15, 1982 (47 FR 46236) establishing minimum site security standards for onshore Federal and Indian (except Osage) oil and gas leases. Those interim rules became effective on November 15, 1982, and comments were to have been submitted by December 14, 1982. In addition, initial site security plans were to have been submitted by December 15, 1982.

Based on the comments received to date, it has been decided to revoke the interim rulemaking, publish proposed

rulemaking, modify some of the technical requirements contained in the interim rules, and to extend the comment period to January 14, 1983. The proposed rulemaking is published elsewhere in this issue of the *Federal Register*.

Under the authority of the Act of February 25, 1920 (30 U.S.C. 189), Part 221, Chapter II, Title 30 of the Code of Federal Regulations is revised as set forth below.

Dated: November 17, 1982.

James G. Watt,
Secretary.

PART 221—OIL AND GAS OPERATING REGULATIONS**§ 221.37 [Revoked]**

Part 221 is amended by revoking § 221.37.

[FR Doc. 82-31967 Filed 11-18-82; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 221

Site Security; Onshore Federal and Indian (Except Osage) Oil and Gas Leases

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: On October 15, 1982, the Minerals Management Service published in the *Federal Register* (47 FR 46236) interim rules establishing the minimum site security requirements for onshore Federal and Indian (except Osage) oil and gas leases. The rules were to become effective on November 15, 1982, and comments were to be submitted by December 14, 1982.

Based on the comments received to date, it has been decided to (1) republish the interim rules as proposed rulemaking, (2) make technical revisions in the requirements contained in the interim rules, and (3) extend the comment period on the proposed rules to January 14, 1983.

DATE: Comments on the proposed rules must be received by January 14, 1983.

ADDRESS: Send comments to the Associate Director, Onshore Minerals Operations, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 650, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Daniels, (703) 860-7535, (FTS) 928-7535.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are Mr. George E. Campbell, Oil and Gas Sub-District Office, Thermopolis, Wyoming; Mr. Michael F. Reitz, South Central Region, Albuquerque, New Mexico; Mr. Sylvester J. Fisher, Central Region, Denver, Colorado; and Mr. Gerald R. Daniels, Mr. Robert C. Kent, Mr. Stephen H. Spector, Mr. Eddie R. Wyatt, Mr. John Duletsky, and Mrs. Florence J. Lee of the headquarters office, Reston, Virginia.

The Minerals Management Service (MMS) published Interim Rulemaking in the *Federal Register* on October 15, 1982 (47 FR 46236) establishing minimum site security standards for onshore Federal and Indian (except Osage) oil and gas leases. Those interim rules became effective on November 15, 1982, and comments were to have been submitted by December 14, 1982. In addition, initial site security plans were to have been submitted by December 15, 1982.

Based on the comments received to date, it has been decided to (1) revoke

the interim rulemaking, publish proposed rulemaking, modify some of the technical requirements contained in the interim rules, and to extend the comment period to January 14, 1983. However, the preamble to the interim rules is hereby incorporated. The revocation of the interim rule is published elsewhere in this issue of the *Federal Register*.

Briefly, amendments have been made in the technical requirements which relate to the placement and type of seals, the submission of schematic diagrams for facilities, the identification of facilities and tanks, reporting of thefts and suspicious circumstances, and frequency of gauging and inspection. In addition, a new section providing for variances from specific requirements is proposed.

Because the revision of Part 221 has been published as final rulemaking in the *Federal Register* of October 27, 1982 (47 FR 47758), the MMS does not intend to forego the submittal of schematic diagrams for each facility as required by § 221.32(a), 221.34(a), and 221.35(b). Thus, lessees and operators should continue to develop and submit these diagrams. Moreover, the MMS does not foresee the need to further revise its requirements for facility and individual tank identification, as modified by this proposed rulemaking. Thus, lessees and operators are encouraged to proceed on this basis so that their facilities and individual tanks will be identified properly on or before the date for compliance with the final rulemaking.

In order to facilitate the filing of site security plans once the final rulemaking becomes effective, the listing below identifies each of the MMS's onshore District Offices and the area under the jurisdiction of each such office.

Office and Area of Jurisdiction

Alaska District Office

Minerals Management Service,
P.O. Box 259,
Anchorage, Alaska 99510,
Telephone (907) 271-4303
Alaska

Bakersfield District Office

Minerals Management Service, 309 Federal Building, 800 Truxtun Avenue, Bakersfield, California 93301, Telephone (805) 861-4186
California, Hawaii, Idaho, Nevada, Oregon, Washington, Arizona (except Navajo and Hopi Indian Reservations)

Jackson District Office

Minerals Management Service, 1509 Federal Building, Jackson, Mississippi 39201, Telephone (601) 964-4405
Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee

Indianapolis District Office

Minerals Management Service, Water Resources Division, 1819 North Meridian Street, Indianapolis, Indiana 46202, Telephone (317) 269-7106
Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin

Grand Junction District Office

Minerals Management Service, P.O. Box 3768, Grand Junction, Colorado 81502, Telephone (303) 245-2852
Colorado, Kansas, Nebraska, That part of the Ute Mountain Ute Indian Reservation located in New Mexico

Salt Lake City District Office

Minerals Management Service, 1745 W. 1700 South, Salt Lake City, Utah 84014, Telephone (801) 524-4590
Utah (except for Navajo Indian Reservation)

Billings District Office

Minerals Management Service, P.O. Box 2550, Billings, Montana 59103, Telephone (406) 657-6368
Montana, North Dakota

Casper District Office

Minerals Management Service, P.O. Box 2859, Casper, Wyoming 82602, Telephone (307) 265-5550
South Dakota, Wyoming Counties of Sheridan, Johnson, Campbell, Crook, Weston, Natrona, Converse, Niobrara, Platte, Goshen, Laramie, Albany, Carbon

Rock Springs District Office

Minerals Management Service, P.O. Box 1170, Rock Springs, Wyoming 82901, Telephone (307) 362-6422
Wyoming Counties of Big Horn, Park, Hot Springs, Washakie, Teton, Fremont, Sublette, Lincoln, Sweetwater, Uinta

Farmington District Office

Minerals Management Service, P.O. Drawer 600, Farmington, New Mexico 87401, Telephone (505) 325-4572
All of the Navajo and Hopi Indian Reservations and New Mexico Counties of Colfax, Mora, Santa Fe, Bernalillo, Valencia, Sandoval, McKinley, Rio Arriba, Taos, and San Juan (except for the Ute Mountain Ute Indian Reservation)

Roswell District Office

Minerals Management Service, Post Office Drawer 1857, Roswell, New Mexico 88201, Telephone (505) 624-1790
New Mexico Counties of Union, Harding, San Miguel, Torrance, Guadalupe, Quay, Curry, DeBaca, Catron, Socorro, Lincoln, Chaves, Roosevelt, Lea, Eddy, Otero, Sierra, Dona Ana, Grant, Luna, Hidalgo, and all of Texas west of the 100th Meridian

Tulsa District Office

Minerals Management Service, 6136 East
32nd Place, Tulsa, Oklahoma 74135,
Telephone (918) 581-7631
Oklahoma and all of Texas east of the
100th Meridian

It is anticipated that final rulemaking will be published in April of 1983 and that lessees and operators will be accorded 60 days thereafter in which to submit their initial site security plans and to have their facilities in full compliance with the final rules.

Executive Order 12291

The Department has determined that this rule is not a major rule and does not require the preparation of a regulatory impact analysis under Executive Order 12291 because it is estimated to result in a total economic effect of less than \$7 million. Since this amount will be spread among approximately 2,200 operators and 17,000 producible oil and gas leases, the total and individual economic effect is not deemed significant.

Regulatory Flexibility Act

The Department has also determined that this rule will not have a significant economic effect on a substantial number of small entities and does not, therefore, require a small entity flexibility analysis under the Regulatory Flexibility Act because small operators will be subject to the same requirements as large operators. In addition, since the losses due to theft may have a greater adverse impact on small operators and lessees, the benefits of increased site security could result in some economic benefits for small entities.

National Environmental Policy Act of 1969

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

Paperwork Reduction Act of 1980

The information collection requirements of the site security plan are being submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3507. The collection of the information in the site security plan, not previously approved will not be required until it has been approved by the OMB. The remaining information collection requirements contained in 30 CFR 221.37 have been approved by the OMB and assigned clearance number 1010-0001.

List of Subjects in 30 CFR Part 221

Oil and gas exploration, Public lands/mineral resources, Reporting requirements.

Under the authority of the Act of February 25, 1920 (30 U.S.C. 189), and Executive Order 12291 (3 CFR, 1981 Comp., p. 127), it is proposed to amend Part 221, Chapter II, title 30 of the Code of Federal Regulations as set forth below.

PART 221—[AMENDED]

Section 221.37, is added to read as follows:

§ 221.37 Site security on Federal and Indian (except Osage) oil and gas leases.

(a) Within 30 days after production, treating and/or storage facilities are first installed on a lease, a site security plan for the lease, which includes the minimum standards enumerated in paragraph (b) of this section, must be filed with the Supervisor or notice given to the Supervisor that the lease is to be subject to an earlier filed plan. For all other leases which are in a producing status at the effective date of this regulation, a plan must be filed with the Supervisor by such effective date, at which time all leases covered thereby must be in compliance with the plan. At the operator's option, a single plan may include all of the operator's leases within a single MMS District, provided that the plan clearly identifies each lease included within the scope of the plan and the extent to which the plan is applicable to each lease involved. Any security elements in excess of the minimum requirements which the operator wishes to implement, but desires to be held confidential, should not be filed with the Supervisor, but must be available for inspection by MMS personnel on request.

(b) Site security plans must meet or exceed the following minimum standards:

(1) All appropriate valves on lines entering or leaving oil storage tanks, including those valves between the storage tanks and the sales point, must be effectively sealed using numbered seals which may not be removed without being destroyed. Any other connection, e.g., bull plugs, flat plugs, or victaulic couplings at the end of a system, which allow direct access to stored production also must be effectively sealed. A record of the numbered seals must be maintained by the operator showing when they were installed and when they were removed. These records also must identify the valves or connections to which the seal numbers apply and must be available

for inspection by MMS personnel on request.

(2) The plan must specify the schedule on which the operator proposes to measure and record the volume of crude oil in storage on each of the leases subject to the plan. These measurement records must be made available for MMS review on request. The operator will compare the production volume indicated by these gauges and, as appropriate, meter readings to known production rates.

(3) The plan must specify the schedule on which the operator proposes to conduct and document inspections of oil production and storage facilities by its employees or contractors. These inspection records must be made available for MMS review on request.

(4) Site facility diagrams required under §§ 221.32(a), 221.34(b), and 221.35(b), must be filed with the Supervisor and incorporated by reference in the site security plan.

(5) Each Lease Automatic Custody Transfer (LACT) system must employ meters that have non-resettable totalizers, and no by-pass around the meter may be installed. In addition, such facilities may not contain any piping that permits the removal of marketable oil from the storage tanks without going through the meter, unless otherwise approved by the Supervisor. Similarly, no by-pass will be permitted around meters used for gas measurement at any well or producing facility.

(6) The operator must minimize the time that oil is stored on leases where the oil is sold via hand-gauged volumes to that time needed to accumulate a run and to complete its sale via tank truck or pipeline. In addition, such facilities may not contain any piping that permits the removal of marketable oil from the storage tanks without going through the sales line, unless otherwise approved by the Supervisor.

(7) The operator will deal promptly with slop or waste oil in accordance with § 221.36 and provisions of the applicable NTL's or operating orders.

(8) All facilities at which oil is stored must be clearly identified with a sign that contains the name of the operator, the lease serial number, and, in public land survey States, the quarter-quarter, section, township, range, and meridian. On Indian leases, the sign also must include the name of the appropriate Tribe or Allottee. In addition each individual storage tank must be clearly identified by a unique number. The identification must be maintained in legible condition and must be clearly apparent to any person at the sales point.

(9) Any person removing oil from a lease by motor vehicle must have the identification documentation required by appropriate NTL's or operating order in his/her physical possession at the time the oil is removed.

(c) The operator may request approval of a variance from any of the minimum standards prescribed by this section, provided the proposed alternative meets or exceeds the applicable standard.

(d) In the event the site security plans are altered due to changing circumstances, the operator must notify the Supervisor within 30 days of any change in content or coverage of the plan.

(e) In the event a theft of oil is discovered on a Federal or Indian lease, the Supervisor must be notified as soon as possible but, in any event, within 24 hours of the discovery. Notification must

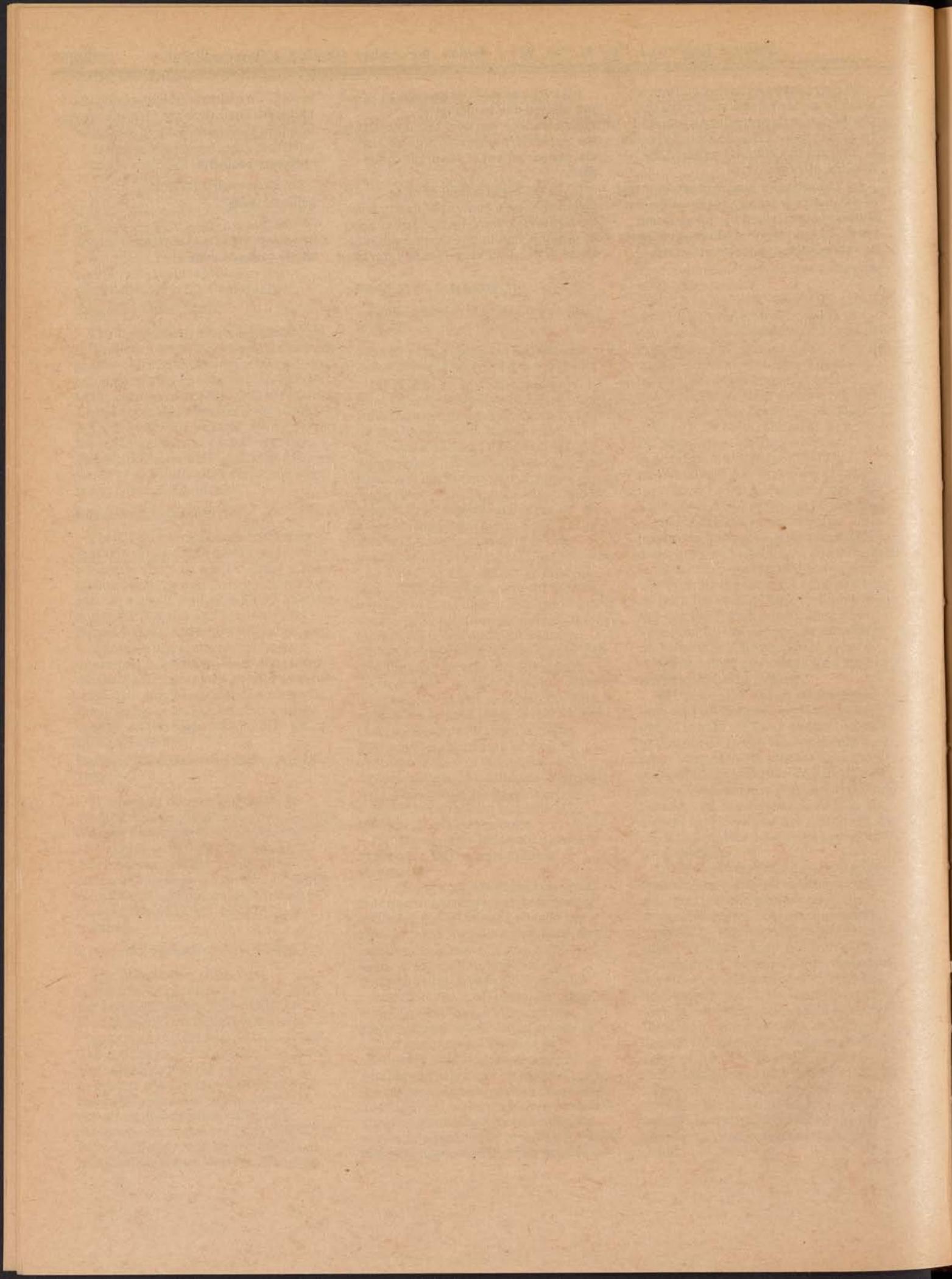
include an estimate of the volume of oil involved. Operators are also encouraged to report thefts promptly to local law enforcement agencies and internal company security.

Dated: November 17, 1982.

James G. Watt,
Secretary.

[FR Doc. 82-31968 Filed 11-18-82; 8:45 am]

BILLING CODE 4310-MR-M



federal register

Friday
November 19, 1982

Part IX

Department of Energy

Energy Information Administration

**Publication of Alternative Fuel Price
Ceilings and Incremental Price Threshold
for High Cost Natural Gas**

DEPARTMENT OF ENERGY

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate cost of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, Section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective December 1, 1982. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT:

Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE-034, Washington, D.C. 20585, telephone (202) 252-6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million BTU's
Alabama	4.18
Arizona ¹	4.19
Arkansas ¹	3.84
California	4.16
Colorado ²	4.09
Connecticut ¹	4.35
Delaware ¹	4.23
Florida	4.24
Georgia	4.29
Idaho ²	4.09
Illinois	3.97
Indiana	3.86
Iowa ¹	3.97
Kansas ¹	3.97
Kentucky ¹	4.07
Louisiana	3.84
Maine	4.34
Maryland ¹	4.23
Massachusetts	4.26
Michigan	3.77
Minnesota	3.78
Mississippi ¹	4.30
Missouri ¹	3.97
Montana ²	4.09
Nebraska ¹	3.97
Nevada ¹	4.19
New Hampshire ¹	4.35
New Jersey	4.12
New Mexico	3.23
New York	4.19
North Carolina ¹	4.30
North Dakota ¹	3.97
Ohio	3.88
Oklahoma ¹	3.84
Oregon ¹	4.19
Pennsylvania ¹	4.23
Rhode Island	4.35
South Carolina ¹	4.30
South Dakota ¹	3.97
Tennessee	4.27
Texas	3.73
Utah ²	4.09
Vermont	4.33
Virginia ¹	4.30
Washington ¹	4.19
West Virginia ¹	4.07
Wisconsin	3.85
Wyoming ²	4.09

¹ Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM79-21.

² Region based price computed as the weighted average price of Regions E, F, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during September 1982 was \$39.67 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective December 1, 1982, is \$8.89 per million BTU's.

Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79-21, established the basis for

determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81-28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: form each selling price, the number of gallons sold to large industrial users in the months of July 1982, August 1982, and September 1982.³ All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used To Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective December 1, 1982, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, July 1982, August 1982, September 1982. Reported prices for sales in July 1982 were adjusted by the percent change in the nationwide volume-weighted average price from July 1982 to September 1982. Prices for August 1982 were similarly adjusted by the percent change in the nationwide volume-weighted average price from August 1982 to September 1982. The volume-weighted 3-month average of the adjusted July 1982 and August 1982, and the reported September 1982 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC Use Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The

³ Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State's alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the

State (expressed in dollars per million BTU's).

There were no reported sales in Region G for the months of July, August, and September 1982. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume weighted average price ceilings for Region E, Region F, and Region H.

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 sulfur residual fuel oil for the ten trading days ending November 15, 1982, and dividing that price by the corresponding weighted average price computed from prices published by *Platt's* for the month of September 1982. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut	New Hampshire
Maine	Rhode Island
Massachusetts	Vermont

Region B

Delaware	New York
Maryland	Pennsylvania
New Jersey	

Region C

Alabama	North Carolina
Florida	South Carolina
Georgia	Tennessee
Mississippi	Virginia

Region D

Illinois	Ohio
Indiana	West Virginia
Kentucky	Wisconsin
Michigan	

Region E

Iowa	Nebraska
Kansas	North Dakota
Missouri	South Dakota
Minnesota	

Region F

Arkansas	Oklahoma
Louisiana	Texas
New Mexico	

Region G

Colorado	Utah
Idaho	Wyoming
Montana	

Region H

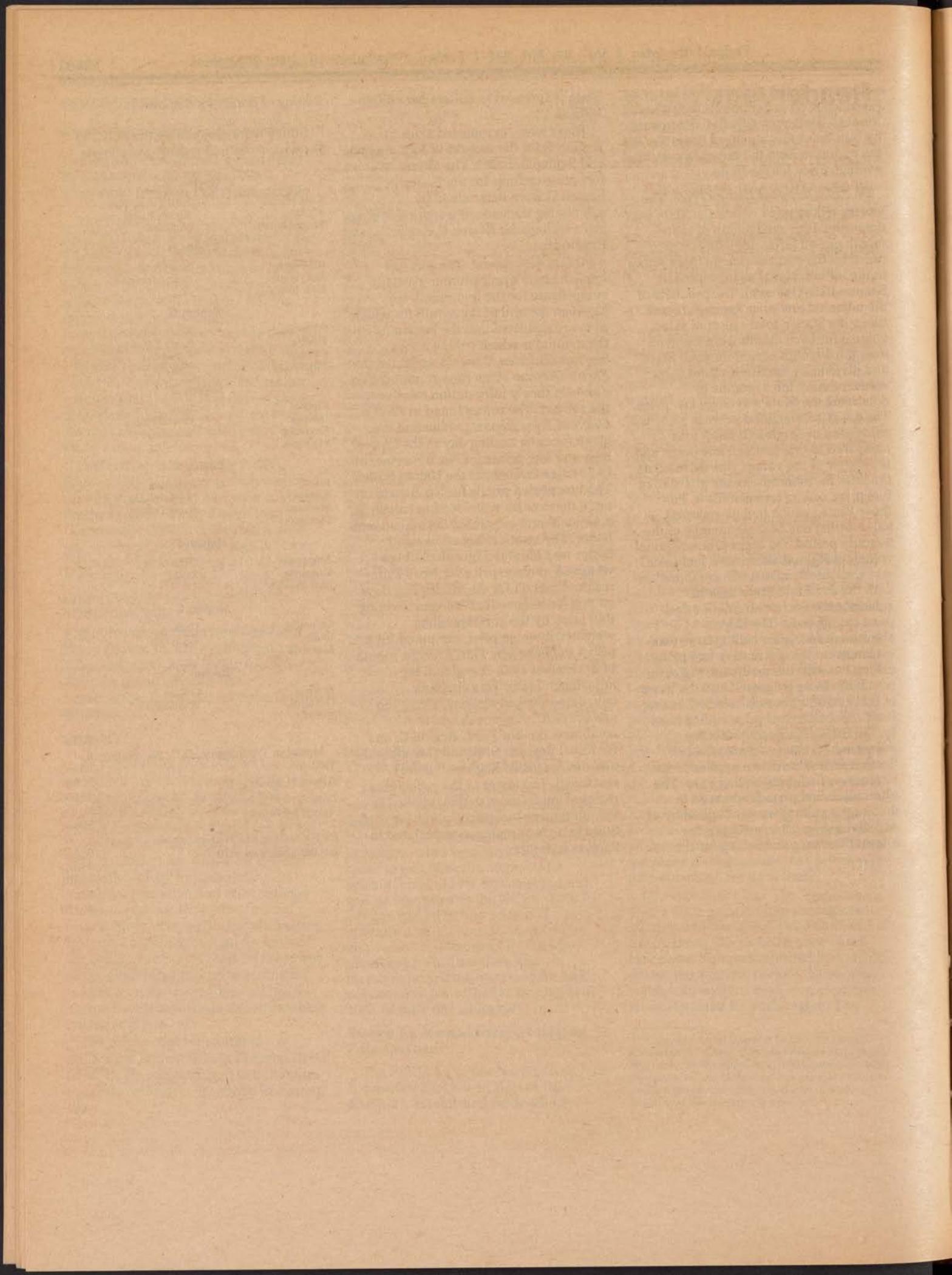
Arizona	Oregon
California	Washington
Nevada	

Issued in Washington, D.C., November 18, 1982.

Albert H. Linden, Jr.,
Deputy Administrator, Energy Information
Administration.

[FR Doc. 82-31993 Filed 11-18-82; 10:52 am]

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Federal Register

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Friday, November 19, 1982

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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next

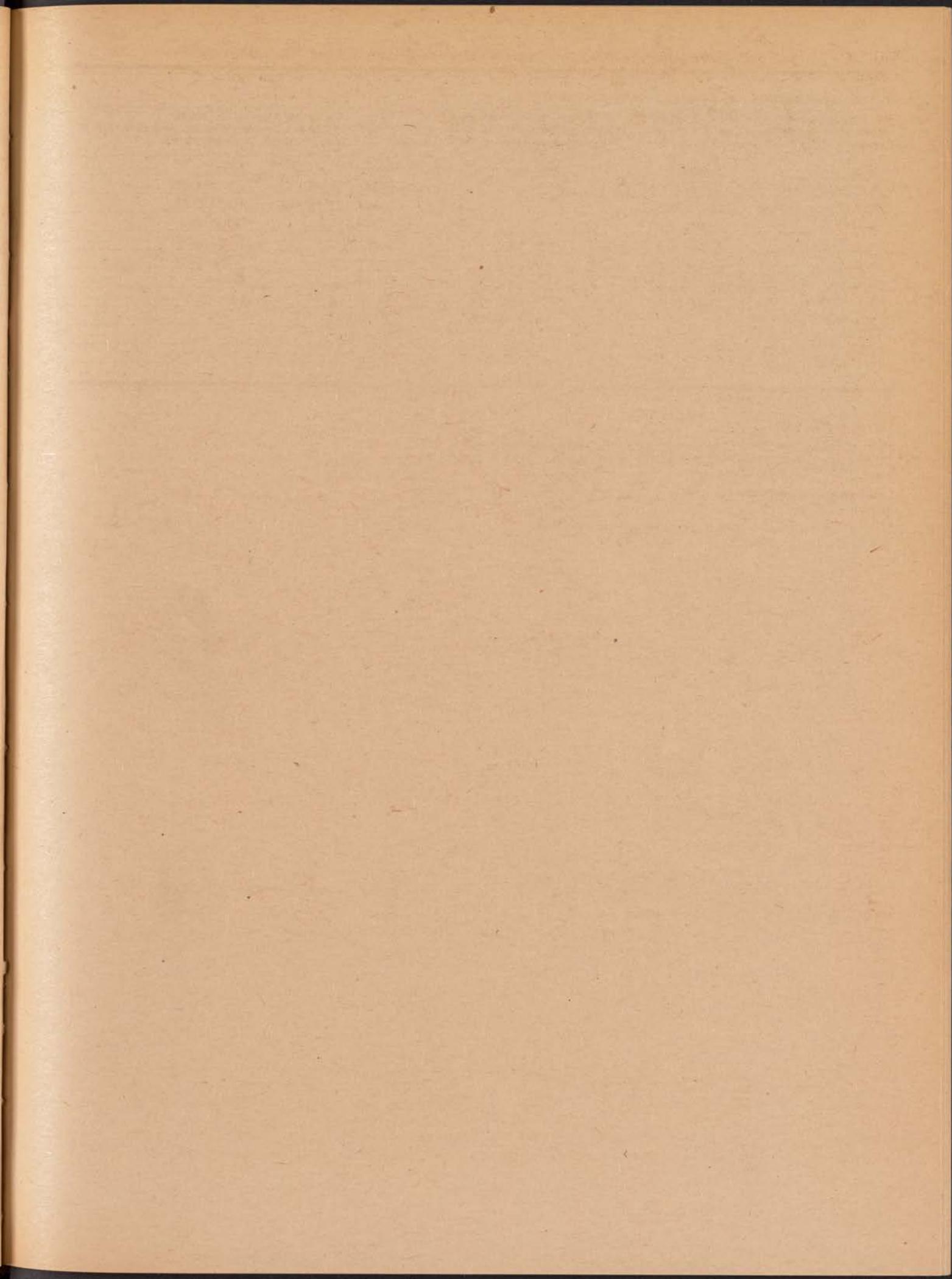
work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

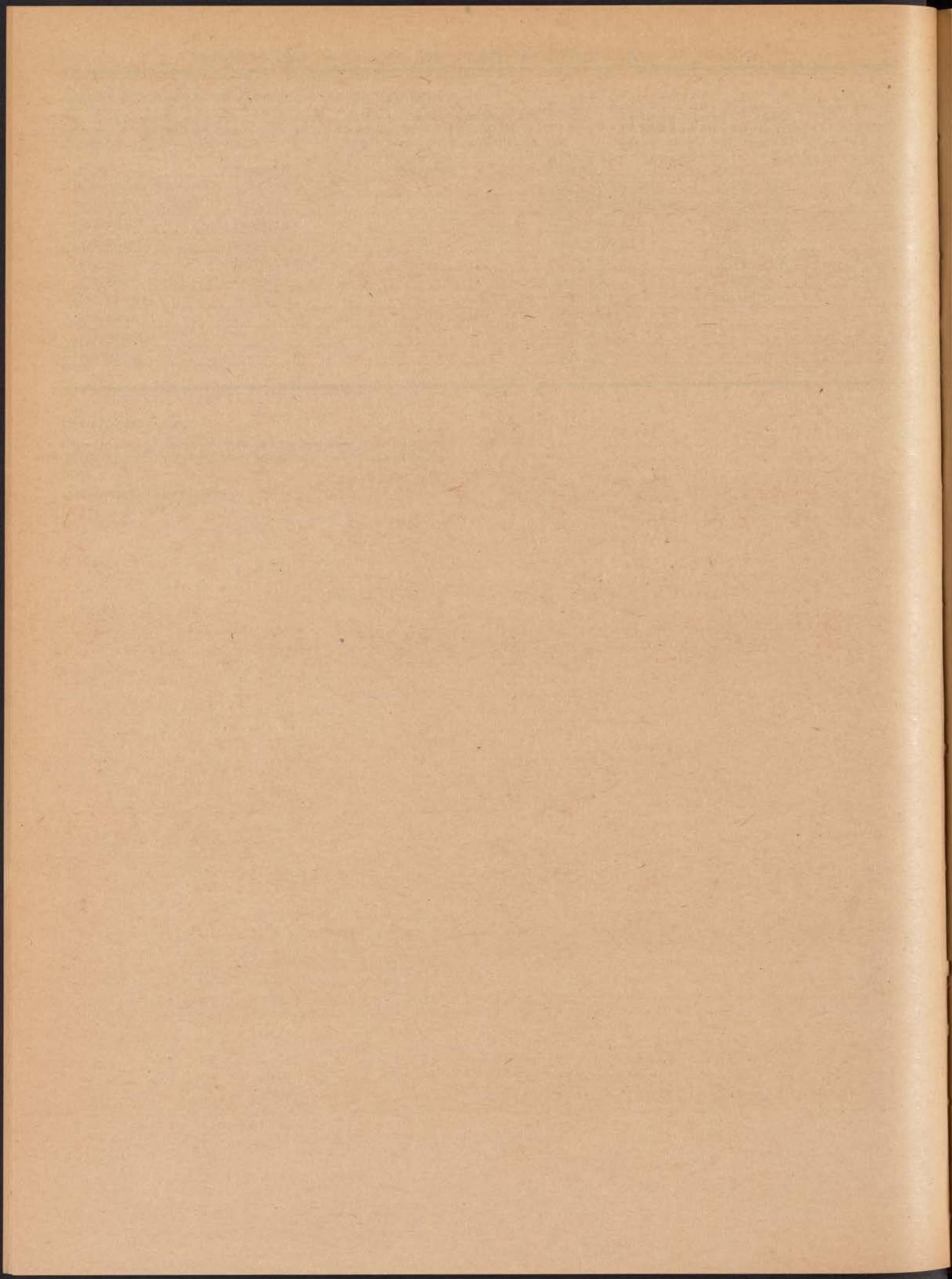
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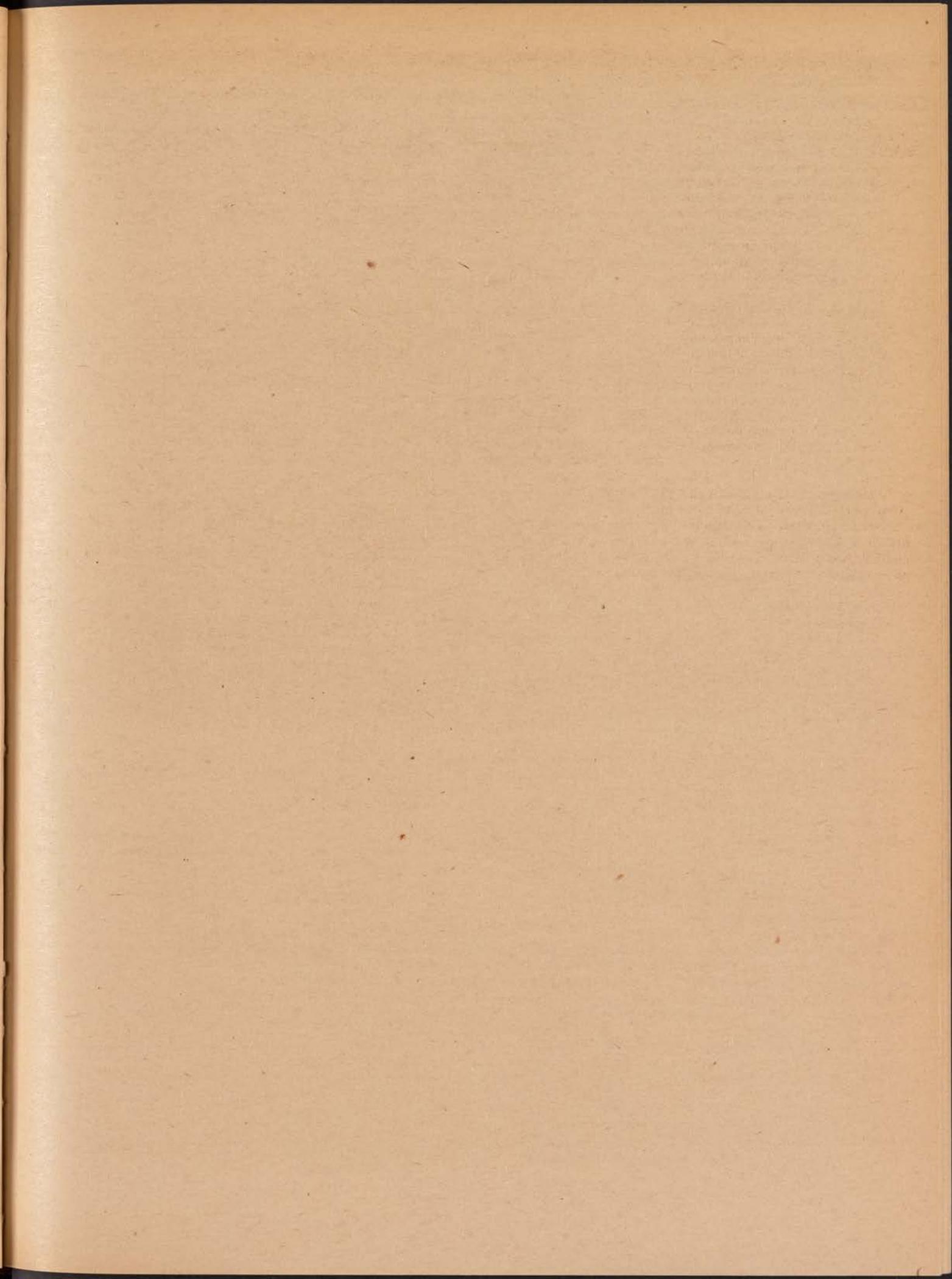
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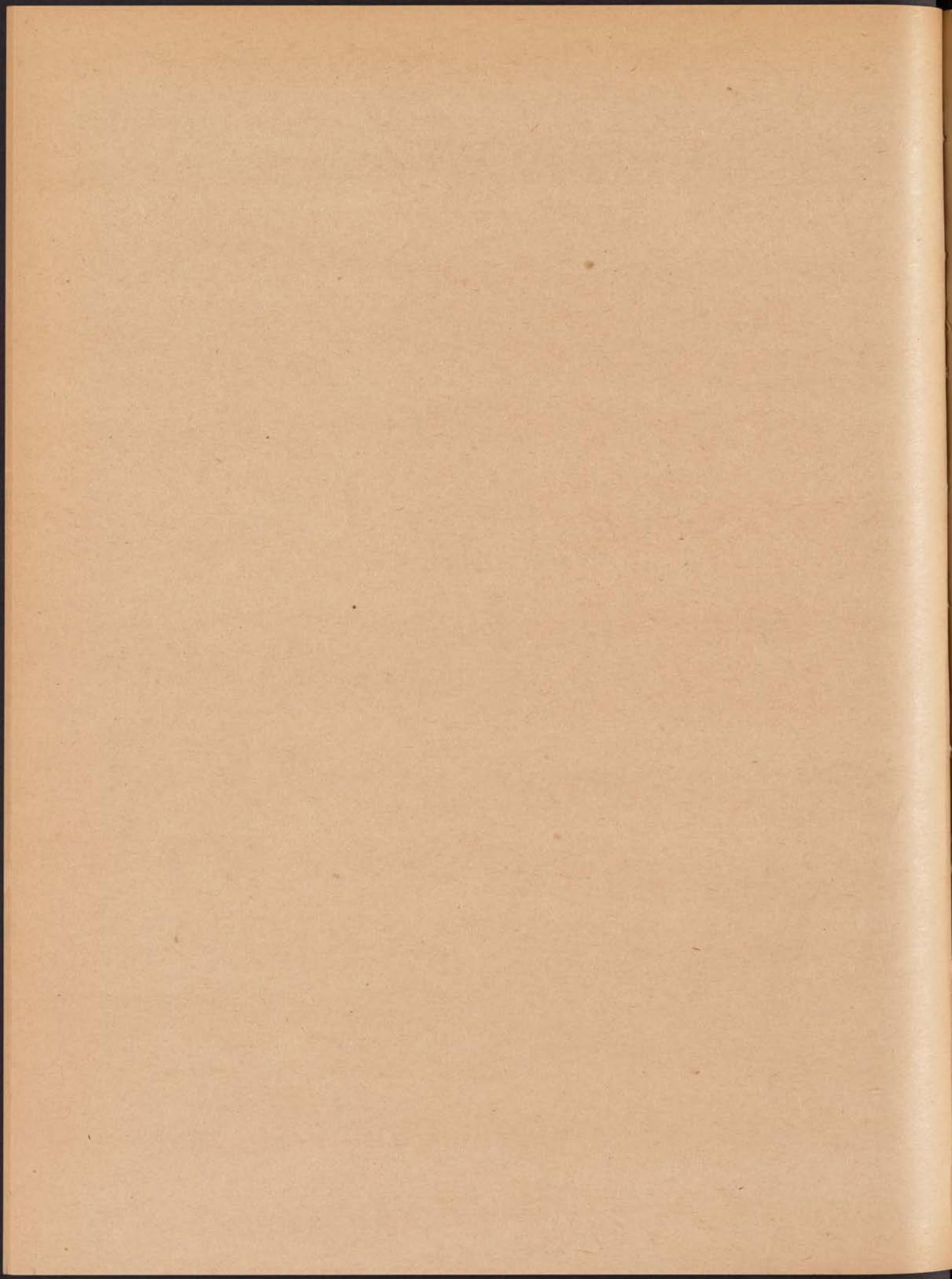
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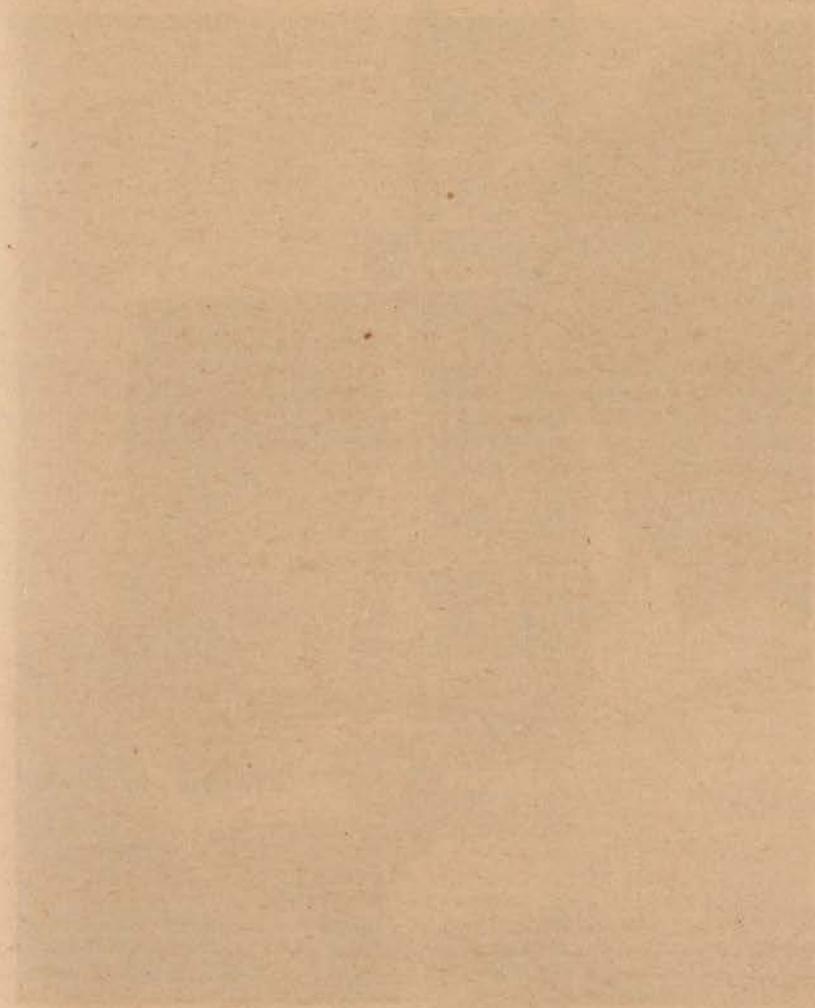








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The first part of the book is devoted to a general history of the United States from its discovery to the present time. It is divided into three periods: the first, from the discovery to the establishment of the first colonies; the second, from the establishment of the first colonies to the declaration of independence; and the third, from the declaration of independence to the present time.

The second part of the book is devoted to a general history of the United States from its discovery to the present time. It is divided into three periods: the first, from the discovery to the establishment of the first colonies; the second, from the establishment of the first colonies to the declaration of independence; and the third, from the declaration of independence to the present time.

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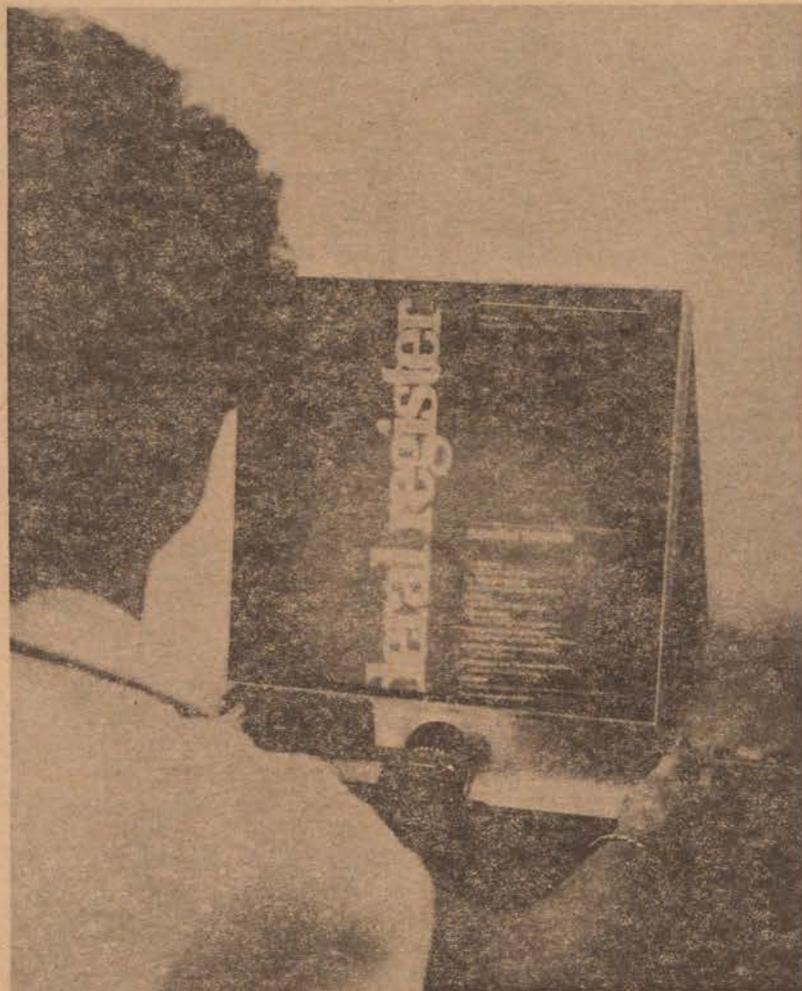
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