AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

01-04-83
Vol. 48 No. 2
Pages 191-376

federal register

Tuesday
January 4, 1983

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 720

Affirmative Employment Programs; Affirmative Action for Disabled Veterans

AGENCY: Office of Personnel Management (OPM).

ACTION: Final regulations.

SUMMARY: These regulations implement OPM's responsibilities under section 403 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, and section 307 of the Civil Service Reform Act of 1978. The regulations establish a Government-wide affirmative action program for disabled veterans in the Federal service.

EFFECTIVE DATE: January 4, 1983.

FOR FURTHER INFORMATION CONTACT: Hassan El-Amin or Marvin Kossmann, (202) 254–3058.

SUPPLEMENTARY INFORMATION:

Background

Under section 403 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. 2014), the former Civil Service Commission was given the responsibility for affirmative action programs in the executive branch with respect to disabled veterans. Subsequently, Executive Order 12106 (1978) transferred various equal employment opportunity enforcement functions from the Civil Service Commission to the Equal Employment Opportunity Commission (EEOC), pursuant to Reorganization Plan No. 1 of 1978. In October 1980, Congress amended 38 U.S.C. 2014 and assigned OPM responsibility for planning, implementing and overseeing an affirmative action program for disabled veterans in the Federal service.

OPM and EEOC shared responsibility for the program during fiscal year 1982. OPM assumed full responsibility for all aspects of the program on October 1, 1982 (the beginning of fiscal year 1983). Accordingly, OPM and EEOC instructed all Federal agencies to comply with instructions in EEOC's EEO–MD–709, "Affirmative Action for Hiring, Placement, and Advancement of Handicapped Individuals Including Disabled Veterans," for FY '82. These instructions require agencies to submit their FY '82 accomplishment reports to EEOC by December 1, 1982.

These regulations implement OPM's responsibility under the law. They add Subpart C to Part 720 of Title 5 of the Code of Federal Regulations, and make other technical changes in Part 720 in connection with the addition of Subpart C. OPM will provide further guidance to Federal agencies in Chapter 720 of the Federal Personnel Manual.

Response to Comments

On June 4, 1982 (47 FR 24336), OPM published proposed rules to implement an affirmative action program for disabled veterans and invited comments on its proposals. Comments and suggestions were received from 32 individuals and organizations. Discussed under topical headings below are the modifications made to the proposed rules in response to those suggestions. Where appropriate, reasons for adopting or not adopting certain suggested revisions are given. Several recommendations which did not result in changes to the regulations will be incorporated into Chapter 720 of the Federal Personnel Manual (FPM).

Program Name and Abbreviation

OPM has accepted one commentator's recommendation to employ a simplified name for "affirmative action for disabled veterans" which will readily distinguish it from the affirmative action plans under the jurisdiction of the Equal Employment Opportunity Commission. Accordingly, the Office has adopted as the official title of the program established by these regulations, "Disabled Veterans Affirmative Action Program," abbreviated "DVAAP."

Definition

Several comments focused on the proposed definition of "disabled veteran," which was taken from 5 U.S.C. 2108. The most significant of these came from the Veterans Administration (VA). The VA argued that the legislative history of 38 U.S.C. 2014 indicates that Congress intended the title 38, not the title 5, definition of disabled veteran to apply to the affirmative action program created by section 2014 (the DVAAP). After lengthy discussions with officials of VA and the Office of Management and Budget, and thorough consideration of the issues and implications involved, the Office is persuaded that the title 38 definition is the more appropriate for the DVAAP. Therefore, the definition of "disabled veteran" for present DVAAP purposes is that found at 38 U.S.C. 2011(3): "(A) a veteran who is entitled to compensation under the laws administered by the Veterans Administration, or (B) a person who was discharged or released from active duty because of a service-connected disability."

Under this (the title 38) definition, proof of the present existence of a service-connected disability is not by itself sufficient to enable a veteran to be classified as "disabled." Thus, Purple Heart recipients can only be considered "disabled veterans" for DVAAP purposes if they otherwise meet the statutory definition. Likewise, those veterans whose disabilities are noncompensable are covered by the DVAAP only if their disability resulted in discharge or release from active duty.

Using the title 38 definition of "disabled veteran" for the DVAAP also requires using the title 38 for the definition of "veteran." Accordingly, the operational definition of "veteran" for DVAAP purposes is that found at 38 U.S.C. 101(2): "a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable."

Agency Programs

Several commentators pointed out that, in order to build more accountability into the program, the performance standards of the responsible agency official identified in § 720.303(b) should contain a specific reference to the DVAAP. OPM concurs, and has included a provision to this effect in its FPM guidance on the program.

Some commentators also expressed concern with the proposed use of the Central Personnel Data File (CPDF) data

exclusively for disabled veteran employment problem identification. They suggested that the program require a comparison with agency employment levels and civilian labor force (CLF) availability of disabled veterans, as is done for minorities and women in the Federal Equal Opportunity Recruitment Program (FEORP). One problem with that approach is that there are no consolidated CLF data on disabled veterans, making the accuracy of a CLF-based indexing system highly questionable. More importantly, the Office wishes to minimize the amount of paperwork and calculation required for the implementation of the program, so that agencies can concentrate on action—recruiting, hiring, and promoting—rather than on statistical calculation.

Another concern voiced in this area is that agencies may want to use more detailed and updated data for DVAAP purposes. The regulations do not prohibit this; they simply point out that for DVAAP purposes CPDF data will be the official record of the status of disabled veteran employment within each participating agency. One factor in OPM's decision to reply on CPDF was the probability that use of CPDF data will save both OPM and participating agencies time and money. Because of this expected savings, and because of the obvious need for uniformity, control, and consistency in administering and reporting to Congress on this Government-wide program, OPM has made no changes to § 720.303(c).

Agency Plans

Because of delays experienced in the publication of these final regulations, the deadline for agencies to have their FY '83 DVAAP plans developed and in place has been changed from October 1, 1982 to January 30, 1983. The final rule also reflects changes that resulted from numerous comments directed at the regulation proposed under this heading:

Plan Development. Discussions with the Equal Employment Opportunity Commission under Executive Order 12067 resulted in the inclusion in this section of the final rule the reference to section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)). Reference to that same Act is made in the law establishing the DVAAP (38 U.S.C. 2014).

Plan Coverage. Some commentators suggested that the regulations include the particular criteria OPM will use to require separate plans from operating components and/or installations. OPM's position is that the initial focus of program implementation should be at the agency level, with OPM headquarters and regional offices providing technical assistance. The Office wishes to provide agencies with a framework that is flexible and reasonable under the widest possible range of employment and labor force conditions. For example, OPM believes that an installation's size, alone, is not sufficient reason for requiring a separate plan. This is consistent with the problem identification approach in that no component/installation will be required by OPM to develop a separate plan absent a specific need for a separate plan.

The regulations do currently permit agencies to set criteria for their own installations. Should it become necessary to publish criteria for OPM's requirement of separate agency component/installation plans, these criteria will be published as program guidance rather than regulation.

On commentator suggested that the law (38 U.S.C. 2014(d)) requires OPM to review all agency DVAAP plans annually (and not on a selective basis). The statute requires that OPM review and evaluate agencies' implementation of DVAAPs, and report semiannually to Congress. OPM believes the program, as proposed, fully satisfies these requirements. In addition, OPM is meeting the requirement of 38 U.S.C. 2014(d) to obtain semiannual reports from agencies by obtaining data from CPDF (to which agencies report regularly) on a semiannual basis.

Plan Certification. To avoid confusing the annual certification requirement with the plan submission requirements (on an "as requested" basis), the subsection entitled "Plan Submission and Certification" in the proposed regulations has been broken out into two subsections, "Plan Submission" and "Plan Certification." The deadline for certification has been changed from November 1 to December 1 of each year to coincide with the new deadline for submission of DVAAP accomplishment reports. As a matter of convenience, most agencies will want to submit their certification when they submit their accomplishment reports for the previous fiscal year.

Plan Content. A number of commentators objected to the absence of a requirement for goals, timetables and other quantifiable guideposts. Several voiced opinion that by not requiring goals and timetables OPM is creating what amounts to be a "paper tiger." By using CPDF data as baseline information, OPM is acknowledging the importance of quantified information. Agencies are expected to show measurable improvement in their disabled veteran employment profiles, and they are free to set goals and timetables for their own programs if they so desire. But they are not required to do so.

Agency Accomplishment Reports

The discussion under the previous subsection, *Plan Content*, also applies to this section. One significant change was made in response to agency concerns over the specified reporting date: the submission date for accomplishment reports was changed from November 1 to December 1 of each year, in order to allow adequate time for agencies to prepare and submit their reports. Thus, the first accomplishment reports required by these regulations will be due to OPM on December 1, 1983.

The Office of Personnel Management has examined and considered all the comments brought to its attention during the public comment period. In preparing the preceding summary, the Office has tried to address all the major points raised in the letters it has received. Certain of the comments and suggestions, however, involved matters outside the scope of these regulations. Others addressed issues of program administration that will be covered in guidance materials the Office will issue to assist agencies in implementing the program.

Pursuant to section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to enable agencies to commence their DVAAPs as soon as practicable.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal Government employment practices.

List of Subjects In 5 CFR Part 720

Equal employment opportuntiy, Government employees, Reporting requirement, Veterans.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM is amending 5 CFR Part 720 as shown:

PART 720—AFFIRMATIVE EMPLOYMENT PROGRAMS

1. By revising the Part heading to read as set forth above.

§ 720.101 [Amended]

2. In § 720.101, by redesignating the section title as "Federal Equal Opportunity Recruitment Program" and removing the word "subpart" and inserting in its place the word "section" in both places where it appears.

3. By adding a new Subpart C, to read as follows:

* * * * *

Subpart C—Disabled Veterans Affirmative Action Program

720.301 Purpose and authority.
720.302 Definition.
720.303 Agency programs.
720.304 Agency plans.
720.305 Agency accomplishment reports.
720.306 Responsibilities of the Office of Personnel Management.
720.307 Interagency Report Clearance.

Authority: 5 U.S.C. 7201; 42 U.S.C. 2000e; 38 U.S.C. 101(2), 2011(3), 2014; 5 U.S.C. 3112; 29 U.S.C. 791(b).

Subpart C—Disabled Veterans Affirmative Action Program

§ 720.301 Purpose and authority.

This subpart sets forth requirements for agency disabled veteran affirmative action programs (DVAAPs) designed to promote Federal employment and advancement opportunities for qualified disabled veterans. The regulations in this subpart are prescribed pursuant to responsibilities assigned to the Office of Personnel Management (OPM) under section 403 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2014), and section 307 of the Civil Service Reform Act of 1978 (5 U.S.C. 3112).

§ 720.302 Definition.

As used in this subpart, the terms "veteran" and "disabled veteran" have the meanings given to these terms in title 38 of the United States Code.

§ 720.303 Agency programs.

(a) *Continuing Programs.* Each Department, agency, and instrumentality in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, shall conduct a continuing affirmative program for the recruitment, hiring, placement, and advancement of disabled veterans.

(b) *Program Responsibility.* The head of each agency shall assign overall program responsibility to an appropriate agency official. The official so designated shall be at a high enough level to ensure effective program administration and the devotion of adequate resources to the program.

(c) *Problem Analysis.*

(1) Annually, OPM will provide appropriate data on the employment of disabled veterans to each agency participating in the Central Personnel Data File (CPDF). These data will be taken from CPDF. For DVAAP purposes, CPDF data are considered to be the offical record of the status of disabled veteran employment within each participating agency. Each participating agency is responsible for assuring that such records are timely, accurate, and complete.

(2) CPDF data must be analyzed by participating agencies to identify problem areas and deficiencies in the employment and advancement of disabled veterans. (OPM will establish with each agency not participating in CPDF, the nature and extent of data to be used in identifying problems and deficiencies.) Based on this analysis, agencies shall develop methods to improve the recruitment, hiring, placement, and advancement of disabled veterans, or revise or redirect existing methods, as necessary. These methods must then be translated into action items.

§ 720.304 Agency plan.

(a) *Plan Development.* As part of the affirmative action plan it prepares pursuant to section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791 (b)) ("Section 501(b) Plan"), each Department, agency, or instrumentality in the executive branch must have an up-to-date affirmative action plan for the employment and advancement of disabled veterans.

(1) Each agency must review its plan on an annual basis, together with its accomplishments for the previous fiscal year, updated employment data, and any changes in agency mission or structure, and update the plan as necessary. Agency operating components and field installations required to develop separate plans under paragraph (b) of this section, below, must perform the same type of annual review and update of their plans.

(2) Plans shall cover a time period of not less than one year and may cover a longer period if concurrent with the agency's Section 501(b) Plan. Each plan must specify the period of time it covers.

(3) Initial plans for fiscal year 1983 required under this subpart must be developed by January 30, 1983 and must be in effect on that day.

(b) *Plan Coverage.*

(1) Each agency must have an agencywide plan covering all of its operating components and field installations. Agencywide plans shall include instructions assigning specific responsibilities on affirmative actions to be taken by the agency's various operating components and field installations to promote the employment and advancement of disabled veterans. OPM must be informed when headquarters offices require plans at the field or installation level.

(2) Agency operating components and field installations must have a copy of the plan covering them, and must implement their responsibilities under it. OPM may require operating components and field installations to develop separate plans in accordance with program guidance and/or instructions.

(c) *Plan Submission.* Affirmative action plans developed under this section shall be submitted to OPM upon request. The Office of Personnel Management will review a selection of agency plans each fiscal year.

(d) *Plan Certification.* Each agency must certify to OPM by December 1 of each year that it has an up-to-date plan as required by this section. This certification must indicate the date the agency's most recent plan was effective or was last amended.

(e) *Plan Content.* Disabled veteran affirmative action plans shall, at a minimum, contain:

(1) A statement of the agency's policy with regard to the employment and advancement of disabled veterans, especially those who are 30 percent or more disabled.

(2) The name and title of the official assigned overall responsibility for development and implementation of the action plan.

(3) An assessment of the current status of disabled veteran employment within the agency, with emphasis on those veterans who are 30 percent or more disabled.

(4) A description of recruiting methods which will be used to seek out disabled veteran applicants, including special steps to be taken to recruit veterans who are 30 percent or more disabled.

(5) A description of how the agency will provide or improve internal advancement opportunities for disabled veterans.

(6) A description of how the agency will inform its operating components and field installations, on a regular basis, of their responsibilities for employing and advancing disabled veterans.

(7) A description of how the agency will monitor, review, and evaluate its planned efforts, including implementation at operating component

and field installation levels during the period covered by the plan.

§ 720.305 Agency accomplishment reports.

(a) Not later than December 1 of each year, agencies must submit an annual accomplishment report on their disabled veterans affirmative action program to the Office of Personnel Management, covering the previous fiscal year.

(b) Agency annual accomplishment reports must describe:

(1) Methods used to recruit and employ disabled veterans, especially those who are 30 percent or more disabled.

(2) Methods used to provide or improve internal advancement opportunities for disabled veterans.

(3) A description of how the activities of major operating components and field installations were monitored, reviewed, and evaluated.

(4) An explanation of the agency's progress in implementing its affirmative action plan during the fiscal year. Where progress has not been shown, the report will cite reasons for the lack of progress, along with specific plans for overcoming cited obstacles to progress.

§ 720.306 Responsibilities of The Office of Personnel Management

(a) *Program Review.* OPM will monitor agency program implementation through review of agency plans, direct agency contact, review of employment data, and through other appropriate means. As it deems appropriate, OPM will conduct onsite evaluations of program effectiveness, both at agency headquarters and at field installations or operating components.

(b) *Technical Assistance.* The Office of Personnel Management will provide technical assistance, guidance, instructions, data, and other information as appropriate to supplement and support agency programs for disabled veterans, through the Federal Personnel Manual (FPM).

(c) *Semiannual Reports.* As provided by 38 U.S.C. 2014(d), OPM will, on at least a semiannual basis, publish reports on Government-wide progress in implementing affirmative action programs for disabled veterans.

(d) *Report to Congress.* As required by 38 U.S.C. 2014(e), OPM will report to Congress each year on the implementation and progress of the program. These reports will include specific assessments of agency progress or lack of progress in meeting the objectives of the program.

§ 720.307 Interagency report clearance.

The reports contained in this regulation have been cleared in accordance with FPMR 101–11.11 and assigned interagency report control number 0305–OPM–AN.

(38 U.S.C. 2011(3), 2014, 5 U.S.C. 3112, 29 U.S.C. 791(b))

[FR Doc. 83-97 Filed 1-3-83; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR PARTS 210, 215, 220 and 235

[Amendments 56, 27, 45, and 9, respectively]

Corrections and Minor Amendments to School Program Rules

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This document makes corrections in the rules for National School Lunch Program (Part 210), the School Breakfast Program (Part 220), the Special Milk Program for Children (Part 215), and State Administrative Expense Funds (Part 235) which were published in the **Federal Register** on April 2, 1982, (47 FR 14131 and 14134). In the matching of funds requirements, the amendatory language was inaccurate resulting in the retention of paragraphs that are now obsolete. This document removes those paragraphs.

Another amendment concerns the precise wording used to delete reference to the Food Service Equipment Assistance Program from Parts 210, 215, 220 and 235.

Furthermore, this document updates the address for the Food and Nutrition Service National Office and for some Regional offices. This update includes the regulations for the National School Lunch and School Breakfast Programs and for the Special Milk Program for Children.

EFFECTIVE DATE: January 4, 1983.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification: This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more nor will it have a major increase in costs or prices for individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity innovation or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of Public Law 96–354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service, (FNS) has certified that this rule does not have a significant economic impact on a substantial number of small entities.

This rule does not contain any reporting or recordkeeping provisions which are subject to approval by the Office of Management and Budget (OMB).

Accordingly, Part 210—National School Lunch Program, Part 215—Special Milk Program for Children, Part 220—School Breakfast Program and Part 235—State Administrative Expense Funds are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

§ 210.6 [Amended]

1. In § 210.6Matching of Funds, paragraphs (i) and (j) are removed.

§ 210.17 [Amended]

2. In § 210.17, Management evaluations and audits, paragraph (a)(4)(i) is amended by removing the reference "the Food Service Equipment Assistance Program,"

3. In § 210.21, Paragraphs (a), (b), (c) and (f) are revised to read as follows:

§ 210.21 Program Information.

* * * * *

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, Massachusetts 01803.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, N.W., Atlanta, Georgia 30367.

(c) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 50

E. Washington Street, Chicago, Illinois 60602.

* * * * *

(f) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard CN02150, Trenton, New Jersey 08650.

* * * * *

Appendix A [Amended]

4. In Part 210 Appendix A—Alternate Foods for Meals—Enriched Macaroni Products With Fortified Protein, paragraph (2), the third sentence is amended by removing the words "Washington, D.C. 20250" and replacing them with "Alexandria, Virginia 22302".

5. In Part 210 Appendix A—Alternate Foods for Meals—Cheese Alternate Products, paragraph (2), the third sentence is amended by removing the words "Washington, D.C. 20250" and replacing them with "Alexandria, Virginia 22302."

Appendix B [Amended]

6. In Part 210 Appendix B—Categories of Foods of Minimal Nutritional Value, the last paragraph, first sentence is amended by removing the words "Washington, D.C. 20250" and replacing them with "Alexandria, Virginia 22302."

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

§ 215.13 [Amended]

1. In § 215.13, Management evaluations and audits, paragraph (a)(4)(i) is amended by removing the reference "the Food Service Equipment Assistance Program,".

2. In § 215.16, paragraphs (a), (b), (c) and (d) are revised to read as follows:

§ 215.16 Program Information

* * * * *

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, Massachusetts 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard, CN02150, Trenton, New Jersey 08650.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, N.W., Atlanta, Georgia 30367.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS Department of Agriculture, 50 E. Washington Street, Chicago, Illinois 60602.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

§ 220.15 [Amended]

1. In § 220.15, Management evaluations and audits paragraph (a)(4)(i) is amended by removing the reference "the Food Service Equipment Assistance Program,".

2. In § 220.21, paragraphs (a), (b), (c) and (f) are revised to read as follows:

§ 220.21 Program Information

* * * * *

(a) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard, CN02150, Trenton, New Jersey 08650.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, N.W., Atlanta, Georgia 30367.

(c) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS U.S. Department of Agriculture, 50 E. Washington Street, Chicago, Illinois 60602.

* * * * *

(f) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, Massachusetts 01803.

* * * * *

Appendix A [Amended]

3. In Part 220 Appendix A—Alternate Foods for Meals—Formulated Grain Fruit Products, paragraph (2), the third sentence is amended by removing the words "Washington, D.C. 20250" and replacing them with "Alexandria, Virginia 22302."

Appendix B [Amended]

4. In Part 220 Appendix B—Categories of Foods of Minimal Nutritional Value, the last paragraph, first sentence is amended by removing the words "Washington, D.C. 20250" and replacing them with "Alexandria, Virginia 22302."

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

§ 235.7 [Amended]

1. In § 235.7, Records and Reports, the first sentence of paragraph (c) is amended by removing the reference "and 230," by placing the word "and" after 220, and by removing the comma after 226.

§ 235.8 [Amended]

2. In § 235.8, Management evaluations and audits, paragraph (a) is amended by removing the words "Attachment H of Federal Management Circular 74-7 (34 CFR Part 256)" and replacing them with "OMB Circular A-102".

(Catalog of Federal Domestic Assistance Nos. 10.553, 10.555, 10.556 and 10.560)

(Sec. 804, 816, 817 and 819, Public Law 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773, and 1785))

Dated: December 23, 1982.

Robert E. Leard,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 83-4 Filed 1-3-83; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 984

Walnuts Grown In California; Free and Reserve Percentages for the 1982-83 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes free and reserve percentages of 77 percent and 23 percent, respectively, for California walnuts certified as merchantable during the 1982-83 marketing year, which began August 1, 1982. The rule is designed to allocate this season's supplies between domestic and export markets so as to make ample supplies available for domestic needs and all of the excess available for export. The percentages are authorized by the Federal marketing order for walnuts grown in California.

EFFECTIVE DATES: August 1, 1982 through July 31, 1983.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant econimic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated 24 handlers.

It is found that good cause exists for not postponing the effective time of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The relevant provisions of the order require that the free and reserve percentage established for a particular marketing year shall apply to all walnuts certified as merchantable from the beginning of that year. The 1982-83 marketing year began August 1, 1982.

Notice of this action was published in the November 29, 1982, issue of the **Federal Register** (47 FR 53738), and interested persons were afforded an opportunity to submit written comments. No comments were received.

The authority to establish free and reserve percentages is pursuant to § 984.49 of the marketing agreement and Order No. 984, both as amended (7 CFR Part 984), regulating the handling of walnuts grown in California and hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal was recommended by the Walnut Marketing Board, hereinafter referred to as the "Board", which works with USDA in administering the order.

Pursuant to § 984.48 of the order, the Board based its recommendation for free and reserve percentages of 77 percent and 23 percent, respectively, on estimates of supply and combined inshell and shelled domestic trade demand for the current marketing year. Estimated trade demand was adjusted to account for supplies of walnuts carried in from the 1981-82 marketing year and for supplies deemed desirable to be carried out on July 31, 1983, for early season domestic use next year until the 1983 crop is available for market.

The estimated 1982 walnut production is well in excess of the 1982-83 marketing year domestic needs. While this action is designed to tailor the supply to domestic demand, it would still ensure the availability of ample supplies of walnuts for domestic markets during that year and promote maximum usage.

Supplies in excess of domestic needs would be available chiefly for export. Any excess supplies that could not be absorbed by export markets would be used for oil, feed, or other outlets noncompetitive with outlets for free merchantable walnuts.

In considering its recommendation, the Board noted the estimates it had made one year earlier for the 1981 crop. These estimates and final results are as follows:

	Estimated kernel weight (1,000 lbs.)	Final kernel weight (1,000 lbs.)
Supply:		
1. Orchard-Run Production	172,000	180,000
2. Less: Miscellaneous Farm Use	800	800
3. Commercial Production	171,200	179,200
4. Plus: Uncertified Carryin Inshell	944	944
Uncertified Carryin Shelled	11,440	11,440
5. Total Merchantable Supply	183,584	191,584
6. Plus: Substandard Creditable for Reserve	8,000	6,344
7. Total supply subject to regulation	191,584	197,928
Demand:		
8. Inshell Demand	27,000	25,532
9. Plus: Desirable Carryout	5,625	2,977
10. Less: Certified Carryin	2,386	2,386
11. Adjusted Inshell Demand	30,239	26,123
12. Shelled Demand	100,000	97,344
13. Plus: Desirable Carryout	30,000	35,345
14. Less: Certified Carryin	16,097	16,097
15. Adjusted Shelled Demand	113,903	116,592
16. Total demand (Item 11+Item 15)	144,142	142,715
Marketing percentages:		
17. Free Percentage [Item 16÷Item 7]	[1]75	
18. Reserve Percentage [100% - Item 17]	[1]25	

[1] Percent.

The Board used the estimates given in the table below in making its recommendation for the 1982-83 marketing year. Weight figures for inshell walnuts are converted to their equivalent shelled kernel weights.

	Inshell weight (1,000 lbs.)	Conversion factor (percent)	Kernel weight (1,000 lbs.)
Supply:			
1. Orchard-Run Production	440,000		
2. Less: Miscellaneous Farm Use	2,000		
3. Commercial Production	438,000	40	175,200
4. Plus: Uncertified Carryin Inshell	415	45	187
Uncertified Carryin Shelled			17,880
5. Total Merchantable Supply			193,267
6. Plus: Substandard Creditable for Reserve			8,000
7. Total supply subject to regulation			201,267
Demand:			
8. Inshell Demand	65,000		
9. Plus: Desirable Carryout	15,000		
10. Less: Certified Carryin	6,200		
11. Adjusted Inshell Demand	73,800	45	33,210
12. Shelled Demand			100,000
13. Plus: Desirable Carryout			37,500
14. Less: Certified Carryin			17,465
15. Adjusted Shelled Demand			120,035
16. Total demand [Item 11+Item 15]			153,245
Marketing percentages:			
17. Free Percentage [Item 16÷Item 7]		[1]	[1]
18. Reserve Percentage [100% - Item 17]		[2]	[2]

[1] Seventy-seven percent [76.1% rounded up by the Board].

[2] Twenty-three percent [23.9% rounded down by the Board].

List of Subjects in 7 CFR Part 984

Marketing agreements and orders, Walnuts, California.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Board, and other available information, it is further found that establishment of the free and reserve percentages under the order, as hereinafter set forth, will tend to effectuate the declared policy of the act.

PART 984—[AMENDED]

Therefore, § 984.228 is added to 7 CFR Part 984 as follows: [This section will not appear in the Code of Federal Regulations].

§ 984.228 Free and reserve percentages for California walnuts during the 1982-83 marketing year.

The free and reserve percentages for California walnuts during the marketing year beginning August 1, 1982, shall be 77 percent and 23 percent, respectively.

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

Dated: December 29, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 83-132 Filed 1-3-83; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1924 and 1944

Revision of Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its regulations regarding Section 502 rural housing (RH) loans. This action is taken to implement a 1-year interest credit agreement based on current rather than projected income, change the definition of household income from projected income to current income, and define moderate-income as $5,500 over the low-income limit for an area. Also added is an eligibility requirement that makes it more difficult for previous Section 502 RH borrowers to obtain a new Section 502 RH loan. An application priority method based on five categories of applicants has also been added. Numerous editorial changes have been made for clarity.

The circumstance requiring this action is an Office of Audit report indicating an execessive amount of improper interest credit is being granted. The intended effect is more accurate granting of interest credit based on current income. Restricting previous borrowers to a 2-year wait before eligibility for another RH loan, unless there were mitigating circumstances, is required for better administrative control of the program. The intended effect is to stop the program from being used for personal gain beyond adequate housing. Retaining the moderate-income limits at $5,000 over the low-income limits is required in order to adequately serve those persons who are unable to qualify for housing credit from conventional sources but who could afford homeownership at FmHA rates and terms. Circumstances requiring the application priority processing are better use of funds for necessary servicing actions on the existing loan portfolio and for serving those applicants living in substandard housing and with incomes at or below 50 percent of median income. The intended effect is more efficient and timely processing of credit sales of acquired properties, transfers of existing FmHA loans thus protecting the Government's security interest, and better fulfilling of the Agency's mandate to serve those rural residents living in substandard housing and with very low incomes.

EFFECTIVE DATE: February 1, 1983.

FOR FURTHER INFORMATION CONTACT: Daryl L. Grove, Division Director, Single Family Housing Processing Division, or Ruth Smith, Loan Specialist, Farmers Home Administration, USDA, 5345, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-1474.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (sections 1944.4, 1944.8, 1944.22, 1944.24, 1944.26 1944.30 1944.33 1944.34 1944.38 1944.39 and 1944.45) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35, and have been assigned OMB No. 0575-0059.

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 which implements Executive Order 12291, and has been designated nonmajor. This determination is based on the fact that any increase or decrease in cost to the Government or to the borrowers is not considered a major impact as defined in Secretary's Memorandum 1512-1. The main effect of the changes is to better assure that benefits received are in line with the actual needs of the recipients. This is accomplished by determining income on current circumstances and reviewing the recipients' incomes on an annual rather than a biannual basis. According to audits conducted on the Section 502 interest credit program, this change will net approximately 78 million dollars in subsidy benefits for the Government. Requiring previous Section 502 RH borrowers who sell without cause to be ineligible for 2 years should discourage borrowers from cashing in on equity at Government expense. The new application priority system gives priority handling to applicants living in substandard housing and those with incomes below 50 percent of the area median income. These added priorities will enable the Agency to better assist applicants in the most need of housing.

1. Interest Credit Agreement

The Agency is implementing a 1-year interest credit contract based on the borrower's current circumstances. Changes will be made only in case of error in borrower information, cancellation if the borrower's adjusted income exceeds the moderate-income limit, and granting of moratorium if decrease in income justifies and borrower qualifies.

The Agency studied two alternatives regarding the term of the Interest Credit Agreement.

Alternative 1 (current method). A 2-year Interest Credit Agreement based on the current household situation and income projected for the next 12 months.

Effects: This alternative has the least public and administration burden. It is estimated that it cost the public $345,000 to comply. It requires completion of approximately 200,000 agreements by FmHA each year. Audit findings estimate that 190.7 million dollars of excessive interest credit are granted because of initial errors and borrowers circumstances changing over the life of the agreement. Changes in the family income during the 2-year period result in 19 percent of the borrowers subsequently becoming ineligible and an additional 48 percent receiving excessive benefits. It also results in borrowers adjusting to a living standard above their means causing financial problems at time of renewal if benefits are lowered.

Alternative 2 (chosen method). A 1-year interest credit contract based on the borrower's current circumstances and income.

Effects: this alternative increases the public and administrative burden over alternative 1. It is estimated that the public burden will be $550,000 or $205,000 over alternative 1. It doubles the administrative burden of the interest credit program. However, it is estimated that it will reduce the cost of the interest credit program by about $128 million dollars. It benefits the borrower by frequent revision of housing cost in ratio to household income. Computing current income is also a more accurate method of determining annual income than projecting income for the next 12 months as is presently required.

2. Loan Restriction

The Agency is imposing a loan restriction on an applicant who previously had a Section 502 rural housing loan but disposed of the property through sale or transfer unless 2 years have elapsed or there were mitigating circumstances.

Alternative 1. Provide for no eligibility restriction in regards to applicants who previously had been Section 502 rural housing borrowers.

Effect: This alternative permits borrowers the option to sell their

property for a profit and then reapply for a new loan. These previous borrowers apply for the limited available resources causing delay in service to other applicants without adequate housing. It is estimated that in some areas over 10 percent of FmHA loan funds are being used to serve this group. Because housing costs have constantly increased, the cost to the Government in providing subsidy to this group is also higher.

Alternative 2 (chosen method). Restrict applicants who prevsiously had a Section 502 rural housing loan to a 2-year waiting period.

Effect: This option should curb the incentive to sell for profit and thus reduce Government cost. It diminishes the tendency of third party groups to profit at the expense of the borrower. It still permits eligibility for those borrowers who must sell because of job transfer or other extenuating circumstances.

3. Moderate-Income Limit

FmHA is retaining the current maximum moderate-income limits of $5,500 more than the applicable maximum low-income limits for the area.

In a proposed regulation of March 11, 1982 (47 FR 10566), FmHA proposed to lower the moderate-income limit to $3,000 over the area low-income limit. Based on comments received, the limits will remain at $5,500 over the low-income limits which have been in effect since December 21, 1981.

Alternative 1. Establish the moderate-income limits at $3,000 over the low-income limits except that no maximum moderate-income limit would be less than $15,600 or greater than $23,000 with the exception of Alaska.

Effect: It is estimated that about 2 million households have a moderate income based on this definition. As a practical matter, persons or households within these income limits would have to commit more than 30 percent of their incomes to housing and often lack repayment ability for a Section 502 loan at current moderate interest rates unless their debt structure is very favorable. Those persons of moderate income and in need of adequate housing which would be within their budget would effectively be made ineligible by the lower moderate-income limit, yet they are unable to obtain conventional credit.

Alternative 2. (chosen method). Retain the current maximum moderate-income limits of $5,500 over the maximum low-income limits.

Effect: It is estimated that about 3 million households have a moderate income based on this definition. About 197,800 of these households occupy substandard housing. Based on current budget levels approximately 10 percent of eligible households could be provided with a Section 502 loan in any year but FmHA feels these persons should not be shut out of the program since their need for housing is as valid as applicants qualifying for interest credit subsidy.

4. Application Priority Processing System.

FmHA has added an application priority processing method based on five categories.

Alternative 1. (current method). Process applications in date order received with priorities given to loans to refinance qualified debts, and subsequent loans necessary to complete transfers by assumption, complete credit sales or for essential improvements and repairs.

Effect: Current method gives no priority to those applicants living in substandard housing or with incomes at or below 50 percent of median income for the area and FmHA is mandated to use 30 percent of its funds for these two groups to the extent practicable.

Alternative 2. (chosen method). Establish a priority processing system for applications with five categories with FmHA State Directors reserving funds for loans for refinancing, sales of inventory properties, hardship cases and essential repairs. Applicants for transfers by assumption, those living in substandard housing, applicants for mutual self-help housing and those with incomes at or below 50 percent of median would be processed ahead of other applications.

Effect: This method of selection of applications for priority processing will make the program more responsive to those eligible applicants now living in substandard or deficient housing and speed up loans necessary for servicing actions to protect the Government's security interest.

This regulation does not directly affect any FmHA programs or projects which are subject to A-95 clearinghouse review.

The Catalog of Federal Domestic Assistance program affected is No. 10.410—Low to Moderate Income Housing Loans (Rural Housing Loans—Section 502 Insured).

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.

A total of 111 individual comments were received on both the final rule, published December 21, 1981 (46 FR 61988), and the proposed rule published March 11, 1982. Fourteen individuals commented on the final rule and 97 individuals commented on the proposed rule. The average number of issues discussed in each letter was six. Many commented on issues that were not changed or proposed to be changed. These were considered because the whole regulation was published for comment.

The comments were summarized and grouped by sections of the regulation. Comments have been generalized for discussion in this part to reflect the typical idea being expressed. Numerous editorial changes were recommended. These were rejected or adopted without discussion here.

1. Section 1944.2(b) Comments were received asking for elimination of the 5 percent and $300 per dependent child adjustments. The reasons given were that they provide greater opportunity for errors, it would be more appropriate to use the Social Security tax rate in place of the 5 percent rate and that the $300 deduction is farcical and should be increased or dropped altogether. This recommendation was not adopted because it is a definition used by the Department of Housing and Urban Development (HUD) and to the extent practical our program is to conform with similar programs administered by HUD.

2. Section 1944.2(r) A definition of very low income was added to provide clarity.

3. Section 1944.3 A comment recommended that this section should include as an eligible loan purpose equity in cooperatives. This recommendation was not adopt because the Section 502 loan program deals with individual ownership of real property.

4. Section 1944.3(b)(15) This paragraph was removed because it is not needed. These services should be provided by an FmHA Community Facilities loan or by the subdivision developer.

5. Section 1944.4(a) Most comments favored this action believing there is enough latitude to help applicants who dispose of their properties for justified reasons. A few opposed the action because they believed the 2-year restriction punishes rural residents who have been forced to move for employment reasons. This section was adopted as proposed. The regulation gives sufficient latitude to help applicants who disposed of the property for justified reasons.

6. Section 1944.4(b)(1) One comment recommended this paragraph be amended to permit income resulting from "shared housing" provided the nonowner or nonborrower income is counted toward subsidy calculations. This recommendation was not adopted because current regulations permit loans to individuals or group of individuals provided the income of all adults residing in the household is considered in determining eligibility and amount of subsidy.

7. Section 1944.4(d) has been added. In the proposed rule, this was § 1944.9(g). Most comments agreed with a need for a requirement that addressed situations where the applicant had demonstrated an inability to be a homeowner. However, all comments believed the proposed rule was meaningless and gave each county office carte-blanche authority to discriminate. Therefore, paragraph 1944.9(g) as proposed was dropped and paragraph 1944.4(d) was added. The new paragraph is clearer as to intent and meaning.

8. Section 1944.8(a)(2)(i) Comments were received wanting definite criteria on this item for guidance to County Supervisors. This recommendation was not adopted. Adequate and dependable income can best be determined by considering each individual's circumstances and not by use of arbitrary rules of thumb.

9. Section 1944.8(a)(2)(ii) Comments were received suggesting that partnerships, cooperatives or public entities be accepted as cosigners. This recommendation was not adopted because there is no legal authority to accept other than individuals as cosigners.

10. Section 1944.8(b) Most commenters believed that it is not reasonable or legal to require someone to become an applicant. The paragraph was rewritten for clarity and intent.

11. Section 1944.8(c) Ten comments were received on the proposed changes. Most agreed with the changes and expressed concern on how to calculate periodic income and some suggested that income be estimated and adjusted at the end of the year with benefits reapplied retroactively. Although this idea has merit, it was rejected because of increased workload required to accomplish it. The paragraph was rewritten based on comments and clarifies calculation of periodic income.

12. Section 1944.8(c)(5)(vii) was added to assure compliance with Federal laws which specifically state that income received from certain sources cannot be used to deny or reduce Federal financial assistance or benefits.

13. Section 1944.9(a)(1) Comments were received that the law specifies that eligible applicants must include the owners and renters of inadequate housing (Section 502 (b) and (c), Title V of the Housing Act of 1949). This section was not changed because of comments but the Agency introduced an application processing priority system in § 1944.26(b) which gives priority to households occupying substandard housing.

14. Section 1944.10(b)(2) Comments were received that this section is confusing and unnecessary. It adds no definite or objective measure for determining urban areas and should be removed. The paragraph is deleted.

15. Section 1944.10(f) Comments were received that this section should be written to provide all developers and other interested parties 6 months notice before the effective date of redesignation and public notice should also be provided through the appropriate local newspapers 60 days before the effective redesignation date. To the extent possible the State Director will follow a course as described in the comment, however, because it is not always possible to delay action for a specified period of time, the recommendation was not adopted.

16. Section 1944.11(b) Comments were received requesting the rule be amended to include unpaved private roads where road maintenance is minimal and not a financial burden to the homeowner. This section was not changed since FmHA will handle these situations on an individual case-by-case basis.

17. Section 1944.11(c) (1) and (3) Comments were received objecting to the elimination of the authority to make loans on sites of any size already owned by the applicant and which do not require the use of loan funds for acquisition or refinancing. The paragraph was rewritten based on comments to allow more latitude.

18. Section 1944.16(a) Comments were received that it be required that all applicants be counseled regarding the type of housing necessary to meet their needs. This was adopted.

19. Section 1944.16(a)(3) Commenters objected to the requirement of an automatic heating system which would maintain a minimum of 55 degrees in the dwelling because it was discriminatory. This action was adopted and the paragraph deleted.

20. Section 1944.16(a)(4) Comments were received requesting the State Director be given authority to approve two-car garages because of local ordinances. This was not adopted.

21. Section 1944.16(a)(5) Comments were received wanting clear criteria by which solar system effectiveness will be evaluated, an outline of the submittal/approval process for solar systems, and a list of the information the applicant, builder or developer must provide. This was not adopted because this information will be contained in a planned exhibit to Subpart A of Part 1924 of this Chapter.

22. Section 1944.16(b) A statement was added for clarity purposes.

23. Section 1944.18(b)(6) Comments were received indicating that in some cases, attorney's fees in handling of the foreclosure of the prior mortgage are such that it adversely affects FmHA junior lien position. A paragraph was adopted to prevent this, which limits future junior liens to be permitted only when the attorney's cost, in case of foreclosure, is limited to 5 percent.

24. Section 1944.22(a) Comments were received requesting classification concerning refinancing secured debts which were incurred solely for a building site. This was rewritten making it an unauthorized use of funds.

25. Section 1944.22(d)(3) Comments were received wanting a phrase to be added requiring the County Supervisor to document that all conditions for refinancing have been met. This was adopted and renumbered to § 1944.22(e).

26. Section 1944.26(a) Comments were received that the absence of a priority for applicants with incomes at or under 50 percent of area median defies the Law (Section 517(a) of Title V of the Housing Act of 1949). Commenters said the absence of a priority for applicants living in substandard housing also violates the law and that self-help housing applicants should receive priority. This section was rewritten based on comments and renumbered to § 1944.26(b).

27. Section 1944.30(a) Comments were received that two forms were omitted in the earlier publication. These have been added.

28. Section 1944.31 Commenters recommended a maximum time of 30 days from the time of application submittal to loan approval be specified. This was not adopted since the time frame for determination of eligibility from date of application submittal is specified in Subpart A of Part 1910 of this Chapter.

29. Section 1944.32(a)(2) Comments were received that the timing indicated is not possible to meet if date of check request is used. This has been corrected.

30. Section 1944.34(a) Comments were received indicating that interest credit can be used to retain housing. This was adopted.

31. Section 1944.34(b)(3) Comments received indicated the change to an annual rather than biennial review period will have a positive impact on FmHA and borrowers. However, there was concern that this provision will add to the workload of the already overworked FmHA county office staffs. A 1-year review period was adopted.

32. Section 1944.34(d)(1) Comments received indicated a need to identify those mortgage loans which can be considered in calculating interest credits. This paragraph was revised to specify that liens made prior to FmHA loans will be eligible for consideration in the interest credit calculation.

33. Section 1944.34(d)(1)(i) Comments received suggested changes to 30 percent, 35 percent, 25 percent or a graduated scale. These suggestions were not adopted since the current 20 percent of income for PITI equates with 30 percent of PITIUM which is typically used as a barometer of housing costs.

34. Section 1944.34(i)(3) Most commenters disagreed with two parts of this section. First, that the effective date of cancellation be the date the County Supervisor becomes aware of the situation. There was a preference for the date the situation actually occurred. This paragraph remains unchanged as proposed since date of actual occurrence usually is difficult to determine. Secondly, commenters disagreed with not recognizing decreases in adjusted income unless the amount of payment with loan amortized at 1 percent exceeds 35 percent of the borrower's adjusted income. This paragraph was changed to provide for revision of the Interest Credit Agreement when decreased income resulted in the borrower paying 35 percent or more of income for PITI.

35. Section 1944.38 This paragraph was changed in order to comply with legal requirements.

36. Exhibit C Seventy-six comments were received on the proposed change of the moderate-income limit from $5,500 to $3,000 over the low-income limit. Only two commenters believed the proposed change was beneficial and necessary. Most commenters pointed out that conventional credit cannot and will not serve those made ineligible by this change. They stressed that in most cases borrowers within $3,000 of the low-income limit would need to commit 30 percent or more of their incomes for housing in order to qualify. Many commenters were concerned about renters in FmHA multi-family housing projects who would become ineligible because of the change. In some cases, rental projects would become unfeasible if this change is adopted. The final rule leaves the moderate-income limit at $5,500 over the low-income limit.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Rural housing, Subsidies.

For the reasons set out in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

Subpart A—Planning and Performing Construction and Other Development

§ 1924.6 [Amended]

1. § 1924.6(c) is amended by changing the reference in the first sentence from "Exhibit G" to "Exhibit E."

PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. §§ 1944.1 through 1944.46 are revised to read as follows:

PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations.

Sec.

1944.1 General.
1944.2 Definitions.
1944.3 Loan purposes.
1944.4 Loan restrictions.
1944.5–1944.7 [Reserved]
1944.8 Income eligibility requirements.
1944.9 Other eligibility requirements.
1944.10 Rural area designation.
1944.11 Property requirements.
1944.12–1944.14 [Reserved]
1944.15 Ownership requirements.
1944.16 Building requirements.
1944.17 Maximum loan amounts.
1944.18 Security requirements.
1944.19–1944.21 [Reserved]
1944.22 Refinancing debts.
1944.23 Loans to Farm Ownership (FO), Individual Soil and Water (SW), and Recreation (RL) borrowers.
1944.24 Technical services.
1944.25 Rates, terms, and source of funds.
1944.26 Application processing.
1944.27–1944.29 [Reserved]
1944.30 Preparation of loan docket.
1944.31 Loan approval.
1944.32 Actions subsequent to loan approval.
1944.33 Loan closing.
1944.34 Interest credit.
1944.35–1944.36 [Reserved]
1944.37 Subsequent Section 502 loans.
1944.38 Mutual self-help housing loans.
1944.39 RH loans to FmHA employees and loan closing officials.
1944.40 Rural Housing Disaster (RHD) loans.
1944.41–1944.43 [Reserved]
1944.44 Borrower graduation.
1944.45 Conditional commitments.
1944.46 Construction financing for builders by private credit sources.
1944.47–1944.50 [Reserved]
Exhibit A Information required to package applications for Section 502 rural housing loans.
Exhibit B Addresses for authentication of alien registration cards.
Exhibit C Maximum adjusted income limits for rural housing programs.
Exhibit D Rural housing applicant interview.
Exhibit E Mutual self-help housing guidelines.
Exhibit E–1 Membership agreement.
Exhibit E–2 Promissory note.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1944.1 General.

This Subpart sets forth the policies and procedures and delegates authority for making Section 502 Rural Housing (RH) loans to individuals under Title V of the Housing Act of 1949, as amended. The objective of Section 502 loans is to provide eligible persons who will live in rural areas an opportunity to obtain adequate but modest, decent, safe, and sanitary dwellings and related facilities. The requirements of Subpart E of Part 1901 will be applied as appropriate. Loans and services provided under this Subpart shall not be denied to any person or applicant based on race, sex, national origin, color, religion, marital status, age, physical or mental handicap (applicant must possess the capacity to enter into a legal contract for services), receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act.

§ 1944.2 Definitions.

The following definitions apply to this Subpart:

(a) *Above-moderate income.* An adjusted annual income that exceeds the maximum limit for moderate-income households as provided in Exhibit C of this Subpart.

(b) *Adjusted annual income.* Annual income as defined in paragraph (c) of this section less 5 percent thereof and less an additional $300 for each dependent minor person (excluding the applicant and foster children) who is a member of the household.

(c) *Annual income.* Current monthly income received by the applicant and all adult members of the household times

twelve. See § 1944.8(c) for supplemental rules on determining annual income.

(d) *Cosigner.* A party who joins in the execution of a promissory note to guarantee its repayment by the borrower. The cosigner becomes jointly and severally liable to comply with the terms of the note in the event of the borrower's default.

(e) *County Supervisor.* Includes Assistant County Supervisor for all duties and responsibilities which are included in the employee's job description and for authorizations which have been delegated in writing in accordance with FmHA Instruction 2006–F (available in any FmHA office). For the areas of Alaska and the Western Pacific Territories it also includes the Area Supervisor.

(f) *Existing dwelling.* One which is (1) more than 1 year old, or (2) previously occupied as a residence.

(g) *Extended family.* A family unit consisting of parents, children and other relatives who will lie together on a permanent basis as a part of the household.

(h) *Farm.* Includes the total acreage of one or more tracts of land which (1) is owned by the applicant, (2) is operated as a single unit, (3) is in agricultural production, and (4) annually will produce agricultural commodities for sle and home use with a gross value of at least $400 based on 1944 prices. To aid in estimating the gross annual value of agricultural commodities produced on a particular farm, a State Supplement will be issued listing the 1944 prices for the principal farm commodities in the State.

(i) *Household.* The applicant and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months.

(j) *Low income.* Eighty percent of the area median income rounded up to the next $500 but not less than 60 percent nor greater than 80 percent of the non-metro census regional income. Maximum low-income limits are set forth in Exhibit C of this Subpart.

(k) *Moderate income.* An adjusted annual income that does not exceed the maximum limit for moderate-income households as provided in Exhibit C of this Subpart.

(l) *Nonfarm tract.* A parcel of land that is not a farm and is located in a rural area, or a building site that is part of a farm, and which secures an RH loan in accordance with § 1944.18 (b)(10).

(m) *Place.* An area containing a concentration of inhabitants within a determinable unincorporated area.

(n) *Rehabilitation.* Major repairs and improvements to existing dwellings such as the installation or completion of bathroom facilities, installation of major items of equipment, additions, or structural changes.

(o) *Senior citizen.* A "senior citizen" is a person who is 62 years of age or older.

(p) *Town.* A "town" means a municipality similar to a city but not a New England-type town which resembles a township or county in most States.

(q) *Urban area.* Either a town, village, city, place or any associated combination thereof, which with the immediately adjacent densely settled areas has a population in excess of the limits prescribed in § 1944.10(a)(2) (i) and (ii).

(r) *Very low income.* Fifty percent of area median income. Maximum limits for very low income are set forth in Exhibit C of this Subpart.

§ 1944.3 Loan purposes.

(a) A loan may be made to an eligible applicant for the following purposes:

(1) To buy, build, rehabilitate, improve or relocate a dwelling and provide related facilities for use by the applicant as a permanent residence.

(2) To buy, build, rehabilitate, improve or relocate a dwelling, and provide related facilities for a farm owner to provide housing to be occupied by the farm manager, tenants, sharecroppers or farm laborers.

(3) To refinance secured debts or unsecured debts as provided in § 1944.22.

(b) A loan made under paragraph (a) (1) or (2) of this section may be used to:

(1) Purchase, in fee title, a minimum adequate site, as outlined in § 1944.11(c) on which the improvements are or will be located, if the applicant does not own an adequate site.

(2) Pay reasonable acquisition cost for a leasehold interest in a minimum adequate site at the time of making the initial RH loan.

(3) Provide an adequate and safe water supply and/or an adequate sewage disposal facility.

(4) Provide site preparation, including grading, foundation plantings, seeding or sodding of lawns, trees, walks, yard fences and driveways to building sites.

(5) Purchase and install essential equipment in the dwelling including items such as a range, refrigerator, clothes washer or clothes dryer, if these items are normally sold with dwellings in the area and if purchase of these items is not the primary purpose of the loan.

(6) Provide special design features or equipment when necessary because of physical handicap or disability of the applicant or a member of the household.

(7) Purchase and install approved energy saving measures and approved furnaces and space heaters which use a type of fuel that is commonly used, and is economical and dependably available.

(8) Provide storm cellars, and similar protective structures.

(9) Pay incidental expenses such as fees for credit reports, tax monitoring service, legal, title clearance, loan closing, architectural, surveying and other technical services.

(10) Pay reasonable connection fees for utilities such as water, sewer, electricity or gas, which are required to be paid by the borrower and which cannot be paid from other funds.

(11) Pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making the planned improvements.

(12) Pay real estate taxes which are due and payable on the building and/or site at the time of closing on an initial loan, if this amount is not a substantial part of the loan.

(13) Establish escrow accounts for the payment of real estate taxes or property insurance premiums in those States where the use of escrow accounts is authorized by the National Office.

(14) Provide living area for all members of the applicant's household, including "extended family," as provided in § 1944.16(a)(6).

§1944.4 Loan restrictions.

(a) A loan will not be made to an applicant who, within the previous 2 years, had a Section 502 RH loan but disposed of the property through sale or transfer unless:

(1) The dwelling sold or transferred was inadequate to meet the applicant's housing needs; or

(2) The applicant was compelled to relocate due to change of employment or health reasons and the property the applicant proposes to buy is in a different trade/market/employment area; or

(3) The housing need is due to a legal separation or divorce.

(b) Loan funds may not be used to:

(1) Buy or improve income-producing land, or buildings to be used for income-producing purposes or buildings not essential for RH purposes.

(2) Pay fees, charges or commissions such as finders' fees, fees for packaging the application or placement fees for the referral of prospective applicants to FmHA.

(c) A loan will not be made to an applicant whose previous FmHA debts have been settled pursuant to Part 1864 of this Chapter (FmHA Instruction 456.1)

or by release from personal liability under Subpart A of Part 1955 of this Chapter as reflected by the County Office records, or where settlement under such regulation is contemplated, unless failure to pay the indebtedness was the result of circumstances beyond the applicant's control, or the conditions which necessitated the debt settlement or release, other than weather hazards, disasters, or price fluctuations, have been removed or will be removed by making the loan. Before approving the property or causing such an applicant to incur any expense in connection with the loan the County Supervisor will complete Form FmHA 431–2, "Farm and Home Plan," or Form FmHA 431–3, "Household Financial Statement and Budget," and send it with the application, any available case folders, and recommendations to the State Office for a determination as to whether to proceed with the development of the loan docket.

(d) A loan will not be made to an applicant who has demonstrated his or her inability to carry out the required obligations of the loan, as evidenced by recent failure to maintain rental property or a former home and premises in a habitable and responsible manner, has performed unauthorized conversion or alterations of the structure, or created public nuisances in or around a former residence, unless the reasons have been removed and are not likely to recur. Evidence of such inability must be specifically addressed in the letter of rejection and documented in the case file running record, and may never be due to presumed inability based on age, sex, marital status, or any other prohibited basis under the Equal Credit Opportunity Act (ECOA).

(e) Loans will not be made to a homestead entryman or desert entryman to improve the entry prior to receipt of patent.

§§ 1944.5–1944.7 [Reserved]

§ 1944.8 Income eligibility requirements.

(a) An applicant is eligible for a Section 502 loan only if the following requirements are met:

(1) The adjusted annual income as defined in § 1944.2(b) at time of loan approval of the applicant's household does not exceed the applicable income limit in Exhibit C.

(2) Repayment ability as provided in § 1944.26(f), is demonstrated in the following manner:

(i) The applicant has adequate and dependably available income. The determination of income dependability will include consideration of the applicant's past history of annual income and/or the history of the typical annual income of others in the area with similar types of employment. Such income should be sufficient to meet living expenses, pay taxes, insurance and maintenance costs, and to make required payments on all obligations including the Section 502 loan; or

(ii) The applicant obtains a cosigner with dependably available income which will be sufficient to repay the loan. The cosigner must be an individual but may not be a member of the applicant's household.

(b) Applicants applying who do not meet the requirements of paragraph (a)(2)(i) of this section will be considered ineligible unless another adult(s) in the household has adequate income and wishes to join in the application as a co-applicant. The combined incomes then may be considered in determining repayment ability.

(c) Annual income as defined in § 1944.2(c) will be determined as follows and thoroughly documented in the case file running record:

(1) If the spouse or any other adult is not presently employed but there is a recent history of such employment, that person's income will be considered unless the applicant/borrower and the person(s) involved sign a statement that the person(s) is not presently employed and does not intend to resume employment in the foreseeable future, or if interest credit is involved, during the term of the Interest Credit Agreement. The statement will be filed in the applicant/borrower's case file.

(2) For all adults, including the spouse, presently employed in either full-time or part-time employment, such income will be computed as the current monthly income times twelve, and

(3) Income from such sources as seasonal type work of less than 12 months duration, commissions, overtime, bonuses and unemployment compensation will be computed as the estimated annual amount of such income for the ensuing 12 months. Historical data based on the past 12 months may be used if a determination of expected income cannot logically be made.

(4) Income from all sources will be included except as provided in paragraph (c)(5) of this section and will include but is not limited to:

(i) Gross income from wages, salaries, and commissions, including that from seasonal type work which can be expected to be repeated.

(ii) Historical receipt of overtime and bonus income which can reasonably be expected to be repeated.

(iii) All net farm and nonfarm business income. Farm or nonfarm business losses will be considered as "0" in determining annual income.

(iv) Pensions, Social Security, welfare, and unemployment compensation.

(v) Child support payments and other payments made on behalf of minors.

(vi) The income of an applicant's spouse, unless the spouse has been living apart from the applicant for at least 6 months (for reasons other than military or work assignment), or court proceedings for divorce or legal separation have been commenced.

(vii) GI bill benefits, fellowships, scholarships, and assistantships, except as provided in paragraph (c)(5)(i) of this section.

(viii) Alimony, or other spousal support payment.

(ix) Proceeds from the sale of equipment, mineral rights or real estate sold under long-term contract (usually more than 3 years).

(5) The following income will not be included in determining annual adjusted income, although it will be included under § 1944.26 (a)(2) and (f)(2) for documenting repayment ability:

(i) Income received by a full time student (*who is not* the applicant or co-applicant) from employment or income from GI Bill benefits, fellowships, scholarships, or assistantships for schooling.

(ii) Proceeds from the sale of equipment, mineral rights, or real estate sold under a short term contract (usually 3 years or less).

(iii) Cash value of food stamps, real estate tax exemptions, or similar types of assistance.

(iv) Payments received for the care of foster children, foster adults or for services rendered as a volunteer on a project sponsored by any of the following programs:

(A) Retired Senior Volunteer Program.

(B) Foster Grandparent and Older American Community Service Programs (as either a foster grandparent, senior health aide or senior companion).

(C) National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Persons With Business Experience.

(D) Peace Corps, VISTA, or any other volunteer program sponsored by ACTION.

(v) Allowances, such as training and travel expenses, paid by the Department of Labor to CETA participants. (Wages paid by the employers of CETA workers will be included.)

(vi) Any payments received by "live in" aides for members of a senior citizen borrower's household paid by state or

federal programs which specifically exclude the cost of shelter from the amount received.

(vii) Any funds, other than those listed in paragraphs (c)(5) (i) through (vi) of this section, which a Federal law specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits to which the recipient would otherwise be entitled.

(6) In determining the applicant's annual income the following deductions are allowed:

(i) A deduction may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the applicant's trade, business, or farming operation. The applicant must provide an itemized schedule showing the depreciation claimed. The schedule should be consistent with the amount of depreciation actually claimed for these items for Federal income tax purposes.

(ii) A deduction may be made in the same manner as outlined in IRS regulations for necessary work related expenses actually paid by the employee in excess of the amount reimbursed by the employer. The deduction must be reasonable and, in the judgment of the approving official, should be deducted from an employee's income to reflect annual income on an equal basis with other employed persons. Deductions, however, are not permitted for the following:

(A) Transportation to and from work.

(B) Cost of meals incurred on one day business trips.

(C) Educational expenses except those incurred to meet the minimum requirements for the employee's present position.

(D) Fines and penalties for violation of laws.

(iii) A maximum aggregate deduction of $400 per month may be made for child care or disabled dependent care which is necessary to enable the borrower to be gainfully employed. The deduction will be based only on monies actually paid for care services. Payments for these services may not be made to persons whom the borrower is entitled to claim as dependents for income tax purposes. Full justification for such deduction must be recorded in detail in the applicant's loan docket.

(iv) A maximum aggregate deduction of $400 per month may be made for full time nursing home or institutional type care which cannot be provided in the home for a member of the household. Such care must be expected to be required for a period of six months or more. The deduction will be limited to expenditures actually paid for such services.

§ 1944.9 Other eligibility requirements.

In addition to the income eligibility requirements of § 1944.8, the applicant must:

(a) Qualify as one of the following:

(1) A person who does not own a dwelling, or owns a dwelling which is not structurally sound, functionally adequate, or large enough to accommodate the needs of the applicant, or

(2) A farmowner without decent, safe and sanitary housing for the farmowner's own use or for the use of farm tenants, sharecroppers, farm laborers, or farm manager.

(b) Be without sufficient resources to provide the necessary housing or related facilities, and be unable to secure the necessary credit from other sources upon terms and conditions which the applicant could reasonably be expected to fulfill. If the applicant has only an undivided interest in the land to be improved, those co-owners whose execution of the mortgage is required under § 1944.18(b)(8) must also be unable to provide the improvement with their own resources or obtain the necessary credit elsewhere either individually or jointly with the applicant.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands, or a non-citizen who resides in one of the foregoing areas after being legally admitted for permanent residence or on indefinite parole. Permanent residents can verify their status by presentation of Form I–551, "Alien Registration Receipt Card," or any later revision of the form. Those on indefinite parole must present Form I–94, "Arrival/Departure Card," or any later revision of the form. If the County Supervisor has reason to question the authenticity of the information provided, he will further authenticate such information through the Immigration and Naturalization Service by the use of INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Service Records," which is obtainable from the nearest INS District Office (See Exhibit B). The words, "No fee, Government Agency," will be inserted in the "Fee Stamp" block on Form G–641.

(d) Possess legal capacity to incur the loan obligation, and have reached the legal age of majority in the State, or have had the disability of minority removed by court action.

(e) have the potential ability to personally occupy the home on a permanent basis, if the loan is to provide housing for the applicant's own use. To illustrate, because of the probability of their being transferred or moving after graduation, military personnel on active duty and full-time students will not be granted loans unless:

(1) The applicant, if military personnel, will be discharged at an early date (usually within 1 year). The family must continue to occupy the home in case the borrower is transferred to another duty station before discharge, and

(2) The applicant intends to make the home a permanent residence and there are reasonable prospects that employment will be available in the area after graduation or discharge, and

(3) An adult member of the household will be available to make inspections if the home is being constructed and to sign checks for work performed.

(f) Have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due. The following *will not* indicate an unacceptable credit history:

(1) "No history" of credit transactions by the applicant.

(2) Bankruptcies, foreclosures, satisfied judgments, or delinquent payment records which occurred more than 36 months before the application if no recent similar situations have occurred.

(3) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(4) Recent bankruptcy, foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The circumstances causing any of the above were of a temporary nature, were beyond the applicant's control and have been removed. Examples: loss of job; delay or reduction in government benefits, or other loss of income; increased expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

§ 1944.10 Rural area designation.

(a) For the purposes of this Subpart, a rural area is:

(1) Open country which is not part of or associated with an urban area, or

(2) Any town, village, city or place, including the immediately adjacent densely settled area, which is not part of or associated with an urban area and which:

(i) Has a population not in excess of 10,000 if it is rural in character, or

(ii) Has a population in excess of 10,000 but not in excess of 20,000, and

(A) Is not contained within a Standard Metropolitan Statistical Area (SMSA), and

(B) Has a serious lack of mortgage credit for low- and moderate-income households as determined by the Secretary of Agriculture and the Secretary of Housing and Urban Development.

(b) A determination that open country, or any town, village, city, or place is not part of or associated with an urban area must include a finding that any densely populated section of the area in question is separated from the densely populated section of any adjacent urban area by open spaces (which are undeveloped, agricultural, or sparsely settled) other than open spaces due to physical barriers, commercial or industrial developments, public parks and similar open spaces, and areas reserved for recreational purposes. This determination should also consider such other factors as the existence of known plans for development within the near future (e.g., 3 to 5 years) of a substantial portion of the intervening land between the area in question and an urban area.

(c) Two or more towns, villages, cities, and places may have contiguous boundaries, and each be considered separately if they are not otherwise associated with each other, as determined after consideration of paragraphs (a) and (b) of this section.

(d) The latest official Bureau of the Census data or more recent official population counts (U.S. Census of Population or other Governmental official counts) will be used in determining population.

(e) The State Director will be responsible for determining boundaries of rural areas and shall issue an appropriate State Supplement to identify such areas by list and maps. Areas in excess of 10,000 population will be identified as "rural areas" in a State Supplement only after written authorization by the National Office and compliance with the requirement of paragraph (a)(2)(ii) of this section.

(f) When a change of designation from rural to nonrural is anticipated, all developers and other interested parties should be notified.

(g) If an area designation is changed from rural to nonrural, loans may be made only in the following instances:

(1) Applications received by FmHA prior to the change of designation may be processed.

(2) New conditional commitments may be issued and existing conditional commitments will be honored only in conjunction with the approval of RH loan applications which were received prior to the date the area was designated non-rural.

(3) Credit sales and transfers by assumption may be processed in such areas as authorized by § 1955.103(e) of Subpart C of Part 1955 of this Chapter and § 1872.18(c)(1)(i) of this Chapter (FmHA Instruction 465.1, paragraph XVIII C 1 a).

(4) Subsequent loans may be made on property in an area where the designation was changed from rural to nonrural after the initial loan was made:

(i) To make necessary repairs.

(ii) To pay equity in connection with an assumption and transfer of an RH loan.

§ 1944.11 Property requirements.

(a) The property on which the loan is made must be located on a farm, or in a designated rural area as defined in § 1944.10 or in an area the designation of which has been changed as provided in § 1944.10(g). A nonfarm tract to be purchased or improved with loan funds must not include or be closely associated with farm service buildings.

(b) Unless an exception is granted by the National Office (notwithstanding the requirement of § 1804.67(b) of this Chapter (FmHA Instruction 424.5, paragraph VII B), the property must be contiguous to and have direct access from an:

(1) All-weather street which has been dedicated to and accepted by a public body which shall be responsible for continuous maintenance, or

(2) Extended driveway if:

(i) The driveway has an all-weather surface,

(ii) The driveway does not potentially serve more than two individual dwellings,

(iii) The applicant obtains title or an easement to the driveway and it is included in the security for the loan, and

(iv) The maintenance cost for the driveway is considered in determining the applicant's repayment ability.

(c) A nonfarm tract on which a loan is to be made may not be larger than a minimum adequate site, which is the smallest area sufficient for the dwelling, an adequate water and/or waste disposal system, other related facilities, and a yard. In all cases, a site of more than one acre must be authorized by the State Director and the reasons and justification for exceeding one acre must be recorded in the loan docket. In determining whether the property is a minimum adequate site the following considerations apply:

(1) The extra land does not qualify as a minimum adequate site for another dwelling, and

(2) The value of the extra land is not a substantial portion of the total value of the property.

(d) Loans made to buy, build, or repair dwellings located in an area having special flood or mudslide hazards are subject to the conditions of Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2).

§§ 1944.12–1944.14 [Reserved]

§ 1944.15 Ownership requirements.

(a) After the loan is closed, the borrower must have an interest in the property to be purchased, improved, or refinanced, which qualifies as one of the following:

(1) Full marketable title.

(2) The purchaser's interest under a land purchase contract which obligates payment of the purchase price, gives the rights of present possession, control and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specific part of the purchase price.

(3) An undivided fee interest if the co-owners meet the security requirements imposed by § 1944.18(b)(8).

(4) A life estate interest with rights of present possession, control and beneficial use of the property if the remaindermen meet the security requirements imposed by § 1944.18(b)(9).

(5) Leasehold interest if all of the following conditions are met:

(i) The applicant is unable to obtain fee title to the property and the rent charged for the lease does not exceed the rate being paid for similar leases.

(ii) The lessor owns the fee simple title.

(iii) Neither the leasehold nor the fee simple title is subject to a prior lien, unless the County Supervisor submits complete information to the State Director for review and authorization prior to approval of the loan. The amount of the RH loan plus any prior liens may not exceed the recommended market value of the leasehold.

(iv) The written lease contains the following provisions:

(A) The lessor's consent to the RH mortgage.

(B) Reasonable security of tenure. The borrower's interest must not be subject to summary forfeiture or cancellation.

(C) The right of FmHA to foreclose the RH mortgage and sell without restrictions that would adversely affect the market value of the security.

(D) The right of FmHA to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(E) The right of FmHA, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell for cash or credit. In case of a credit sale, FmHA will take a mortgage with rights similar to those under the original RH mortgage.

(F) The right of the borrower, in the event of default or inability to continue with the lease and the RH loan, to transfer the leasehold, subject to the RH mortgage, to an eligible transferee with assumption of the RH debt.

(G) Advance notice of at least 90 days to FmHA of lessor's intention to cancel or terminate the lease. Such advance notice will be long enough to permit FmHA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interests, and the market value of the leasehold interest and, if litigation is involved, to refer the case with a report of the facts to the United States Attorney for appropriate action.

(H) Express provisions covering the question of liability of FmHA for unpaid rentals or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA's possession or ownership, pending further servicing or liquidation.

(I) Any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(v) The lease has an unexpired term, from the date of loan approval, of at least 50 years (a lease for 25 years with an option to the lessee to renew for an additional 25 years would be considered a 50 year lease) except where:

(A) A lease is granted for the purpose of permitting a person to obtain an RH loan and the time required to process and approve the loan results in the unexpired term of the lease being not less than 49 years, or

(B) A lease is in existence at least 1 year prior to the date of the loan approval, and the unexpired term of the lease is at least 50 percent longer than the repayment period of the loan. In no case may the unexpired term of the lease be less than 15 years.

(6) Possessory rights on an Indian reservation or State-owned land if the security requirements imposed by § 1944.18(b)(2) are met.

(7) The interest of an Indian in land held in severalty under trust patents or deeds containing restrictions against alienation if the security requirements imposed by § 1944.18(b)(3) are met.

(b) If an applicant's title to any part of the property does not qualify as an ownership interest under paragraph (a) of this section and is therefore defective, an RH loan may nevertheless be made if:

(1) The defect cannot be cured at a reasonable cost, and

(2) No improvements to be constructed or repaired with loan funds will be located on the parcel to which title is defective, and

(3) No security value will be accorded to the parcel to which title is defective.

§ 1944.16 Building requirements.

(a) *New dwellings.* Dwellings to be built or purchased new must provide decent, safe and sanitary housing that is modest in size, design and cost, and consistent with the market in the area. Applicants should be counseled regarding the type of housing necessary to meet their needs, however, modest housing may include 3 bedrooms and 1½ bathrooms if such a dwelling is within the applicant's repayment ability and is typical of other dwellings owned or being built in the area by persons with similar incomes.

(1) The dwelling will contain no more than 1,200 square feet of living area. When the size of the household results in an average of more than two persons per bedroom a larger dwelling may be justified to provide adequate sleeping space. For purposes of complying with this paragraph, the following will be considered in determining living area:

(i) Living area will include all finished areas as well as unfinished areas that are designed for or normally considered as living area. This will include those areas which meet or can be improved to meet the Minimum Property Standards (MPS), as defined in Subpart A of Part 1924 of this Chapter, requirements for habitable area.

(ii) Living area will not include such space as a stairway between living areas, enclosed stairway, enclosed entryway, space necessary for utilities in a home without a basement, general storage area, porch not suited for year-round use, solar greenhouse which provides heat to the living area, garage or carport which is attached, detached or in the basement area; basement or other area not designed for or normally considered living area.

(2) Special design features or equipment may be included when necessary because of physical handicap or disability.

(3) Two-car garages or carports will not be authorized. Single-car garages or carports may be included if customarily included in other homes in the area.

(4) Energy saving measures which exceed FmHA requirements and cost more than 1 percent of the market value of the property and solar energy systems may be used only after approval by the State Architect/Engineer and authorization by the State Director. Complex systems, such as active solar space heating or cooling, geothermal, hydropower, wind and photovoltaic, that could be considered unconventional, must be submitted to the National Office for concurrence prior to authorization by the State Director.

(5) Solid fuel burning devices may be authorized only if the loan approval official determines and documents that a dependable and economical fuel supply is available. All solid fuel burning devices must comply with MPS (4900.1, 610–1.1) and with Exhibit D, paragraph IV D 2, of Part 1924, Subpart A. To assure compliance and to remove uncertainties regarding safety and efficiency, solid fuel burning devices are authorized only after approval by the State Architect/Engineer and subsequent authorization by the State Director.

(6) A dwelling for an extended family as defined in § 1944.2(g) may include bedroom area with an exterior entrance and an additional bathroom. This area should be designed in a manner that will not adversely affect the home's potential for resale.

(b) *Existing dwellings.* Applicants should be counseled regarding the type of housing necessary to meet their needs. Existing dwellings purchased with RH funds must be structurally sound, functionally adequate, either be in good repair or placed in good repair with loan funds and meet the standards required by § 1924.5(d)(1)(ii) of Subpart A of Part 1924 of this Chapter. All existing dwellings must meet the thermal performance standards required in Exhibit D, paragraph IV B, of Subpart A of Part 1924. The policies stated in paragraph (a) of this section may be used as a guide in making a determination of adequate but modest existing dwellings, however, modest existing dwellings should contain no more then 1,400 square feet of living area and be modest in cost and design. Loans should not be made on existing dwellings which contain more than one

design feature which would not be allowed in new homes.

(c) *Repairs.* Any dwelling repaired with RH funds must be structurally sound, functionally adequate, and be placed in good repair with loan funds. If the loan is not more than $7,500 and is scheduled for repayment in not more than 15 years from the date of the note, the dwelling may lack some equipment or features such as a complete bath, kitchen cabinets, closets, or completely finished interior in some rooms. Such dwellings must meet the basic housing needs of the applicant and provide decent, safe, and sanitary living conditions when the improvements financed with the loan are completed.

(d) *Improvements.* Improvements financed with loan funds must be on land which, after loan closing, is part of a tract owned by the borrower in accordance with § 1944.15(a), or on an easement appurtenant to such a tract.

§ 1944.17 Maximum loan amounts.

(a) An RH loan to buy or build a dwelling may be made up to the market value of the security less the unpaid principal balance and past-due interest of any other liens against the security property for:

(1) An existing dwelling which is more than a year old or previously occupied as a residence.

(2) A new dwelling when any of the following conditions exist:

(i) A conditional commitment was issued in accordance with § 1944.45.

(ii) The RH loan will be closed prior to the start of construction.

(iii) Construction is financed in accordance with § 1944.46.

(iv) The required construction inspections were made by the Federal Housing Administration (FHA) or Veterans Administration (VA). A complete set of plans and specifications will be submitted together with copies of inspection reports or certification by FHA or VA indicating the dwelling was built in accordance with approved plans and specifications. The builder will also furnish a certification of compliance with FmHA thermal standards for new construction as required by Exhibit D of Subpart A of Part 1924 of this Chapter.

(v) The dwelling is covered by an approved insured 10-year warranty plan. The builder will provide complete plans and specifications together with a certification that construction was completed in compliance with the plans and specifications, MPS and FmHA thermal standards for new construction. The cost of the insured warranty will be included in the sale price of the dwelling, if it is to be charged to the borrower. Prior to loan approval the builder must provide evidence that he/she is an approved builder in good standing under a 10-year insured warranty plan.

(b) A loan will be limited to 90 percent of the market value of the security for any dwelling that does not meet the requirements of paragraph (a) of this section.

(c) A loan on a dwelling meeting the requirements of paragraph (a) of this section which causes the total secured indebtedness to exceed the appraised value of the property securing the loan may be made when the amount exceeding the appraised value is all or part of a lien held by a public body, hospital or welfare institution for advances made for medical bills, welfare payments, or state motor vehicle judgments provided:

(1) The borrower is unable to settle or compromise such lien sufficiently to avoid exceeding the market value, and

(2) The lien securing the excess amount will at all times be inferior to the FmHA mortgage securing the initial loan and any subsequent loan or advances determined by the FmHA to be reasonably necessary to carry out the purpose of the initial loan or to protect the Government's financial interest, and

(3) The existence of the excess lien will not jeopardize the security or servicing so as to preclude the making of a sound RH loan, and

(4) The borrower has the ability to meet any payments on the excess debt as they become due or are likely to become due.

§ 1944.18 Security requirements.

(a) *Adequate security.* To protect the interests of FmHA all loans must be adequately secured. Except as provided in paragraph (b) of this section, a loan is adequately secured only when all of the following requirements are met:

(1) FmHA obtains at closing a mortgage on all ownership interests in the entire tract.

(2) No liens prior to the FmHA mortgage exist at the time of closing, and no junior liens are likely to be taken immediately subsequent to or at the time of closing.

(3) The provisions of Part 1807 of this Chapter (FmHA Instruction 427.1) regarding title clearance and the use of legal services are complied with.

(b) *Exceptions.* Exceptions to the usual security requirements will be made only as follows:

(1) *Note only.* A loan of $2,500 or less scheduled for repayment is not more than 10 years from the date of the note, and that is not subject to recapture of subsidy in accordance with Subpart I of Part 1951 of this Chapter, may be secured by the borrower's promissory note alone when the County Supervisor determines that:

(i) The applicant has a credit history which indicates an ability and willingness to pay debts when they are due;

(ii) The applicant will have sufficient income to readily meet all obligations; and

(iii) The applicant's equity in the real estate as improved equals or exceeds the amount of the proposed loan.

(2) *Mortgage insurance.* When the applicant is the holder of possessory rights on an Indian reservation or State-owned land, adequate security in the form of mortgage insurance guaranteeing payment from a State agency or Indian tribe will be acceptable. Separate State Supplements covering loan approval, title clearance, closing, appropriate loan documents and a Memorandum of Understanding with the State or Indian tribe insuring agency should be developed and used with the approval of the State Director and the concurrence of the Office of General Counsel (OGC). Approval of such supplements by the National Office is required prior to participation in any such program.

(3) *Indian land.* Indian land in trust or restricted status acquired with an RH loan will remain in trust or restricted status. In these cases mortgages must be approved by the Secretary of the Interior. When a lien is to be taken on trust or restricted property, the local Bureau of Indian Affairs (BIA) representative will be requested to furnish advice and information with respect to the property and each applicant. The FmHA State Director should arrange with the BIA Area Director or other appropriate local BIA official as to how the information will be requested and furnished. A State Supplement will be issued to prescribe the actions to be taken by FmHA personnel to implement the making of loans under such conditions.

(4) *Best mortgage obtainable.* Loans of $7,500 or less scheduled for repayment in not more than 15 years from the date of the note must be secured by a mortgage, except as provided in paragraph (b)(1) of this section, but title clearance and the use of legal services in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1) are not required. The best mortgage obtainable without use of these procedures will be sufficient unless the loan approval official determines that the procedures in Part 1807 of this Chapter (FmHA Instruction 427.1) are necessary to assure repayment or

accomplish the objective of the loan. Evidence of ownership must comply with § 1944.24(d)(2).

(5) *Leasehold.* When the applicant owns only a leasehold interest, FmHA may not require a mortgage on the lessor's interest but will treat the lessee's interest like any other type of ownership interest in determing whether a mortgage on the leasehold is required. The lease must meet the requirements of § 1944.15(a)(5) (iv) and (v). In any State in which applicants are likely to own a leasehold interest, the State Director will issue a State Supplement outlining the technical requirements for making such loans.

(6) *Security by junior lien.* FmHA may take a junior mortgage as security for an RH loan if the tract which will secure the FmHA mortgage provides adequate security for the entire prior lien debt and the RH loan, and

(i) The prior mortgage does not contain provisions that may jeopardize FmHA's security position or the borrower's ability to repay the loan, such as provisions for future advances, forfeiture, cancellation, foreclosure without adequate notice to junior lienholders, the charge of a flat fee of more than 5 percent attorney's cost in case of foreclosure; or

(ii) Such provisions are satisfactorily limited, modified, or waived.

(7) *Liens junior to FmHA lien.* Liens junior to the FmHA lien will be allowed at closing or immediately subsequent to closing only when:

(i) The junior lien will not interfere with the purposes or repayment of the RH loan, and

(ii) The total amount of the RH loan, the junior lien, and any prior liens will not exceed the market value of the security except as provided in § 1944.17(c).

(8) *Undivided interest.* When the applicant owns an undivided interest in the property, the co-owners' interests need not be included in the mortgage in the following cases:

(i) When one or more of the co-owners are not legally competent, or cannot be located, or the ownership rights are divided among such a large number of co-owners that it is not practical for all their interests to be mortgaged, the mortgaging of interests not exceeding 50 percent may be excluded from the security requirements upon prior approval by the State Director. The State Director should review the County Supervisor's recommendation accompanied by a full statement of ownership and conditions which justify the exclusion. All legally competent co-owners using or occupying the property will be required to sign the mortgage. Co-owners will be required to sign the note when necessary for a sound loan or to obtain the required security. The loan may not exceed the percentage of the market value of the property represented by the interests of the owners who sign the mortgage. In determining such value, consideration will be given to any adverse effect which might result from sale of the mortgaged interests separately from the nonmortgaged interests.

(ii) When an applicant owns an undivided interest in part of a farm and seeks a loan to build or improve facilities on another part in which the applicant owns the entire interest, or the applicant owns only an undivided interest in a building site which will be a part of the farm, the interest of the applicant's co-owners may be excluded from the security requirements upon approval by the State Director if:

(A) The loan will be adequately secured by the applicant's equity in the wholly owned tract,

(B) The market value of the jointly owned tract is at least equal to the debts against it, and

(C) The applicant's participation in the joint ownership of part of the farm and its operations has been and is likely to continue to be successful.

(9) *Life estate.* When the applicant owns a life estate interest in the property, the remaindermen's interests need not be included in the mortgage if one or more of the remaindermen are not legally competent or cannot be located or if the remainder rights are divided among such a large number of remaindermen that it is not practicable to obtain the signatures of all the remaindermen. In that case, the mortgaging of remainder interests, not exceeding 50 percent of the total remainder interest may be excluded from the security requirements upon prior approval by the State Director. The State Director should review the County Supervisor's and District Director's recommendations accompanied by a memorandum stating complete ownership information and circumstances which justify the exclusion. In such cases, the loan may not exceed the percentage of market value of the property represented by the interests of those remaindermen who sign the mortgage, determined with due regard to all adverse factors involved. Remaindermen will be required to sign the note when necessary for a sound loan or to obtain the required security.

(10) *Farm dwelling.* When the applicant is the owner of a farm, a mortgage may be taken only on the dwelling and dwelling site provided the following conditions can be met:

(i) The tract to be mortgaged must not include or be close to farm service buildings, must be in a good residential location, be otherwise suitable as a residential type of nonfarm tract, provide adequate security for the loan, be contiguous to and have direct access to a public road, or

(ii) The tract to be mortgaged must contain at least enough land to clearly provide adequate security for the loan and to make the tract readily saleable in the area.

(11) *Land purchase contract.* When the ownership interest is by virtue of a land purchase contract a prior lienholder's agreement must be obtained as required by Part 1807 of this Chapter (FMHA Instruction 427.1, paragraph II F 5.)

(c) *Additional security.* When necessary to supplement the applicant's equity in the farm or nonfarm tract on which the dwelling is located, or to facilitate servicing the loan, FmHA may also take a mortgage on other real estate owned by the applicant.

(d) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be depreciated will be assigned and disposed of in accordance with § 1872.11 of Part 1872 of this Chapter (FmHA Instruction 465.1, paragraph XI), and the provisions for written consent of any prior lienholder. In small nonfarm tract cases, the State Director may authorize withholding transmittal of assignments to lessees for execution until production begins. The State Director may, in individual cases, waive the requirement of taking an assignment if repayment of the loan is reasonably assured from other sources.

§§ 1944.19–1944.21 [Reserved]

§ 1944.22 Refinancing debts.

(a) Refinancing of FmHA debts and debts on a building site without a dwelling is not authorized.

(b) Loan funds may be used for refinancing non-FmHA debts on a dwelling only if the debt was incurred by the applicant prior to the date the application was filed and the following conditions can be met:

(1) The debt was incurred for purposes for which a Section 502 RH loan could be made or is a protective advance by the mortgagee for items covered by the mortgage to be refinanced, such as accrued interest, insurance premium or real estate tax advances or preliminary foreclosure costs.

(2) The debt must be a lien against the property which will be security for the RH loan. The promissory note and security instrument for the debt must represent rates and terms that were typical and customary for long-term residential financing in the area at the time the debt was incurred.

(3) A loan to refinance a qualified secured debt may also include short-term or unsecured debts, if necessary to establish a sound repayment ability, if such short-term or unsecured debts were incurred for authorized Section 502 loan purposes and are not a significant portion of the loan.

(4) Payments on the debt are so seriously delinquent, for reasons beyond the control of the applicant, that the applicant is likely to lose the dwelling at an early date if the debt is not refinanced. Such delinquency must be due to loss of employment or income, illness, or such other similar events or unforeseen circumstances.

(5) A statement will be obtained for each debt to be refinanced showing the purpose for which the debt was incurred, the date on which it was incurred, the final due date, interest rate, amount and frequency of installments, amount of delinquency, unpaid principal and accrued interest.

(c) If a loan of $5,000 or more is necessary for repairs to correct major deficiencies to make the dwelling decent, safe and sanitary, an existing lien which meets the requirements of paragraph (b) (1), (2) and (3) of this section may be refinanced regardless of delinquency, if necessary for the applicant to have repayment ability for the existing loan and the requested loan for repairs.

(d) Debts or costs incurred after the date of application may be refinanced if the costs were incurred for:

(1) Fees for legal, architectural and other technical services, or

(2) Materials, construction or site acquisition.

(e) The County Supervisor may authorize the use of RH funds to pay costs provided for in paragraph (d) (1) and (2) of this section only when all of the following conditions exist and have been documented in the borrower case file:

(1) The costs were incurred after the applicant filed a written application for a loan but before the loan was closed. In the case of a subsequent loan to complete improvements previously planned, the costs must have been incurred after the initial loan was closed.

(2) The applicant is unable to pay such costs from personal resources or to obtain credit from other sources and failure to authorize the use of RH funds to pay such costs would jeopardize the applicant's capability of repaying the loan.

(3) The construction or repair work conforms to that shown on the building plans and specifications or Form FmHA 424-1, "Development Plan," when applicable, and the costs were incurred for authorized Section 502 loan purposes.

§ 1944.23 Loans to Farm Ownership (FO), Individual Soil and Water (SW), and Recreation (RL) borrowers.

A Section 502 loan may be made to an FO, SW, or RL borrower or simultaneously with an FO loan and a loan from another lender if all conditions of this Subpart are met. In these cases, the borrower's current FO, SW, or RL loan may be reamortized in accordance with § 1951.40 of Subpart A of Part 1951 of this Chapter.

§ 1944.24 Technical services.

(a) *Planning and performing construction work.* Any construction work will be planned and completed in accordance with Subpart A of Part 1924 of this Chapter.

(b) *Planning and performing site development work.* Any site development will be planned and completed in accordance with Subpart D of Part 1804 of this Chapter (FmHA Instruction 424.5).

(c) *Appraisal.* The value of property securing RH loans will be determined as follows:

(1) When a mortgage will be taken on a nonfarm tract or small farm, or on a leasehold interest in a nonfarm tract or small farm, to secure a total indebtedness of more than $7,500, an appraisal of the security property will be made in accordance with FmHA Instruction 422.3 (available in any FmHA office). A small farm for the purpose of this Subpart is a farm as defined in § 1944.2(h) of this Subpart which has value primarily as a residence rather than for the production of agricultural commodities, and repayment of the RH loan is not dependent on farm income.

(2) When a mortgage will be taken on a farm tract or leasehold interest in a farm tract to secure a total indebtedness of more than $7,500, an appraisal of the security property will be made in accordance with Subpart A of Part 1809, of this Chapter (FmHA Instruction 422.1).

(3) When the total indebtedness will be not more than $7,500, an appraisal of the real estate or leasehold interest is not required, unless the County Supervisor or loan approval official is uncertain as to the adequacy of the security. When an appraisal is not completed the County Supervisor will document in the case file the estimated market value of the property.

(4) When a loan is being made to an FmHA real estate borrower and the FmHA appraisal report in the borrower's case folder indicates the value of the security property is adequate to secure the total real estate indebtedness, including the planned loan, an appraisal is not required.

(5) Real estate mortgaged as additional security will be appraised when it represents a substantial portion of the security for the loan or when requested by the loan approving official.

(d) *Title clearance and legal services.* (1) When real estate will be taken as security except on a best mortgage obtainable basis (including a mortgage on a leasehold), title clearance and legal services for making and closing the loan will be provided in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1). Title clearance and legal services will not be requested until the loan is approved.

(2) When real estate will not be mortgaged or when the best real estate mortgage obtainable is taken as security without title clearance or use of legal services, each applicant will be required to submit evidence of ownership of the farm or nonfarm tract. This may be the original or a certified or photostatic copy of the deed, purchase contract, or other instrument evidencing ownership. When the County Supervisor is uncertain as to whether or not the applicant is a qualified owner, such action will be taken as the County Supervisor considers necessary, such as requiring the applicant to furnish additional information or obtaining the advice of the OGC regarding the evidence of ownership submitted and any further information or action that may be needed. Proof of ownership need not be as much as that required by Part 1807 of this Chapter (FmHA Instruction 427.1). For example, it may include such evidence as the levy and payment, in the applicant's name, of taxes on the real estate and affidavits by others in the community to the effect that the applicant has occupied the property as the apparent owner for a given length of time and is believed and generally reputed to be the owner. No loan will be made if the County Supervisor has actual knowledge that the applicant does not have a valid title to the property.

§ 1944.25 Rates, terms, and source of funds.

(a) *Source of funds.* Insured loan funds from the Rural Housing Insurance Fund (RHIF) will be used for all Section 502 loans.

(b) *Interest rate per annum on unpaid principal.* Loans will be made at the interest rate(s) specified in FmHA Instruction 440.1, Exhibit B (available in any FmHA office). If only one interest rate is so specified, such rate will be the maximum interest rate established for mortgages under Section 203 (b) of the National Housing Act by the Secretary of Housing and Urban Development (HUD). If there are two interest rates for Section 502 insured RH loans specified in FmHA Instruction 440.1, Exhibit B, moderate-income borrowers will pay the HUD rate if the annual payments required for principal and interest on existing Section 502 RH loans, if any, the annual principal and interest payments on the loan for which application is being made (with payments calculated at the HUD rate), taxes, and insurance are not more than twenty percent (20%) of the borrower's adjusted annual income. In all other cases, moderate-income borrowers will pay the rate specified as the Section 502 rate.

(c) *Amortization.* Each loan will be scheduled for repayment over a period not to exceed 33 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probability of depreciation of the security. A loan for $2,500 or less not secured by a real estate mortgage will be scheduled for repayment over a period not to exceed 10 years from the date of the note.

(d) *Interest credit.* Borrowers may be eligible for an interest credit subsidy which can reduce the borrower's effective interest rate to as low as 1 percent. The policies and procedures for granting and servicing interest credit on RH loans are set forth in § 1944.34.

§ 1944.26 Application processing.

(a) *Application forms.* (1) Applications for Section 502 RH loans will be made on Form FmHA 410–4, "Application for Rural Housing Assistance (Nonfarm Tract)," or Form FmHA 410–1, "Application for FmHA Services," which are available at local County Offices, and processed in accordance with Subpart A of Part 1910 of this Chapter.

(2) If Form FmHA 410–4 does not provide sufficient information to clearly determine the applicant's repayment ability, or if the applicant needs credit counseling, Form FmHA 431–3 will be completed by the applicant and County Supervisor. In preparing Form FmHA 431–3 the following will be considered:

(i) Non-cash items (*e.g.*, food stamps, scholarships, free clothing, or transportation which help reduce the applicant's budgeted expenses) will be properly documented, and budgeted expenses will be reduced accordingly.

(ii) Dependably available income from all sources not used to determine adjusted annual income, such as earnings from employment of minors or full-time students, foster care payments, and similar income items, will be considered to the extent it is used to offset budgeted expenses even though such income will not be included in "annual income."

(3) An applicant who completes Form FmHA 410–1 will also complete Form FmHA 431–2 as prescribed in Subpart B of Part 1924 of this Chapter. In preparing Form 431–2, the provisions of paragraphs (a)(2)(i) and (ii) of this section will apply to allow consideration of all income and non-cash items. When a loan is to be made to a non-operator farmowner, the columns in Table B and C pertaining to the operator's share will be changed to the owner's share. If an application is being considered early in the crop year for a borrower who has a current Form FmHA 431–2, such form will be revised to show changes in the financial statement and significant changes in the planned operation. However, if the crop year is well advanced or completed, a farm and home plan will be developed for the ensuing year. The applicant will also complete Form FmHA 431–1, "Long-Time Farm and Home Plan," when needed.

(4) When available funds are not adequate to complete the processing of all applications as they are received, a preliminary determination of eligibility will be made based on information provided by the applicant. To avoid duplication of work, a credit report or Verification of Employment will not be ordered for those who appear eligible until it is known that funds will be available for the processing of the loan and it appears that such information will not have to be updated before loan closing. Applicants who appear eligible at time of application will be advised within 30 days of the filing of the application of the estimated waiting period and that a final determination of eligibility will be made when loan funds are available for the processing of their applications. Applicants found not eligible will be advised of the appeal procedure in accordance with Subpart B of Part 1900 of this Chapter. Applicants on the waiting list will be notified when funds are available and will be advised of information necessary to determine final eligibility for loan approval.

(b) *Processing priorities.* Applications for Section 502 RH loans will be processed in accordance with § 1910.4(a) of Subpart A of Part 1910 of this Chapter except that the County Supervisor will designate the following categories of applications on the left side of Form FmHA 405–4, "Application and Processing Card—Individual," to establish a processing priority system as follows:

(1) Category I. The State Director will maintain an adequate reserve to fund applications for the following types of loans. Applications for such loans will be processed as soon as they are received in the county office and the approved loans submitted through the State Office for funding.

(i) Loans for refinancing of debts in accordance with § 1944.22(b).

(ii) Subsequent loans related to credit sales of inventory property and credit sales of inventory property requiring no allocated loan funds.

(iii) Applicant hardship cases as determined by the State Director.

(iv) Susequent loans for essential improvements and repairs.

(2) Category II. Applicants for transfers by assumption whose applications are accompanied by an option to purchase, a sales contract or a Form FmHA 465–5, "Transfer of Real Estate Security," for the purchase of property presently mortgaged by FmHA. Also, applicants for mutual self-help housing loans in FmHA approved self-help projects.

(3) Category III. Applicants living in deficient housing for a period of more than 6 months prior to the date of application. This determination will be based on information obtained from the applicant and will be documented on the last page of the application or by attachment thereto. If the County Supervisor believes there is reason to question the accuracy of the information provided, an on-site inspection may be made. Deficient housing is defined as follows:

(i) Lack of complete plumbing; the housing does not have a bathtub or shower, wash basin, flush toilet and hot running water for the exclusive use of the occupant, or

(ii) is overcrowded: More than one person per room. The number of rooms in a dwelling will include bedrooms, living rooms, dining rooms, kitchen, and other rooms designed for living area.

(4) Category IV. Applicants with incomes, as shown on the application, at or below 50 percent of median income as listed in Exhibit C of this Subpart. If

such applicants also are currently living in deficient housing, they will be designated as category III applicants. If it is determined during later processing that category IV applicants have incomes higher than 50 percent of median, such information will be documented and their designation will be changed to category V.

(5) Category V. All other Section 502 RH applications. Applicants in this category, or categories III and IV, who wish to assume an existing FmHA RH loan and who have obtained an option to purchase, a sales contract, or a Form FmHA 465–5 will be changed to category II and processed in the order that complete material is submitted for loan approval.

(c) *Selection for processing.* Quarterly, or as necessary, the County Supervisor will select a sufficient number of applicants from categories II, III, IV and V, in that order, to assure an adequate number of loans which can be processed and approved during the period. Processing will be handled in accordance with the following:

(1) Selected applicants will be notified that they have not more than 30 days in which to submit the necessary material to continue the processing of the loan.

(2) The County Supervisor will post and update after each selection period on the county office bulletin board in a conspicuous place a list of the names of those applicants who have been selected and notified of the processing of their applications.

(3) After applicants are notified, the loans will be approved in the order in which required material is submitted to the county office.

(4) Those applicants supplying all necessary items but for whom loans cannot be funded in the current quarter will be held over for priority funding from the subsequent quarter's funds, according to the date of submission of complete material, prior to the selection of any other applicants.

(5) Applicants who respond affirmatively to the notice of selection for processing but fail to furnish within 30 days all material necessary to approve a loan will be by-passed for the current quarter but will be reselected for the ensuing quarter. If all required material for loan approval is not received within 30 days after the second selection notification, the applicants will be notified that after an additional 15 days their application will be withdrawn.

(d) *Applicant interview.* A personal interview will be conducted by FmHA employees with all applicants before approval of the requested loan. During the interview, the applicant will verify information, including any submitted by a packager or others, concerning the applicant's employment and income. The applicant will also verify information concerning persons who will occupy the dwelling and on whose income eligibility for the loan and any interest credit is based. The County Supervisor will inform the applicant, and reach an understanding with the applicant, as to the FmHA loan making and servicing authorities, and the responsibilities of the applicant or borrower. The *discussion* will include an explanation of all options of assistance which may be available to the applicant or borrower. A documentation of the items *discussed* will be placed in each applicant case file and will be dated and signed by both the applicant and County Supervisor. A copy will be provided to the applicant or borrower at the time of the personal interview. Exhibit D of this Subpart sets forth items which must be included and may be used as a guide in preparing the required documentation for this purpose. *No housing loan will be approved without such evidence that a personal interview has been completed.*

(e) *Credit counseling.* During the time of the applicant's initial interview and application processing, consultation will be provided as necessary to assist the applicant in preparing and understanding a meaningful budget, Form FmHA 431–2, or Form FmHA 431–3, which will reasonably reflect the applicant's repayment ability. County Supervisors will work closely with applicants to better understand all sources of income and cash substitutes. Credit and financial counseling will also be provided, as needed, to suggest financial management methods by which the applicant's success as a homeowner may most likely be achieved. When the County Supervisor determines that the applicant does not have sufficient income to repay the requested loan, other alternatives will be considered such as reducing amenities in the dwelling, selecting a less expensive dwelling or site, obtaining a cosigner, reduction of present debt load or, when appropriate, building the dwelling by the self-help method.

(f) *Determining eligibility.* (1) The County Committee will determine eligibility of RH applicants who are also applying for or are indebted for a Farmer Program loan. The County Supervisor will determine eligibility for all other RH applicants.

(2) Repayment ability as outlined in § 1944.8 (a)(2), will be evaluated on the circumstances surrounding the individual case including possible eligibility for interest credits as provided in § 1944.34. Obvious repayment ability may be determined by use of the short budget on Form FmHA 410–4. Form FmHA 431–3 will be completed by the applicant and the County Supervisor if eligibility cannot be clearly determined from the short budget. Under no condition(s) will arbitrary guidelines or "rules of thumb" be used. If the applicant(s) can verify payment of a comparable or greater amount for housing costs for the previous 12 months, the applicant will be presumed to have repayment ability for the requested loan unless:

(i) Current annual income is less than past income,

(ii) Planned expenses are proportionally greater than current expenses, when compared to income, or

(iii) The applicant has increased debts, or failed to pay existing debts in order to maintain the present standard of living.

(3) Credit history will be considered to the extent that it is used in evaluating all applicants for similar types and amounts of credit in accordance with the ECOA. For instance, credit requirements for a female applicant will not differ from those of a male applicant.

(4) The age of the applicant will not be used as a consideration of eligibility, except as provided in § 1944.9(d).

(5) The County Supervisor must determine whether the applicant could obtain housing credit elsewhere as follows:

(i) In any case in which a County Supervisor determines there is no possibility of the applicant's obtaining adequate housing credit elsewhere and, therefore, does not require the applicant to provide evidence that an effort has been made to obtain such credit, the County Supervisor will record that conclusion and the basis for it in the loan docket.

(ii) In any case where there may be a possibility that credit could be obtained from another source, the County Supervisor will require the applicant to make a diligent effort to obtain other credit.

(A) Applicants will be expected to apply for credit from lenders engaged in extending long-term housing credit in the area.

(B) Applicants should be advised to request lenders to indicate the amount, interest rate, and terms of housing credit they would be willing to extend to the applicant.

(C) When appropriate, the County Supervisor should verify evidence

presented by an applicant that adequate credit is not available elsewhere.

(D) Letters from the lenders and any other evidence indicating that the applicant is unable to obtain credit elsewhere will be included in the loan docket.

(E) In no case will a loan be made to an applicant who is able to obtain the credit needed from another source at terms that can reasonably be expected to be within the applicant's repayment ability.

(g) *Veterans preference.* Veterans preference will apply when:

(1) There is a shortage of funds.

(2) Obligating forms are ready to be submitted to the Finance Office, and

(3) There is more than one application in the same category having the same date.

(h) *Optioning of real estate.* The County Supervisor should advise the applicant about the size, design, quality, cost and location of the dwellings and dwelling sites suitable for the RH program. If possible this should be done before the applicant selects a property to be purchased. Form FmHA 440–34, "Option to Purchase Real Property," should be used; however, other option forms may be used if their provisions are acceptable.

(i) *Application assistance.* Builders, brokers, contractors, and others including organizations such as those providing self-help assistance, who can provide complete information on the applicant and the house that is to be purchased, may assist in the assembly and processing of loan applications. Form FmHA 1944–12, "Rural Housing Loan Application Package," will be used for this purpose. Builders or sellers who received conditional commitments may also assist applicants in applying for an RH loan to buy a house for which a conditional commitment was issued in accordance with § 1944.45. The County Supervisor will meet with such interested parties to explain:

(1) The eligibility requirements of RH loans,

(2) The size, design, cost and location of homes that can be financed,

(3) The requirements of Subpart E of Part 1901 of this Chapter.

(4) How applications will be handled, and

(5) The type of information that must be submitted. The information to be submitted is listed in Exhibit A of this Subpart which may be used as a guide.

(j) *Appeal.* If the decision on the applicant's request for assistance is unfavorable and was based on appealable determinations, the applicant will be notified of appeal rights as required by § 1910.6(b) of Subpart A of Part 1910 and Subpart B of Part 1900 of this Chapter.

§§ 1944.27–1944.29 [Reserved]

§ 1944.30 Preparation of loan docket.

(a) Forms and documents will be fastened in the designated filing positions of the case folder as prescribed in Exhibit A of FmHA Instruction 2033–A (available in any FmHA office). Appropriate loan docket forms will be prepared in accordance with the Forms Manual Insert (FMI) for distribution as follows:

Form No.	Name of form	Total No. of copies	No. signed by borrower	Loan docket	Copy for borrower
FmHA 410-1	Application for FmHA services	1	[1]	[1]	
FmHA 410-4	Application for rural housing assistance (nonfarm tract)	1	[1]	[1]	
FmHA 1944-12	Rural housing loan application package	1		[1]	
FmHA 410-5	Request for verification of employment	1		[1]	
FmHA 410-7	Notification to applicant on use of financial information from financial institution	2		[3]1	[1]
FmHA 410-8	Applicant reference letter	1		[1]	
FmHA 410-9	Statement required by the Privacy Act	2	[1][2]	[3]1	[1]
FmHA 431-2	Farm and home plan	1	[1]	[1]	(in record book)
FmHA 431-1	Long-time farm and home plan	2	[1][2]	[3]1	[1]
FmHA 431-3	Household financial statement and budget	2	[1][2]	[3]1	[1]
FmHA 440-2	County committee certification or recommendation	1		[1]	
FmHA 427-8	Agreement with prior lienholder (or similar form)	[4]3		[1]	[3]1
FmHA 440-34	Option to purchase real property	[4]3	[1][2]	[1]	[3]1
FmHA 424-1	Development plan (including any plans, specifications, and cost estimates)	[5]2	[1]	[1]	[3]1
FmHA 422-1	Appraisal report (farm tract) (with attachments)	1		[1]	
FmHA 422-8	Property information and appraisal report, rural housing nonfarm tract	1	[1]		
FmHA 427-9	Preliminary title opinion	2		[1]	[3]1 (designated attorney)
FmHA 1944-6	Interest credit agreement (section 502 RH loans)	3	[1]	[1]	[3]1 (finance); [3]1
FmHA 1940-1	Request for obligation of funds	4	[1][2]	[3]1	[3]1
FmHA 444-2	Single family housing fund analysis	4		[3]1	
FmHA 440-35	Acceptance of option	2	[1]	[3]1	[1][6]1
FmHA 1940-41	Truth in lending disclosure statement	3	(See FMI)	[3]1	[3]1
FmHA 1940-43	Notice of right to cancel	3	(See FMI)	[3]1	[1][2]
FmHA 400-1	Equal opportunity agreement	2	2	[3]1	[3]1
FmHA 400-3	Notice to contractors and applicants	3		[3]1	[3]1; [3]1 (contractor)
FmHA 400-6	Compliance statement	3		[3]1	[3]1 (contractor); [3]1
FmHA 440-9	Supplementary payment agreement	2	[1]	[3]1	[3]1
FmHA 440-45	Nondiscrimination certificate (individual housing)	2	[1][2]	[3]1	[3]1

[1]Original. [2]Copy. [3]Copy to lienholder. [4]Signed copy of option previously delivered to seller. [5]When contract method will be used, 3 copies of plans and specifications will be required. [6]Original to seller.

(b) All other documents necessary for approval of the particular loan will be included in the loan docket. This will include the following or others as appropriate:

(1) A copy of Exhibit D, "Rural Housing Applicant Interview," or a similar document executed by the applicant.

(2) Credit report(s) on the applicant(s).

(3) Evidence of ownership such as a certified copy of the applicant's deed, lease, purchase contract, or other evidence specified in § 1944.24(d), or a statement by the County Supervisor that such documents have been reviewed.

(4) Estimates of the value of any security for which a formal appraisal report is not required.

(5) Agreements from prior lienholders, if any, when necessary to comply with § 1944.18(b)(6) and § 1807.2(f) of this Chapter (paragraph II F of FmHA Instruction 427.1).

(6) When the loan is to be secured by a junior real estate mortgage, the docket must include a copy of each prior mortgage and, if available, a copy of each secured note or other obligation, furnished by the applicant at the applicant's own expense. The docket must include a current statement signed by the mortgagee showing the amount of unpaid principal secured by the mortgage; the amount of any accrued interest; the amount of any delinquency,

with interest and principal shown separately; and, if a copy of the note is not furnished, its maturity date, payment schedule, interest rate, and a summary of any other provisions of the note.

(7) When the applicant obtains a cosigner, the docket must include that cosigner's current financial statement, income statement, and employment or business history. This will be supplemented by a statement from the County Supervisor as to the cosigner's financial condition and reputation for paying debts, and any other information, such as a credit report, that will be of assistance to the loan approval official.

§ 1944.31 Loan approval.

(a) The State Director, District and Assistant District Directors, County and Assistant County Supervisors are authorized to approve or disapprove loans in accordance with Subpart A of Part 1901 of this Chapter.

(b) The loan approval official is responsible for reviewing the docket to determine that the proposed loan complies with established policies and all pertinent regulations and that funds are available for the loan.

(c) Prior to loan approval a new verification of employment will be required if more than 90 days have elapsed since the date of the last verification of employment, or if evidence is brought to the attention of the loan approval official that indicates the applicant's financial status has changed.

(d) When a loan is approved, the loan approval official will:

(1) Indicate on all copies of Form FmHA 1940–1 any condition that must be met before the loan is closed. Also, the loan approval official will specify all security requirements that the applicant will need to meet, such as a first real estate lien or a junior lien subject to certain prior liens. If title evidence is required in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1) or in accordance with any special requirements for the loan but is not included in the docket, the loan may be approved subject to the applicant's furnishing the required title evidence. When the applicant furnishes required title evidence, the County Supervisor will proceed with processing the loan. In those cases in which the title evidence does not comply with the conditions specified by the approval official, the docket will be reconsidered by the loan approval official.

(2) Sign the approval certification on the original and one copy of Form FmHA 1940–1 and insert title in the space provided. The remaining copies will be conformed.

(3) If a loan is not approved after the docket has been developed, the reason for such action with date and initial of the approval official will be shown on the original Form FmHA 1940–1 and the County Supervisor will notify the applicant in accordance with § 1910.6(b) of Subpart A of Part 1910 of this Chapter.

(e) After the loan is approved the docket forms will be distributed as outlined below.

(1) *To the Finance Office.* (i) Form FmHA 1940–1 (first copy)

(ii) Form FmHA 444–2 (original)

(2) *To the State Office.* If the loan is approved by the County Supervisor, or the District Director, an unsigned copy of Form FmHA 1940–1 (unless exempted by State Supplement) and a copy of Form FmHA 444–2 will be sent to the State Office. If the loan is approved in the State Office, an unsigned copy of Form FmHA 1940–1 and a copy of Form FmHA 444–2 will be retained in the State Office.

(3) *To the borrower.* A signed copy of Form FmHA 1940–1, the original of Form FmHA 1940–41, and if applicable, the original and copy of Form FmHA 1940–43. The sending of Form 1940–1 to the borrower completes the approval process.

§ 1944.32 Actions subsequent to loan approval.

(a) *Requesting a loan check.* (1) A loan check may be requested when all approval conditions can be met and necessary curative actions have been taken to provide a satisfactory title to real estate security. Form FmHA 440–57, "Acknowledgment of Obligated Funds/Check Request," will be completed and a copy sent to the Finance Office to request the check.

(2) A loan check may be requested at the time of loan approval by entering the amount of the check requested on Form FmHA 1940–1 when one of the following conditions exist:

(i) The loan will be secured by a promissory note only, or

(ii) Real estate security will be taken and the County Supervisor is reasonably certain that satisfactory title evidence can be obtained and the loan can be closed within 20 working days from the date of the check.

(3) When not more than $4,000 of the loan funds will remain unexpended for more than 15 days after loan closing, the total amount of the loan will be requested in a single advance.

(4) If loan funds cannot be expended within 15 days, the County Supervisor will enter in the appropriate "block" of Form FmHA 1940–1 the amount of loan funds to be disbursed at loan closing. Additional loan funds will be requested when, and in amounts, needed by submitting a completed copy of Form FmHA 440–57 to the Finance Office, or by telephone request if the additional funds cannot be received by the date needed using mail service. The County Supervisor should work with borrowers, developers, and others to be sure that funds will be available when needed and to reduce the multiple advances to a reasonable number. Any loan funds not requested by the "amortization effective date" for the loan, will be disbursed by the Finance Office to the County Office by check dated on the amoritization effective date. The check will be deposited in the borrower's supervised bank account if it cannot be endorsed directly to a payee within 20 working days from the date of the check.

(b) *Handling loan checks.* (1) When the loan check or borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with § 1902.6 of Subpart A of Part 1902 of this Chapter no later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(c) *Cancellation of loan.* Loans may be cancelled before loan closing by the use of Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," prepared in accordance with the FMI for that form. Checks received in the County Office will be returned with Form FmHA 1940–10 to the Finance Office. Interested parties will be notified of the cancellation as provided in Part 1807 of this Chapter (FmHA Instruction 427.1). If the cancellation is not a voluntary action by the applicant, the applicant will be notified in accordance with § 1910.6 (b) of this Chapter.

(d) *Increase or decrease in amount of loan.* If it becomes necessary that the amount of the loan be increased or decreased prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office. The loan docket will be revised and reprocessed in accordance with the FMI for Form FmHA 1940–1.

(e) *Property insurance.* Buildings on the property which is to be taken as

security for the loan will be insured in accordance with Subparts A and B of Part 1806 of this Chapter (FmHA Instructions 426.1 and 426.2) when appropriate.

§ 1944.33 Loan closing.

(a) *Loans approved with interest credit.* If the loan will be closed and Form FmHA 1944–6 or 1944–A6, "Interest Credit Agreement (Section 502 RH Loans.)" will be executed more than 90 days after the last "Verification of Employment," or if there is evidence to indicate the applicant's financial status has changed significantly, a current "Verification of Employment" will be obtained and the amount of interest credit will be determined on the basis of the applicant's new circumstances. If the adjusted income exceeds the low-income limit set forth in Exhibit C of this Subpart, the loan will not be closed unless authorized by the State Director. Such authorization may be granted if there is documented evidence to clearly indicate other credit is not available. Interest credit will not be granted in any case in which the adjusted income exceeds the moderate-income limit set forth in Exhibit C.

(b) *Loans approved without interest credit.* Further review of the applicant's financial status is not required at the time of closing unless the loan is closed more than 90 days after the date of loan approval, or there is evidence to indicate the financial status has changed significantly. If the adjusted income exceeds the limit for moderate income set forth in Exhibit C of this Subpart, the case will be referred to the State Director. The State Director may authorize closing of the loan if there is documented evidence to clearly indicate other credit is not available.

(c) *Promissory note.* Form FmHA 440–16, "Promissory Note," will be prepared and signed in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1), and the FMI for the form.

(1) The payment alternatives of the note will be completed in accordance with the FMI for the form. Payments of principal and interest will be deferred during the period the dwelling is not expected to be suitable for occupancy as a residence because of construction or repairs to be made. In such cases if the loan is closed before any funds are advanced by the Finance Office or loan funds are distributed by multiple advance, accrued interest is added to principal and repaid in regular amortized installments (payment alternative II) after the deferment period.

(2) The payment provision of the note will be completed in accordance with the FMI for the form and the following:

(i) The monthly payment provision will be used for all borrowers who regularly receive monthly income and who can repay the loan in 12 equal monthly payments.

(ii) The annual payment provision will be used only for borrowers who do not regularly receive monthly income throughout the year. If installments are not to be deferred, the following provisions apply:

(A) The amount of the first installment will be determined by the County Supervisor after considering the immediate debt paying ability of the borrower. The amount of the first installment may be less, but not more, than a regular annual installment.

(B) The amount of the first installment may not be less than the amount equal to interest on the loan from the date of loan closing to the next January 1.

(C) Form FmHA 440–9 should be used to supplement this payment provision to facilitate servicing of loans for borrowers who pay more than one time a year.

(d) *Real estate mortgage.* Form FmHA 427–1, "Real Estate Mortgage for (State)," will be used for loans to be secured by a real estate mortgage. Any changes made in the text by deletion, substitution, or addition (excluding filling in blanks) will be initialed in the margin by all persons signing the mortgage. Additions will be made on the mortgage in the following cases:

(1) For a loan secured by a mortgage on a leasehold, the following language, or similar language which in the opinion of OGC is legally adequate, will be inserted in the mortgage just before the legal description of the real estate:

"All Borrower's right, title, and interest in and to the leasehold estate for a term of —— years beginning on ——, 19—, created, executed and established by certain Lease dated ——, 19—, by ——— as lessor(s), and recorded at Book ——, Page — of the —— Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:"

(2) For a loan secured by a mortgage on a leasehold an additional covenant will be inserted in the mortgage to read as follows:

"Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect."

(3) For all initial and subsequent Section 502 RH loans, until the mortgage forms are revised, the following additional covenant will be inserted above the signature line on the mortgage and be initialed at loan closing by all parties signing the mortgage.

"This instrument also secures the recapture of any interest credit or subsidy which may be granted to the borrower(s) by the Government pursuant to 42 U.S.C. 1490a."

(e) *Collection of first installment.* If the annual payment provision of the note is used and payments are not deferred, the first installment of a loan closed during December will be collected at the time of loan closing.

(f) *Direct payments.* Direct payment cards for all new borrowers, including transferees, will be retained in the County Office until the borrower has made at least three monthly payments on time. The cards may then be delivered to the borrower and payments made directly to the Finance Office. The County Supervisor may retain the payment cards for a longer period if such action is considered to be necessary to determine that the borrower is able to make timely payments as agreed. Payments made to the County Office will be forwarded to the Finance Office with the appropriate direct payment card in the Finance Office mail. Cash payments, refunds, and extra payments made by borrowers will be handled in accordance with Subpart B of Part 1951 of this Chapter.

(g) *Owner's policy of title insurance.* If an owner's policy of title insurance is obtained, it will be delivered to the borrower as soon as it is received from the title insurance company.

(h) *Real estate mortgage after filing.* When the real estate mortgage is returned by the filing official or loan closing official, the original will be filed in the borrower's case folder. If the original is retained by the filing official in the official records, a copy conformed to show the recording data including the date and place of recording and the book and page number will be filed in the borrower's case folder. A copy of the mortgage will be delivered to the borrower.

(i) *Effective date of loan closing.* A loan secured by a real estate mortgage is closed when the mortgage is filed for record. In other cases a loan is closed when the borrower executes the note and any other required instruments.

(j) *Water stock certificate or other such collateral.* When water stock certificates or other such collateral are

part of the security, they will be retained in the County Office. A notation will be made on Form FmHA 1905–1, "Management System Card-Individual," or Form FmHA 1905–5, "Management System Card-Individual (RH Only)," as appropriate, showing that such security has been retained.

(k) *Account record and case folder.* The account record and case folder will be established in accordance with FmHA Instructions 2033–A and 1905–A (available at any FmHA office).

§ 1944.34 Interest credit.

(a) *General.* It is the policy of FmHA to grant interest credit on loans to low-income borrowers to assist them in obtaining and retaining decent, safe, and sanitary dwellings and related facilities.

(b) *Definitions.* (1) *Annual payment borrowers.* Borrowers who signed promissory notes providing for annual payments, including borrowers converted to monthly payments through the use of Form FmHA 451–34, "Direct Payment Plan Change."

(2) *Monthly payment borrowers.* Borrowers who signed promissory notes providing for monthly payments.

(3) *Review period.* The review period for an annual payment borrower will be the months of October and November. The review period for a monthly payment borrower will be the second and third months prior to the anniversary date of the borrower's current Interest Credit Agreement.

(4) *Real estate taxes.* Real estate taxes for interest credit purposes means the amount of real estate taxes and assessments that will actually be due and payable on the dwelling and the dwelling site during the interest credit period, reduced by the amount of any tax exemption available to the borrower, regardless of whether such exemption is actually claimed. Tax exemptions may include such things as homestead exemptions, special exemptions for low-income families, senior citizens, veterans and others.

(c) *Approval authority.* Those FmHA officials who are authorized to approve Section 502 loans are also authorized to approve the Interest Credit Agreement.

(d) *Amount of interest credit.* (1) Loans other than FmHA loans qualified to be considered in the interest credit calculation include only those advanced for authorized Section 502 RH purposes and which are a lien against the FmHA security by virtue of a prior mortgage. Except as provided in paragraph (d)(2) of this section, the amount of interest credit granted will be the lesser of:

(i) The difference between 20 percent of the borrower's adjusted annual income and the sum of the annual installments due at the note interest rate on qualified loans plus the cost of real estate taxes and insurance, or

(ii) The difference between the annual installment due on the FmHA promissory notes eligible for interest credit and the amount the borrower would pay if the loan(s) were amortized at an interest rate of 1 percent.

(2) For repair and rehabilitation loans which meet the requirements of paragraph (f)(6) of this section, interest credit will be granted in an amount to achieve the following effective interest rates:

(i) For borrowers whose adjusted annual income is not more than $5,000, interest credit will be calculated to reduce the effective interest rate to 1 percent.

(ii) For borrowers whose adjusted annual income is more than $5,000, but not more than $7,000, interest credit will be calculated to reduce the effective interest rate to 2 percent.

(iii) For borrowers whose adjusted annual income is more than $7,000 but not more than $10,000, interest credit will be calculated to reduce the effective interest rate to 3 percent.

(3) Borrowers qualifying for interest credit assistance under both paragraphs (d) (1) and (2) of this section will be granted only the one type of interest credit assistance that is most beneficial to them. Interest credit on initial and subsequent loans will always be the same type. There is no provision for switching from one type of interest credit to the other.

(e) *Recapture.* At the applicant interview, the County Supervisor will advise all Section 502 RH applicants that interest credit is subject to recapture. Applicants who receive interest credit will be required to sign a "Subsidy Repayment Agreement" (Supart I of Part 1951 of this Chapter, Exhibit A) at the time the initial interest credit agreement is signed.

(f) *Eligibility.* To be eligible for interest credit, a borrower must qualify for a Section 502 loan, must personally occupy the dwelling, and must meet the following additional requirements:

(1) *Initial loans including credit sales.* Interest credit my be granted at loan closing if:

(i) The borrower's adjusted annual income does not exceed the applicable low-income limit in Exhibit C of this Subpart.

(ii) The borrower's net worth does not exceed $7,500 (a maximum net worth of $10,000 will be allowed for senior citizens) unless an exception is authorized. The calculation of net worth will exclude the value of the dwelling and a minimum adequate dwelling site, cash on hand which will be used to reduce the amount of the loan, and household goods and the debts against them. For the purpose of determining whether an exception is justified, consideration will be given to the nature of the assets, particularly whether they are assets upon which a borrower is currently dependent for a livelihood or which could be used to reduce or eliminate the need for interest credit. The District Director may authorize exceptions of the net worth limitation up to $20,000. Cases recommeded by the State Director for which the net worth exceeds $20,000 will be submitted to the National Office for authorization to grant interest credit.

(iii) The term of the loan is for 33 years, unless authorized otherwise by the State Director based on complete documentation of the justifiable reasons on an individual case basis. Interest credit will not be granted on loans with a term of less than 25 years, except as provided in paragraphs (f) (4) and (6) of this section.

(iv) The loan was approved on or after August 1, 1968.

(v) The amount of interest credit will be $5 or more per month or $60 or more annually.

(2) *Subsequent loans.* Interest credit may be granted on subsequent loans which meet the requirements of paragraph (f)(1) of this section. If interest credit is presently being granted on the initial loan and the borrower's adjusted income does not exceed the moderate-income limit set forth in Exhibit C of this Subpart, it may also be granted on the subsequent loan if the term of the subsequent loan is 25 years or more.

(3) *Transfers.* Interest credit may be granted to a borrower assuming an RH loan provided:

(i) The requirements of paragraph (f)(1) of this section are met except that if the loan being assumed was initially approved before August 1, 1968, the assumption must be on new terms.

(ii) The note being assumed is not an above-moderate loan.

(4) *Reamortization.* Interest credit may be granted on loans made as low- and moderate-income loans after reamortization under the following conditions:

(i) If the loan was eligible for interest credit prior to reamortization, interest credit may continue to be granted even though the term of the reamortization period is less than 25 years; or

(ii) If the loan was not eligible for interest credit prior to reamortization, the reamortized term of the loan must be 25 or more years and all other

conditions of paragraph (f)(1) of this section must be met.

(5) *Existing loans.* Interest credit may be granted at any time after loan closing if:

(i) The requirements of paragraph (f)(1) of this section are met.

(ii) The loan was approved as a "low or moderate" Section 502 loan on or after August 1, 1968.

(iii) The borrower requests interest credit, or the County Supervisor determines that interest credit is needed to enable the borrower to repay the loan. In the case of married borrowers, when one spouse has left the dwelling due to marital discord, interest credit based on the remaining spouse's income may be extended to the remaining spouse if:

(A) The remaining spouse is occupying the dwelling, owns a legal interest in the property, and is liable for the debt;

(B) The FmHA loan account is put in the remaining spouse's name;

(C) Legal papers have been filed with the appropriate court to commence divorce or legal separation proceedings, or one spouse has not been living in the dwelling for at least six months. Interest credit will not be granted if separation is due only to work assignment or military order; and

(D) The remaining spouse is informed and agrees that should the spouse begin to live in the dwelling, that spouse's income will then be counted toward annual income and interest credit may be reduced or cancelled.

(6) *Repair and rehabilitation loans.* Interest credit may be granted on Section 502 RH loans made to repair or rehabilitate a dwelling already owned by the applicant provided the following conditions are met:

(i) The initial interest credit will be granted at the time of loan closing and the loan will be secured by a real estate mortgage;

(ii) The dwelling is, or will be, occupied by an eligible borrower after the loan is made;

(iii) The amount of the loan will not exceed $10,000, or be amortized for not more than 25 years;

(iv) The applicant's adjusted annual income does not exceed $10,000;

(v) The repairs will be made to bring a substandard dwelling up to the standards outlined in §1944.16 (c); and

(vi) The net worth requirements in paragraph (f)(1)(ii) of this section are met.

(g) *Processing interest credit.* (1) *General.* The amount of interest credit for which a borrower may be eligible will be determined by use of Form FmHA 1944–6 or Form FmHA 1944–A6 as outlined in paragraph (d) of this section.

(i) *Determination of income.* The County Supervisor is responsbile for determining the borrower's annual and adjusted annual income as defined in §1944.2, paragraphs (b) and (c) respectively, of this Subpart. A borrower interview will be conducted in all cases for granting initial interest credit. Form FmHA 410–5 will be used to verify the earnings from employment of all persons whose income is included in "Annual Income."

(ii) *Effective period.* Interest Credit Agreements on loans made to monthly payment borrowers will be for a 12-month period with the agreement extendable for an additional 12 months if the borrower's circumstances do not change. For annual payment borrowers the agreement will be in effect until the first December 31 after the effective date with the agreement renewable until the second December 31 after the effective date if the borrower's circumstances do not change. The effective date will be as indicated on the FMI for Form FmHA 1944–6.

(iii) *Partial year interest credit.* For an annual payment borrower with an initial installment less than a regular installment, and who will receive less than a full year of interest credit assistance, the interest credit granted will be a pro rata portion calculated on the number of months left in the current calendar year, including the month in which the loan is closed.

(iv) *Advances from the RHIF.* The repayment schedule for advances made from the Rural Housing Insurance Fund will be computed at the interest rate shown on the promissory note. However, interest will accrue and payments will be applied on the amount advanced at the reduced interest rate in effect at the time of payment.

(v) *Preparation of the transaction record.* For borrowers receiving interest credit, the following changes will be shown on Form FmHA 451–26, "Transaction Record," when prepared by the Finance Office:

(A) Interest rate field. The interest rate field of the form will continue to show the interest rate on the note. The Finance Office will compute the effective interest rate charged the borrower based on the amount of interest credit granted. The computed rate, rounded to the nearest ⅛ of a percent, will be shown as a footnote on the form as "Interest Rate reduced to %." Subsequent transactions will be applied to the loan by the Finance Office at the reduced interest rate until such time as renewal, change, or cancellation occurs.

(B) Daily interest accrual field. The daily interest accrual will be shown at the reduced interest rate and the interest will accrue at the same interest rate until such time as the interest credit is renewed, changed, or cancelled.

(C) Application of credit field. The initial transaction record form will not have an entry in the "Application of Credit" field. The Interest Credit Transaction Code for this method of processing interest credit will be 4 Z.

(D) Payment status field. The payment status field will not reflect the dollar amount of the interest credit granted. No entry will be made for monthly payment borrowers.

(E) Minimum amount due be date shown field. For annual payment borrowers, the amount of the installment, reduced by the amount of interest credit granted, will be shown. For monthly payment borrowers the word "monthly" will be entered in the space provided.

(2) *Initial and subsequent loans.* (i) *County Office action.* The County Supervisor will:

(A) Determine the borrower's adjusted annual income and document the calculations in the case file running record.

(B) Enter of Form FmHA 1940–1 the adjusted annual income, the estimated real estate taxes that will become due and payable during the first and second years of the agreement, and the amount of the annual property insurance premium for the dwelling.

(C) For initial loans approved with interest credit and closed under the multiple advance feature of the loan disbursement system outlined in Subpart A of Part 1902 of this Chapter, further review of the borrower's financial status is not required unless the Interest Credit Agreement will be approved more than 90 days after the last "Verification of Employment," or there is evidence which indicates the borrower's financial status has changed significantly. If prior to approval of the Interest Credit Agreement the County Supervisor finds that the adjusted income has increased, interest credit will be granted on the basis of the borrower's new circumstances. Interest credit will not be granted if the borrower's adjusted income exceeds the moderate-income limit indicated in Exhibit C of this Subpart.

(D) Complete and submit a corrected Interest Credit Agreement to the Finance Office when the loan is closed, or at the amortization effective date, if the borrower's circumstances have changed so that the amount of interest

credit would be increased or decreased by at least $5 monthly or $60 annually.

(ii) *Finance Office actions.* The Finance Office will:

(A) Enter the information concerning adjusted annual income, the estimated real estate taxes, and the insurance premium on Form FmHA 440–57.

(B) Calculate the amount of interest credit to be granted to the borrower. The amount of interest credit will be determined from the information initially shown on Form FmHA 1940–1.

(C) Prepare and mail Form FmHA 1944–A6 to the County Office when the final loan check is issued. Upon receipt, the form will be competed and a copy returned to the Finance Office only when indicated on the form.

(D) Prepare and issue payment cards to the County Office.

(3) *Reamortization, credit sales and transfers.* Interest credit to a borrower whose loan is being reamortized, or a borrower who assumes an RH loan or purchases property from inventory will be calculated by the County Office on Form FmHA 1944–6. A copy of Form FmHA 1944–6 will be forwarded to the Finance Office along with the copy of the Reamortization Agreement, Advice of Mortgaged Real Estate Sold, or Assumption Agreement. The Finance Office will issue payment cards to the County Office.

(4) *Existing loans.* Interest credit granted in accordance with paragraph (f)(5) of this section can be processed at any time in the same manner as interest credit on initial loans, except that the County Office will complete Form FmHA 1944–6 and calculate the amount of interest credit assistance the borrower will receive. A copy of Form FmHA 1944–6 will be used to send interest credit information to the Finance Office. The daily interest accrual will be reduced as of the effective date entered on the form or as of the date the last cash credit was made to the account, whichever is later.

(h) *Interest credit modification.* (1) *Before expiration.* When approving a change in interest credit assistance before the expiration of a current Interest Credit Agreement in Accordance with paragraph (i)(3) of this section, the County Supervisor will again interview the borrower, determine the follower's adjusted annual income and document the findings in the case file running record. A Form FmHA 1944–6 will be completed in accordance with the FMI and a copy of the form will be forwarded to the Finance Office. The Finance Office will adjust the daily interest accrual as of the date entered on the form or as of the date of the last cash credit made to the account, whichever is later.

(2) *Correction of Interest Credit Agreements.* If a corrected Interest Credit Agreement will be prepared pursuant to paragraph (j) of this section and the borrower is still eligible to receive interest credit, the corrected agreement will be submitted to the Finance Office only after the borrower's appeal right has expired or, if the borrower has filed an appeal, after a final decision has been made. In such cases, a Form FmHA 1944–6 showing the proper amount of interest credit which the borrower is entitled to receive, together with written authorization from the State Director to reapply any affected payments, will be submitted to the Finance Office to replace the incorrect agreement. The effective date of the corrected agreement will be the same as the agreement in error. The notation "Corrected in accordance with § 1944.34" will be entered on the face of the form. The Finance Office will cancel the incorrect Interest Credit Agreement as of its effective date. Payments made under the previous agreement will be reversed and reapplied at the adjusted interest rate of the new Interest Credit Agreement.

(3) *Interest credit renewal.* (i) *Initiation of renewal action.* At the beginning of the annual review period, the Finance Office will mail to the County Office a list of borrowers whose Interest Credit Agreements are to be reviewed, together with a package to be mailed by the County Supervisor to each borrower. The package will contain Form FmHA 1944–6 (3 parts with carbon interleaved). If the renewal Form FmHA 1944–6 is for the first year review period following the effective date of the agreement, it will contain the following legend:

"Subsidy for *(ensuing year)* of $———. Is this correct? ☐".

The County Supervisor will complete Form FmHA 1944–1, "Interest Credit Agreement Renewal," according to the FMI for the form and insert it in the package together with two Forms FmHA 410–5, "Request for Verification of Employment." Two envelopes (without indicia) which have been preaddressed with the County Office address will be inserted in the package to be used by the employer(s) to mail the Verification of Employment form(s) to the County Office.

(ii) *Borrower responsibility.* Upon receipt of the package, the borrower will give one copy of the Verification of Employment form to the employer or employers of each member of the household who has income to be considered. An envelope will be provided each employer to facilitate the mailing of the Verification of Employment form directly to the County Office. The borrower will also complete part II of the Interest Credit Agreement form (leaving carbon intact), sign the original form and bring the original and all copies to the County Office.

(iii) *County Office actions.* The County Supervisor, or designee, will:

(A) Maintain the list of borrowers as a record of Interest Credit Agreements processed and sent to the Finance Office.

(B) Conduct an interview with the borrower to review the information on Forms FmHA 1944–A6 and 410–5 for completeness and accuracy. The interview should, whenever possible, be a face-to-face contact.

(C) Determine the adjusted annual income and document the calculations in the case file running record.

(D) For the first year review period following the effective date of the agreement, place an "X" in the box of the Finance Office legend on the renewal Form FmHA 1944–A6 if there is no change in the amount of interest credit. This will extend the agreement for one year. If there is a change, complete the Interest Credit Agreement and send a copy of the agreement to the Finance Office. For the second review period following the effective date of the agreement, an Interest Credit Agreement will be completed and a copy of the agreement sent to the Finance Office. If an annual note installment borrower is not eligible for interest credit, enter "0" in the blocks which indicate the amount of interest credit and send a copy of the agreement to the Finance Office. For monthly note installment borrowers not eligible for interest credit a copy of the agreement need not be sent to the Finance Office.

(E) If the Form FmHA 1944–A6 is multilated or unusable, transfer *all* information preprinted on the form to a new Form FmHA 1944–6 to be signed by the borrower and submit the completed form to the Finance Office.

(F) Retain the original of the Interest Credit Agreement and return the other copy to the borrower.

(G) Notify by letter borrowers not eligible for continued interest credit and those whose interest credit has been reduced of the amount of their revised payments. The letter must notify the borrower of the right to appeal as outlined in § 1944.34(1). A new Form FmHA 440–9 will be obtained when needed.

(iv) *Finance Office actions.* The Finance Office will:

(A) Upon receipt of Form FmHA 1944–A6 fron the County Office, send the County Office a new set of payment cards.

(B) Before the end of the review period, send the County Office a list of annual installment borrowers for whom a renewal Interest Credit Agreement has not been received. The County Office staff will place a chechmark in the appropriate column of the list to indicate those borrowers who are no longer eligible for interest credit or whose agreements will not be renewed. The original of the completed list will be retained in the County Office and a copy returned to the Finance Office.

(v) *Processing interest credit renewals not received during the review period.* The County Supervisor may approve interest credit renewals not completed during the review period. They will be handled as follows:

(A) The amount of interest credit assistance granted will be based on the borrower's current annual income. The effective date of the Interest Credit Agreement will be as indicated on the FMI for Form FmHA 1944–6.

(B) Payments made by the borrower after the expiration date of the previous Interest Credit Agreement will be applied at the note interest rate until the Finance Office receives a new Form FmHA 1944–6.

(C) Upon receipt of Form FmHA 1944–6, the Finance Office will reduce the daily interest accrual in accordance with the following conditions and limitations:

(*1*) If failure to renew was due to error or oversight by FmHA, the State Director will authorize the Finance Office to reduce the interest accrual as of the effective date entered on the form and reverse and reapply payments processed after the effective date. Such authorization must be in writing.

(*2*) In all other cases the Finance Office will reduce the daily interest accrual as of the effective date entered on the form or as of the date of the last cash credit made to the account, whichever is later.

(i) *Eligibility review.* The eligibility of those borrowers currently receiving interest credit will be reviewed as follows:

(1) *Annual review.* The eligibility of borrowers with one-year renewable agreements (agreements signed after the implementation date of this regulation) will be reviewed annually during the review period. The eligibility of borrowers with existing two-year Interest Credit Agreements effective prior to the implementation date of this regulation will be redetermined at the expiration of the agreement.

(i) If the borrower's net worth increases above the applicable eligibility limit, interest credit may nevertheless be renewed unless the increase is sufficient to enable the borrower to graduate to another source of credit.

(ii) Interest credit will not be renewed if:

(A) The amount of interest credit for which the borrower qualifies is less than $5 monthly or $60 annually, or

(B) The borrower's adjusted annual income exceeds the moderate-income limit set forth in Exhibit C of this Subpart.

(iii) Interest credit will not be renewed if the borrower has enlarged or improved the dwelling or added related facilities so that the housing exceeds modest standards for size, design, and cost for previously occupied homes as compared to other housing in the locality for low- and moderate-income families.

(2) *Renewals not completed during the review period.* When the borrower's renewal Interest Credit Agreement is not completed during the review period, it will be processed in accordance with § 1944.34(h)(3)(v).

(3) *Change in borrower's circumstances.* The County Supervisor is not responsible for monitoring whether a borrower's income, family size, real estate taxes, or insurance costs have changed after an Interest Credit Agreement is approved. If, however, it becomes known that the borrower's circumstances have changed significantly, the County Supervisor will take action in accordance with the following:

(i) *Increased adjusted income.* If the County Supervisor determines that the borrower's adjusted income exceeds the moderate-income limit set forth in Exhibit C of this Subpart, the interest credit will be cancelled effective the date the County Supervisor becomes aware of the situation. The borrower will be notified in accordance with paragraph (1) of this section. For existing two-year Interest Credit Agreements effective prior to the implementation date of this regulation, the agreement will be revised in accordance with paragraph (h)(1) of this section if the interest credit will be decreased by $15 or more per month.

(ii) *Decreased adjusted income.* Changes in interest credit will not be made except in cases where the decrease in income is such that the sum of principal and interest on loans eligible for interest credit, amount of annual installments due at the note rate on qualified loans ineligible for interest credit, real estate taxes and insurance equals or exceeds 35 percent of the borrower's adjusted income. If the change is determined within three months prior to the anniversary date of the agreement currently in effect, the change will be effective on the anniversary date. For existing two-year Interest Credit Agreements effective prior to the implementation date of this regulation, the agreement will be revised in accordance with paragraph (h)(1) of this section if the interest credit will be increased by $15 or more per month.

(j) *Improper interest credit.* (1) *When to take action.* Servicing under this section will be taken when, at the time of interest credit approval, incorrect information was provided by a borrower or any other person or an error by any FmHA employee results in the borrower receiving improper interest credit of $5 or more per month or $60 or more annually.

(2) *Determining improper interest credit.* Whenever there is a reason to believe a borrower was granted improper interest credit the County Supervisor will immediately reverify the information on which the interest credit was based. The County Supervisor will determine if improper interest credit was granted. If there is reason to believe there may be fraud or fiscal irregularities, the complete case file together with all facts will be submitted to the State Director. If the State Director believes there is indication of fraud or fiscal irregularity, further investigation will be considered as provided in FmHA Instruction 2012–B (available in any FmHA office). If there is no indication of fraud or fiscal irregularity the case will be returned to the County Supervisor for appropriate corrective action.

(3) *Falsification or error by borrower.* The following actions will be taken when it is determined that excessive interest credit was granted because the borrower intentionally or otherwise provided incorrect information.

(i) The County Supervisor will inform the borrower by certified mail (return receipt requested) of the intent to cancel the Interest Credit Agreement and the effective date of such cancellation. The notice to the borrower will include the right to appeal as provided in § 1900.56 of Subpart B of Part 1900 of this Chapter. The borrower will also be informed of the amount of monthly payment required after proper corrections are made. A corrected Interest Credit Agreement with an effective date the same as the agreement in error will be prepared if the borrower remains eligible for interest credit. The corrected agreement or cancellation will be

submitted to the Finance Office only after the borrower's appeal right has expired or if the borrower has filed an appeal and a final decision has been made.

(ii) If the borrower does not appeal, or it is determined that the appeal is not valid, the case will be handled by one of the following methods:

(A) If the Interest Credit Agreement is to be cancelled, the County Supervisor will cancel the Interest Credit Agreement as of the effective date of the current Form FmHA 1944–6, the date of the extension of the agreement, or the earlier Form FmHA 1944–6 as appropriate for the period of review or investigation. The Finance Office will then reapply any affected payments to the account at the note rate of interest and will notify the County Supervisor and borrower of any adjustments made in the account.

(B) If a corrected Interest Credit Agreement based on the borrower's actual circumstances during the period in question is to be prepared, it will be submitted to the Finance Office in accordance with paragraph (h)(2) of this section together with written authorization from the State Director to reapply payments in accordance with the corrected Form FmHA 1944–6. The Finance Office will notify the County Supervisor and borrower of adjustments made in the account.

(C) If the borrower's action appears to have been deliberate and a major error occurred, liquidation may be warranted. For example, such actions may be taken if the information obtained indicates that the borrower was not eligible for an RH loan. Such a borrower will be asked to repay the RH loan by refinancing or otherwise satisfying the account. In other cases, the borrower may already be in default and the fact that the borrower had not correctly reported income may justify liquidation of the loan. The State Director may authorize the account to be repaid under an acceleration agreement if the conditions of § 1872.17(g) of this Chapter (FmHA Instruction 465.1, paragraph XVII G) are met.

(D) When falsified information is provided to FmHA in order to qualify the borrower for interest credit (for example, a packager provides information for a borrower), but there is evidence that the borrower is not at fault or definitely did not intend to provide false information, the borrower will be requested to pay the loan in full, including any improper and excessive interest credit that may have been granted. If, however, the borrower is unable to satisfy the account and the State Director determines that the Government's financial interest would not be jeopardized by leaving the loan outstanding, and that it would be inequitable to call it, the loan may be continued.

(E) In cases for which immediate liquidation is not warranted and the State Director determines the loan may be continued, the County Supervisor will make a diligent effort to obtain a lump sum restitution of the improperly advanced interest credit. If the borrower is unable to pay by lump sum payment, Form FmHA 451–37 will be used to establish a new repayment schedule. The borrower will be charged interest of the improperly advanced interest credit at the same rate charged on the principal indebtedness.

(4) *Error by FmHA employee.* (i) When the borrower presented correct information and an FmHA employee erroneously granted excessive interest credit, the following action will be taken:

(A) The County Supervisor will inform the borrower by letter of the action to be taken and of the right to appeal as provided in paragraph (1) of this section. A cancellation of interest credit or a corrected Interest Credit Agreement will be submitted to the Finance Office only after the borrower's appeal right has expired or if the borrower has filed an appeal and a final decision has been made.

(B) If the Interest Credit Agreement is to be cancelled, the County Supervisor will cancel the Interest Credit Agreement effective the date of the current Form FmHA 1944–6, the extension of the agreement, or earlier Form FmHA 1944–6 as appropriate for the period of review or investigation. The Finance Office will then reapply any affected payments to the account at the note rate of interest and will notify the County Supervisor and borrower of any adjustments made in the account.

(C) If a corrected Interest Credit Agreement based on the borrower's actual circumstances during the period in question is to be prepared, it will be submitted to the Finance Office in accordance with paragraph (h)(2) of this section together with written authorization from the State Director to reapply payments in accordance with the corrected Form FmHA 1944–6. The Finance Office will notify the County Supervisor and borrower of adjustments made in the account. The amount of improper interest credit will be charged to the borrower's account and become immediately due and payable.

(D) If the Interest Credit Agreement is cancelled or revised, the County Supervisor will make a diligent effort to obtain a lump sum restitution of the improperly advanced interest credit from the borrower. If this cannot be done, the County Supervisor will take one of the following courses of action:

(*1*) If the borrower can repay the improperly advanced interest credit over a reasonable period of time, the County Supervisor will use Form FmHA 451–37 to establish a new repayment schedule. The borrower will be charged interest on the improperly advanced interest credit at the same rate charged on the principal indebtedness.

(*2*) If the County Supervisor determines that the borrower is unable to repay the improperly granted interest credit, that fact should be documented and the case forwarded to the State Director for review. If the State Director concurs with the findings of the County Supervisor, the case will be forwarded to the National Office with recommendations that the improperly advanced interest credit be forgiven.

(ii) When an error by an FmHA employee results in too little interest credit being granted, a corrected agreement will be prepared effective the date of the error, if the error results in the granting of $5 or more per month or $60 or more per year less interest credit than the borrower was eligible for.

(k) *Cancellation of interest credit agreements.* (1) *Reasons for cancellation.* An existing Interest Credit Agreement will be cancelled whenever:

(i) The borrower has never occupied the dwelling and FmHA will not continue with the loan.

(ii) The borrower ceases to occupy the dwelling.

(iii) The borrower sells or conveys the title to the property.

(iv) The borrower has received improper interest credit as outlined in § 1944.34(j) and a corrected Interest Credit Agreement will not be submitted.

(v) The borrower has an increase in income as outlined in § 1944.34(i)(3)(i) and is no longer eligible for interest credit.

(vi) The borrower has enlarged or improved the dwelling or added related facilities so that the housing exceeds modest standards for size, design and cost for previously occupied homes compared to other housing in the locality for low- and moderate-income families.

(2) *Effective date of cancellation.* The effective date of cancellation for paragraph (k)(1)(i) of this section will be date of loan closing. The effective date of cancellation for paragraphs (k)(1) (ii), (iii) and (iv) of this section will be the date on which the earliest action occurs which causes the cancellation. If the date cannot be determined, the date on

which the County Supervisor became aware of the situation will be used. The effective date of cancellation for paragraph (k)(1) (v) and (vi) of this section will be the date on which the County Supervisor became aware of the situation. When an account has been accelerated and none of the conditions outlined in paragraph (k)(1) of this section exists, the Interest Credit Agreement will remain in effect until the final foreclosure action is completed. However, if the existing agreement expires before the foreclosure action is completed an interest credit renewal agreement will not be prepared. If foreclosure action is dismissed, withdrawn or terminates without sale of the property or payment of the loan in full a renewal agreement will be prepared with an effective date as of the expiration of the previous agreement.

(3) *Notification to the Finance Office.* The County Supervisor will determine the date of cancellation and notify the Finance Office on Form FmHA 19194444–15, "Interest Credit Agreement Cancellation (Section 502 RH Loans)." If there is more than one loan eligible for interest credit represented on the Interest Credit Agreement being cancelled, a separate Form FmHA 1944–15 must be prepared for each loan. The Finance Office will process the cancellation and will accrue interest from the date of cancellation at the rate of interest shown on the promissory note. Prompt notification to the Finance Office, using Form FmHA 1944–15, is extremely important, as any transaction affecting the borrower's account subsequent to cancellation will be incorrect if cancellation action has not been completed by the Finance Office.

(l) *Applicant or borrower notice of right to appeal.* All applicants or borrowers who request and are denied interest credit or whose interest credits are reduced, cancelled, or not renewed, will be notified of their appeal rights as required by § 1900.56 of Subpart B of Part 1900 of this Chapter except when:

(1) Interest credit is denied because of confirmed income that is above FmHA published limits, or

(2) Interest credit is reduced because of confirmed income increases.

(m) *Submission to National Office.* The State Director may submit to the National Office for determination by the Administrator or a delegate any proposed transaction in which the conditions prescribed in the foregoing paragraphs of this section cannot be met, and it is determined that interest credit is necessary to avoid extreme hardship to the family or prevent foreclosure action. This paragraph is primarily intended to be used for those cases in which the granting of interest credit is necessary for the borrower to retain a dwelling for the borrower's own use, and there are no other means to do so. The State Director will submit to the National Office the County Office files together with full facts, justification, and recommendation.

§§ 1944.35–1944.36 [Reserved]

§ 1944.37 Subsequent Section 502 loans.

Subsequent Section 502 loans may be made to present borrowers for the same purposes and under the same conditions and limitations as initial loans, except as provided in this section.

(a) The subsequent loan will be processed in the same manner as initial loans, except that a new appraisal report will be required in accordance with § 1944.24 only when real estate will be taken as security and at least one of the following conditions exists:

(1) The property was not appraised in connection with the initial loan.

(2) The latest appraisal report of the real estate is over two years old.

(3) The physical characteristics of the property have changed significantly.

(4) The County Supervisor or loan approval official is uncertain of the adequacy of the security and requests a new appraisal report.

(5) The subsequent loan is in connection with a transfer of an existing loan subject to subsidy recapture in accordance with Subpart I of Part 1951 of this Chapter.

(b) A subsequent RH loan may be made on a note-only basis, provided the amount of the subsequent loan plus the unpaid principal balance of any prior note-only RH loan or loans does not exceed $2,500. Applicants for such loans must meet the requirements of § 1944.18(b)(1).

(c) When a real estate mortgage is required in connection with a subsequent RH loan, any outstanding RH notes will be described in the mortgage unless an exception can be made in accordance with Exhibit A, paragraph II F, of FmHA Instruction 427.1 (available in any FmHA office).

(d) The subsequent loan will bear interest at a rate determined in accordance with Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(e) When necessary to settle a divorce action, a subsequent loan may be made to permit the remaining borrower, if eligible, to purchase the equity of the departing spouse.

(f) When an area designation has been changed from rural to non-rural, subsequent RH loans may be made only in accordance with the provisions of § 1944.10(g)(4).

(g) The loan approval official may authorize reamortization of a prior RH loan at the time a subsequent loan is made in those cases in which it is determined that the borrower cannot reasonably be expected to meet installments due unless the account is reamortized. It will be processed in accordance with § 1951.314 of this Chapter.

§ 1944.38 Mutual self-help housing loans.

Low income applicants may build their homes by participating in a mutual self-help housing project. The County Supervisor will not approve RH loans or proceed in the development of a self-help project without prior authorization of the State Director. If an organization applies for a Technical Assistance (TA) grant, the District Director will submit form AD–625, "Application for Federal Assistance (Short Form)," and all related information concerning the technical assistance grant to the State Director. If it is determined that the technical assistance grant has been approved for funding, the State Director may issue written authorization for the County Supervisor to approve Mutual Self-Help Housing Loans. Exhibit E, "Mutual Self-Help Housing Guidelines," will be used as a guide for developing self-help projects and counseling with participating families. Exhibit E–1, "Membership Agreement," and Exhibit E–2, "Promissory Note," will be used as explained in Exhibit E. The county Supervisor, in counseling with families participating in self-help housing projects, will determine the anticipated time required for construction.

§ 1944.39 RH loans to FmHA employees and loan closing officials.

FmHA employees, County Committee members, and loan-closing officials, or their spouses may receive a Section 502 RH loan subject to the provisions of this Subpart and the following conditions:

(a) The application will be submitted to the County Office in the usual manner. Written evidence indicating the applicant's inability to obtain the needed credit will be included. The County Office will obtain the verification of employment and credit report and submit the application and related information to the District Director for review. The District Director will forward the applicant's docket, along with written recommendation concerning the applicant's eligibility, to the State Director for eligibility determination.

(b) The State Director will determine the eligibility of the applicant. If eligible, the applicant will be notified and the docket will be returned to the District Director for processing. If the applicant is determined ineligible, the State Director will notify the applicant in writing and will provide the applicant all information required by § 1910.6(b) of Subpart A of Part 1910 of this Chapter.

(c) The application will be retained in the County Office and will be processed in the same order as other applications. The District Director will be notified when the application is in order for processing and will be responsible for the complete loan processing.

(d) If the loan applicant works outside the county in which the application is filed, the District Director may permit authorized County Office staff to perform the appraisal function. In all other cases the District Director will appraise the property or have it appraised by a qualified FmHA appraiser from outside the County Office area in which the loan is to be made. The completed loan docket together with the District Director's written recommendation will be submitted to the State Director for consideration of approval.

(e) If the applicant is an employee in the District Office, the State Director will designate another District Director to process the application.

(f) The State Director must, before approving the loan, determine that the applicant has not been and will not be given any advantage because of the FmHA relationship and the making of a loan will not result in a conflict of interest under FmHA Instruction 2045-BB (available in any FmHA office). The dwelling may not exceed the needs of the applicant or be excessive in size, design, or cost when compared to other FmHA financed dwellings in the area.

(g) If the loan is approved, the borrower's case file will not be maintained or serviced in the office where the borrower is or will be employed. If the property is in the area serviced by the office of employment the State Director will designate another District or County Office to service the loan.

(h) If the loan involves any type of construction, the inspections for FmHA will be made by the District Director or another member of the District Director's staff as designated by the District Director. Under no circumstances will the employee receiving the loan make the inspections for FmHA.

(i) Loans, credit sales, or assumption agreements *will not* be approved under this authority for any of the following purposes:

(1) Purchase of inventory property.

(2) Purchase of a dwelling from an RH borrower.

(3) Purchase of FmHA security property being sold at foreclosure sale.

§1944.40 Rural housing disaster (RHD) loans.

RHD loans may be made to repair or replace dwellings which were damaged or destroyed by a natural disaster such as earthquake, flood, forest fire, severe windstorm, or lightning.

(a) *Eligibility requirements.* (1) The applicant must meet the requirements of §1944.8 and §1944.9.

(2) Nonfarm applicants must have occupied the dwelling as their permanent residence.

(3) The loss by a nonfarm applicant was not the result of a major disaster designated by the President as eligible for individual assistance or a natural disaster designated by the Administrator of the Small Business Administration.

(4) The loss by a farmer was not the result of a major disaster designated by the President as eligible for individual assistance or a natural disaster designated by the Secretary of Agriculture.

(5) The loan application must be filed within 12 months after the date the loss occurred.

(6) The applicant must use available assets, including insurance loss payments, and other assistance, to the extent available, to repair or replace the damaged or destroyed buildings.

(b) *Repair or replacement of buildings.* Repair or replacement of any damaged or destroyed building must be consistent with the basic Section 502 loan policies. Changes may be made in the building, but in any case the repaired or replaced building should not be significantly larger or more costly than the original building except as necessary to provide a building which is adequate but modest. Any new dwelling constructed must meet the limitations established by § 1944.16.

(c) *Interest rate and source of funds.* (1) RHD loans will be made at an interest rate of 5 percent. Interest credit will not be granted for RHD loans.

(2) Insured loan funds will be used for RHD loans.

(d) *Approval authorization.* The State Director, County and Assistant County Supervisors are authorized to approve RHD loans in accordance with Subpart A of Part 1901 of this Chapter for Section 502 RH loans.

(e) *Deferred payments.* The initial payments of principal and interest, or principal only, may be deferred so as not to become due until as late as the third January 1 for annual payment notes, or the third anniversary date of the note for monthly payment notes, subject to all of the following conditions:

(1) The applicant, as a result of the loss suffered from the disaster, has had a substantial loss of income; or debts, including the proposed RHD loan, have increased substantially as a result of the disaster.

(2) The income loss or increase in debts must be sufficiently great so that the applicant will not likely be able to pay in full the installments that ordinarily would be due during the proposed deferment period and also meet other obligations.

(3) The applicant's other debts must be adjusted by reduction, reamortization, extension, or other means to the extent possible by negotiation with other creditors.

(4) The applicant's income will be sufficient after the deferment period to enable the applicant to meet the payments on the RHD loan and all other obligations.

(f) *Form FmHA 1940-1.* The appropriate assistance code number will be entered in the space provided to indicate the nature of the loss.

§§ 1944.41.-1944.43 [Reserved]

§ 1944.44 Borrower graduation.

County supervisors must stay currently informed about credit from other sources including availability of funds, interest rates, terms and debt/value ratios required. Borrowers will be asked to refinance RH loans when FmHA determines that credit likely will be available at rates and terms prevailing in the area and on terms which the borrower can reasonably be expected to meet. Borrowers will be required to apply for a refinancing loan from one or more locally active lenders when asked and, if approved by a lender, accept such credit to pay the FmHA loan in full. Graduation reviews will be conducted in accordance with Part 1865 of this Chapter (FmHA Instruction 451.6).

§ 1944.45 Conditional commitments.

(a) *General.* A conditional commitment is assurance from FmHA to a qualified builder or seller that a dwelling to be built or rehabilitated and offered for sale will be acceptable for purchase by qualified RH loan applicants if built in accordance with FmHA approved plans and specifications and priced at not more than a specified maximum amount. The conditional commitment does not

reserve funds for a loan nor does it assure that a loan applicant will be available to buy the dwelling.

(b) *Eligibility.* To be eligible for conditional commitments, the builder or seller must:

(1) Be the owner as defined in § 1944.15, before construction is started, of the site on which the dwelling is located or to be built, except as indicated in Subpart G of Part 1822 of this Chapter (paragraph VII L of FmHA Instruction 444.8).

(2) Have the experience and ability to complete the type of proposed work in a competent and workmanlike manner.

(3) Be financially responsible and have the ability to finance or obtain financing for the proposed housing or rehabilitation.

(4) Comply with the requirements of Subpart E of Part 1901 of this Chapter and all applicable laws relating to equal opportunity.

(5) Plan to build or rehabilitate dwellings which will qualify for purchase by RH applicants and which will be in compliance with all applicable laws, ordinances, and codes.

(6) Have the legal capacity to enter into the required agreements and the actual capacity to carry them out.

(c) *Limitations.* (1) Conditional commitments will be issued only in cases where the commitment applicant's selling price does not exceed the commitment price, which will never be more than the appraised value minus customary closing costs.

(2) Conditional commitments will be issued by FmHA only for new homes to be constructed or existing homes to be rehabilitated.

(3) Conditional commitments will not be issued after construction has started.

(4) Number of conditional commitments.

(i) The total number of conditional commitments issued in any locality will not exceed the number of homes for which there is an immediate and ready market in that locality.

(ii) The number of houses on which conditional commitments will be outstanding to a commitment applicant at any time will not exceed 15 in any one county unless authorized by the State Director after the State Director:

(A) Determines that a larger number of commitments must be made to meet the immediate housing needs in the area;

(B) Determines that authorizing more than 15 commitments to one commitment applicant will not reduce the participation of small volume builders in the Rural Housing program; and

(C) Provides guidelines to the County Supervisor to assure that all builders active in the area have equal opportunity to obtain more than 15 conditional commitments.

(iii) The total number of conditional commitments outstanding in the area served by a County Office will not exceed the number on which the County Supervisor can reasonably expect to be able to approve RH loans within 3 months after the houses covered by the commitments are completed, considering the availability of loan funds and the number of applications in the County Office.

(5) The period of the conditional commitment will be for 12 months from the date of issue. The commitment may be extended for an additional 6 months if justified because of (1) unexpected delays in construction caused by such factors as bad weather or materials shortages, or (2) marketing difficulties.

(6) When five or more conditional commitments have been issued to one recipient during a 12 month period, an affirmative marketing plan will be required in accordance with § 1901.203 (c) of Subpart E of Part 1901 of this Chapter.

(d) *Conditional commitments involving packaging of applications.* A conditional commitment may be made to a builder who packages a Rural Housing application for an applicant to buy the property. In cases when the dwelling is presold and is to be constructed for sale only to a specific applicant and the information on the house and the loan applicant is submitted at the same time, all of the following conditions must be met to avoid misunderstanding of FmHA's obligation to either the RH applicant or the conditional commitment applicant:

(1) The conditional commitment will not be approved until the RH loan has been approved.

(2) Construction will not begin until the County Office has received notice from the Finance Office that funds are obligated for the RH loan.

(3) The RH loan will be closed only after the dwelling is constructed or the rehabilitation completed and final inspection has been made.

(e) *Fees.* Each commitment applicant will pay an application fee at the time an application is submitted for a conditional commitment. The fee for each dwelling will be:

(1) For proposed construction of new dwellings—$65.

(2) For existing dwellings to be rehabilitated—$50.

(f) *Processing applications.* (1) Applications for conditional commitments will be submitted on Form FmHA 1944–36, "Application for Conditional Commitment." Attachments as outlined on the form will be included for each individual dwelling for which a conditional commitment is requested.

(2) *Transmittal of fees.* The County Supervisor will transmit application fees on Form FmHA 451–2, "Schedule of Remittances." The payment will be handled with all other payments for the day in accordance with Subpart B of Part 1951 of this Chapter and the FMI for Form FmHA 451–2.

(3) *Evaluation of applications.* The County Supervisor will take the following actions in the order specified:

(i) Determine whether the commitment applicant meets the requirements of paragraphs (b) and (c) of this section.

(ii) Determine whether the dwelling and site meet the requirements of this Subpart and Subpart A of Part 1924 of this Chapter and will comply with all local codes and ordinances. The property must meet the requirements of Subpart D of Part 1804 of this Chapter (FmHA Instruction 424.5).

(iii) If the commitment applicant and the dwelling and site have qualified, an appraisal will be made in accordance with FmHA Instruction 422.3 (available in any FmHA office).

(4) *Failure of applicant or dwelling to qualify.* In case any commitment applicant or dwelling does not qualify for a conditional commitment, the documents attached to the application will be returned to the commitment applicant with a letter explaining why the application was not approved. If the application is denied for failure to meet the requirements of paragraph (b) (2) or (3) of this Section, notice of appeal rights will be given as required by §1900.56 of Subpart B of Part 1900 of this Chapter.

(i) The application fee will be refunded if for any reason preliminary inspection of the property or investigation of the commitment applicant indicates that a conditional commitment cannot be issued. For example, the property might be located in a nonrural area or the dwellings may not be of a type that the FmHA can appropriately finance. If a refund is required, a memorandum should be sent to the Finance Office indicating the commitment applicant's name together with the date and amount of fees paid. The memorandum should also indicate the number of commitments being denied and amount of fees to be refunded.

(ii) Application fees will not be refunded for any property on which the appraisal has been made.

(5) *Conditional commitment approval.* The State Director, District Director, County and Assistant County Supervisors are authorized to approve conditional commitments provided the commitment price does not exceed the loan approval authority for Section 502 RH loans as outlined in Subpart A of Part 1901 of this Chapter. If the application is approved, the County Supervisor will complete and sign Form FmHA 444–11, "Conditional Commitment." When a qualified applicant applies for a loan to buy a dwelling on which a conditional commitment has been issued, the RH loan docket will be transferred to the conditional commitment folder.

(g) *Inspections.* Inspections of work to be done will be performed in accordance with Subpart A of Part 1924 of this Chapter. Failure to correct any deficiencies or to complete the work in accordance with plans and specifications approved by FmHA will be a basis for cancelling the conditional commitment.

(h) *Changes in plans, specifications, and/or commitment price.* The County Supervisor is authorized to approve changes in plans and specifications that are consistent with MPS and Exhibit D of Subpart A of Part 1924 of this Chapter. If the changes are requested after an option has been executed by a rural housing applicant, the change will be approved only after the applicant and the commitment holder submit a written request for approval. If a change will reduce or increase the appraised value of the property, the County Supervisor will revise the commitment price and inform the commitment holder. Also, in cases when the holder of a commitment reports to the County Supervisor that costs associated with the construction or repair of a dwelling have increased, the approval official may increase the commitment price provided the property has not been optioned by an RH applicant, and the County Supervisor determines that the increase is clearly justified, the circumstances causing the price increase were beyond the commitment holder's control, and the value of the property is adequate to permit the increased commitment price. A revised appraisal report will be prepared. The conditional commitment will be revised, initialed, and dated by the person authorizing the change.

(i) *Cancellation of outstanding conditional commitments.* (1) Conditional commitments may be cancelled when construction of the dwelling is not begun within 60 days after the commitment is issued.

(2) Conditional commitments will be cancelled when construction is not in accordance with all FmHA requirements, approved plans, specifications, or MPS, and the builder refuses to make corrections necessary for compliance.

(j) *Folder maintenance.* Documents prescribed in this Subpart will be filed in accordance with FmHA Instruction 2033–A (available in any FmHA office).

(k) *Builder's warranty.* The builder or seller, as appropriate, will execute Form FmHA 424–19, "Builder's Warranty," or provide a 10-year isured warranty when construction is completed or the loan to buy the dwelling is closed.

§ 1944.46 Construction financing for builders by private credit sources.

(a) The purpose of this section is to provde a method by which a builder may be able to obtain construction credit from commercial sources of credit. It may eliminate the need to use a supervised bank account and also eliminate the need for the borrower to make payments on the loan during construction.

(b) This method may be used under the following conditions:

(1) A conditional commitment has been or will be issued, an RH loan approved, and funds obligated for the applicant in accordance with § 1944.45, or

(2) The applicant owns a building site and will contract the construction or improvement of the building or buildings. In such a case:

(i) The applicant will retain ownership of the site and not convey title to the builder, and

(ii) The lender providing the construction financing will not take a mortgage on the site owned by the applicant or otherwise require the applicant to secure the construction loan.

(c) This method may not be used if the RH loan is made in participation with an FO or an individual SW loan.

(d) Loan docket forms will be prepared in accordance with § 1944.30 of this Subpart. Applicants who own the building site will be required to obtain and submit to the County Supervisor preliminary title evidence in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1). Satisfactory title or leasehold interest in the property must be confirmed before execution of Form FmHA 424–6, "Construction Contract," and Form FmHA 444–16, "Notice of Loan Approval."

(e) When Form FmHA 440–57 is received from the Finance Office, the County Supervisor will complete and sign an original and one copy of Form FmHA 444–16. The original of Form FmHA 444–16 will be given to the builder and a copy will be retained in the loan docket.

(f) The builder may present Form FmHA 444–16, Form FmHA 444–11, "Conditional Commitment," Form FmHA 440–34, or Form FmHA 424–6, as appropriate, to a commercial lender to obtain construction financing. The County Supervisor will make no commitments to the lender except as indicated on the above forms.

(g) The required inspections will be made by FmHA or a firm or company that will provide a 10-year insured warranty. In all cases the final inspection will be made by FmHA. Copies of Form FmHA 424–12, "Inspection Report," will be provided to the builder and, if requested, to the commercial lender.

(h) The lender is responsible for determining the amount that will be advanced to the builder under the construction financing arrangement, and for determining any measures necessary to protect its interest.

(i) When construction is completed, the loan will be closed in accordance with Subpart A of Part 1807 of this Chapter (FmHA Instruction 427.1), usually within 10 days after satisfactory completion of construction.

§§ 1944.47–1944.50 [Reserved]

Exhibit A [Amended]

2. Exhibit A, paragraph III, is amended by changing the reference in the last sentence from "§ 1944.26 (c)" to "§ 1944.26 (d)."

Exhibit B [Amended]

3. Exhibit B is amended by removing the Sample Letter for Authenticating Alien Registration Cards and by changing the list of addresses of the Immigration and Naturalization Service district offices to read as follows:

Albany, New York 12207, Post Office and Courthouse, Room 220, 445 Broadway
Anchorage, Alaska 99513, Room D–229, 701 C Street
Atlanta, Georgia 30303, Room 1408, Federal Office Building, 75 Spring Street, SW
Baltimore, Maryland 21201, F.A. Garmatz Federal Building, 100 S. Hanover St.
Boston, Massachusetts 02203, John Fitzgerald Kennedy Federal Building, Government Center
Buffalo, New York 14202, 68 Court Street
Chicago, Illinois 60604, Dirksen Federal Office Building, 219 South Dearborn Street
Cincinnati, Ohio 45201, U.S. Post Office and Courthouse, 5th and Walnut Streets, Post Office Box 537
Cleveland, Ohio 44199, Room 1917, Federal Building, 1240 East 9th Street
Dallas, Texas 75202, Room 6A21, Federal Building, 1100 Commerce Street

Denver, Colorado 80202, 17027 Federal Office Building
Detroit, Michigan 48207, Federal Building, 333 Mount Elliott Street
El Paso, Texas 79964, 343 U.S. Courthouse, Post Office Box 9398
Hammond, Indiana 46320, 102 Federal Building, 507 State Street
Harlingen, Texas 78550, 2102 Teege Avenue
Hartford, Connecticut 06105, 900 Asylum Avenue
Helena, Montana 59601, Room 512, 301 South Park
Honolulu, Hawaii 96809, 595 Ala Moana Boulevard, Post Office Box 461
Houston, Texas 77004, 2627 Caroline Street
Kansas City, Missouri 64106, Suite 1100, 324 E Eleventh Street
Los Angeles, California 90012, 300 North Los Angeles Street
Los Fresnos, Texas 78566, Route 3, Box 341
Memphis, Tennessee 38104, 814 Federal Building, 167 North Main Street
Miami, Florida 33130, 155 South Miami Avenue
Milwaukee, Wisconsin 53202, Room 186 Federal Building, 517 East Wisconsin Avenue
Newark, New Jersey 07102, Federal Building, 970 Broad Street
New Orleans, Louisiana 70113, Room T-8005, Postal Services Building, 701 Loyola Avenue
New York, New York 10007, 26 Federal Plaza
Norfolk, Virginia 23502, Room 207, Bank of Virginia Building, 870 North Military Highway
Omaha, Nebraska 68102, Room 1008, Federal Office Building, 106 South 15th Street
Philadelphia, Pennsylvania 19106, Room 1321 U.S. Courthouse, Independence Mall West, 601 Market Street
Phoenix, Arizona 85025, Federal Building, 230 North First Avenue
Pittsburgh, Pennsylvania 15222, 2130 Federal Building, 1000 Liberty Avenue
Port Isabel, Texas 78566, Rural Route 3
Portland, Maine 04112, 76 Pearl Street
Portland, Oregon 97209, Federal Office Building, 511 N.W. Broadway
Providence, Rhode Island 02903, Federal Building, U.S. Post Office, Exchange Terrace
Reno, Nevada 89502, Suite 150, 350 South Center Street
Saint Albans, Vermont 05478, Federal Building, Post Office Box 328
Saint Louis, Missouri 63101, Room 423, U.S. Courthouse and Customhouse, 1114 Market Street
Saint Paul, Minnesota 55111, 927 New Post Office Building, 180 East Kellog Blvd.
Salt Lake City, Utah 84138, Room 4103, New Federal Building, 125 South State Street
San Antonio, Texas 78206, Suite A301, U.S. Federal Building, 727 East Durango
San Diego, California 92188, 880 Front Street
San Francisco, California 94111, Appraisers Building, 630 Sansome Street
San Juan, Puerto Rico 00936, U.S. Immigration and Naturalization Service, GPO Box 5068
Seattle, Washington 98134, 815 Airport Way, South
Spokane, Washington 99201, 691 U.S. Courthouse Building
Washington, D.C. 20538, E Street NW.

Exhibit C [Amended]

5. Under "Maximum adjusted incomes for rural housing programs in Idaho," the column entitled "Area/county" is revised by changing "District I" to "Panhandle," "District II" to "Clearwater," "District III" to "Ida-Ore," "District IV" to "Region IV," "District V" to "Southeast," and "District VI" to "East Central."

6. Under "Maximum adjusted incomes for rural housing programs in New Mexico," the Mid Rio Grande area is amended by adding the county "Cibola" and by changing "Los Almos" to read "Los Alamos."

7. The table entitled, "Maximum adjusted incomes for rural housing programs in Alaska" is revised to read as follows:

MAXIMUM ADJUSTED INCOMES FOR RURAL HOUSING PROGRAMS IN ALASKA

Area/County	Very low, 50% median	Low income	Moderate income
Soldotna	15,000	24,000	29,500
Palmer	15,000	24,000	29,500
Fairbanks	15,000	24,000	29,500
Juneau	17,100	27,500	33,000

Exhibit D [Amended]

8. Item number 2 is amended by changing the wording in the second sentence from "The planned income to be received" to "The current income received."

9. Item number 4 is amended by adding the word "initial" following "An" in the first sentence.

10. Item number 9 is amended by changing the wording at the end of the paragraph from "every 2 years" to "every year."

11. Item number 11 is revised to change the word "it" to "the property."

12. Item number 15 is revised to read as follows:

15. *Graduation:* FmHA does not replace conventional credit. FmHA credit is available to eligible rural residents only until such time as conventional credit is available to finance the borrower's needs. When, in FmHA's opinion, the borrower may obtain credit at rates and terms then prevailing in the area and on terms the borrower can reasonably be expected to meet, the borrower will be required to apply for and, if approved by the lender, accept a loan sufficient to pay the balance of the FmHA debt in full.

13. Item number 20 has been amended by adding at the end of the sentence, the words, "and the home may then become ineligible for transfer by assumption in the FmHA loan program."

14. Exhibits E and F are removed and Exhibits G, G-1 and G-2 are renumbered to Exhibits E, E-1 and E-2 respectively.

Exhibit E [Amended]

15. Exhibit E is amended in the Table of Contents by changing the references from "Exhibit G-1" and "Exhibit G-2" to "Exhibit E-1" and "Exhibit E-2," in the section titled "Organization and Agreements," by changing the reference in the third sentence of the first paragraph from "Exhibit G" to "Exhibit E-1," and in the second paragraph by changing the reference in the second sentence from "Exhibit G-2" to "Exhibit E-2."

(42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70)

Dated: November 12, 1982.

Frank W. Naylor, Jr.,

Under Secretary for Small Community and Rural Development.

[FR Doc. 83-128 Filed 1-3-83; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 204 and 217

[Docket No. R-0444]

Reserve Requirements of Depository Institutions (Regulation D) and Interest on Deposits (Regulation Q); Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendments.

SUMMARY: Pursuant to its authority under section 19 of the Federal Reserve Act, as amended, the Board has amended Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) and Regulation Q—Interest on Deposits (12 CFR Part 217) to incorporate the rules of the Depository Institutions Deregulation Committee ("DIDC"), adopted pursuant to the Depository Institutions Deregulation Act of 1980 and section 327 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320; 96 Stat. 1501). The amendments to Regulations D and Q are technical in nature and conform the Board's rules to those of the DIDC.

EFFECTIVE DATE: January 5, 1983.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625), or Paul S. Pilecki, Senior Attorney (202/452-3281), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. 96-221) transfers to the DIDC the authority conferred by section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) upon the Board (and the similar authority of the Federal Deposit Insurance and the Federal Home Loan Bank Board, which are contained in other statutes) to establish rules concerning the payment of interest on deposit accounts.

The Board has amended its Regulation D and Regulation Q to bring them into conformity with actions taken by the DIDC. The following table presents the regulatory provisions that have been affected by the DIDC's actions:

DIDC rule	Regulatory provision amended
1204.104—26 Week Money Market Time Deposits of Less Than $100,000.	217.7(f).
1204.109—Maximum Rates of Interest Payable by Depository Institutions on Deposits Subject to Negotiable Orders of Withdrawal.	217.1(e), 217.7(c).
1204.120—90-Day Time Deposits of Less Than $100,000.	217.7(j).
1204.121—Seven to 31-Day Time Deposits of $2,500 or More.	204.2(b)(2), (c)(1), 217.4(d)(6), 217.4(f), 217.7(i).
1204.122—Money Market Deposit Account.	217.1(e)(4), 217.5(c), 217.7(m).
1204.201—Establishment of Interest Rates on Deposits Not Subject to Interest Rate Ceilings.	217.4(d)(5).

Because of the technical nature of the amendments conforming Regulations D and Q to actions of the DIDC, the Board finds that application of the notice and public participation provisions of 5 U.S.C. 553 to these actions is unnecessary and contrary to the public interest, and that good cause exists for making these actions effective January 5, 1983.

List of Subjects in 12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign banking.

PARTS 204 AND 217—[AMENDED]

Pursuant to its authority under section 19 of the Federal Reserve Act (12 U.S.C 461, 371a, and 371b), the Board amends Regulation D (12 CFR Part 204) and Regulation Q (12 CFR Part 217), effective January 5, 1983, as follows:

§ 204.2 [Amended]

1. Section 204.2 is amended by removing the phrase ", subject to a minimum balance of $20,000," in paragraphs (b)(2)(iv)(A) and paragraph (c)(1)(iii).

2. Section 217.1(e) is amended by adding a new paragraph (4) as follows:

§ 217.1 Definitions

* * * * *

(e) * * *

(4) Savings deposit also means a deposit issued pursuant to § 217.7(c)(2)(ii) or § 217.7(m) with respect to which the member bank reserves the right to require at least seven days' notice prior to withdrawal or transfer.

* * * * *

3. Section 217.4 is amended by revising paragraph (d) (5) and (6) and paragraph (f) to read as follows:

§ 217.4 Payment of time deposits before maturity.

* * * * *

(d) * * *

(5) Any amendment of a time deposit contract that results in an increase in the rate of interest paid, except for time deposits on which no maximum interest rate limitation is prescribed, or any amendment of a time deposit contract that results in a reduction in the maturity of the deposit constitute payment of a time deposit before maturity.

(6) For purposes of computing the penalty required to be imposed under this paragraph, under a time deposit agreement that provides that subsequent deposits reset the maturity of the entire account, each deposit, maintained in the account for at least a period equal to the original maturity of the deposit may be regarded as having matured individually and been redeposited at intervals equal to such period. Except as provided in § 217.7(*i*)(3), when a time deposit is payable only after notice, for funds on deposit for at least the notice period, the penalty for early withdrawal shall be imposed for at least the notice period.

* * * * *

(f) *Loans upon security of time deposits.* Except as provided in § 214.7(*l*)(2), a member bank may make a loan to the depositor upon the security of his time deposit, provided that the rate of interest on such loan shall be not less than 1 percent per annum in excess of the rate of interest on the time deposit.

4. Section 217.5 is amended by revising the introductory text of paragraph (c)(1) but not footnote 12, which remains unchanged to read as follows:

§ 217.5 Withdrawal of savings deposits.

* * * * *

(c) *Manner of payment of savings deposits.* (1) Subject to the provisions of paragraphs (c)(2) and (3) of this section and § 217.7(m), a member bank may permit withdrawals to be made from a savings deposit only through payment [12] to the depositor himself (but not to any other person whether or not acting for the depositor), except

* * * * *

[12] * * *

§ 217.7 [Amended]

5. Section 217.7 is amended by removing the number "$10,000" wherever it appears in paragraph (f) and the number "$7,500" in paragraph (j) and substituting in lieu thereof the number "$2,500".

6. Section 217.7 is amended by revising paragraphs (c) and (l) and by adding a new paragraph (m) to read as follows:

§ 217.7 Maximum rates of interest payable by member banks on time and savings deposits.

* * * * *

(c) *Savings deposits.* (1) Except as provided in paragraph (m), no member bank shall pay interest at a rate in excess of 5¼ percent on any savings deposit.

(2) A member bank may pay interest on any deposit or account subject to negotiable or transferable orders of withdrawal that is authorized pursuant to 12 U.S.C. 1832(a)

(i) At a rate not to exceed 5¼ percent per annum, or

(ii)(A) At any rate on a deposit account subject to the conditions of this paragraph with an initial balance of no less than $2,500 and an average deposit balance (as computed in paragraph (c)(2)(ii)(B) of this section) of no less than $2,500. However, for an account with an average balance of less than $2,500, a member bank shall not pay interest in excess of the rate specified in paragraph (c)(2)(i) of this section for the entire computation period, as described in paragraph (c)(2)(ii)(B).

(B) The average balance in paragraph (c)(2)(ii)(A) may be calculated on the basis of the average daily balance over any computation period selected by a member bank which is not longer than one month. (For purposes of this paragraph (c)(2)(ii), a "month" shall mean, at a member bank's option, a calendar month or statement cycle. A statement cycle is normally 28 to 31 days, but may occasionally be as long as 35 days.)

(C) A member bank may not obligate itself to pay any interest rate or obligate itself to employ any method of calculation of an interest rate on this account for a period longer than one month. A member bank may not condition the interest rate paid upon the period of time the funds remain on deposit in this account, if that period is longer than one month.

(D) A member bank must reserve the right to require at least seven days' notice prior to withdrawal or transfer of any funds in this account. If such a requirement for a notice period is imposed by a member bank on one depositor, it must be applied equally to all other depositors holding an account subject to this paragraph (c)(2)(ii) at the same institution.

(E) A member bank is not permitted to lend funds to a depositor to meet the $2,500 balance requirements of this paragraph (c)(2)(ii).

* * * * *

(l) *Seven-to-31 day time deposits of $2,500 or more.* (1) Notwithstanding paragraphs (b) and (d), a member bank may pay interest at any rate as agreed to by the depositor on any nonnegotiable time deposit of $2,500 or more, with a maturity or required notice period of not less than seven days nor more than 31 days. However, a member bank shall not pay interest in excess of the ceiling rate for regular savings deposits or accounts on any day the balance in a time deposit issued under this paragraph is less than $2,500.

(2)(i) A member bank is not permitted

(A) To lend funds to a depositor upon the security of a time deposit that it has issued under this paragraph, or

(B) To lend funds to a depositor to meet or maintain the minimum denomination requirement of a time deposit issued under this paragraph.

(ii) The rate of interest and any other charges imposed on an overdraft credit arrangement to which withdrawals are paid or to which payments upon maturity or expiration of a required notice period are made from an account issued under this paragraph must be not less than those imposed on such overdrafts for customers that do not possess an account issued under this paragraph at the same institution.

(3)(i) Where all or any part of a time deposit issued under this paragraph is paid before maturity or expiration of the required notice period, a depositor shall forfeit an amount at least equal to the greater of

(A) All interest earned on the amount withdrawn from the most recent of the date of deposit, date of maturity, or date on which notice was given, or

(B) All interest that could have been earned on the amount withdrawn during a period equal to one-half the maturity period or required notice period.

(ii) Where all or any part of a time deposit issued under this paragraph is withdrawn within one business day after the maturity date of the deposit or the date of expiration of notice of withdrawal, no early withdrawal penalty is required to be applied on the amount withdrawn.

(4) Additional deposits to an account issued under this paragraph with a fixed maturity must be maintained in the account for a period at least equal to the original term of the account and may be regarded as having matured individually and having been redeposited at intervals equal to such period. For accounts issued under this paragraph that are subject to a notice period, additional deposits must remain in the account for a period equal to at least the notice period before such funds may be withdrawn without the imposition of an early withdrawal penalty.

(5) Deposits to any account issued under this paragraph may not be made by automatically transferring funds from another account of the depositor at the same institution where the transfer is initiated by the level of the balance in any account.

(6)(i) Withdrawals from any account issued under this paragraph may not be made

(A) By check, draft, or other third party payment instrument or instruction drawn or issued by the depositor, or

(B) By automatically transferring funds to another account of the depositor where the transfer is initiated by the level of balance in any account held by the depositor.

(ii) Payments at maturity or withdrawals may be paid by

(A) Check or cash to the depositor,

(B) Cash, draft, or electronic transfer issued by the institution to a third party, or

(C) Transfer to any other account held by the depositor.

(iii) Notice of withdrawal from an account issued under this paragraph may be delivered by the depositor to the institution by telephone or other telecommunication, mail, messenger, standing order, or by appearance in person at the offices or premises of the institution.

(m) *Money market deposit accounts.* (1) Notwithstanding paragraph (c) of this section, a member bank may pay interest at any rate on a deposit account as described in this paragraph with an initial balance of no less than $2,500 and an average deposit balance (as computed in paragraph (m)(2) of this section) of no less than $2,500. However, for an account with an average balance of less than $2,500, a member bank shall not pay interest in excess of the ceiling rate specified for NOW accounts under paragraph (c)(2)(i) of this section for the entire computation period, as described in paragraph (m)(2) of this section.

(2) The average balance for this account may be calculated on the basis of the average daily balance over any computation period selected by the member bank that is not longer than one month. (For purposes of this paragraph, a "month" shall mean, at a member bank's option, either a calendar month or a statement cycle. A statement cycle is normally 28 to 31 days, but may occasionally be as long as 35 days.)

(3) A member bank is not required to establish a maturity on this account. However, it may do so, provided that the maturity is no longer than one month. Furthermore, a member bank may not obligate itself to pay any interest rate or obligate itself to employ any method of calculation of an interest rate on this account for a period longer than one month. A member bank may not condition the interest rate paid or the method of calculation of the interest rate paid upon the period of time funds remain on deposit in this account, if that period is longer than one month.

4. A member bank must reserve the right to require at least seven days' notice prior to withdrawal or transfer of any funds in this account. If such a requirement for a notice period is imposed by a member bank on one depositor, it must be applied equally to all other depositors holding this account at the same institution.

(5)(i) A member bank is not required to limit the number of transfers of funds from this account to another account of the same depositor when made by mail, messenger, automated teller machine or in person. A member bank is not required to limit the number of withdrawals (*i.e.*, payments directly to the depositor) from this account when made by mail, telephone (via check mailed to the depositor), messenger, automated teller machine or in person. A member bank must restrict all preauthorized (including automatic) transfers of funds from this account to a maximum of six per month. Three of such transfers may be by check, draft or similar device drawn by the depositor to third parties. Telephone transfers to third parties or to another account of the same depositor are regarded as preauthorized transfers. There is no required minimum denomination for the transfers allowed by this paragraph.

(ii) In order to ensure that no more than the permitted number of transfers are made, a member bank must either:

(A) Prevent transfers of funds in this account that are in excess of the limits established by this subparagraph, or

(B) Adopt procedures to monitor those transfers on an ex post basis and contact customers who exceed the limits established by this paragraph on more than an occasional basis. For customers

who continue to violate those limits after being contacted by the member bank, the bank will be required to either close the account or take away the account's transfer and draft capacities.

(iii) A member bank, at its option, may use on a consistent basis either the date on a check or the date it is paid in applying the limit on checks established by this subparagraph (5).

(iv) The rate of interest or other charges imposed on an overdraft credit arrangement on an account to which withdrawals from this account can be paid must be not less than those imposed on overdrafts for customers who do not maintain this account.

(6) A member bank may offer the account authorized by this paragraph to any depositor.

(7) A member bank is not required to impose restrictions on the number of additional deposits (including sweeps from other accounts) into this account.

(8) A member bank is not permitted to lend funds to a depositor to meet the $2,500 balance requirement of this account.

By order of the Board of Governors, December 28, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-114 Filed 1-3-83; 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 207

[Economic Reg. Amdt. No. 34; Dockets 40366, 38621, Reg. ER-1311]

Charter Trips and Special Services

AGENCY: Civil Aeronautics Board.

ACTION: Conforming amendment.

SUMMARY: The CAB is conforming its rules to take account of its recent codification of its domestic baggage liability rules. This action is taken at the Board's initiative.

DATES: Adopted: December 22, 1982. Effective: February 22, 1983.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION:

14 CFR Parts 207, *Charter trips and special services*, and 208, *Terms, conditions and limitations of certificates to engage in charter air transportation*, set out rules applicable to domestic charter operations. Sections 207.18 and 208.30 prohibit air carriers subject to those parts from limiting their baggage liability except as set forth in Part 254.

In ER-1305, 47 FR 52987, November 24, 1982, the Board simplified its rules for domestic baggage liability and codified them in 14 CFR Part 254. The orders that had previously set forth the domestic baggage liability requirements have been superseded by this new part. Part 254 provides that air carriers in interstate and overseas air transportation may not limit their liability to less than $1000 per passenger for loss, damage, or delay in the carriage of passenger baggage. In addition, carriers must provide written notice in or with their tickets of any limitation on liability for fragile or perishable goods, and of the availability, if any, of excess valuation insurance.

This amendment makes conforming changes consistent with the new Part 254. References to the three baggage orders have been removed and replaced with a reference to Part 254. The notification that copies of the orders are available through the CAB Publications Section has also been removed.

Because these changes are editorial in nature, are necessary, and are made merely to conform to the recent codification of the baggage liability rules, the Board finds that notice and public procedure are unnecessary.

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 this rule will not have a significant economic impact on a substantial number of small entities. The requirements concerning domestic baggage liability apply only to large aircraft operations (more than 60 seats/18,000 pound payload capacity), which are not considered small entities for the purposes of the Regulatory Flexibility Act under the Board's definition.

List of Subjects in 14 CFR Part 207

Charter flights, Reporting requirements, Surety bonds, Travel agents.

PART 207—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 207, *Charter trips and special services*, as follows:

1. The authority for Part 207 is:

Authority: Secs. 102, 204, 401, 403, 404, 407, 411, 416, 418, 1002 of Pub. L. 85-726, as amended; 72 Stat. 740, 743, 754, 758, 760, 766, 769, 771, 91 Stat. 1284, 72 Stat. 788; 49 U.S.C. 1302, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1388, 1482.

2. Section 207.18, Baggage liability, is amended so that it reads:

§ 207.18 Baggage liability.

Air carriers shall not limit their baggage liability for interstate and overseas charter flights except as set forth in 14 CFR Part 254.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-79 Filed 1-3-83; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 208

[Economic Regs. Amdt. No. 36; Dockets 40366, 38621; Reg. ER-1312]

Terms, Conditions and Limitations of Certificates To Engage in Charter Air Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Editorial amendment.

SUMMARY: The CAB is conforming its rules to take account of its recent codification of its domestic baggage liability rules. This action is taken at the Board's initiative.

DATES: Adopted: December 22, 1982. Effective: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION:

Supplementary information about this change appears in ER-1311, issued along with this rule. Because these changes are editorial in nature, are necessary, and are made merely to conform to the recent codification of the baggage liability rules, the Board finds that notice and public procedure are unnecessary.

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 this rule will not have a significant economic impact on a substantial number of small entities. The notice requirements concerning domestic baggage liability apply only to large aircraft operations (more than 60 seats/18,000 pound payload capacity), which are not considered small entities for the purposes of the Regulatory Flexibility Act under the Board's definition.

List of Subjects in 14 CFR Part 208

Charter flights, Insurance, Military air transportation, Reporting requirements, Surety bonds, Travel agents.

PART 208—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 208 as follows:

1. The authority for Part 208 is:

Authority: Secs. 102, 204, 401, 403, 404, 407, 411, 416, 417, 1002 of Pub. L. 85-726, as amended; 72 Stat. 740, 743, 754, 758, 760, 766, 769, 771; 76 Stat. 145; 72 Stat. 788; 49 U.S.C. 1302, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1387, 1482.

2. Section 208.39, *Baggage liability*, is amended to read:

§ 208.39 Baggage liability.

Air carriers shall not limit their baggage liability for interstate and overseas charter flights except as set forth in 14 CFR Part 254.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-80 Filed 1-3-83; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 221

[Economic Regs. Amdt. No. 62, Dockets 40366, 38621; Reg. ER-1310]

Tariffs

AGENCY: Civil Aeronautics Board.

ACTION: Conforming amendment.

SUMMARY: The CAB is conforming Board-mandated notices concerning baggage liability to remove unnecessary references to domestic baggage liability from countersigns and ticket notices, because they are governed by a new, recently adopted baggage rule. This action is taken at the Board's initiative.

DATES: Adopted: December 22, 1982. Effective: February 22, 1983.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION:

In ER-1305, 47 FR 52987, November 24, 1982, the Board simplified its rules for domestic baggage liability and codified them in 14 CFR Part 254. The rule provides that air carriers in interstate and overseas air transportation may not limit their liability to less than $1,000 per passenger for loss, damage, or delay in the carriage of passenger baggage. In addition, a carrier must provide written notice on or with its ticket concerning any limitations on its baggage liability, including its rules for fragile or perishable goods and the availability, if the carrier provides it, of excess valuation insurance coverage.

Section 221.176, *Notice of limited liability for baggage; alternative consolidated notice of liability limitations*, requires air carriers to provide notice to passengers concerning their baggage liability limitations, on Board-specified countersigns and ticket notices. Although the notices deal primarily with international air transportation, one clause alerts passengers to the monetary limit in domestic air transportation. This amendment removes the reference to the domestic baggage limitation because it has been superseded by the general notice requirement in Part 254.

An obsolete transitional proviso is deleted from § 221.176(b).

Because these changes are editorial in nature, are necessary, and are made merely to conform to the recent increase of the baggage liability limitation, the Board finds that notice and public procedure are unnecessary.

The Board is aware that some uncertainty concerning international baggage limitations has been caused by the decision in *Franklin Mint Corporation* v. *Trans World Airlines, Inc.*, No. 82-7012, (2nd Cir., decided September 28, 1982). The purpose of this amendment is only to conform the Part 221 notice requirements for domestic baggage liability with the issuance of the new Part 254. It should not be construed as affecting in any way the rules concerning international baggage liability.

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 this rule will not have a significant economic impact on a substantial number of small entities. The notice requirements concerning domestic baggage liability apply only to large aircraft operations (more than 60 seats/18,000 pound payload capacity), which are not considered small entities for the purposes of the Regulatory Flexibility Act under the Board's definition.

List of Subjects in 14 CFR Part 221

Air rates and fares, Credit, Explosives, Freight, Handicapped.

PART 221—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 221, as follows:

1. The authority for Part 221 is:

Authority: Secs. 102, 204, 401, 402, 403, 404, 411, 416, 1001, 1002, as amended, Pub. L. 85-726, 72 Stat. 740, 743, 754, 757, 578, 760, 769, 771, 788; 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1374, 1381, 1386, 1461, 1482.

2. Section 221.176, *Notice of limited liability for baggage: alternative consolidated notice of baggage liability* is amended to remove the references to domestic baggage liability so that as revised it reads:

§ 221.176 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.

(a) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations on liability for loss of, damage to, or delay in delivery of baggage shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to persons or accept baggage for checking, a sign which shall have printed thereon the following statement:

Notice of Limited Liability for Baggage

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply for valuables. Consult your carrier for details.

Provided, however, that an air carrier or foreign air carrier which provides a higher limitation of liability for death or personal injury than that set forth in the Warsaw Convention and has signed a counterpart of the agreement approved by the Board by Order E-23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in full compliance with the posting requirements of this paragraph and of § 221.175(b):

Advice to Passengers on Limitations of Liability

Airline liability for death or personal injury may be limited by the Warsaw Convention and tariff provisions in the case of travel to or from a foreign country.

For most international travel (including domestic portions of international journeys) liability for loss, delay or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply to valuable articles.

See the notice with your tickets or consult your airline or travel agent for further information.

Provided, however, that carriers may include in the notice the parenthetical phrase "($20.00 per kilo)" after the phrase "$9.07 per pound" in referring to

the baggage liability limitation for most international travel. Such statements shall be printed in bold-face type at least one-fourth of an inch high and shall be so located as to be clearly visible and clearly readable to the traveling public.

(b) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations of liability for loss of, damage to, or delay in delivery of, baggage shall include on each ticket issued in the United States or in a foreign country by it or its authorized agent, the following notice printed in at least 10-point type:

Notice of Baggage Liability Limitations

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared in advance and additional charges are paid. Excess valuation may not be declared on certain types of valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier.

Provided, however, that carriers may include in their ticket notice the parenthetical phrase "($20.00 per kilo)" after the phrase "$9.07 per pound" in referring to the baggage liability limitation for most international travel.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-73 Filed 1-3-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

[Docket No. 21102-222]

Public Telecommunications Facilities Program; Correction of Final Rules

AGENCY: National Telecommunications and Information Administration (NTIA), Department of Commerce.

ACTION: Correction of final rules.

SUMMARY: In 47 FR 53652, November 26, 1982, NTIA issued Final Rules governing its Public Telecommunications Facilities Program (PTFP). In issuing the Final Rules NTIA added two new subparagraphs to a section. NTIA is now correcting one of the subparagraphs by deleting the phrase "or other transmission" in order to clarify the intent of its regulations and to conform more closely with existing law.

FOR FURTHER INFORMATION: Contact persons desiring further information concerning the correction of the Final Rules should contact: Robert M. Hunter, Office of General Counsel, DOC, Room 5883, Washington, D.C. 20230. Telephone: (202) 377-5384.

SUPPLEMENTARY INFORMATION:

List of Subjects in 15 CFR Part 2301

Administrative procedure, Grant programs—communications, Reporting requirements, Telecommunications.

Paragraph (17) of § 2301.28(a) is hereby amended by removing the phrase "or other transmission" and adding the phrase, "except as permitted by law." Section 2301.28(a)(17) now reads:

§ 2301.28 Nondiscrimination.

During the construction of a project and the Federal interest period, the grantee must:

* * * * *

(a) * * *

(17) Not make its facilities available to any person for the broadcast of any advertisement except as permitted by law.

(Catalogue of Federal Domestic Assistance No. 11.550.)

Dated: December 27, 1982.

Approved:

Bernard J. Wunder, Jr.

Administrator.

[FR Doc. 83-76 Filed 1-3-83; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 7

[T.D. 83-7]

Customs Regulations Amendment Relating to Articles Imported From Insular Possessions of the United States Other Than Puerto Rico

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that articles valued at $100 or less coming directly into the United States from an insular possession of the United States other than Puerto Rico may be admitted free of duty pursuant to the Tariff Schedules of the United States, without certain specified accompanying documentation. The current regulation provides for this treatment for articles valued at $25 or less. This change will result in a reduction in paper work for both importers and Customs, and will expedite the clearance of passengers' baggage and mail parcels containing products from insular possessions.

EFFECTIVE DATE: February 3, 1983.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Benjamin Mahoney, Entry Procedures and Penalties Division (202-566-5765); Operational Aspects: Eula D. Walden, Office of Cargo Enforcement and Facilitation (202-566-8151); U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

General Headnote 3(a), Tariff Schedules of the United States (TSUS, 19 U.S.C. 1202) provides, in part, that articles coming into the customs territory of the United States directly from an insular possession of the United States other than Puerto Rico (Guam, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and American Samoa), which are the growth or product of any such insular possession, or are manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 50 percent of their total value (or more than 70 percent of their total value with respect to watches and watch movements), are exempt from duty. It further provides that all articles previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation, which were shipped from the United States without remission, refund, or drawback of such duties and taxes, directly to the insular possession from which they are being returned by direct shipment, are exempt from duty.

Section 7.8 (a), Customs Regulations (19 CFR 7.8. (a)), provides that when articles coming directly into the United States from an insular possession, other than Puerto Rico, in a shipment valued over $25 are sought to be admitted free of duty under the provisions of General Headnote 3(a), TSUS, relating to certain articles *produced in the insular possessions,* there shall be filed in connection with the entry, a certificate of origin on Customs Form 3229 signed by the chief or assistant chief Customs officer at the port of shipment, showing that the articles are the growth or

product of such possession, or were manufactured or produced in such possession from materials the growth, product, or manufacture of any such possession or of the United States, or of both, which do not contain foreign materials to the value of more than 50 percent of their total value. A certificate of origin is not required for any shipment valued at $25 or less.

Section 7.8(b), Customs Regulations (19 CFR 7.8(b)), provides that when articles coming directly into the United States from an insular possession, other than Puerto Rico, in a shipment valued over $25 are sought to be admitted free of duty under the provisions of General Headnote 3(a), TSUS, relating to certain articles *returned to the United States*, there shall be filed in connection with the entry, a certificate on Customs Form 3311, of the district director of Customs at the port from which the articles were shipped from the United States. Section 7.8(b) further provides for a declaration of the shipper of the articles in the insular possession with respect to when the articles were shipped from the United States, and back to the United States. The certificate and declaration requirements of § 7.8(b) are not applicable for shipments valued at $25 or less, or in any case where the district director is satisfied by reason of the nature of the articles or otherwise that they were shipped directly to the insular possession and were returned by direct shipment, and that no drawback of duties or refund or remission of taxes was allowed when the articles were shipped from the United States.

Section 7.8(c), Customs Regulations (19 CFR 7.8(c)), provides that when merchandise, excluding any shipments valued at $25 or less, arrives unaccompanied by a certificate of origin or a declaration of the shipper, or when any other document necessary to complete entry is lacking, a bond for the production of any missing document may be accepted by Customs.

Customs has determined that the $25 limit of § 7.8 (a), (b), and (c) should be raised to $100. Due to inflation, the $25 limit is no longer realistic. This change will result in a reduction in paperwork for both importers and Customs, and will expedite the clearance of passengers' baggage and mail parcels containing products from the insular possessions.

Section 7.8(d), Customs Regulations (19 CFR 7.8(d)), which relates to the determination as to whether an article contains foreign materials in the value of more than 50 percent of the value of the article for an exemption from duty under General Headnote 3(a), TSUS, must be amended to reflect the fact that the precentage test for watches and watch movements is 70 percent, not 50 percent. General Headnote 3(a), TSUS, was asmended to provide for the 70 percent test by Pub. L. 94–88.

Footnote 4 to § 7.8, which set forth previous General Headnote 3(a), TSUS, has been deleted since it is readily available in the TSUS, and its inclusion in the regulations is unnecessary.

In addition, several minor, non-substantive changes are being made to § 7.8.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary because these amendments relieve a burden on the importing public and because they are essentially procedural.

Executive Order 12291

Because these amendments will not result in a "major rule" as defined by section 1(b) of Executive Order 12291, the regulatory impact analysis prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code, as added by section 3 of Pub L. 96–354, the "Regulatory Flexibility Act." That act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other statute.

Drafting Information

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 7

Customs duties and inspection, Exports, Imports, Insular possessions of the U.S.

Amendment to the Regulations

Part 7, Customs Regulations (19 CFR Part 7), is amended as set forth below.

Approved December 15, 1982.

Robert E. Powis,

Acting Assistant Secretary of the Treasury.

William von Raab,

Commissioner of Customs.

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

Section 7.8, Customs Regulations (19 CFR 7.8), is revised to read as follows:

§ 7.8 Insular possessions of the United States other than Puerto Rico.

(a) When articles coming directly into the United States from an insular possession, other than Puerto Rico, in a shipment valued over $100 are sought to be admitted free of duty under the provisions of General Headnote 3(a), Tariff Schedules of the United States (19 U.S.C. 1202), relating to certain articles produced in such insular possessions, there shall be filed in connection with the entry a certificate of origin covering articles shipped from insular possessions (except Puerto Rico) to the United States. The certificate shall be on Customs Form 3229, and shall be signed by the chief or assistant chief customs officer at the port of shipment,[5] showing that the merchandise is the growth or product of such possession, or manufactured or produced in such possession, from materials the growth, product, or manufacture of any such possession or of the United States, or of both, which do not contain foreign materials to the value of more than 50 percent of their total value (or more than 70 percent of their total value with respect to watches and watch movements). A certificate shall not be required for any shipment valued at $100 or less.

(b) When articles coming directly into the United States from an insular possession, other than Puerto Rico, in a shipment valued over $100 are sought to be admitted free of duty under the provisions of General Headnote 3(a), Tariff Schedules of the United States, relating to certain articles returned to the United States, there shall be filed in connection with the entry the following evidence:

(1) A certificate, on Customs Form 3311, of the district director at the port from which the merchandise was shipped from the United States. No certificate shall be required if the district director is satisfied by reason of the nature of the articles or otherwise that no drawback of duties or refund or remission of taxes was allowed on the merchandise by reason of the shipment. This certificate shall be issued on application of the importer, or of the district director at the importer's request, and shall be mailed by the issuing officer directly to the port at which it is to be used. If the

merchandise was shipped from the port at which entry is made and the fact of shipment appears on Customs records, the fact of return shall be noted on the record but the filing of the certificate on Customs Form 3311 shall not be required; and

(2) A declaration of the shipper in the insular possession in the following form:

I, ———— of ———— do hereby declare that to the best of my knowledge and belief the articles identified below were sent directly from the United States on ———— 19——, to ————, of ————, on (insular possession) the ————, and that the (Name of carrier) articles remained in said insular possession until shipped by me directly to the United States via the ———— (Name of carrier on ————, 19——.

Marks: ————, Numbers: ————, Quantity: ————, Description: ————, Value: ————.

Dated at ————, this —— day of ————, 19——.

Shipper:

The declaration shall not be required in any case where the district director is satisfied by reason of the nature of the articles or otherwise that they were shipped directly to the insular possession and were returned by direct shipment.

(c) When merchandise, excluding any shipments valued at $100 or less, arrives unaccompanied by any of the documentation required by this section, or when any other document necessary to complete entry is lacking, a bond for the production of any missing document may be taken on Customs Form 7551, 7553, or another appropriate form, except that a bond for production of a bill of lading shall be taken on Customs Form 7581.

(d) In determining whether an article produced or manufactured in any such insular possession contains foreign materials to the value of more than 50 percent (or more than 70 percent with respect to watches and watch movements), a comparison shall be made between the actual purchase price of the foreign materials (excluding any material which at the time such article is entered, or withdrawn from warehouse, for consumption in the United States, may be imported into the United States from a foreign country, other than Cuba or the Philippines, free of duty), plus the cost of transportation to such insular possession (but excluding duties and taxes, if any, assessed by the insular possession and any charges which may accrue after landing), and the final appraised value in the United States determined in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a), of the article brought into the United States.

(e) A special Customs invoice on Customs Form 5515 shall be required in connection with shipment of dutiable merchandise valued over $500 unless the shipment would have been exempt from the requirement of a special Customs invoice under § 141.83 of this chapter if it had been imported from a foreign country, or when the shipment is covered by a certificate of origin provided for in paragraph (a) of this section.

(f) Merchandise may be withdrawn from a bonded warehouse under section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, without payment of duty, or with a refund of duty if the duties have been paid, in like manner as for exportation to foreign countries. No drawback may be allowed under section 313, Tariff Act of 1930, as amended (19 U.S.C. 1313), on articles manufactured or produced in the United States and shipped to any insular possession. No drawback of internal-revenue tax is allowable under 19 U.S.C. 1313 on articles manufactured or produced in the United States with the use of domestic tax-paid alcohol and shipped to Wake Island, Midway Islands, Kingman Reef, Johnston Island.

(g) Guam, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and American Samoa are American territory, but not within the customs territory of the United States. Importations into those islands are not governed by the Tariff Act of 1930 or these Customs Regulations. The Customs administration of American Samoa is under the jurisdiction of the Department of the Interior (Office of Territories). The Customs administration of Wake Island is under the jurisdiction of the Department of the Air Force (General Counsel). The Customs administration of Midway Islands is under the jurisdiction of the Department of the Navy. The Customs administration of Guam is under the Government of Guam. A certificate signed by the Commander at the Johnston Island Air Force Base, or his assistant, shall be acceptable as proof of origin. Kingman Reef is understood to be uninhabited (R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[FR Doc. 83-46 Filed 1-3-83; 8:45 am]

BILLING CODE 4820-02-M

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

Note.—This document originally appeared in the **Federal Register** of Thursday, December 30, 1982. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Employment and Training Administration, Labor.

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains final regulations to implement certain provisions of the Training Partnership Act (Pub. L. 97-300). The final rule provides guidance on the structure and implementation of the planning systems authorized under Title I of the Act.

EFFECTIVE DATE: January 31, 1983.

FOR FURTHER INFORMATION CONTACT: Patrick J. O'Keefe, Telephone (202) 376-8444.

SUPPLEMENTARY INFORMATION: Proposed rulemaking governing certain provisions of the Job Training Partnership Act was published in the **Federal Register** on November 19, 1982 (47 FR 52197), for the purpose of soliciting public comment. The Department received 32 written comments on the proposal. Following is a description of each affected section as it appears in these final regulations, a summary of the comments received, and the Department's response.

The proposed regulations at § 626.2 describe the appointment of the State job training coordinating council (SJTCC). Commentators suggested that the regulations set forth an order of events in establishing the SJTCC, and suggested that the regulations prescribe a process to be used by the Governor in selecting SJTCC members. The Department believes, however, that it would be appropriate not to compromise the flexibility of the Governor in appointing the SJTCC. Therefore, the provision remains as proposed.

The proposed regulations at § 626.3 provide guidance on the designation of service delivery areas (SDAs). Several commentators requested additional rules addressing circumstances the Governors will face in designating SDAs for areas of the State comprised of units of general local government with

populations of less than 200,000. Other comments on § 626.3 suggested that the regulations set dates for establishing SDAs, and provide more structure for appeals. Consistent with the decentralized spirit of the Act, the Department believes that the Governor is in the best position to resolve any issues that arise during the designation of SDAs. Therefore, the provision remains as proposed.

Commentators suggested clarification on whether the entire State is to be covered by an SDA. That clarification has been included.

In § 626.3, paragraph (a) was relettered as paragraph (b) and paragraph (b) was relettered as paragraph (a) to reorder the presentation of events which must occur in the SDA designation process.

In § 626.4, paragraph (a) governs the establishment and certification of the private industry council (PIC) and paragaph (b) covers PIC functions. Commentators requested additional rules and/or guidance concerning delineation of responsibilities in cases of a combined SJTCC/PIC, criteria for evaluating, appointing and certifying PIC members, delineation of monitoring and oversight functions of the PIC versus the local elected official(s), and public notice of PIC nominees prior to the Governor's certification. Consistent with the intent of the Act, the regulations were written to provide those at the State and local levels with the authority for making these determinations. Therefore, additional guidance is unnecessary.

Numerous commentators objected to the authority granted in § 626.4(b) for the PIC to exercise independent oversight over activities under the job training plan. Commentators pointed out that the law places oversight responsibility jointly with the PIC and the unit(s) of local government in the SDA. The regulation as proposed was not intended to diminish the oversight authority of others, including local elected officials. Instead, in addition to any joint oversight, the PIC is authorized to undertake its own independent oversight activities. We are, however, revising the regulation to explicity state that such additional oversight is authorized, but not required.

The proposed regulations at § 626.4, paragraph (b), state that the PIC is to provide policy and program guidance for all activities under the job training plan. There was objection to the word program since the law only specifies that the PIC will provide policy guidance. The statute requires the PIC to provide policy guidance and such guidance would be related solely to the program, therefore inclusion of the word program is appropriate.

Also in § 626.4, paragraph (b), is a reference to the agreements to be negotiated between the PIC and the chief elected official(s). There was comment that in Section 163(b) of the Act the term chief elected official can include an authorized representative. The comment suggested that the regulation be revised to add "or his designee" after chief elected official. The Department, however, believes this addition is unnecessary since the statute is clear on this point. Therefore, no further clarification by regulation is necessary.

Commentators objected to the language in § 626.4(c) concerning the development of the plans required under the Wagner-Peyser Act. The commentators felt that the language should repeat the statutory provision. Accordingly, the language in paragraph (c) has been revised.

A question was also raised with respect to Section 181(f)(7) of the statute concerning the Secretary's authority to provide up to $80,000 to each PIC for Fiscal Year 1983. Because this provision does not impose a Secretarial responsibility, it is not addressed as a regulation. However, this issue will be addressed through an internal Department of Labor administrative issuance at a later date.

Due to the statutory deadline of January 1, 1983 for publication of these regulations, these rules have not been submitted to OMB for review under Executive Order 12291. See Section 8(a)(2) of the Executive Order.

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 and 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) 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)).

(b) Pursuant to Section 101 of the Act, the Governors shall designate service delivery areas (SDAs) for the State. All areas within the State must be covered by designated SDAs. Requests for designation shall be submitted in a form and by a date established by the Governor.

(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 area 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 apeal 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 may exercise independent oversight over activities under the job training plan, and oversight shall not be circumscribed by agreements with the appropriate chief elected official(s) of the SDA.

(c) The employment service shall develop jointly with each appropriate PIC and chief elected official(s) for the SDA those components of the plans required under the Wagner-Peyser Act of 1933, as amended, applicable to the SDA (Sec. 501(d)).

Signed at Washington, D.C., this 28th day of December, 1982.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 82-35220 Filed 12-29-82; 8:45 am]

BILLING CODE 4510-30-M

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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: Final 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 amending its regulations for the certification of nonimmigrant aliens for temporary employment in agriculture and logging in the United States. The rule amends 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 rule does not establish a permanent methodology for adoption beyond 1982 in these four or any other States.

EFFECTIVE DATE: February 3, 1983.

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 amending 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*, Civil Action No. 82-2315 (D.D.C. September 3, 1982), concerns piece rates for apple harvesting in West Virginia.

The notice of proposed rulemaking in this rulemaking was published in the **Federal Register** on November 19, 1982, (47 FR 52198) and written comments were requested by December 20, 1982. The comments received are discussed later in this document. The rule establishes a methodology for determining the 1982 adverse effect wage rates (AEWRs) for the four States covered by the orders.

The issuance of a visa petition to admit a nonimmigrant alien to the United States for the purpose of temporary employment is 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 DOL to advise INS, in part, whether 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 also has been determined that employment of those aliens in a number of States at wages below specially computed adverse effect wage rates (AEWRs) would adversely affect the wage of similarly employed United States workers. 20 CFR 655.202(b)(9) and 655.207.

Since 1968, these 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 field and livestock worker wage rates.

The methodology contained in this rule compensates for the reduction of data available from the USDA. DOL plans to address separately the viability and appropriateness of a general AEWR methodology, and its action today in no way prejudges those more basic and broader questions. In other States, rates established for 1981 "remain in effect until such time as a final determination regarding the methodologies for computing AEWRs can be made." 47 FR 37980 (August 27, 1982).

In recent years, ETA has considered several methodologies and options regarding the use of 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 methodologies considered in this rulemaking were:

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 upon 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.

The Option 4 methodology was adopted in the proposal, and is adopted in final form because it is the most readily understandable and consistent with the methodology used since 1968. Under this option the 1981 USDA annual average rates were 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). The January-April 1981 surveys included

thousands of workers in each survey. With the estimated 1981 annual average for each State, the percentage change can be determined from the difference between it and the 1980 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, the instant rule amends the **Federal Register** notice of August 27, 1982, cited above, and the AEWRs set forth in the rule "shall remain in effect until such time as a final determination regarding the methodologies for computing AEWRs can be made." 47 FR 37980. Some recent applicants for certification have asked ETA informally whether the rulemaking amends the August 27, 1982, notice to permit 1983 wages in any State at prevailing rates below the AEWRs set forth in this document and in that notice. It does not, but to avoid any lowering of wages past the 1982 and 1982–83 seasons, the final rule has been clarified to apply beyond those seasons, the final rule has been clarified to apply beyond those seasons.

As applied to the four named States, the 1982 AEWRs are set at the levels shown in Table I below. For comparison, the 1981 AEWRs and the percentage changes also are shown.

TABLE I.—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	3.69	+2.5
West Virginia	3.62	3.98	+10d.0 [1]

[1] The actual increase for West Virginia under the methodology was +17.2 percent. A 10.0 percent increase will be applied in 1982. As noted in the proposed rule, the balance (+7.2 percent) will be applied in computing the 1983 AEWR ($4.24) for West Virginia.

Comments were received by DOL both in favor of the proposed rule and opposed to it.

A number of Florida agricultural employers and employer associations commented favorably on the proposed rule. One such employer referred to the rule as the "most viable option", which is "fair to all parties concerned". Other Florida employers submitting comments supported the rule as an interim measure, but indicated that a new methodology would be needed in the future. They also made suggestions on methodologies for setting AEWRs in future years.

A comment was received from the AFL–CIO objecting to the employment of nonimmigrant aliens in United States agriculture. The association's Department of Economic Research opposed the use of Option 4 for determining the AEWRs, and suggested that AEWRs be issued for all States based upon actual wage surveys or the increase in wages of nonfarm production workers. The AFL–CIO also objected to the proposal "to exempt" the West Virginia AEWR from 7.2% of the scheduled increase. The general subject of alien employment in the United States is outside the narrow scope of this rulemaking.

As noted above, the full year agricultural wage surveys formerly supplied by the USDA are no longer available. The linkage of farm wages to nonfarm wages was considered by DOL in a previous rulemaking (44 FR 59890, October 16, 1979), and continues to be one of many options considered in the determination of a final AEWR policy. As shown in Table I above, West Virginia was not exempted from the further 7.2% increase. That increase has been deferred until 1983, to avoid any potential economic hardship on West Virginia employers, who will have to pay the 1982 wages retroactively.

> The common purpose [of 8 U.S.C. 1101(a)(15)(H)(ii) and 1184] are to assure [employers] an adequate labor force on the one hand and to protect the jobs of citizens on the other. Any statutory scheme with these two purposes must inevitably strike a balance between the two goals. Clearly, citizen-workers would best be protected and assured high wages if no aliens were allowed to enter. Conversely, elimination of all restrictions upon entry would most effectively provide employers with an ample labor force.

Rogers v. *Larsen*, 563 F. 2d 617, 626 (3rd Cir. 1977); *Flecha* v. *Quiros*, 567 F. 2d 1154, 1156 (1st Cir. 1977).

Comments from West Virginia were split into two groups, each claiming that the AEWR discriminates against its members. West Virginia agricultural employers, and those representing their interests, commented that the AEWR was so high as to discriminate unfairly against growers in that State. West Virginia agricultural workers, and those representing their interests, commented that the AEWR should have been increased even more for 1982, and, thus, discriminated unfairly against workers in that State.

A number of comments were received from West Virginia growers and persons representing their interests, who opposed the proposed rule, arguing that it would put West Virginia growers importing nonimmigrant alien workers in a less competitive position than growers which use United States workers. Similar comments were received from West Virginia employer groups and State agencies, and were enclosed with letters from two West Virginia Members of Congress. However, as noted above, the rate for West Virginia has been set in response to the court Order ordering DOL to set a rate for 1982.

DOL considered several courses of action, and selected the most practical option; one that is equitable to both United States workers and agricultural employers. This neutral statistical methodology was applied for the AEWR for each of the four States named in the court's Orders. As noted in the above Table I, the effect on West Virginia was tempered for 1982.

The 1981 annual USDA rates for West Virginia and the other named States were computed by examining the historical relationship between USDA's January–April data and annual data. Once the 1981 USDA annual rates were computed, the methodology used to determine the 1982 AEWRs was virtually the same as that currently contained in 20 CFR 655.207(b) (1) and (2), and is firmly anchored in economic realities.

The Immigration and Nationality Act and the Immigration regulations grant the Secretary of Labor "broad discretionary authority to choose any reasonable formula to compute" AEWRs. *Rowland* v. *Marshall*, 650 F. 2d 28, 30 (4th Cir. 1981); *Florida Sugar Cane League, Inc.* v. *Usery*, 531 F. 2d 299 (5th Cir. 1976). The methodology in 20 CFR 655.207(b) (1) and (2) has been accepted by the United States Courts of Appeal both in cases where employers argued that the AEWR was set too high and in cases where workers argued that the AEWR was set too low. *Rowland* v. *Marshall, supra; Williams* v. *Usery*, 531 F. 2d 305 (5th Cir. 1976); and *Florida Sugar Cane League, Inc.* v. *Usery, supra.*

As shown in Table II below, the data base for the West Virginia AEWR, and the AEWR itself, were computed by the same methodology as for the other States covered by the court's orders.

TABLE II.—USDA DATA BASE FOR 1982 AEWR'S

State	Year	Jan.–Apr. Average	Annual Average	Ratio
West Virginia:	1974	$1.51	$1.75	$1.16
	1975	1.89	1.98	1.05
	1976	1.95	1.98	1.02
	1977	2.17	2.03	.94
	1978	2.41	2.24	.93
	1979	2.51	2.37	.94
	1980	2.62	2.62	1.00
	1981	3.05	[1]3.07	[2]1.0057
New England: [3]	1974	2.07	2.02	.98
	1975	2.17	2.21	1.02
	1976	2.32	2.33	1.00
	1977	2.34	2.38	1.02
	1978	2.44	2.47	1.01
	1979	2.71	2.81	1.04
	1980	2.81	2.82	1.00
	1981	2.86	[1]2.89	[2]1.01

TABLE II.—USDA DATA BASE FOR 1982 AEWR'S—Continued

State	Year	Jan.–Apr. Average	Annual Average	Ratio
Florida:	1974	2.49	2.42	.97
	1975	2.71	2.59	.96
	1976	2.85	2.75	.96
	1977	3.13	2.96	.95
	1978	3.28	3.22	.98
	1979	3.55	3.47	.98
	1980	4.16	3.98	.96
	1981	4.15	[1]4.01	[2].9657

[1]The 1981 annual average USDA rate was computed by multiplying the January–April 1981 USDA rate by the average ratio for the previous seven years.
[2]The 1981 ratio is the average of the ratios for the previous seven years.
[3]USDA surveys New England, including Maine and Vermont, as one unit.

As shown in Table II above, the USDA annual average wage rate for West Virginia field and livestock workers increased by 17.2% from 1980 to 1981, from $2.62/hour to $3.07/hour. In comparison, the USDA annual rates increased 0.8% in Florida, from $3.98/hour to $4.01/hour; and increased 2.5% in Maine and Vermont, from $2.82/hour to $2.89/hour. Those percentage increases were applied to the 1981 AEWRs for the States included in the court's Orders in the manner shown in Table I above.

Attorneys for various West Virginia agricultural workers objected to the deferral of 7.2% of that State's AEWR until 1983. However, a comparison of the AEWR increases in the four States named in the court's Orders shows that the West Virginia AEWR otherwise would have increased substantially more than the other three named States. Given that the AEWR will rise by the additional 7.2% in 1983, that the AEWR did not rise in States other than the named four since 1981, and that the 1982 AEWR is being applied retroactively to employers, the rule being adopted by this document is a reasonable approach to the AEWR question, and is equitable to both employers and workers. Similar comments were received from the attorneys for the plaintiffs in *Bragg* v. *Donovan, supra.*

The Director of the Economic Development Division of the Economic Research Service of USDA expressed three concerns on the proposed rule. One concern alleged inequities in the AEWR determinations. That suggestion is dealt with above. Another concern was that the "1982 methodology * * * includes no 1982 * * * data." As indicated above, the AEWR methodology in place since 1968, necessarily relied upon the increase in average rates between the previous two years. The methodology used here followed that procedure.

In his third concern the Director stated that "DOL derived 1981 farm wage rates that are questionable [because] the data for the 1974–80 period indicate there is no close correlation between the farm wage survey rates and the USDA annual average farm wage survey rates for this period." DOL disagrees with this analysis.

Table II shows that for the past seven years the January to April averages in the four States have been reasonably comparable to the annual averages in those States. To compensate for year-to-year variations between first quarter and annual average wage rates, DOL determined, for each State, the average variation for the past seven years. Using the resultant ratios, DOL estimated, for each State, an annual average wage for 1981. The methodology adopted provides an appropriate balance protecting the interests of U.S. workers and agricultural employers.

An attorney who represents various East Coast agricultural employers suggested setting the AEWR at $3.35, the Fair Labor Standards Act minimum wage, or at 15% above that level. These options were considered in adopting the new rule, and were rejected for the reasons discussed above.

An attorney representing Vermont agricultural employers objected to the issuance of any AEWR for that State, particularly one issued retroactively. DOL is under a court Order to adjust the rate in Vermont and to apply that increase retroactively.

An attorney representing Florida farmworkers opposed the rule on a number of grounds. Most of his comments related to expansion of the rulemaking and the AEWR increase beyond those States and crop activities covered by the court's Orders, and thus were outside the narrow scope of this rulemaking. Similar comments were received from the attorneys for the plaintiffs in *Bragg* v. *Donovan, supra.* The Florida attorney also suggested that the AEWR for Florida sugar cane be raised. As stated above, the rates were set pursuant to the established methodology and in accordance with the court's Orders. In addition, the AEWRs for Florida sugar cane in the past have resulted consistently in average hourly earnings above the adverse effect level in the crop activity.

The Maryland Department of Human Resources opposed the increase in the West Virginia AEWRs, suggesting that it would "impact on recruiting efforts in Maryland". However, DOL has had to develop a 1982 AEWR for West Virginia pursuant to the court's Order, and historically AEWRs have been set on a State-by-State basis.

DOL has reviewed and considered carefully each of the above comments, and based on the requirements of the court's Orders, and the practicality of the chosen methodology for 1982, the final rule set forth below is being adopted. The rule is consistent with the document published in the **Federal Register** on November 19, 1982 (adopting the same methodology as there proposed), and protects United States workers from the adverse effect of employment of nonimmigrant aliens, while at the same time allowing for such employment where there are shortfalls in the domestic workforce.

Development of Final Rule

This final 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 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. Executive Order 12291 (February 17, 1981).

At the time of publication of the proposed rule, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the 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.

Final Rule

PART 655—[AMENDED]

Accordingly, § 655.207 of Part 655 of Chapter V of Title 20, Code of Federal Regulations, is amended, 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: beginning in the 1982 harvest season, $3.53 in Maine, $3.63 in Vermont, and $3.98 in West Virginia, for agricultural employment in those States; beginning in the 1982–83 harvest season, $4.73 in Florida for sugar cane work; and beginning in the 1983 harvest season, $4.24 in West Virginia, for agricultural employment in that State.

* * * * *

(Secs. 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 29th day of December 1982.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 83–140 Filed 1–3–83; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 82F–0192]

Indirect Food Additives; Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of poly(diallyldimethylammonium chloride) as a pigment dispersant and/or retention aid in the manufacture of paper and paperboard that may contact food. This action responds to a petition by Calgon Corp.

DATES: Effective January 4, 1983; objections by February 3, 1983.

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

FOR FURTHER INFORMATION CONTACT: Vir Anand, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 27, 1982 (47 FR 32479), FDA announced that a petition (FAP 2B3616) had been filed by the Calgon Corp., Calgon Center, P.O. Box 1346, Pittsburgh, PA 15230, proposing that the food additive regulations be amended to provide for the safe use of poly(diallyldimethylammonium chloride) as a pigment dispersant and/or retention aid in the manufacture of paper and paperboard intended to contact food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 U.S.C. 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition, are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency 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 therefore an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 176 is amended in § 176.170(a)(5) by alphabetically inserting a new item in the list of substances, to read as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * *	* *
Poly(diallyldimethylammonium chloride) (CAS Reg. No. 26062-79-3) produced by the polymerization of diallyldimethylammonium chloride so that the finished resin has a nitrogen content of 8.66±0.4 percent on a dry weight basis and a minimum viscosity in a 40-weight percent aqueous solution of 1,000 centipoises at 25° C (77° F), determined by LVF Model Brookfield Viscometer using a No. 3 spindle at 30 r.p.m. (or equivalent method). The level of residual monomer is not to exceed 1 weight percent of the polymer (dry basis).	For use only as a pigment dispersant and/or retention aid prior to the sheet-forming operation in the manufacture of paper and paperboard, and used at a level not to exceed 10 pounds of active polymer per ton of finished paper and paperboard.
* * *	* *

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 3, 1983, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective January 4, 1983.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: December 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-11 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 177

[Docket No. 82F-0026]

Indirect Food Additives: Polymers; High-Temperature Laminates

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of an aliphatic polyurethane laminating adhesive for fabricating retortable pouches and related high-temperature laminates. This action responds to a food additive petition filed by Toyo Seikan Kaisha, Ltd.

DATES: Effective January 4, 1983, objections by February 3, 1983.

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

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In notices published in the **Federal Register** of March 19, 1982 (47 FR 11971) and December 28, 1982 (47 FR 57775), FDA announced that a petition (FAP 2B3615) had been filed by Toyo Seikan Kaisha, Ltd., 3-1 Uchisaiwaicho 1-Chome, Chiyoda-ku, Tokyo 100, Japan, proposing that the food additive regulations be amended to provide for the safe use of a 2-component aliphatic polyurethane laminating adhesive for fabricating retortable pouches and other high-temperature laminates identified in § 177.1390(c) *High-temperature laminates* (21 CFR 177.1390(c)).

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that § 177.1390 should be amended as set forth below.

In accordance with § 177.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency 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 is not required. The agency's finding of no significant impact and the evidence supporting these findings may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 177 is amended in § 177.1390 by adding new paragraph (c)(2)(iv) to read as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

§ 177.1390 High-temperature laminates.

* * * * *

(c) * * *

(2) * * *

(iv) Polyester-urethane adhesive for use at temperatures not exceeding 121° C (250° F) and formulated from the following:

(*a*) Polyester-urethanediol resin prepared by the reaction of a mixture of polybasic acids and polyhydric alcohols listed in § 175.300(b)(3)(vii) of this chapter, 3-isocyanatomethyl-3,5,5-trimethylcyclohexyl isocyanate (CAS Reg. No. 4098-71-9) and optional trimethoxysilane coupling agents containing amino, epoxy, ether, and/or mercapto groups not to exceed 3 percent by weight of the cured adhesive.

(*b*) Urethane cross-linking agent comprising not more than 25 percent by weight of the cured adhesive and formulated from 3-isocyanatomethyl-3,5,5-trimethylcyclohexyl isocyanate (CAS Reg. No. 4098-71-9) adduct of trimethylol propane (CAS Reg. No. 77-99-6).

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 3, 1983 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective January 4, 1983.

(Secs. 202(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: December 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-50 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 81F-0367]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Cyclic Neopentanetetrayl Bis(Octadecyl Phosphite)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for safe use of cyclic neopentanetetrayl bis(octadecyl phosphite) as an antioxidant and/or stabilizer in ethylenevinyl acetate copolymers intended to contact food. This action responds to a petition filed by Borg-Warner Chemicals, Inc.

DATES: Effective January 4, 1983; objections by February 3, 1983.

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

FOR FURTHER INFORMATION CONTACT: Julia L. Ho, Bureau of Foods (HFF-334),

Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 8, 1981 (46 FR 60063), FDA announced that a food additive petition (FAP 2B3591) had been filed by Borg-Warner Chemicals, Inc., Technical Centre, Washington, WV 26181, proposing that Part 178 (21 CFR Part 178) of the food additive regulations be amended to provide for the safe use of cyclic neopentanetetrayl bis(octadecyl phosphite) as an antioxidant and/or stabilizer in ethylene-vinyl acetate copolymers intended to contact food.

FDA had evaluated the data in the petition and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency 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 agency's finding of no significant impact and the evidence supporting this finding, contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742), may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives; Food packaging; Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 178 is amended in § 178.2010(b) by alphabetically inserting a new item in the list of substances to read as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.2010 Antioxidants and/or stabilizers for polymers.

(b) * * *

Substances	Limitations
* * *	* *
Cyclic neopentanetetrayl bis(octadecyl phosphite) (CAS Reg. No. 3806-34-6); the phosphorus content is in the range of 7.8 to 8.2 weight percent.	For use only at levels not to exceed 0.1 percent by weight of ethylene-vinyl acetate copolymers complying with § 177.1350 of this chapter that contact food under conditions of use E, F, and G described in table 2 of § 176.170(c) of this chapter.
* * *	* *

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 3, 1983, submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective January 4, 1983.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: December 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-12 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 82F-0227]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers; Antioxidants and/or Stabilizers for Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant in surface lubricants used in the manufacture of metallic articles for contact with food. This action responds to a petition by Ciba-Geigy Corp.

DATES: Effective January 4, 1983; objections by February 3, 1983.

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

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

SUPPLEMENTARY INFORMATION: In a notice in the **Federal Register** of August 27, 1982 (47 FR 37958), FDA announced that a petition (FAP 2B3640) had been filed by CIBA-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing to amend § 178.3910 *Surface lubricants used in the manufacture of metallic articles* (21 CFR 178.3910) to provide for safe use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]methane as an antioxidant in surface lubricants used in the manufacture of metallic articles intended for food-contact use.

Having evaluated data in the petition and other relevant material, FDA concludes that the proposed food additive use is safe and that § 178.3910 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2) (21 CFR 171.1(h)(2)), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency 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 agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Comestic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 178 is amended in § 178.3910(b)(2) by alphabetically inserting a new item in the list of substances to read as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.3910 Surface lubricants used in the manufacture of metallic articles.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * * * *	
Tetrakis[methylene (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane (CAS Registry No. 6683-19-8).	For use at a level not to exceed 0.5 percent by weight of the finished surface lubricant formulation.
* * * * *	

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 3, 1983, submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective January 4, 1983.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: December 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-13 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 82F-0245]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Antioxidants and/or Stabilizers for Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as an antioxidant and/or stabilizer in vinylidene chloride homopolymers and copolymers intended to contact food. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective January 4, 1983; objections by February 3, 1983.

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

FOR FURTHER INFORMATION CONTACT: Vir Anand, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of August 27, 1982 (47 FR 37959), FDA announced that a petition (FAP 2B3618) had been filed by the Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that the food additive regulations be amended to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as an antioxidant and/or stabilizer in vinylidene chloride homopolymers and copolymers intended for food-contact use.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will remove from the documents any materials that are not available for public disclosure before making the document available for inspection.

The agency 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 is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), § 178.2010(b) is amended by adding a new limitation for "Octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate" to read as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.2010 Antioxidant and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate (CAS Reg. No. 2082-79-3).	For use only * * * 12. At levels not exceeding 0.2 percent by weight of vinylidene chloride homopolymers and/or vinylidene chloride copolymers complying with applicable regulations in Parts 175, 176, 177, 179, and 181 of this chapter. The vinylidene chloride copolymers shall contain not less than 50 weight percent of total polymer units derived from vinylidene chloride.
* * * * *	

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 3, 1983, submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective, January 4, 1983.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: December 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-48 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 184

[Docket No. 82G-0010]

Direct Food Substances Affirmed as GRAS, Mixed Carbohydrase and Protease Enzyme Product

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that mixed carbohydrase and protease enzyme product derived from *Bacillus licheniformis* is generally recognized as safe (GRAS) when used to hydrolyze starches and proteins in the production of certain foods. This action is based on an industry petition requesting such affirmation.

EFFECTIVE DATE: January 4, 1983.

FOR FURTHER INFORMATION CONTACT: Mary C. Custer, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In accordance with the procedures described in § 170.35 (21 CFR 170.35), Novo Laboratories, Inc., Danbury Rd., Wilton, CT 06897, submitted a petition (GRASP 3G0026) requesting affirmation that mixed carbohydrase and protease enzyme product derived from *Bacillus licheniformis* used as an enzyme in the production of nutritive sweeteners, beer, distilled spirits, and protein hydrolyzates is GRAS. A notice of filing of the petition was published in the **Federal Register** of September 12, 1973 (38 FR 25214), and interested persons were given an opportunity to review the petition and to submit comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

In response to the notice, one comment was received from the manager of microbiological research at a large firm. The comment questioned the statement made by the petitioner that *B. licheniformis* is a member of the *Bacillus subtilis* group and the petitioner's contention that all the data available to show the safety of carbohydrase and proteases prepared from *B. subtilis* are applicable to the mixture derived from *B. licheniformis*. The respondent pointed out that *B. licheniformis* had been classified as a separate and distinct species from *B. subtilis* as early as 1944 and used examples to show that the safety data for one organism do not automatically guarantee the safety of another albeit closely related, organism.

The agency concurs with the comment and concludes that the safety of mixed carbohydrase and protease enzyme product derived from *B. licheniformis* should be evaluated on the basis of scientific procedures, not on the basis of the history of use of similar enzyme preparations from *B. subtilis*, as requested by the petitioner.

Mixed carbohydrase and protease enzyme product is an enzyme preparation that includes amylases and proteases. It is obtained from the culture filtrate resulting from a pure culture fermentation of a nonpathogenic strain of the organism *B. licheniformis*. The enzyme mixture is standardized with respect to amylase or protease activity by the addition of an appropriate amount of dilute sodium chloride solution. The enzyme product, as prepared, should meet the specifications for enzymes of the Food Chemicals Codex, 3d Ed. (1981).

The applications of mixed carbohydrase and protease enzyme preparations in the food industry fall into two spearate areas based upon the principal reaction that is being catalyzed by the enzymes in the mixture. The amylase portion of the mixture catalyzes the hydrolysis of starch to water soluble sugars, and the protease portion of the mixture catalyzes the hydrolysis of proteins to smaller, usually more soluble, proteins and polypeptides.

Mixed carbohydrase and protease enzyme preparations are used in the brewing and distilling industries to liquify the starch in mashes or adjuncts. These preparations may also be used to dissolve starch in cane juice to facilitate the subsequent filitration process. Likewise, the enzyme preparation can be used to recover sugars from scrap candy that contains starch as a gelling agent.

The mixed carbohydrase and protease enzyme product derived from *B. licheniformis* has been used to degrade gelled starch to water soluble sugars in the corn syrup industry since 1972. This enzyme preparation has also been used in the experimental production of protein hydrolyzates since 1971.

Published scientific literature as well as standard books on food microbiology demonstrate that *B. licheniformis* is widely recognized as a common contaminant found in many foods. None of these references report any toxicity or pathogenicity associated with the presence of this organism in food.

A search of the scientific literature reported by the petitioner disclosed no evidence that *B. licheniformis* produces disease in man. One published

pathogenicity study reported that *B. licheniformis* was not pathogenic in mice or guinea pigs.

The petition also contains unpublished pathogenicity studies, animal feeding studies, and dermal studies to support the safety of the enzyme preparation. The unpublished pathogenicity studies on the particular strain of *B. licheniformis* covered by the petition confirm that this strain of *B. licheniformis* is neither pathogenic nor toxicogenic to rats, mice, guinea pigs, and rabbits. The animal feeding studies, including LD_{50}s in both sexes of mice and rats, a 28-day study in the rat, two 90-day studies in the rat and the dog, respectively, a teratology study in the rat, and two dominant lethal studies in the male mouse and male rat, respectively, provide data that corroborate that anticipated levels of the enzyme preparation in food are safe for human consumption. The dermal studies on rabbit skin and rabbit eye mucosa showed, respectively, moderate and minimal irritation. However, the agency believes that these effects are not relevant to the safety of the enzyme preparation as a food ingredient.

The agency has evaluated all the information related to the use of mixed carbohydrase and protease enzyme product derived from *B. licheniformis* in food and has reached the following conclusions:

1. The enzyme product is not GRAS based on history of common use in food.

2. The enzyme product is GRAS based on scientific procedures. This conclusion is based on published information establishing that *B. licheniformis* is widely recognized as a harmless contaminant found in many foods. This conclusion is corroborated by unpublished animal feeding studies that confirm that food uses of the enzyme product derived from *B. licheniformis* are safe.

The agency has also concluded that it is both impractical and unnecessary to include levels of use in the GRAS affirmation regulation for mixed carbohydrase and protease enzyme product derived from *B. licheniformis*. A set of percentage-by-weight levels of use would not be meaningful because of the varying activity levels of individual enzyme preparations, and the use of this enzyme preparation in many foods is self-limiting because the addition of excessive amounts results in a degree of hydrolysis that produces products of unacceptable texture. Therefore, the agency is affirming the GRAS status of mixed carbohydrase and protease enzyme product derived from *B. licheniformis* when it is used under current good manufacturing practice conditions of use in accordance with § 184.1(b)(1) (21 CFR 184.1(b)(1)). To make clear, however, that the affirmation of the GRAS status of this substance is based on the evaluation of limited uses, the regulation sets forth the technical effect and the food uses of this ingredient that FDA evaluated.

In the **Federal Register** of September 7, 1982 (47 FR 39199), FDA proposed to adopt a general policy restricting the circumstances in which it will specifically describe conditions of use in regulations affirming substances as GRAS under 21 CFR 184.1(b)(1) or 186.1(b)(1). The agency proposed to amend its regulations to indicate clearly that it will specify one or more of the current good manufacturing practice conditions of use in regulations for substances affirmed as GRAS with no limitations other than current good manufacturing practice only when the agency determines that it is appropriate to do so.

The format of the final regulation is different from that in previous GRAS affirmation regulations. FDA has modified paragraph (c) of § 184.1027 to make clear the agency's determination that GRAS affirmation is based upon current good manufacturing practice conditions of use, including both the technical effects and food categories listed. This change has no substantive effect but is made merely for clarity.

The agency has determined pursuant to 21 CFR 25.24(d)(6) (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.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this rule and the agency has determined that the rule is not a major rule as defined by the Order. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 184 is amended by adding new § 184.1027 to read as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

§ 184.1027 Mixed carbohydrase and protease enzyme product.

(a) Mixed carbohydrase and protease enzyme product is an enzyme preparation that includes carbohydrase and protease activity. It is obtained from the culture filtrate resulting from a pure culture fermentation of a nonpathogenic strain of *B. licheniformis*.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 107, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme, as defined in § 170.3(o)(9) of this chapter, to hydrolyze proteins or carbohydrates.

(2) The ingredient is used in the following foods at levels not to exceed current good manufacturing practice: alcoholic beverages, as defined in § 170.3(n)(2) of this chapter, candy, nutritive sweeteners, and protein hydrolyzates.

Effective date. This regulation shall become effective January 4, 1983.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: December 8, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

Note.—Incorporation by reference was approved by the Director of the Office of the Federal Register on April 1, 1982, and is on file in the Office of the Federal Register.

[FR Doc. 83-3 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-1-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Trimethoprim and Sulfadiazinl Sterile Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Wellcome Animal Health Div., Burroughs Wellcome Co., providing for safe and effective use in horses of a combination antibacterial drug containing trimethoprim and sulfadiazine.

EFFECTIVE DATE: January 4, 1983.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Bureau of Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Wellcome Animal Health Div., Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709, filed an NADA (106–965) providing for intravenous use of Tribrissen 48% Injection (a sterile suspension containing 80 milligrams (mg) of trimethoprim and 400 mg of sulfadiazine per milliliter (mL)) for treating bacterial infections in horses. The firm also holds approval for use of Tribrissen 24% Injection in dogs. Use of the injection in horses is indicated where control of bacterial infections is required during treatment of acute strangles, respiratory tract infections, acute urogenital infections, and wound infections and abscesses. The firm submitted effectiveness data that comply with the Bureau of Veterinary Medicine's combination drug guidelines. The data generated by several field investigations, and also from several general infection models, demonstrate substantial evidence of the drug's effectiveness. Therefore, the Bureau granted a waiver from the requirement of 21 CFR 514.111(a)(5)(ii) that the field investigations specifically qualify as adequate and well-controlled studies based on certain criteria designated by the section. Safety of the drug combination to horses is established. The NADA is approved, and the regulations are amended to reflect the approval.

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 the environmental impact analyses report (pursuant to 21 CFR 25.1(f)(1)(ii)), 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 522

Animal drugs, Injectable.

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 redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 522.2610 is revised, to read as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 522.2610 Trimethoprim and sulfadiazine sterile suspension.

(a)(1) *Specifications.* Each milliliter of sterile aqueous suspension contains 240 milligrams (40 milligrams of trimethoprim and 200 milligrams of sulfadiazine).

(2) *Sponsor.* See 017220 in § 510.600(c) of this chapter.

(3) *Conditions of use*—(i) *Dosage.* One milliliter (40 milligrams of trimethoprim and 200 milligrams of sulfadiazine) per 20 pounds (9 kilograms) of body weight per day.

(ii) *Indications.* For dogs for treatment of acute urinary tract infections, acute bacterial complications of distemper, acute respiratory tract infections, acute alimentary tract infections, and acute septicemia due to *Streptococcus zooepidemicus.*

(iii) *Limitations.* For subcutaneous use in dogs only; administer once every 24 hours, or for severe infections, after an initial dose, administer half the normal daily dose every 12 hours; continue therapy 2 to 3 days after clinical signs of infection have subsided; if no improvement is seen in 3 to 5 days, reevaluate diagnosis; injection may be used alone or in conjunction with oral dosing; not recommended for use for more than 14 days; a complete blood count should be done for prolonged use; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(b)(1) *Specifications.* Each milliliter of sterile aqueous suspension contains 480 milligrams (80 milligrams of trimethoprim and 400 milligrams of sulfadiazine (as the sodium salt)).

(2) *Sponsor.* See 017220 in § 510.600(c) of this chapter.

(3) *Conditions of use*—(i) *Dosage.* Two milliliters (160 milligrams of trimethoprim and 800 milligrams of sulfadiazine) per 100 pounds (45 kilograms) of body weight per day.

(ii) *Indications.* For horses where systemic anti-bacterial action against sensitive organisms is required during treatment of acute strangles, respiratory tract infections, acute urogenital infections, and wound infections and abscesses.

(iii) *Limitations.* For intravenous use; administer as single, daily dose for 5 to 7 days; daily dose may also be halved and given morning and evening; continue acute infection therapy 2 to 3 days after clinical signs have subsided; if no improvement of acute infections is seen in 3 to 5 days, reevaluate diagnosis; a complete blood count should be done periodically for prolonged use; not for use in horses intended for food; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. January 4, 1983.

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

Dated: December 21, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-2 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1990

Identification, Classification and Regulation of Potential Occupational Carcinogens; Partial Stay

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Partial administrative stay.

SUMMARY: On January 5, 1982, OSHA published a combined advance notice of

proposed rulemaking and proposal for partial administrative stay of certain provisions of its generic standard, Identification, Classification and Regulation of Potential Occupational Carcinogens (The "Carcinogen Policy") 29 CFR Part 1990. After considering the comments received in response to this notice, OSHA is staying the requirements to issue the Candidate and Priority Lists contained in 29 CFR 1990.121, 1990.122, 1990.131 and 1990.133, as proposed. The partial stay will be in effect during the period of reevaluation and rulemaking proceedings on the Carcinogen Policy.

DATE: The stay is effective January 4, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3641, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

On January 5, 1982, OSHA published an advance notice of proposed rulemaking (47 FR 187) requesting public comment on a reevaluation of its generic standard for Identification, Classification and Regulation of Potential Occupational Carcinogens (29 CFR Part 1990), also known as the "Carcinogen Policy." The Agency also proposed to stay, during the course of the reevaluation, those provisions of the Policy requiring the establishment and publication of the Candidate List and Priority Lists (29 CFR 1990.121, 1990.122, 1990.131 and 1990.133).

These lists are part of the Carcinogen Policy's screening and priority setting process which was intended to reduce the large number of substances that OSHA needed to review in order to determine the most hazardous ones. The establishment and publication of the 1980 Candidate List was the first step in the process. OSHA reviewed all substances for which there was some evidence of carcinogenicity. It screened out those that were not present in the American workplace or which the evidence did not justify further action at that time. The substances eventually placed on the Candidate List should receive further study.

The development and publication of the Priority Lists constituted the second step of the priority setting process. Substances were to be screened from the Candidate List by using several priority factors listed in the Carcinogen Policy. Some of these factors included the number of workers exposed to the substance, estimated exposure levels, levels of exposure known to cause cancer in animals or humans, molecular similarity of the substance to a known carcinogen, and availability of suitable safe substitutes. After receipt of public comment and review of any new data, OSHA would select an appropriate substance from the Priority Lists and initiate rulemaking proceedings. This was the final step in OSHA's screening and priority setting process.

The first Candidate List (45 FR 53672, August 12, 1980) included 204 substances for further scientific review and evaluation. The two Priority Lists would have involved a more extensive review in order to determine approximately twenty substances that would have priority for review and consideration by OSHA. Any public comments, information, or data received after the publication of the lists would have been included in OSHA's analysis and selection of any priority substance for possible regulation.

OSHA proposed to stay the requirements for the development and publication of these lists in order to evaluate the impact of publishing the lists and to reconsider the criteria used in establishing the lists.

In response to the January 5 **Federal Register** notice, OSHA has received and reviewed numerous comments regarding the proposed stay of publication of the Candidate and Priority Lists. A substantial number of parties, generally businesses and trade associations, responded in support of the stay, directing their comments to three basic issues.

The issue addressed most frequently dealt with the adverse economic effects felt by business after the publication of the 1980 Candidate List (45 FR 53672). For example, one manufacturer stated, "when the government labels a substance as having unacceptable toxic (particularly carcinogenic) qualities, those who produce or use the substance become exposed to a variety of adverse economic consequences including reduced sales, and increased insurance costs" (Chemical Manufacturers Association, Exh. 302-38). Another business was concerned because its "customers, plant workers, and the general public will interpret the published lists as OSHA's conclusion that the chemical substances included are carcinogens. This interpretation may lead to undue and unwarranted concern, or 'cancer scares' which could be damaging to our business" (BASF Wyandotte Corporation, Exh. 302-57).

A second issue repeatedly raised was, that in the absence of a stay, the Agency might incorrectly list substances based on inappropriate criteria thereby directing valuable resources toward hazards that may not be the most severe. As one commenter stated, "the Agency would find itself in the position of listing and prioritizing substances at the same time as it is examining the criteria which should be used to list and prioritize. This is not only contradictory, but also is an inefficient means of allocating limited Agency resources" (Cast Metals Federation, Exh. 302-45).

Additional comments referred to the waste of valuable scientific and administrative resources both in the government and industry if OSHA did not stay the development and publication of lists based on criteria that may be changed (PPG Industries, Exh. 302-16; Certain Teed, Exh. 302-42; Shipbuilders Council of America, Exh. 302-32). One commenter contended that, "in light of OSHA's rulemaking capability, the backlog that will result from priority lists, without subsequent immediate regulation, can create a public image of an Agency unable to regulate 'known' carcinogens" (Dow Chemical Company, Exh. 302-59).

A third issue was the actual use of the 1980 Candidate List for regulatory purposes although, as stated in the preamble to the List, it was published to guide further study. One commenter remarked, "that despite protestations that the Lists are not official rules, other regulatory groups, especially those of local agencies, choose to use them as guides. One such example is the Philadelphia 'workers' right to know law' which is using the Candidate List to require labeling, recordkeeping, and notification by employers" (Air Products, Exh. 302-7).

OSHA also received a number of comments principally from employee unions, that objected to the proposed stay of the requirements for publishing the list for two principal reasons.

The first reason is that employees have the right to know the evidence about the potential carcinogenic nature of chemicals with which they work, so that they, or their union representatives, will be in a position to make a judgment regarding protective work practices. One commenter stated "that the right to know as a democratic principle outweighs any potential negative effects about which the Agency has speculated" (International Molders and Allied Workers Union, Exh. 302-62). Another contended that, "we have concluded that notification of cancer risk does not produce 'scares.' On the contrary, it is the lack of information provided to workers that creates rumors, erroneous views, fears and cynicism"

(Pattern Makers League of North America, Exh. 302–44).

A second reason raised by those objecting to the proposed stay was the claim by industry that the 1980 Candidate List had produced negative effects. As one commenter stated, "While industry claimed that publication of that list would create a black list of chemicals and cause undo alarm, no such documented reaction among the public has resulted" (American Federation of Labor and Congress of Industrial Organizations, Exh. 302–56).

OSHA recognizes the concerns expressed by those opposing, as well as those supporting, the partial stay. After a careful review of the comments received, OSHA has concluded that it is appropriate to stay those provisions requiring the development and publication of the Candidate List and Priority Lists during the course of the reconsideration of the Carcinogen Policy. The reasons for this conclusion are as follows:

First, the scientific criteria used for establishing the lists are among those provisions of the Carcinogen Policy that are to undergo review and possible amendment. The January 5, 1982, **Federal Register** notice was the first step in this review process. OSHA believes it would not be effective use of Agency resources to develop and publish Candidate and Priority Lists based on criteria that may be changed in the near future.

Second, a number of industry comments, as referenced above, stated that economic injury had been or would be caused by the publication of the lists. Third Candidate List was intended to direct further scientific research on substances briefly reviewed by OSHA. Therefore, it is inappropriate to use it as the sole basis for making major decisions which may have substantial adverse economic effects. Third, industry comments indicated that the presence of the Candidate List as an official Agency document has led to use of the list by other regulatory agencies and groups as if it were a document based on full scientific review. OSHA believes a stay of the lists will help to prevent the use of preliminary documents as if they were final decisions.

Other comments received, principally from unions, made the point that employees and their representatives are entitled to know the scientific evidence, as well as to know the judgments of cancer experts, regarding the possible carcinogenicity of specific chemicals. OSHA believes that staying the provisions regarding further preparation and publication of the lists will not unduly restrict employee access to information pertaining to the carcinogenicity of substances. All data upon which the lists were to be based are available to the public. Furthermore, the National Institute for Occupational Safety and Health has published a list of chemicals for which there is some evidence of carcinogenicity and has referenced the reviewed data (Registry of Toxic Effects of Chemical Substances-Tumorigenic, Teratogenic and Mutagenic Citations Subfiles, 1979). The International Agency for Research on Cancer (IARC) has published monographs that contain conclusions concerning the carcinogenicity of substances reviewed by this international agency (IARC, 1972–1981). These sources, as well as others, will permit employees and their representatives to make judgments about the suitability of precautions to be taken.

OSHA agrees with all the commenters that a priority setting process is needed to maximize employee protection and to promote cost-effective regulation. Therefore, OSHA is not staying those sections of the Carcinogen Policy, such as 29 CFR 1990.132, which give guidance to the priority setting process. OSHA also agrees with labor union commenters that the priority setting process must include public participation However, for the reasons stated above, OSHA believes that it is necessary and appropriate to stay the lists while the priority setting process is under review. This will permit the Agency to devise a priority system which will be effective and will include public participation without creating adverse consequences.

Accordingly, pursuant to Sections 6 and 8 of the Occupational Safety and Health Act, 29 CFR 1990.106(b)(3) and the Administrative Procedure Act, OSHA is hereby staying the provisions of 29 CFR 1990.121 (a) and (b), 1990.122, 1990.131 and 1990.133 requiring the Agency to establish and publish the Candidate List and the Priority Lists. Section 1990.121(c) is not stayed, as it indicates that the 1980 Candidate List, already published, does not reflect a scientific determination that the substances listed are carcinogenic. All other provisions of the Carcinogen Policy will remain in effect during this period of reevaluation and rulemaking proceedings.

List of Subjects in 29 CFR Part 1990

Administrative practice and procedure, Cancer, Occupational safety and health.

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(Secs. 6 and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657); the Administrative Procedure Act (5 U.S.C. 551 et. seq.); Secretary of Labor's Order 8–76, 41 FR 25059; 29 CFR Part 1911 and 1990)

Signed at Washington, D.C., this 28th day of December 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 83-16 Filed 1-3-83; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Approval of Program Amendments From the State of Iowa Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 915 by adding permanent program amendments to the Iowa permanent regulatory program under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the modifications to the Iowa program meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director has approved the Iowa program amendments, and Part 915 of 30 CFR Chapter VII is being amended to implement this decision.

EFFECTIVE DATE: This approval is effective January 4, 1983.

FOR FURTHER INFORMATION CONTACT: Arthur Abbs, Chief, Division of State Program Assistance, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; Telephone: (202) 343–5351.

SUPPLEMENTARY INFORMATION:

Background

The Iowa program was conditionally approved effective April 10, 1981. Notice of the Secretary's decision was published in the January 21, 1981

Federal Register (46 FR 5885–5892). Two of the three conditions imposed on the approval of the Iowa program were removed on May 26, 1982 (47 FR 22950) and the final condition was removed on September 8, 1982 (47 FR 39482).

On December 21, 1981, OSM notified the Iowa Department of Soil Conservation (DSC) that a review of Iowa's program rules revealed that several important rules had been deleted and that the Iowa program was therefore deficient. (Administrative Record No. IA–188). On September 28, 1982, Iowa submitted to OSM provisions intended to correct the deficiencies noted in OSM's December 21, 1981 letter, and additional amendments.

OSM published a notice in the Federal Register on November 3, 1982, announcing receipt of the amendments, procedures for the public comment period, and a public hearing on the adequacy of the amendments (47 FR 49868–49869). The public comment period ended December 6, 1982. A public hearing scheduled for November 30, 1982, was not held because no one expressed a desire to present testimony On November 24, 1982, OSM published a notice cancelling the public hearing.

Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17, that the program amendments submitted by Iowa on September 28, 1982, meet the requirements of sections 510, 515 and 516 of SMCRA and 30 CFR Parts 771, 816 and 817.

The provisions submitted by Iowa are to replace rules deleted by the State in order to comply with actions taken by OSM suspending certain rules in 30 CFR Chapter VII as a result of litigation on the permanent program rules (*In re Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. 1980), aff'd 617 F. 2d 807 (D.C. Cir. 1980)). When Iowa chose to delete the corresponding rules from its program, it also deleted portions of the rules that were not suspended.

The amendments to chapter 4 of the Iowa Administrative Code on "Surface Mining and Reclamation Operations" are summarized as follows:

1. Subrule 4.522(11) dealing with hydrologic balance, water quality standards, and effluent limitations, and which adopts by reference 30 CFR 816.42 as promulgated March 13, 1979, is modified so that paragraph (a), subparagraphs (1) and (7), do not apply to the reclamation phase of mining, and paragraph (b) does not apply to total suspended solid discharges.

2. Subrule 4.522(15) dealing with hydrologic balance and sedimentation ponds, and which adopts by reference 30 CFR 816.46 as promulgated March 13, 1979, is modified to delete all but the first sentences from paragraphs (b), (c), and (h) of the federal regulations, and the following words from paragraph (d): "and shall have a discharge rate to achieve and maintain the required theoretical detention time."

3. Subrule 4.522(41) dealing with water control measures for coal processing waste banks, and which adopts by reference 30 CFR 816.83 as promulgated March 13, 1979, is modified to adopt by reference an amended rule adopted by the Office of Surface Mining on November 20, 1980, at 45 FR 76934.

4. Subrule 4.522(56) dealing with backfilling and grading for covering coal, acid and toxic-forming materials, and which adopts by reference 30 CFR 816.103 as promulgated March 13, 1979, is modified so that in lieu of subparagraph (a)(1) which was suspended, the Iowa DSC applies Sections 515(b)(14) and 516(b)(10) of SMCRA and 30 CFR 816.48.

5. Subrule 4.522(65) dealing with revegetation, and which adopts by reference 30 CFR 816.116 as promulgated March 13, 1979, is modified as amended by the Office of Surface Mining on August 4, 1980 (45 FR 51549).

6. Subrule 4.523(15) dealing with hydrologic balance and sedimentation ponds, and which adopts by reference 30 CFR 817.46 as promulgated March 13, 1979, is modified to delete all but the first sentences from paragraphs (b)(c), and (h) and the following words from paragraph (d): "and shall have a discharge rate to achieve and maintain the required theoretical detention time."

7. Subrule 4.523(38) dealing with water control measures for coal processing waste banks, and which adopts by reference 30 CFR 817.83 as promulgated March 13, 1979, is modified to adopt by reference an amended rule adopted by the Office of Surface Mining on November 20, 1980 (45 FR 76935).

8. Subrule 4.523(60) dealing with the standards for success of revegetation, and which adopts by reference 30 CFR 817.116 as promulgated March 13, 1979, is modified as amended by the Office of Surface Mining on August 4, 1980 (45 FR 51549).

9. Subrule 4.55(1) dealing with special requirements for prime farmlands, and which adopts by reference 30 CFR 823.11 as promulgated March 13, 1979, is modified to adopt by reference an amended rule adopted by the Office of Surface Mining on August 4, 1980 (45 FR 51550).

10. Subrule 4.55(5) dealing with prime farmland revegetation, and which adopts by reference 30 CFR 823.15 as promulgated March 13, 1979, is modified to adopt by reference an amended rule adopted by the Office of Surface Mining on August 24, 1980 (45 FR 51550).

The following two provisions were not submitted in response to OSM's December 21, 1981 letter, but are additional amendments submitted by the State.

11. Subrule 4.311(2), paragraph (e), subparagraph (1) dealing with maps and plans is modified to change the scale of maps required for the permit area from "1:1200 or larger" to "1:2400 or larger."

12. Subrule 4.322(13) dealing with cross sections, maps and plans, is modified in paragraph (k) to change the scale of topographic maps required for the existing land surface of proposed permit areas from "1:1200 or larger" to "1:2400 or larger" and to change the required contour interval from "two foot or less" to "five foot or less." Paragraph (1) of the same subrule is changed to modify the scale requirement for cross sections from "1:1200 or larger" to "1:2400 or larger."

Public Comment

No comments were received on the Iowa amendments.

Approval of Amendments

Accordingly, 30 CFR Part 915 is amended to indicate approval of the Iowa program amendments submitted to OSM September 28, 1982.

Additional Determinations

National Environmental Policy Act. Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), this rule is not a major Federal action and therefore no environmental impact statement, environmental assessment, or FONSI need be prepared on this rulemaking.

Regulatory Flexibility Act. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291. On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State programs, actions, or amendments. Therefore, this program amendment is exempt from the requirement to prepare a Regulatory Impact Analysis and regulatory review by OMB.

List of Subjects in 30 CFR Part 915.

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Therefore, Part 915 of 30 CFR Chapter VII is amended as set forth herein.

Dated: December 22, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary for Energy and Minerals.

PART 915—IOWA

1. Section 915.10 is revised to read as follows:

§ 915.10 State regulatory program approval.

The Iowa program as submitted February 28, 1980, and as amended and clarified June 11, 1980, and December 15, 1980, was approved effective April 10, 1981. The amendments submitted October 1, 1981, were approved effective May 26, 1982. The amendments submitted June 3, 1982, were approved effective September 8, 1982. The amendments submitted September 28, 1982 were approved effective January 4, 1983. Copies of the approved program, as amended, are available at:

(a) Iowa Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319.

(b) Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.

(c) Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240.

[FR Doc. 83-53 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 917

Removal of Certain Conditions of Approval of the Kentucky Permanent Program Under the Surface Mining Control and Reclamation Act of 1977 and Consideration of Additional Amendments Thereto

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 917 by (1) removing certain conditions of approval of the Kentucky permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and (2) approving certain additional amendments to the Kentucky program. Kentucky has submitted material to OSM which satisfies some of the conditions of the Secretary's approval of May 18, 1982 (47 FR 21404–21435).

EFFECTIVE DATE: The removal of these conditions and the approval of these program amendments are effective on January 4, 1983.

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Kentucky Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Ky. 40504, Telephone (606) 233–7320.

SUPPLEMENTARY INFORMATION:

Background on the Kentucky Program Submission

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of twelve minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982, **Federal Register** (47 FR 21404–21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435).

Background on the Secretary's Conditional Approval

Deficiencies (b), (c), (k) and (l) of the Kentucky program for which the Secretary required correction as conditions of approval were as follows:

(b) Kentucky did not have fully promulgated regulations providing for citizens to accompany State inspectors onto a minesite consistent with 30 CFR 842.

(c) Kentucky did not have fully promulgated regulations providing adequate public participation in the cumulative bond crediting process consistent with SMCRA Section 519.

(k) Kentucky did not have a policy statement or regulations establishing standards no less effective than those at 43 CFR 4.1294 for the award of costs and expenses in administrative proceedings.

(l) Kentucky did not have a plan which includes: (1) A process for prompt completeness determinations of permit applications from existing operators who expect to continue mining past the eighth month of primacy; (2) assurances that operators who have not submitted complete applications by eight months after primacy will be immediately advised that they may not continue mining until being issued an approved permit, and (3) a policy that permit applications for new areas will not be given priority for processing over those from existing operations which are continuing to mine under the interim program when such existing mine applications are one year old or older.

Submission of Revisions and Program Amendments

On May 28 and July 31, 1982, OSM received from the Commonwealth of Kentucky material intended to satisfy conditions (b), (c), (k), and (l), above. OSM also received pursuant to the 30 CFR 732.17 state program amendment procedures, certain revisions to the State regulations.

OSM published a notice in the **Federal Register** on July 23, 1982, announcing receipt of these provisions and inviting public comment on whether the proposed program amendments corrected these deficiencies, and whether the Secretary should approve the additional amendments to the State program (47 FR 31890–31896). The public comment period ended August 23, 1982. A public hearing was held on August 12, 1982. OSM published a second notice in the **Federal Register** on September 8, 1982, announcing receipt of provisions to satisfy conditions (k) and (l), and inviting public comment on whether the proposed amendments corrected these deficiencies (46 FR 39536–39537). The public comment period ended October 8, 1982. A public hearing scheduled September 22, 1982, was not held because no one expressed a desire to present testimony.

Submission of Proposed Program Corrections

On June 18, 1982, OSM received from the Commonwealth of Kentucky a letter attempting to clarify certain statements in the May 18, 1982, **Federal Register** (47 FR 21404–21435) notice announcing the approval of the State program. The letter makes the following points:

1. At the top of page 21434, middle column, the notice states that the deadline for correcting deficiency (d), relating to civil procedure guidelines, is September 30, 1982, when the actual date agreed upon was December 31, 1982.

2. On page 21428 of the notice in Item No. 2 relating to performance standards, the Secretary indicates, in a response to a public comment, that plans prepared by a professional engineer under 405 KAR 16:140E Section 6 and 18:140E Section 6 for removal of burned coal processing waste must be certified by the engineer as being in accordance with sound engineering practice.

Kentucky states that its regulations provide for no such certification.

3. Kentucky is concerned that in Finding 13.26 (47 FR 21413) and deficiency No. 1 (47 FR 21433), the Secretary does not make it clear that this deficiency exists only for permit areas larger than 40 acres.

4. On page 21426, in Item No. 3 relating to permitting, in response to a public comment, the Secretary defines "incidental boundary revisions" as incidental to whatever revision is being sought. Kentucky states that its Act allows boundary revisions incidental to the mining operation as a whole.

5. Kentucky is concerned that in Finding 18.8 (47 FR 21419), the Secretary gives an incorrect impression of the State's criteria for release of bond by increments. Kentucky states that in incremental bonding the remaining bond amounts must be sufficient to insure reclamation on the remaining permit area as a result of setting initial bond amounts on individual increments sufficiently high to insure reclamation on those increments.

Secretary's Findings

1. The Secretary finds the material submitted by Kentucky on May 28 and July 31, 1982, addresses the deficiencies in the Kentucky program as follows:

(b) Kentucky has promulgated 405 KAR 12:030 Section 4 to provide for citizens to accompany State inspectors, and thus has satisfied condition (b).

(c) Kentucky has eliminated its cumulative bond crediting process. Condition (c) is, therefore, removed as a condition of approval.

(k) Kentucky has adopted a policy statement, effective July 30, 1982, which establishes the same standards as those in 43 CFR 4.1294 for the award of costs and expenses in administrative hearings. In order to fully satisfy condition (k), by October 31, 1983, the State must submit promulgated regulations establishing standards which are no less effective than those at 43 CFR 4.1294.

(1) The Secretary has not completed his review of the material submitted by Kentucky to satisfy condition (1). The Secretary will announce his decision on all of this material at a later date.

2. The Secretary finds the following program amendments submitted by Kentucky on May 28, 1982, pursuant to the 30 CFR 732.17 procedures, to be acceptable and hereby approves them:

a. An addition to 405 KAR 7:020 Section 1(11) to include in the definition of "auger mining" the phrase, ". . . and shall also include all other such methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems." This addition is no less effective than the Federal definition of "auger mining" at 30 CFR 701.5.

b. An amendment to 405 KAR 7:020 Section 1(70) to change the definition of "operator" to, "any person, partnership or corporation engaged in surface coal mining and reclamation operations." This definition is no less effective than the Federal definition at 30 CFR 701.5 because removal of 250 tons of coal per 12 month period is contained in the definition of "surface coal mining operations" at 405 KAR 7:020 Section 1(117) discussed under "c" below.

c. An amendment to 405 KAR 7:020 Section 1(117) in the definition of "surface coal mining operations" to exclude from such definition, "the extraction of, or intent to extract, 250 tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months." This definition now is no less effective than the provision in the Federal regulations at 30 CFR 700.11 which excludes from applicability of the regulations the removal of less than 250 tons of coal.

d. An amendment to 405 KAR 7:030 Section 1 to change the applicability section to state: "Title 405, Chapter 7 through 24 apply to all coal exploration and surface coal mining and reclamation operations, except surface coal mining and reclamation operations of two (2) acres or less which are exempt from the requirements of SMCRA." This revision is no less effective than 30 CFR 700.11.

e. In 405 KAR 7:040 Section 5(1), an amendment to delete the words, "Division of Water," after the word, "department."

f. Amendments to 405 KAR 7:040 Section 10(2):

(1) Delete the phrase, "and appropriate direct participation and/or supervision by the registered professional engineer," and replace it with the phrase, "and standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates."

(2) Delete the phrase, "or assume any liability other than that normally incurred in the practice of engineering," in the second sentence.

There is no Federal counterpart to 405 KAR 7:040 Section 10. These amendments, therefore, are no less effective than the Federal regulations.

g. An amendment to 405 KAR 7:040 Section 10(7) to delete the requirement that certifications by registered professional engineers be notarized. There is no Federal counterpart to 405 KAR 7:040 Section 10. This amendment is, therefore, no less effective than the Federal regulations.

h. An addition to 405 KAR 7:090 Section 4(1) to clarify that a preliminary hearing need not be scheduled if it is waived. This amendment is no less effective than the Federal regulations.

i. An amendment to 405 KAR 7:090 Section 4(6) to give a person to whom a notice or order was issued, 15 days from the mailing of the proposed penalty assessment to waive the preliminary hearing and request a formal hearing. This amendment is no less effective than the Federal regulations.

j. An amendment to 405 KAR 7:090 Section 6 to provide a 15 day period during which a local preliminary hearing may be requested. This amendment is no less effective than the Federal regulations.

k. An addition to 405 KAR to create a new part, 7:095, Assessment of Civil Penalties. This new part contains, *inter alia*, the State's proposed penalty assessment guidelines at § 731.14(g)(4–7)(15) of the Kentucky resubmission. This new part is no less effective than 30 CFR 845.

l. An amendment to 405 KAR 8:010 Section 6(1) to delete the different requirements applicable to "small operators" (as defined by KRS 350.450(4)(d)) for the payment of permit application fees. This amendment is not less effective than 30 CFR 771.25 which leaves such fees to the discretion of the State. Such fees must no exceed the actual cost of reviewing, administering or enforcing the permit, and they do not appear to do so.

m. An amendment to 405 KAR 8:010 Section 6(2) to increase the permit application fee for applications submitted after July 15, 1982, to $375 plus $75 for each acre or fraction thereof of the area of land to be affected under the permit. This amendment is no less effective than 30 CFR 771.25 which leaves such fees to the discretion of the State. Such fees must not exceed the actual cost of reviewing, administering, or enforcing the permit, and they do not appear to do so.

n. Amendments to 405 KAR 8:010 Section 13(1) to:

(1) Decrease from 15 to 10 the number of days from initial receipt of the application by which the department shall notify the applicant of the initial completeness of the application, and

(2) Explain the department's procedures if an application is determined to be incomplete.

These amendments are no less effective than 30 CFR 786.11 and 786.17.

o. An amendment to 405 KAR 8:010 Section 20(5), regarding permit revisions, to conform the fees therefor to the amendment to 405 KAR 8:010 Section 6(2), above. This amendment is no less effective than 30 CFR 771.25 which leaves such fees to the discretion of the State.

p. An amendment to 405 KAR 8:010 Section 21(2)(a)(4), regarding permit renewals, to conform the fees therefor to the amendment to 405 KAR 8:010 Section 6(2), above. This amendment is no less effective than 30 CFR 771.25 which leaves such fees to the discretion of the State.

q. An amendment to 405 KAR 8:010 Section 21(2)(b)(1) to delete the phrase, "except that the time for the initial completeness determination shall be ten (10) days." This amendment is no less effective than 30 CFR 788.14(b)(1).

r. An amendment to 405 KAR 8:010 Section 22(1) and 22(2)(a) to change the word "chapter" to "Title."

s. An amendment to 405 KAR 8:010 Section 22(2)(a)(2), regarding the transfer, assignment or sale of permit rights, to conform the fees therefor to the amendment to 405 KAR 8:010 Section 6(2), above. This amendment is no less effective than 30 CFR 771.25 which leaves such fees to the discretion of the State.

t. An amendment to 405 KAR 8:010 Section 22(2)(c)(1) to delete the existing language and replace it with the following: "The person seeking approval would be eligible to receive a permit in accordance with the criteria specified in Section 14." This amendment is no less effective than 30 CFR 788.18(c)(1).

u. Amendments to 405 KAR 8:010 Section 22, to create the following three new subsections:

(1) Section 22(4), regarding proof of transfer, sale or assignment of permit rights.

(2) Section 22(5), regarding release of bond liability.

(3) Section 22(6), regarding interim program permits.

These amendments are no less effective than 30 CFR 788.17–.19.

v. An amendment to 405 KAR 8:020 Section 2(2)(h) to increase the fee for exploration to $375 after July 15, 1982. The amendment is no less effective than the Federal regulations as there is no Federal provision for a fee for exploration approval.

w. An amendment to 405 KAR 8:030 Section 23(4) and 8:040 Section 23(4) to add the following sentence: "The qualified registered professional engineer shall not be required to certify true ownership of property." The amendment is no less effective than 30 CFR 779.24 and 779.25.

x. Amendments to 405 KAR 12:010 Section 3(5) (a) and (b) to delete the phrase, "under its jurisdiction," and replace it with the phrase, "permitted under Title 405, Chapter 8." The amendment changes the inspection frequency regulations to require four complete and eight partial inspections per year only on sites which are permitted, thus excluding illegal operations from this requirement. These amendments are no less effective than 30 CFR 840.11.

y. An amendment to 405 KAR 16:140 Section 2(1)(d) to add the following sentence: "The responsible registered prefessional engineer shall certify to the department within two (2) weeks after each inspection that the coal processing waste bank has been constructed as specified in the design approved by the department." This amendment is no less effective than 30 CFR 816.82.

z. An amendment to 405 KAR 18:140 Section 2(1)(d) to add the same sentence as the amendment to 405 KAR 16:140 Section 2(1)(d), above. This amendment is no less effective than 30 CFR 817.82.

aa. Amendments to 405 KAR 24:020 Section 3(7) and Section 4(6) and 24:030 Section 3(5) to delete the term, "supporting evidence," and replace it with the term "objective evidence." The Secretary finds that the State's use of the term "objective evidence" is intended to signal petitioners to avoid "subjective" information in compiling petitions. These amendments, therefore, are no less effective than 30 CFR 764.13 and 764.15(a)(4).

bb. Amendments to 405 KAR 24:030 Section 4(4) as follows:

(1) To delete the term, "supporting evidence," and replace it with the term, "objective evidence," in subsection (d). The Secretary finds that the State's use of the term "objective evidence" is acceptable and the amended regulation is no less effective than 30 CFR 764.16(c) for the reasons set forth above.

(2) To require a notarized signature by an intervenor in subsection (a). While the Federal counterpart, 30 CFR 764.16(c), does not require notarization, it is a time honored manner of insuring the validity of signed documents. While notarization represent somewhat of an inconvenience to the potential intervenor, such inconvenience is minor when weighed against the State's desire to insure that it is dealing with *bona fide* parties. This amendment is, therefore, no less effective than 30 CFR 764.16(c).

cc. An amendment to 405 KAR 24:030 to create a new Section 9 and delete existing Section 8(7), describing the administrative and judicial review of decisions on petitions to designate lands unsuitable for surface mining operations. This amendment is no less effective than 30 CFR 764.

dd. An amendment to 405 KAR 1:005, to create a new Section 6 which states, "The hearing provisions of this chapter shall apply to the resolution of all notices and orders that were issued by the department prior to the date of primacy as defined in 405 KAR 7:020E." This amendment is no less effective than the Federal regulations.

ee. An amendment to 405 KAR 3:005 to create a new Section 6 which states, "The hearing provisions of this chapter shall apply to the resolution of all notices and orders that were issued by the department prior to the date of primacy as defined in 405 KAR 7:020E." This amendment is no less effective than the Federal regulations as there is no comparable Federal provision.

ff. An amendment to the Kentucky Revised Statutes (KRS), Chapter 350, contained in House Bill No. 19, to add the following language: "All bonds required to be filed in accordance with KRS 350.060 and KRS 350.064 shall not be required to be filed until the applicant for the permit has been notified in writing by the department that the application for the permit has been approved, with the exception of the bond." This admendment is consistent with SMCRA Section 509 and 30 CFR 800.11.

gg. An amendment to KRS 350.010, contained in Senate Bill No. 267, changing the definition of "surface coal mining operations," to include "extended depth secondary recovery systems" within such definition. This amendment is no less effective than Federal regulation and law as there is no comparable Federal provision.

hh. Amendments to the KRS, contained in Senate Bill No. 380, as follows:

(1) Section 1. KRS 350.425 is amended to add the following sentence at the end: "The Kentucky bureau of surface mining through KRS Chapter 350 shall have exclusive jurisdiction over KRS Chapter 151 concerning the regulation of dams, levees, embankments, dikes, bridges, fills, or other obstructions across or along any stream or in the floodway of any stream, which structures or obstructions are permitted under this chapter."

(2) Section 2. KRS 151.250 is amended to add the following sentence at the end of Subsection (3): "The Kentucky bureau of surface mining through KRS Chapter 350 shall have exclusive jurisdiction over KRS Chapter 151 concerning the regulation of dams, levees,

embankments, dikes, bridges, fills, or other obstructions across or along any stream or in the floodway of any stream which structures are permitted under KRS Chapter 350 for surface coal mining operations."

These amendments are no less effective than Federal regulations and law as there are no comparable Federal provisions.

ii. Amendments to the KRS, contained in Senate Bill No. 165, as follows:

(1) Amendments to KRS 350.035 to create an office of special investigations, and to authorize the appointment of special investigation officers who shall be responsible for the enforcement of provisions relating to criminal offense.

(2) Amendments to KRS 350.990 (2) and (3), clarifying enforcement authority and increasing the penalty for mining without a permit from a misdemeanor to a felony.

(3) A new section of KRS Chapter 350 is created to allow the secretary of the department to appoint officers to deal with criminal violations. This section describes such officers' authority and their qualifications.

(4) A new section of KRS Chapter 350 is created to allow the seizure by the department of all instrumentalities used in the mining of coal without a permit.

(5) A new section of KRS Chapter 350 is created to establish an "illegal mining reclamation fund", consisting of monies from the sale or forfeiture of all instrumentalities used in the mining of coal without a permit. The section describes the permissible uses of such monies.

These amendments are no less effective than Federal regulations and law as there are no comparable Federal provisions.

jj. Amendments to the KRS, contained in Senate Bill No. 218, as follows:

(1) Amendments to KRS 350.010 Section 1 as follows:

(a) Excluding from the definition of "surface coal mining operations" those persons who extract or intend to extract two hundred fifty tons or less of coal by surface coal mining operations within twelve successive calendar months. This definition is consistent with the Federal definition of the term at SMCRA Section 701(28), and the provision for approval of exploration at Section 512(d) where not more than 250 tons of coal may be removed without written, regulatory approval.

(b) Conforming the definition of "strip mining" to the definition of "surface coal mining operations", as above.

(c) Revising the definition of "overburden" to include "material of any nature, consolidated or unconsolidated, excluding topsoil." This definition is no less effective than the Federal definition at 30 CFR 701.5.

(d) Revising the definition of "area of land affected" to mean, "any area of land or water upon which surface coal mining and reclamation operations are conducted or located or are to be conducted or located." This definition is no less effective than the Federal definition of "affected area" at 30 CFR 701.5.

(e) Conforming the definition of "operator" to the definition of "surface coal mining operations," above.

(f) Adding the following definition: "Certification by a qualified registered professional engineer as required by this chapter and regulations promulgated hereunder means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of this chapter and regulations promulgated hereunder, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates. Such certification shall not be construed to constitute a warranty or guarantee". While there is no Federal counterpart to this definition, it is consistent with Federal regulations and law.

(2) Amendments to KRS 350.028, Section 3, subsections (3), (4) and (5) to clarify enforcement hearing authority and the power to adopt rules. These amendments are consistent with Federal regulations and law.

(3) Amendments to KRS 350.060, Section 5, as follows:

(a) Deleting the reference to interim permit applications filed in 1980 in subsection (3).

(b) Modifying the application requirements regarding stock ownership in an applicant company in subsection (5)(g).

(c) Stating that the professional engineer certifying the application not be required to certify the true ownership of property in subsection (8)(a).

(d) Adding the word "show" at the beginning of subsection (8)(d).

(e) Relettering existing subsection (8)(d)–(h) as (8)(e)–(i).

(f) Amending subsection (10) to read as follows: "All certifications required by this chapter to be made by professional engineers shall be done in the form prescribed by the department and shall be reasonably specific as to the work being certified. The department may reject any document or map as incomplete if it is not properly certified."

(g) Amending subsection (14) to clarify the language regarding bonding for a two acre operation.

(h) Adding the term "revegetation" in the description of minimal regulations which the Kentucky Department of Natural Resources will promulgate for surface coal mining and reclamation operations which affect two acres or less, in subsection (15).

(i) Clarifying the application, acreage fee and bond requirements for deep mines, in subsection (16).

These amendments are consistent with Federal regulations and law because they are either non-substantive, or add or clarify requirements in OSM's regulations and SMCRA.

(4) An amendment to KRS 350.450 Section 33(4) to develop a simplified small operator permit. This amendment is consistent with Federal regulations and law.

(5) Amendments to KRS 350.130 Section 14 as follows:

(a) Clarifying the issuance of enforcement notices and orders and the opportunity for hearings thereon.

(b) Clarifying the State's enforcement authority in cases where an imminent danger is discovered.

These amendments are consistent with Federal regulations and law.

(6) An amendment to KRS 350.610 clarifying the contents of a petition to have an area designated as unsuitable for surface coal mining operations, and the judicial review of a decision on such petition. These amendments are consistent with Federal regulations and law as they are non-substantive in nature.

(7) An amendment to KRS 350.990 Section 35 authorizing the State to develop a method for calculating monetary penalties. This amendment is consistent with SMCRA Section 518.

kk. Amendments to KRS 350.060(9), 350.060 Section 5(14), and Chapter 377 Section 1(14), contained in House Bill No. 813, to increase the maximum allowable permit application fee to $375 plus $75 for each acre or fraction thereof of the area of land to be affected by the operation. The amendments are consistent with Federal regulations and law as the setting of fee amounts is a matter within the discretion of the State. Such fees must not exceed the actual cost of reviewing, administering or enforcing the permit, and they do not appear to do so.

ll. Amendments to KRS 350.139(2) and 350.139, Chapter 377 Section 4(2), contained in Senate Bill No. 316, to read as follows: "The state treasurer shall on

or before August 1 of each year transfer thirty-three and one-third percent (33⅓%) of all funds paid during the preceding fiscal year as fees for the issuance of any permit to strip mine to the fiscal courts of the county in which the permitted operation is located for the general purposes of that fiscal court." The amendments are consistent with Federal regulations and law as the use of such fees is a matter within the discretion of the State because there are no comparable Federal provisions.

3. The Secretary has not completed his review of the remaining statutory and regulatory revisions, submitted by Kentucky on May 28, 1982. In some cases the State has been asked to submit further, clarifying material. The Secretary will announce his decision on these State program amendments at a later date. These revisions are to the following Kentucky rules: 405 KAR 7:020 Section 1(86), 8:050 Section 2, 16:020 Section 4 and 18:190 Section 2(2). These revisions are to the following Kentucky statutory provisions: KRS 350.060 Section 5(21) and (22), 350.093 Section 10(2), and 350.062(9), contained in Senate Bill 218.

The Secretary further finds that, in spite of the self-implementing nature of these revisions, Kentucky must not begin the administration or enforcement of these provisions until Secretarial approval. SMCRA Section 503 establishes that a State may not exercise jurisdiction under the Act unless the State program is approved by the Secretary. Thus, any changes to the program are not enforceable by the State until approved by the Secretary. 30 CFR 732.17(g) clearly prohibits any such unilateral changes to approved State programs, thus implementing SMCRA Section 503. In his oversight of the State program the Secretary will recognize only the statutes and regulations approved by him, and will require the enforcement by the State of only such provision.

4. The Secretary finds the following statements contained in the June 18, 1982, letter from the State to be acceptable, and hereby approves them as clarifications to the Kentucky program:

a. Condition (d), relating to civil procedure guidelines, is to be satisfied by December 31, 1982.

b. 405 KAR 16:140 Section 6 and 18:140 Section 6 do not require that plans prepared by a professional engineer for removal of burned coal processing waste be certified as being in accordance with sound engineering practice. Rather, the engineer is required by KRS Chapter 322 to affix his/her seal and signature to such plans as evidence that a professional engineer has performed the work to insure that it is competently done. 405 KAR 16:140 Section 6 and 18:140 Section 6 are no less effective than 30 CFR 816.87.

c. 405 KAR 16:200 Section 6(4) and 18:200 Section 6(4) contain alternative standards for success of revegetation for permit areas of forty acres or less as in 30 CFR 816.116(d). Thus, condition (a) applies only to permit areas larger than forty acres, and is hereby amended to that extent.

d. In finding 18.8 of the May 18, 1982, notice approving the Kentucky program (47 FR 21419–21420), the Secretary stated that the main difference between State and Federal regulations regarding bond increments is that 405 KAR 10:040E Section 3 allows each bond increment to be treated independently and deleted from the permit area after final release on the increment, whereas 30 CFR 807.12(c) specifies that the increment not be released from the permit area separately until release of the last remaining increment. The Secretary found the State requirements no less effective than the Federal requirements because of the additional safeguards that the State has established for the increments (see 47 FR 21419–21420). In its letter of June 18, 1982, Kentucky pointed out that in incremental bonding, the remaining bond amounts must be sufficient to insure reclamation on the remaining permit area as a result of setting initial bond amounts on individual increments sufficiently high to insure reclamation on those increments. The Secretary finds he is not in disagreement with Kentucky's letter of June 18, 1982, as it clarifies Finding 18.8 in the May 18, 1982, notice.

5. The Secretary has not completed his review of the statement in the June 18, 1982, letter relating to incidental boundary revisions because the State has been asked to submit further, clarifying material. The Secretary will announce his decision on this statement at a later date.

Public Comments

1. The Appalachian Research and Defense Fund of Kentucky, Inc. (ARDFK) commented, regarding the June 18, 1982, clarifying letter from Kentucky as follows:

a. The State is given too much time (to December 31, 1982) to correct deficiency (d) which is a program defect of major proportion. The Secretary disagrees that the defect is major because the State presently has procedures for hearings. Further, condition (d) requires the State to submit guidelines of civil procedure which are no less effective than those at 43 CFR 4 for use in administrative hearings by December 31, 1982, a date which is less than two months away. Condition (d) also requires promulgated regulations which are no less effective than those at 43 CFR 4 by October 31, 1983.

b. That 405 KAR 16:140 Section 6 and 18:140 Section 6 do not require that plans prepared for removal of burned coal processing waste be certified by a professional engineer as being in accordance with sound engineering practice renders such rules inconsistent with 30 CFR 816.87. For the reasons set forth in Finding 4(b), above, the Secretary finds KAR 16:140 Section 6 and 18:140 Section 6 are no less effective than 30 CFR 816.87, and accepts Kentucky's explanation of its provisions.

c. Kentucky's clarification of its approach to incremental bonding shows that the State's approach is deficient in meeting the requirements of SMCRA Section 509. The State proposes to allow each increment of a permit area to be treated independently of other increments for purposes of bond release and liability. In so doing, it expressly violates Federal regulations, and all but insures that the amount of the bond will be insufficient to insure reclamation of the remaining permit area.

For the reasons set forth in Finding 4(d), above, the Secretary finds that 405 KAR 10:040 Section 2(2)(c) is no less effective than 30 CFR 807.12(c), and accepts Kentucky's explanation of its provisions.

2. ARDFK criticized OSM for its actions during the 1982 Kentucky legislative session, and the enactment of legislative amendments by Kentucky prior to approval by the Secretary. OSM, however, merely evaluated certain proposed State legislation at Kentucky's request. The Office never gave its approval of any such legislation, nor did it ever suggest that such legislation should be effective prior to submission as program amendments. See Finding 3, above.

3. ARDFK commented that Kentucky published the regulatory amendments in emergency form and put them into full force and effect, without any notice or opportunity to be heard, in violation of 30 CFR 732.17(g). The Secretary agrees with this comment. See Finding 3, above.

4. ARDFK commented that the revisions to 405 KAR 7:090 provide that the State will set a preliminary hearing in all enforcement cases unless affirmatively waived by the alleged violator. ARDFK points out that such a provision is not necessarily inconsistent with the Federal regulations, but that it creates potential delay in enforcement activity and strains staff resources. The

Secretary agrees that the revision is not inconsistent with Federal regulations and, therefore, finds it acceptable.

5. Another commenter objected to the revisions to 405 KAR 7:030 and 8:040 Section 23(4) which add the sentence: "The qualified registered professional engineer shall not be required to certify true ownership of property." First, 30 CFR 779.24 and 779.25 do not require any such certification. Second, the Kentucky regulations at 405 KAR 8:030 and 8:010 Section 23(1)(e) require that the permit application include a map showing, "All * * * names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area." Further, 405 KAR 8:030 and 8:040 Section 23(4) provide that, "Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, and shall be updated as required by the department." Therefore, the professional engineer is required to certify as to owners of record, but is not required to search beyond such records. The Secretary finds the Kentucky amendments to be reasonable, and no less effective than 30 CFR 779.24 and 779.25.

6. The Kentucky Coal Association (KCA) states that Kentucky has not substantially complied with State law in developing the revision to 405 KAR 7:020 Section 1(11), regarding the definition of "auger mining." According to KCA, this revision is in conflict with the amended definition of "surface coal mining operations" at KRS 350.010(1) in Senate Bill No. 218 because the intent of this bill was to include "extended depth secondary recovery systems" as a new mining method, along with the other common methods of coal mining such as contour, strip and auger. The Secretary disagrees as the only changes to the definition of "surface coal mining operations" are the deletion of the phrase, "or subject to the requirements of this chapter," and the addition of the phrase, "or the extraction of, or intent to extract, two hundred fifty (250) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months." These changes reflect no such intent by the Kentucky legislature. The Secretary, therefore, finds that KRS 350.010(1) is consistent with SMCRA Section 701(28), and 405 KAR 7:020 Section 1(11) is no less effective than 30 CFR 701.5 (See Findings 2(a) and 2(jj)(1)(a), above).

7. KCA commented that in the revision to 405 KAR 7:090 Section 4(6), the operator should be allowed to waive the preliminary hearing within 15 days of receipt of the proposed penalty assessment rather than within 15 days of the mailing of the assessment. As the Federal regulations contain no such preliminary hearing and this revision has been found to be consistent with Federal regulations in Finding 2(i), above, the Secretary believes it is within the State's discretion to set the length and timing of such waiver periods.

8. KCA had a number of comments on the creation of 405 KAR 7:095, Assessment of Civil Penalties. First, KCA felt that this section is biased against large permittees in its assessment of penalties based on history of violations. Second, KCA suggested that each violation be counted, for purposes of history of previous violations, only if it led to a civil penalty assessment. Third, a total of 30 points should be the limit for all performance standards cited in a single non-compliance order, for purposes of seriousness. Fourth, the subsection assigning points for probability of occurrence should be deleted. Fifth, the subsection assigning points for negligence should be deleted. Sixth, the penalty amounts listed in the table should be divided by a factor of three. Seventh, the penalty assessment worksheet should be accompanied by a detailed explanation of point totals for each category. Eighth, the penalty "break point" of thirty points for fines should be raised. Last, the column entitled, "Days violation existed" should be deleted, reserving this column for those operators who fail to correct a violation for which a citation has been issued.

On May 16, 1980, the U.S. District Court for the District of Columbia issued its second round decision in the litigation over the permanent regulations (*In re: Permanent Surface Mining Regulation Litigation*, No. 79-1144). In that decision the Court answered the Secretary's request for clarification regarding the Round I decision issued February 26, 1980, regarding penalties. In those decisions the Court indicated that Section 518(i) of SMCRA requires only that a State incorporate the penalties, the four criteria, and the procedures in Section 518 of SMCRA. It is, therefore, within the State's discretion to fashion its civil penalty system within those strictures. Since KCA's objections are to matters within the State's discretion, the Secretary must find Kentucky's revisions no less effective than 30 CFR 845 (See Finding 2(k)).

9. ARDFK commented that the proposed State amendment to 405 KAR 8:010 Section 22(1)(c)(1) would be acceptable if the department would affirmatively find that the successor of a permit will conduct operations in accordance with KRS Chapter 350 and 405 KAR Chapters 7-24. The phrase requiring the department to find that the successor will comply with State laws and regulations must be retained since it is not explicitly included in 405 KAR 8:010 Section 14. The Secretary believes the Kentucky program does provide for compliance with all State laws and regulations by a successor. First, Section 14 mandates compliance with all permit requirements. Second, 405 KAR Section 22 (1)(c)(3) requires the successor to continue to conduct the operations involved in full compliance with the terms of the original permit until a new permit has been obtained. Finally, KRS 350.085(1) states that, "No application for a permit and no operation shall be approved or allowed by the department if there is found on the basis of the information set forth in the application that the requirements of this chapter or regulations will not be observed . . ." Taken together, the Secretary finds that these provisions of the Kentucky program do require a successor to conduct operations in accordance with KRS Chapter 350 and 405 KAR Chapters 7-24, and that these provisions are no less effective than 30 CFR 788.18(c)(1).

10. ARDFK objected to the replacement of the term "supporting evidence" with the term "objective evidence" in KRS 350.610 and 405 KAR 24:020 and 24:030, regarding the contents of a petition to have an area designated as unsuitable for surface coal mining. The commenters felt that any exclusion of evidence tending, however tenuously, to support a petition's allegations is impermissible. The Secretary does not believe he is in disagreement with the commenter's goal, or that the Kentucky program provides for the exclusion of relevant evidence. SMCRA Section 522(c) requires such a petition to contain, "allegations of fact with supporting evidence which would tend to establish the allegations." KRS 350.610(6) requires the petition to contain, "allegations of facts . . . and shall be based upon objective evidence which would tend to establish the allegations." The emphasis in both the State and Federal law is on evidence which supports the allegations. The Secretary believes that the Kentucky provisions do not allow the State to disregard non-empirical, non-scientific evidence tending to establish an allegation, but only material which does not tend to support any allegations. On this basis, the Secretary finds KRS

350.610(6) to be consistent with SMCRA 522(c) and 405 KAR 24:020 and 24:030 to be no less effective than 30 CFR 764.

11. 405 KAR 24:020 Sections 3(7) and 4(6) require that, regarding petitions to have an area designated as unsuitable for surface mining, the allegations of fact and objective evidence in support thereof be "specific as to the petitioned area" sought to be petitioned or terminated as an area unsuitable for mining. ARDFK sought clarification of this language. The commenters were concerned that general scientific or other evidence which may be pertinent to characteristics of a petitioned area, yet refer to a more general or similar area, may be excluded. For the reasons set forth in response comment No. 10, above, the Secretary believes that such evidence would not be excluded. On this basis, the Secretary finds 405 KAR 24:020 Sections 3(7) and 4(6) to be no less effective than 30 CFR 764.13.

12. ARDFK objected to 405 KAR 24:030 Section 9(1) which establishes a right to formal administrative review of a petition to have an area designated as unsuitable for surface mining if the department makes a determination on completeness or frivolity regarding the petition. The commenters felt that such a hearing would dilute the petition process by permitted premating involvement of an administrative hearing officer into the process. While the Federal designation scheme contains no similar hearing right, the Secretary finds no conflict with Federal laws or regulations. Further, there is no evidence as yet that the right to such a hearing will dilute the Kentucky petition process. If, in his oversight of the Kentucky program, the Secretary determines that such a hearing is causing the State petition process to be inconsistent with SMCRA Section 522 or less efffective than 30 CFR Subchapter F, he will take appropriate steps to remedy the situation. The Secretary, therefore, finds 405 KAR 24:030 Section 9(1) no less effective than the Federal regulations.

13. The Secretary received comments on a number of the revisions and on Kentucky's statement regarding incidental boundary revisions in the June 18, 1982, letter, for which he has not yet completed his review as specified in Findings 3 and 5, above. The Secretary will address those comments when he announces his decision on these provisions of the Kentucky program.

Approval of Amendments to Satisfy Conditions and Additional Program Amendments

Accordingly, conditions (b) and (c) are hereby removed. Condition (k) is partially satisfied. Condition (a) is clarified to the extent that it applies only to permit areas larger than forty acres.

Revisions to the following Kentucky regulations are hereby approved pursuant to 30 CFR 732.17: 405 KAR 7:020 Section 1(11), 7:020 Section 1(70), 7:020 Section 1(117), 7:030 Section 1, 7:040 Section 5(1), 7:040 Section 10(2), 7:040 Section 10(7), 7:090 Section 4(1), 7:090 Section 4(6), 7:090 Section 6, 7:095, 8:010 Section 6(1), 8:010 Section 6(2), 8:010 Section 13(1), 8:010 Section 20(5), 8:010 Section 21(2)(a)(4), 8:010 Section 21(2)(b)(1), 8:010 Section 22(1), 8:010 Section 22(2)(a), 8:010 Section 22(a)(2), 8:010 Section 22(2)(c)(1), 8:010 Section 22(4), 8:010 Section 22(5), 8:010 Section 22(6), 8:020 Section 2(2)(h), 8:030 Section 23(4), 12:010 Section 3(5)(a) and (b), 16:140 Section 2(1)(d), 18:140 Section 2(1)(d), 24:020 Section 3(7), 24:020 Section 4(6), 24:020 Section 3(5), 24:030 Section 4(4), 24:030 Section 8(7), 24:030 Section 9, 1:005 Section 6, and 3:005 Section 6.

Revisions to the following Kentucky statutory provisions are hereby approved pursuant to 30 CFR 732.17: KRS Chapter 350, as contained in House Bill No. 19; KRS 350.010, as contained in Senate Bill No. 267; KRS 350.425 and 151.250(3), as contained in Senate Bill No. 380; KRS 350.035, 350.990 (2) and (5), and KRS Chapter 350, as contained in Senate Bill No. 165; KRS 350.010 Section 1(1), (2), (4), (7), (8) and (17), KRS 350.028 Section 3(3), (4) and (5), KRS 350.060 Section 5(3), (5)(g), (8)(a), (8)(d)–(i), (10), (14), (15), and (16), KRS 350.450 Section 33(4), KRS 350.130 Section 14, KRS 350.610(6), and KRS 350.990 Section 35(1), contained in Senate Bill No. 218; KRS 350.060(9), KRS 350.060 Section 5(14) and KRS Chapter 377 Section 1(14), contained in House Bill No. 813; KRS 350.139 and KRS Chapter 377 Section 4(2), contained in Senate Bill No. 316.

30 CFR 917.11 is amended to indicate approval of these program amendments. 30 CFR 917.10 incorporates approval of the corresponding amendments. The removal of these conditions, the clarification of condition (a), and the approval of the additional amendments to the Kentucky program are effective January 4, 1983.

Additional Findings

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections, 3, 4, 6, and 8, of Executive Order 12291 for all actions taken to approve or conditionally approve state regulatory programs, actions, or amendments. Therefore, these program amendments are exempt from the preparation of a Regulatory Impact Analysis and regulatory review of OMB.

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), this rule is not a major Federal action. It is designated as a categorical exclusion from the NEPA Process. Therefore, for this rule OSM is exempt from the requirements of preparing an Environmental Assessment, EIS or FONSI.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96–354, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

On September 3, 1982, the Environmental Protection Agency transmitted its written concurrence on these Kentucky program amendments.

List of Subjects in 30 CFR Part 917:

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 917 of Title 30 is amended as set forth herein.

Dated: December 22, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 917—KENTUCKY

Accordingly, Part 917 of title 30 is amended as follows:

1. 30 CFR 917.10 is revised to read as follows:

§ 917.10 State regulatory program approval.

The Kentucky State program as resubmitted on December 30, 1981, and amended and clarified on February 22, 1982, was conditionally approved, effective May 18, 1982. Beginning on that date, the Kentucky Department for Natural Resources and Environmental Protection was deemed the regulatory authority in Kentucky for surface coal mining and reclamation operations and for coal exploration operations on non-Federal and non-Indian lands. Copies of the approved program are available for review at:

(a) Kentucky Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

(b) Office of Surface Mining, Administrative Record Room, 1100 L Street, N.W., Washington, D.C. 20240.

(c) Department for Surface Mining, Reclamation and Enforcement, Commonwealth of Kentucky, 3rd Floor, Capitol Plaza Tower, Frankfort, Kentucky 40504.

§ 917.11 [Amended]

2. Section 917.11 is amended as follows:

A. By removing and reserving paragraph (b).

B. By revising paragraph (a) to read as follows:

(a) Steps will be initiated to withdraw the approval found in § 917.10 unless Kentucky submits to the Secretary by October 31, 1983, copies of promulgated regulations eliminating the discretionary stocking plan approval for noncommercial forest land for permit areas larger than 40 acres, or otherwise amends its program to set standards for stocking for such areas when the post mining land use is forest land other than commercial forest. Furthermore, pending completion of the above, Kentucky must utilize the reference areas concept for these areas or the approval will terminate immediately.

C. By revising paragraph (k) to read as follows:

(k) Steps will be initiated to withdraw the approval found in § 917.10 unless Kentucky submits to the Secretary by October 31, 1983, copies of promulgated regulations establishing standards of costs and expenses no less effective than those at 43 CFR 4.1294.

3. 30 CFR 917 is amended by adding a new § 917.15 to read as follows:

§ 917.15 Approval of Amendments to State Regulatory Program.

(a) The following amendments are approved effective on January 4, 1983. Revisions submitted on May 28, 1982, to the following Kentucky regulations: 405 KAR 7:020 Section 1(11), 7:020 Section 1(70), 7:020 Section 1(117), 7:030 Section 1, 7:040 Section 5(1), 7:040 Section 10(2), 7:040 Section 10(7), 7:090 Section 4(1), 7:090 Section 4(6), 7:090 Section 6, 7:095, 8:010 Section 6(1), 8:010 Section 6(2), 8:010 Section 13(1), 8:010 Section 20(5), 8:010 Section 21(2)(a)(4), 8:010 Section 21(2)(b)(1), 8:010 Section 22(1), 8:010 Section 22(2)(a), 8:010 Section 22(a)(2), 8:010 Section 22(2)(c)(1), 8:010 Section 22(4), 8:010 Section 22(5), 8:010 Section 22(6), 8:020 Section 2(2)(h), 8:030 Section 23(4), 12:010 Section 3(5) (a) and (b), 16:140 Section 2(1)(d), 18:140 Section 2(1)(d), 24:020 Section 3(7), 24:020 Section 4(6), 24:020 Section 3(5), 24:030 Section 4(4), 24:030 Section 8(7), 24:030 Section 9, 1:005 Section 6, and 3:005 Section 6.

(b) Revisions submitted on May 28, 1982, to the following Kentucky statutory provisions: KRS Chapter 350, as contained in House Bill No. 19; KRS 350.010, as contained in Senate Bill No. 267; KRS 350.425 and 151.250(3), as contained in Senate Bill No. 380; KRS 350.035, 350.990 (2) and (5), and KRS Chapter 350, as contained in Senate Bill No. 165; KRS 350.010 Section 1 (1), (2), (4), (7), (8) and (17), KRS 350.028 Section 3 (3), (4) and (5), KRS 350.060 Section 5 (3), (5)(g), (8)(a), (8)(d)–(i), (10), (14), (15), and (16), KRS 350.450 Section 33(4), KRS 350.130 Section 14, KRS 350.610(6), and KRS 350.990 Section 35(1), contained in Senate Bill No. 218; KRS 350.060(9), KRS 350.060 Section 5(14) and KRS Chapter 377 Section 1(14), contained in House Bill No. 813; KRS 350.139 and KRS Chapter 377 Section 4(2), contained in Senate Bill No. 316.

[FR Doc. 83-52 Filed 1-3-83; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations; Bank Interest Payments to Iran

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations to further specify which assets are required to be transferred pursuant to § 535.213. The amendment is needed to facilitate the ongoing implementation of the Iran-U.S. agreements of January 19, 1981 (the "Algiers Accords").

EFFECTIVE DATE: December 30, 1982.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376–0236.

SUPPLEMENTARY INFORMATION: Sections 535.212 and 535.213 of the Regulations require that certain Iranian assets held by U.S. banks be transferred to the Federal Reserve Bank of New York, together with interest from November 14, 1979, at commercially reasonable rates. Section 535.440 specified that, with respect to obligations other than time or savings deposits, the expectation was that the "commercially reasonable rate" would be that rate agreed upon by the bank and Iran.

A number of U.S. banks are currently negotiating with Iran concerning payments of non-syndicated debt. These negotiations, and the settlements that are expected to result, also deal with Iran's claim for interest on deposits which were transferred pursuant to the Algiers Accords. However, Iran has also filed claims for such interest against the United States Government before the Iran-U.S. Claims Tribunal (the "Tribunal"). It is the position of the United States that any settlement agreements between the banks and Iran which discharge the banks' liability to Iran for interest on deposits fully discharge any U.S. Government liability to transfer such interest or to pay any damages or additional interest with regard to such claims. Accordingly, any claims that Iran has filed against the United States with regard to matters settled between the banks and Iran are moot and should be dismissed. However, the United States also recognizes that the Tribunal is the final arbiter of the obligations of the parties pursuant to the Algiers Accords.

Therefore, the Office of Foreign Assets Control is amending the provisions of the Regulations dealing with the transfer of interest. The expectation remains that the "commercially reasonable rate" of interest will be that rate agreed upon between the banks and Iran. The amendment, however, provides that if the Tribunal determines that a greater amount of interest, or compensation or damages in lieu of interest, is due Iran, then the amount of interest at a "commercially reasonable rate" shall be determined on the basis of that amount determined to be due Iran. Transfers which are required to be made by banks to the Federal Reserve Bank of New York shall be based upon the amount determined by the Tribunal to be due Iran, regardless of any settlement between the banks and Iran or any release or discharge that Iran may have given the banks.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date, are inapplicable. Similarly, because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with federal regulations. Since no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable to this regulation.

List of Subjects in 31 CFR Part 535

Iran, Foreign assets control.

PART 535—[AMENDED]

31 CFR Part 535 is amended as follows:

1. Section 535.213 is amended by the revision of paragraph (b) as follows:

§ 535.213 Direction involving property held by offices of banks in the United States in which Iran or an Iranian entity has an interest.

* * * * *

(b) Transfer of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part, and such funds, securities or deposits, plus interest at commercially reasonable rates from November 14, 1979, to the transfer date, shall be received by the Federal Reserve Bank of New York by 11 a.m., E.D.T., July 10, 1981. For periods for which rates are to be determined in the future, whether by agreement between Iran and the bank or otherwise (see § 535.440), interest for such periods shall be transferred to the Federal Reserve Bank of New York promptly upon such determination. Such interest shall include interest at commercially reasonable rates from July 19, 1981, on the interest which would have accrued by July 19, 1981.

2. Section 535.440 is being amended by revising paragraph (a), adding a new paragraph (b) and redesignating existing paragraph (b) as paragraph (c). As revised, § 535.440 reads:

§ 535.440 Commercially reasonable interest rates.

(a) For purposes of §§ 535.212 and 535.213, what is meant by "commercially reasonable rates" depends on the particular circumstances. In the case of time or savings deposits, the "commercially reasonable rate" is that rate provided for by the deposit agreement or applicable law. With respect to other obligations where the rate remains to be determined, it is presently expected that the "commercially reasonable rate" will be the rate agreed upon by the bank and Iran. However, where a deposit has in fact operated as a demand account under Treasury license, it would be appropriate to treat the deposit for purposes of §§ 535.212 and 535.213 as a non-interest bearing account. Furthermore, in the event that the Iran-U.S Claims Tribunal (the "Tribunal") determines that interest additional to that agreed upon between the bank and Iran, or compensation or damages in lieu of interest, is due Iran, then that amount determined by the Tribunal to be owing to Iran shall be transferred as, or as part of, the interest at "commercially reasonable rates" required to be transferred pursuant to §§ 535.212 and 535.213, regardless of any settlement between the bank and Iran or any release or discharge that Iran may have given the bank.

(b) The contingent interest of Iran in any liability for further or additional interest, or compensation or damages in lieu of interest, that may be claimed in, and determined by the Tribunal, constitutes an interest of Iran in property for purposes of this part, and no agreement between Iran and any person subject to the jurisdiction of the United States is effective to extinguish such Iranian interest in property unless so specifically licensed by the Treasury Department.

(c) For deposits held as time deposits, no penalty shall be imposed for early withdrawal. (In this connection, the Board of Governors of the Federal Reserve System has determined that application of the penalty for early withdrawal of time deposits transferred before maturity, pursuant to § 535.213 is not required).

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12205; 45 FR 24099; E.O. No. 12211, 45 FR 26605; E.O. No. 12276, 46 FR 7913; E.O. No. 12277, 46 FR 7915; E.O. No. 12278, 46 FR 7917; E.O. No. 12279, 46 FR 7919; E.O. No. 12280, 46 FR 7921; E.O. No. 12281, 46 FR 7923; E.O. No. 12282, 46 FR 7925; and E.O. No. 12294, 46 FR 14111)

Dated: December 30, 1982.

Dennis M. O'Connell,

Director.

Approved:

John M. Walker, Jr.,

Assistant Secretary, Enforcement and Operations.

[FR Doc. 82-35801 Filed 12-30-82; 5:15 pm]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 2273-6]

Approval and Promulgation of Implementation Plans; Maricopa County, Arizona; Nonattainment Area Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: This notice disapproves the Maricopa County State Implementation Plan (SIP) for Total Suspended Particulates (TSP). The effect of this action is the imposition of a moratorium on the construction or modification of major sources of TSP in the Maricopa Urban Planning Area.

DATE: This action is effective January 4, 1983.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Acting Director, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Wallace Woo (415) 974–7634.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 1982 [47 FR 19327] EPA conditionally approved the TSP nonattainment area plan (NAP) for Maricopa County, Arizona. EPA required that, as a condition of approval of the TSP plan, the State submit by August 3, 1982 a schedule for the development, adoption and implementation of the control measures necessary for attainment of the TSP standard. As indicated in that rulemaking notice as supplemented by the General Preamble [44 FR 38583 (July 2, 1979)], failure to satisfy the condition would result in EPA action to disapprove the plan under Part D of the Clean Air Act. The State has not submitted the required schedule and therefore has failed to satisfy the condition of approval.

EPA Action

This notice disapproves the Maricopa NAP for TSP since it does not satisfy the requirements of Part D of the Clean Air Act, or the terms of the conditional approval granted on May 5, 1982. The effect of this disapproval is the imposition of a moratorium on the construction or modification of major new sources of TSP in the Maricopa County Urban Planning Area.

Regulatory Process

EPA finds that there is good cause within the meaning of 5 U.S.C. 553(b) (Administrative Procedure Act) to take this action without providing further notice and opportunity to comment. Opportunity to comment on this procedure and the specific conditions for the Maricopa NAP was provided in the October 22, 1980 proposed rulemaking notice on the Maricopa NAP and the May 5, 1982 conditional approval. Comment on this action is unnecessary, since the State has failed to meet the condition specified in the May 5, 1982 conditional approval. In addition, a discussion of conditional approval appears in two supplements to the General Preamble [44 FR 38583 (July 2, 1979) and 44 FR 67192 (November 23, 1979)] and specifies that failure to meet a condition will result in immediate disapproval of the NAP and imposition of the construction ban.

Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 7, 1983. This action may not be challenged later in proceedings to enforce its requirements.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

The Administrator has certified that SIP actions do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

(Sections 110, 129, 171–178 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)])

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Ozone, Sulfur oxides, Nitrogen oxides, Hydrocarbons, Carbon monoxides.

Dated: December 27, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

PART 52—[AMENDED]

Subpart D of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart D—Arizona

1. Section 52.123 is amended by adding paragraph (e) as follows:

§ 52.123 Approval status.

* * * * *

(e) The Administrator finds that the plan does not satisfy all the requirements of Part D, Title I, of the Clean Air Act as amended in 1977 for the nonattainment and area pollutants listed in this paragraph.

(1) Maricopa County Urban Planning Area for TSP.

§ 52.124 [Amended]

2. Section 52.124 is amended by removing paragraph (a)(1)(ii).

[FR Doc. 83-54 Filed 1-3-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6472]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

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

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

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. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

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

The 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 provision of 5 U.S.C. 605(b), the Associate Director of 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. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the Nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in non-compliance of the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

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

State	County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Colorado	Mesa	Grand Junction, city of	080117-D	Oct. 13, 1978, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Feb. 1, 1974, June 28, 1974, Oct. 10, 1975, Dec. 12, 1978.	Jan. 6, 1983.
Illinois	Sangamon	Unincorporated areas	170912-C	July 29, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	May 5, 1978, June 15, 1979.	Do.
Indiana	Noble	Kendallville, city of	180185-C	Mar. 24, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	June 14, 1974, Dec. 26, 1975, Sept. 10, 1976.	Do.
Do	do	Ligonier, city of	180186-A	Sept. 23, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	July 16, 1976	Do.
Do	Porter	Valparaiso, city of	180204-C	Mar. 24, 1975, emergency; Mar. 2, 1979, regular; Jan. 6, 1983, suspended.	Jan. 9, 1974, Apr. 9, 1976.	Do.
Michigan	Oakland	Bloomfield, township of	260169-B	May 22, 1973, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	May 17, 1974, June 18, 1976.	Do.
Minnesota	Hennepin	Independence, city of	270167-B	Jan. 28, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	June 28, 1974, July 30, 1976.	Do.
Do	Pine	Sandstone, city of	270351-B	May 14, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	May 10, 1974, June 4, 1976.	Do.
Missouri	Ray	Hardin, city of	290307-B	Nov. 10, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	June 7, 1974, Nov. 28, 1975.	Do.
New Jersey	Cape May	Cape May City, city of	345288-A	July 10, 1970, emergency; Feb. 26, 1971, regular; Jan. 6, 1983, suspended.	Aug. 7, 1970, Feb. 13, 1976.	Do.
Do	do	Cape May Point, borough of	345289-B	June 30, 1970, emergency; Dec. 31, 1970, regular; Jan. 6, 1983, suspended.	July 1, 1970, Feb. 13, 1976.	Do.
Do	Monmouth	Howell, township of	340301-B	Nov. 26, 1974, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Mar. 22, 1974, Aug. 27, 1976.	Do.
Do	Warren	Knowlton, township of	340488-B	July 11, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Aug. 16, 1974, July 9, 1978.	Do.
Do	Gloucester	Logan, township of	340206-C	June 29, 1976, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Sept. 13, 1974, Nov. 28, 1975, Dec. 30, 1977.	Do.
Do	Somerset	Somerville, borough of	340444-C	May 22, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	July 26, 1974, Oct. 24, 1975, Mar. 31, 1981.	Do.
Do	Ocean	South Toms River, borough of	340392-B	June 27, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	July 26, 1974, July 23, 1976.	Do.
Do	Cape May	Wildwood, city of	345329-A	June 5, 1970, emergency; Dec. 31, 1970, regular; Jan. 6, 1983, suspended.	June 5, 1970, Dec. 19, 1975.	Do.
Do	do	North Wildwood, city of	345308-B	July 24, 1970, emergency; Mar. 5, 1971, regular; Jan. 6, 1983, suspended.	Mar. 6, 1971, Dec. 19, 1975.	Do.
New York	Montgomery	Canajoharie, town of	360442-B	June 13, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	May 3, 1974, Apr. 23, 1976.	Do.
Do	Albany	Guilderland, town of	360010-A	Oct. 9, 1974, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Jan. 17, 1975	Do.
Do	Nassau	Laurel Hollow, village of	360475-B	May 8, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	June 28, 1974, July 9, 1976.	Do.
North Carolina	Lenoir	Unincorporated areas	370144-B	July 7, 1980, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Dec. 27, 1974, July 21, 1978.	Do.
Do	Haywood	Waynesville, town of	370124-B	July 2, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Mar. 8, 1974, Aug. 27, 1976.	Do.
Ohio	Jefferson	Mingo Junction, city of	390300-B	April 30, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Mar. 1, 1974, June 11, 1976.	Do.
Oklahoma	do	Waurika, city of	400076-B	Sept. 23, 1974, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	June 28, 1974, July 19, 1977.	Do.
New Mexico	Sandoval	Bernalillo, town of	350056-B	Jan. 17, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	June 4, 1974, May 21, 1976.	Do.
Do	do	Corrales, village of	350094-B	Oct. 14, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Dec. 20, 1974, May 15, 1979.	Do.
Pennsylvania	Delaware	Ridley, township of	420429-B	Sept. 8, 1972, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Apr. 27, 1973, Aug. 6, 1976.	Do.
South Carolina	Lancaster	Unincorporated areas	450120-B	July 3, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Dec. 20, 1974, Sept. 9, 1977.	Do.
Tennessee	Wilson	Lebanon, city of	470206-B	June 23, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Apr. 12, 1974	Do.
Texas	Jefferson	Bevil Oaks, town of	480878-B	July 19, 1976, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	May 13, 1977	Do.
Do	Orange	Unincorporated areas	480510-B	Nov. 6, 1970, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Mar. 11, 1977	Do.
Do	do	Orange, city of	480512-B	Jan. 15, 1974, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	June 14, 1974, May 24, 1977.	Do.
Do	do	Pinehurst, city of	480513-B	Dec. 31, 1970, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Jan. 6, 1983	Do.
Do	do	West Orange, city of	480515-A	Apr. 11, 1974, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Mar. 31, 1974	Do.
Wisconsin	Oconto	Unincorporated areas	550294-A	May 21, 1973, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Jan. 6, 1983	Do.
Do	La Crosse	La Crosse, city of	555562-A	Jan. 15, 1971, emergency; Jan. 15, 1971, regular; Jan. 6, 1983, suspended.	May 14, 1976	Do.
Minnesota	Hennepin	Brooklyn Park, city of	270152-B	Feb. 5, 1974, emergency; May 17, 1982, regular; Jan. 6, 1983, suspended.	Apr. 12, 1974, May 17, 1982.	Do.
Do	Marshall	Stephen, city of	270273-A	Apr. 26, 1974, emergency; Sept. 16, 1982, regular; Jan. 6, 1983, suspended.	May 17, 1974	Do.
New Jersey	Cape May	Sea Isle City of, city of	345318-B	June 19, 1970, emergency; Dec. 31, 1970, regular; Jan. 6, 1983, suspended.	Dec. 31, 1970, Dec. 26, 1975.	Do.
Montana	Missoula	Missoula, city of	300049-B	Mar. 14, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended.	Mar. 8, 1974, Aug. 15, 1975.	Do.
Wisconsin	Washington	West Bend, city of	550475-B	Aug. 15, 1975, emergency; Aug. 2, 1982, regular; Jan. 1, 1982, suspended.	Dec. 28, 1973, Apr. 30, 1976.	Do.

[1] Certain Federal assistance no longer available in special flood hazard area.

(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; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: December 20, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 83-219 Filed 1-3-83; 8:45 am]

BILLING CODE 6716-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 21124-247]

Foreign Fishing

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to amend the foreign fishing regulations. The final rule establishes for 1983 the foreign fishing permit fee, the surcharge for the Fishing Vessel and Gear Damage Compensation Fund, and the methods of calculating the observer surcharge and paying for certain fees and surcharges. The final rule also clarifies the scope of responsibility of the designated agent. The final rule will allow NOAA to recover 1983 administrative costs and other surcharges required by statute, and improve payment procedures.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Susan E. Jelley, 202-634-7432.

SUPPLEMENTARY INFORMATION:

Background

NOAA is publishing the fee schedule for 1983 in two, or possibly three, segments. A proposed rulemaking for the first segment was published at 47 FR 38947 on September 3, 1982. Public comments were invited on the proposed regulations for 30 days ending October 4, 1982. By that action, NOAA proposed to: (1) Increase the 1983 foreign fishing permit fee; (2) set the surcharge fee at 4 percent in 1983 to capitalize the Fishing Vessel and Gear Damage Compensation Fund (FVGDCF); (3) establish the method of surcharge calculation and payment for the observer fund; (4) require each nation to establish a single revolving letter of credit for all fee and surcharge payments except permit fees; and (5) clarify that the designated agent for a foreign nation would be required to receive and respond to any legal process for any vessel of that nation fishing subject to the jurisdiction of the United States. The basis for the proposed regulations is throughly discussed at 47 FR 38947. Comments were received from one source, the Japan Fisheries Association (JFA).

The following summarizes the comments provided by that source and NOAA responses to these comments.

Comments and Responses

1. The JFA suggested that NOAA provide a sufficient amount of time for the industry to review and confirm the quarterly observer billing following its receipt, before NOAA draws against the letter of credit (L/C).

Responses: A 45-day period to reconcile observer expenditures is now included in the final rule at § 611.8(b).

2. The JFA suggested that the required amount to be established and maintained in the L/C for the observer surcharge should be for three months rather than six months.

Response. The proposed rule suggested that a letter of credit be established for half of the predicted annual observer surcharge. This is amended in the final rule at § 611.8(b) to be one-quarter of the predicted annual observer surcharge.

3. Section 611.22(a)(2)(ii) should not be revised. The reference to establishing and maintaining an irrevocable confirmed L/C at a level not less than one-quarter of the total estimated annual poundage and surcharge fees should remain as it is in the present regulation.

Response: The final rule does not change the reference to establishing a L/C at 25 percent of the previous year's total allocations, at the current year's fees. The decision to reduce the amount to be included in the L/C for the observer program makes this change unnecessary. The proposed reference to surcharges, including the surcharge under § 611.8(b), is retained in the final rule. Because the L/C is revolving, if a country's bill exceeds the 25 percent level during any quarter, the required payments can be made by two successive withdrawals. (See *Observer Surcharge* for further discussion).

4. The surcharge rate for the FVGDCF should be controlled by setting $1.7 million, or the final FVGDCF capitalization requirement, as a fixed target to be collected against final poundage fees established for 1983 and it should remain unchanged.

Response: NOAA has refined its estimate of the 1983 fee collection target and believes the 4 percent surcharge set out in § 611.22(b) is adequate to capitalize the FVGDCF for 1983. No adjustment during the year is currently foreseen.

Observer Surcharge

Section 201(i)(5) of the Magnuson Fishery Conservation and Management Act requires that the Secretary maintain a revolving fund to operate the observer program. However, to meet monthly program operating expenses NOAA needs to maintain a cash balance in the fund of one-twelfth of the expected annual appropriation. In fiscal year (FY) 1983, the appropriation is $6.9 million, requiring that a monthly balance of $575,000 be maintained. To respond in a positive manner to comment No. 3 and yet achieve the purposes of the Magnuson Act, the following procedure is instituted.

The foreign fishing nations were billed for a combined total of $3 million in September 1982, under the assumption that the FY 1983 appropriation would be $4 million. In fact, $6.9 million was subsequently appropriated. Cash payments made under the September billings are being used to operate the program during October 1982 through December 1982 (i.e., the first quarter of FY 1983). Also, NOAA intends to apply these funds to a portion of second quarter FY 1983 (January through March) program costs. The funds will support the observer program until withdrawals are made against the L/Cs required by these regulations in 1983.

Each fishing nation must establish a single, irrevocable, revolving L/C at an amount sufficient to cover all estimated quarterly fees and surcharges (except permit application fees). This amount will include an amount for one-fourth (rather than one-half) of the total estimated annual observer surcharge. NOAA will determine the amount of the L/C for each foreign nation by early December, based on the anticipated fishing effort by that nation for the year. The L/C must be established by January 1, 1983, or before fishing or processing may commence. If a L/C in the stated amount is not established, foreign fishing permits will not be issued.

NOAA will monitor actual observer expenditures. If the monthly balance of the observer fund falls below one-twelfth of the annual observer surcharge (as estimated under the appropriation),

intermediate withdrawals from the L/C will be made to return the fund balance to the minimum level. The amount of the intermediate withdrawals from each nation's L/C will be prorated based on the total amount of observer coverage provided and anticipated for that nation's vessels for the quarter in which the intermediate withdrawal is made. For example, if the amount of actual and anticipated observer coverage for a single nation's vessels is equal to 90 percent of the total actual and anticipated observer coverage for the quarter, then that nation's L/C will be assessed 90 percent of the sum needed to balance the fund at the minimum level. Thus, if a nation has not fished during the quarter in question, no intermediate withdrawal will be made from that nation's L/C. The major withdrawals will be made at the beginning of each quarter. Withdrawals from each nation's L/C will be for the amount needed to cover the costs of anticipated observer coverage for the upcoming quarter.

The table shows a sample cash flow. Under this procedure, $575,000 out of the $3 million billed last September would be applied to establish the minimum monthly balance in the fund.

One alternative would be for foreign nations to pay cash in advance for the entire fiscal year, but no refunds or credits would be made. Therefore, this option was rejected.

The benefit of this procedure adopted today is that, after the initial payment, use of the L/C system reduces the possibility of collecting more cash than is actually needed to operate the system. At the time a foreign fishing nation notifies the United States that it will not be fishing during a subsequent year, that nation's pro-rated contribution to the initial establishment of the fund's minimum monthly balance will be credited back to that nation's observer account. No refund may be made, however.

Foreign nations should be aware that if Congress appropriates more than $6.9 million for FY 1983 or otherwise acts to allow expansion of the program beyond that amount, the minimum monthly balance and observer payments may be greater than those sample payments on the table.

	1982			1983									1983
	October	November	December	January	February	March	April	May	June	July	August	September	October
Cash at beginning of month	3,000,000 [1]	2,600,000	2,100,000	1,575,000 [2]	1,075,000	725,000	1,825,000 [3]	1,125,000	575,000 [4]	2,067,000 [5]	1,567,000	1,077,000	575,000 [6]
Sample observer expenditures	400,000	500,000	525,000	500,000	350,000	300,000	700,000	700,000	300,000	500,000	490,000	502,000	
Cash at end of month	2,600,000	2,100,000	1,575,000	1,075,000	725,000	425,000	1,125,000	425,000	275,000	1,567,000	1,077,000	575,000	etc.

[1] Source: September 1982 billings.
[2] Note: New L/C for one-quarter of predicted fiscal year 1983 observer fees established now. No withdrawals are made, though, because cash on hand is sufficient to operate the program.
[3] $425,000 cash on hand at the end of March, plus withdrawals from L/Cs of $150,000 to bring cash up to minimum level of $575,000, and a withdrawal of $1,250,000 to cover observer estimated cost for April, May and June.
[4] $425,000 on hand at the end of May, plus intermediate withdrawal of $150,000 to bring cash up to minimum level of $575,000 because estimate of cost for April, May and June was low.
[5] $275,000 cash on hand at the end of June, plus withdrawals from L/Cs of $300,000 to bring cash up to minimum and a withdrawal of $1,492,000 to cover estimated costs for July, August and September.
[6] Beginning of new fiscal year. $575,000 on hand. Accounts balanced based on actual cost. A withdrawal will be made to cover the estimated cost for October, November and December.

Certain non-substantive changes are made in § 611.22. These changes remove § 611.22(a)(3) because its provisions are no longer relevant to an L/C system of payments. Section 611.22(a)(1) makes clear that checks for permit application fees must be drawn on a U.S. bank. Editorial changes are made in § 611.22(a)(2)(ii) for clarity.

Administrative Procedure Act

The Assistant Administrator has determined that in order not to disrupt foreign fishing operations, these regulations must be effective on January 1, 1983. Therefore, the Assistant Administrator waives part of the 30-day delay in implementation required under the Administrative Procedure Act.

Classification

The Assistant Administrator has determined that this action is consistent with the Magnuson Act and other applicable laws. NOAA has prepared a regulatory impact review (RIR) that discusses the economic consequences and impacts of the regulations. Copies of the RIR are available at the above address. Based on the RIR, the Administrator, NOAA, has determined that the regulations do not constitute a major rule under E.O. 12291. The RIR demonstrates that the final rules comply with the requirements of Section 2 of E.O. 12291.

These regulations will not have a significant impact on a substantial number of small domestic entities for purposes of the Regulatory Flexibility Act because the only impacts are on foreign entities. The preamble to the proposed rule (47 FR 38947) states that the General Counsel of the Department of Commerce has certified to the Small Business Administration that this action is non-significant.

This action does not constitute a major Federal action significantly affecting the quality of the human environment. These amendments are programmatic functions with no potential for environmental impacts under the National Environmental Policy Act.

This final rule has no information collection provisions, for purposes of the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: December 29, 1982.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 611 is amended as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. Revise § 611.3(c) (3) and (4) to read as follows:

§ 611.3 Permits for foreign fishing vessels.

* * * * *

(c) * * *

(3) The payment of the fees established by the Secretary, including any surcharge fees; and

(4) The designation of an agent to receive and respond to any legal process issued in the United States to an owner or operator of any vessel of that nation fishing subject to the jurisdiction of the United States.

* * * * *

3. Revise § 611.8(b) to read as follows:

§ 611.8 Observers.

* * * * *

(b) The Assistant Administrator will notify the owners or operators of foreign fishing vessels of the estimated annual costs of placing observers aboard their vessels. The owners or operators of any such vessel shall provide for repayment of those costs by including one-fourth of the estimated annual observer fee as determined by the Assistant Administrator in a letter of credit, as prescribed in § 611.22(a)(2)(ii). During the fiscal year, payment will be withdrawn from the letter of credit at the beginning of each quarter to cover the estimated costs of observer coverage for that quarter. NOAA will reconcile any differences between the estimated cost and actual costs of observer coverage 45 days after the end of each quarter based on actual observer coverage.

* * * * *

4. The authority citation for § 611.22 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, and 22 U.S.C. 1980.

5. Remove § 611.22(a)(3), and revise § 611.22 (a)(1)(i), (a)(2)(ii), and (b) to read as follows:

§ 611.22 Fee Schedule for foreign fishing permits.

(a) * * *

(1) *Permit application fees.* (i) Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $73 per vessel, plus the surcharge required under paragraph (b) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA", must be sent to: Division Chief, Permits and Regulations Division, F/CM7, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235. The permit fee payment must be accompanied by a list of the vessel applications for which payment is made.

* * * * *

(2) * * *

(ii) *Method of payment of poundage fees, observer fees, and surcharges.* If a nation chooses to accept an allocation, an irrevocable revolving letter of credit must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocations at the rate in paragraph (a)(2)(i) of this section, or as determined by the Assistant Administrator, plus the surcharges required by paragraph (b) of this section, and § 611.8(b). The Department of Commerce, NOAA, must be designated as the beneficiary. The customer must pay all commissions, telex, and service charges. The letter of credit must be confirmed by a Federally chartered bank in the United States. No fishing will be allowed unless the letter of credit is established, and authorized written notice of its issuance and confirmation is provided to the Assistant Administrator at the address in paragraph (a)(1)(i) of this section.

(iii) * * *

(b) The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraph (a) of this section must also pay a surcharge equal to 4 percent of those fees. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed to maintain capitalization of the fund.

[FR Doc. 83-130 Filed 1-3-83; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 2
Tuesday, January 4, 1983

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 285

[Amendment Number 239]

Noncash Nutrition Assistance in the Commonwealth of Puerto Rico

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes amendments to the regulations published July 27, 1982 (47 FR 32409) concerning the Commonwealth of Puerto Rico's Nutrition Assistance Program. The proposed changes are required to implement a provision of the Food Stamp Act Amendments of 1982. The major change proposed in this rule will prohibit the use of cash for providing food assistance in the Commonwealth of Puerto Rico after September 30, 1983.

DATE: Comments must be recieved on or before March 7, 1983, to be assured of consideration in the final rulemaking process.

ADDRESS: Comments should be submitted to Judith M. Seymour, Acting Supervisor, Policy and Regulations Section Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Va. 22302. All written comments will be open to public inspection at the Office of Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Va., Room 708.

FOR FURTHER INFORMATION CONTACT: Ms. Judith M. Seymour, at the above address or by telephone at (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation does not contain reporting and recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act.

Classification

This rule has been reviewed under Executive Order 12291 and the Secretary's Memorandum No. 1512-1. The Department has classified this rule as a non-major rule. The proposed rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. This proposed rule would not affect the business community and would not 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.

Regulatory Flexibility Act

The proposed rule has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. No. 96-354, 94 Stat. 1164, September 19, 1980). Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this action would not have a significant economic impact on a substantial number of small entities. The proposed action would implement that provision of the Food Stamp Act Amendments of 1982 which prohibits the use of cash for providing food assistance in the Commonwealth of Puerto Rico after September 30, 1983. The State and local welfare agencies will be affected to the extent that they administer the current program.

Background

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. No. 97-35) provided for the conversion of the Food Stamp Program in the Commonwealth of Puerto Rico to a nutrition assistance grant effective July 1, 1982. A final rule implementing this legislative provision was published on July 27, 1982 (47 FR 32409).

The July 27, 1982, rulemaking required that the Commonwealth of Puerto Rico submit a plan of operation for fiscal years 1982 and 1983. The Commonwealth of Puerto Rico submitted its plan to provide nutrition assistance in the form of cash. The Department approved the plan and on July 1, 1982, the Commonwealth of Puerto Rico began issuing checks for food assistance.

During the deliberation of proposed legislation which eventually become the Food Stamp Act Amendments of 1982 (Pub. L No. 97-253 enacted September 8, 1982), the House Agriculture Committee expressed concern ". . . that using cash for nutrition assistance in Puerto Rico would jeopardize the integrity of the food assistance program and would preclude close monitoring for potential abuse. The Committee, not wanting the Food Stamp Program to become an income transfer program in Puerto Rico or in any of the fifty States, declared its opposition to a block grant concept that cashes out food assistance." H.R. Rep. No. 97-687, 97th Cong., 2d Sess., P. 57 (1982). Additionally, the General Accounting Office's Inspector General testified that a cash-out system in the Commonwealth of Puerto Rico would make the prevention or detection of fraud difficult and perhaps impossible. (H.R. Rep. No. 97-687, p. 68). In response to these concerns, Section 184 of the Food Stamp Act Amendments of 1982 prohibits the use of cash for food assistance in the Commonwealth of Puerto Rico after September 30, 1983. The Congressman offering this amendment stated that he is not suggesting a return to coupons as the medium of nutrition assistance, but that cash or checks are an unacceptable medium for this purpose in the Commonwealth of Puerto Rico or elsewhere (H.R. Rep. No. 97-687, p.77).

This proposed rulemaking would amend the current provisions (7 CFR 285) on the Commonwealth of Puerto Rico's nutrition assistance program, this rulemaking would prohibit the use of cash for nutrition assistance in the Commonwealth of Puerto Rico. Examples of alternate benefit delivery systems that the Commonwealth of Puerto Rico may use include but are not limited to food vouchers, electronic funds transfer, and food coupons.

If change in an amount of less than one dollar is required, this proposed rulemaking would allow the Commonwealth of Puerto Rico to give the change on cash. At no time would cash change in excess of 99 cents be returned in a nutrition assistance program transaction.

Implementation

In accordance with Section 184(b) of the Food Stamp Act Amendments of 1982, the provisions in this rulemaking would be implemented no later than October 1, 1983.

List of Subjects in 7 CFR Part 285

Accounting, Food assistance programs, Grant programs-Agriculture, Grant programs-social programs, Intergovernmental relations, Puerto Rico, Technical assistance, Reporting and recordkeeping requirements.

PART 285—PROVISION OF A NUTRITION ASSISTANCE GRANT FOR THE COMMONWEALTH OF PUERTO RICO

For the reasons set forth in the preamble, this proposed rule would amend Part 285 as follows:

§ 285.2 [Amended]

1. In §285.2(a), the first sentence is amended by inserting the word "noncash" before the words "food assistance" wherever it appears.

2. In §285.3:

a. Paragraph (b)(3)(i) is amended by replacing the semicolon at the end of the paragraph with a period and by adding three new sentences after the period.

b. Paragraph (b)(3)(ii) is amended by replacing the period at the end of the paragraph with a semicolon.

c. A new paragraph (b)(3)(iii) is added.

The additions read as follows:

§ 285.3 Plan of operation.

* * * * *

(b) * * *

(3) * * *

(i) * * * This nutrition assistance shall be in the form of a noncash benefit that can only be used for purchasing food. Noncash nutrition assistance shall be in a form other than cash or checks. Alternate benefit delivery systems include but are not limited to: food vouchers, electronic funds transfer and food coupons;

* * * * *

(iii) If change in an amount of less than 1-dollar is required, the Commonwealth of Puerto Rico may allow eligible households to receive the change in cash. At no time may cash change be in excess of 99 cents. Food stores may not engage in a series of transactions of less than one dollar in order to provide the same customer an amount of cash change greater than the maximum 99 cents cash change allowed in one transaction.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011-2029))

(Catalog of Federal Domestic Assistance Programs, No. 10.551, Food Stamps)

Dated: December 27, 1982.

Robert E. Leard,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 83-17 Filed 1-3-83; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 947

Irish Potatoes Grown in Modoc and Siskiyou Counties in California and in All Counties in Oregon Except Malheur County; Withdrawal of Proposed Amendment No. 1 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed amendment to rule.

SUMMARY: This document withdraws a proposal to amend handling regulation § 947.340 (46 FR 47757) which would have increased the minimum size requirements for fresh market potatoes grown in Modoc and Siskiyou Counties in California and all counties in Oregon except Malheur County. The proposal was recommended to help promote orderly marketing by making Oregon-California production area size requirements more similar to those of potato marketing orders in two adjoining States. It has now been determined that the proposed change based on market conditions in October would no longer benefit growers and consumers this late in the marketing season. Therefore, there is no longer a need to implement the proposed amendment.

DATE: This document is effective December 29, 1982.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447-2615.

SUPPLEMENTARY INFORMATION: This document withdraws that portion of a proposal published in the **Federal Register** on November 30, 1982 (47 FR 53883-53884), to amend the handling regulation for Oregon-California potatoes (§ 947.340).

The proposed amendment to increase size requirements was published in the November 30 **Federal Register** with comments allowed until December 15. Two comments were filed favoring the proposed amendment. Twenty-four comments were filed against the proposal including two petitions signed by a total of 52 producers. Some producers expressed concern about the disruptive effect of changing the regulation in mid-season. This prompted the Oregon-California Potato Committee to meet and re-analyze the proposed changes. After reviewing the most current farm and market conditions, it was concluded that the proposed changes would not improve the growers' position in the marketplace. Hence, the committee filed a comment with the hearing clerk recommending withdrawal of the proposed amendment.

Therefore, the current handling regulation (§ 947.340) tends to effectuate the declared policy of the act and shall remain in effect.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes, Oregon, California.

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

Dated: December 29, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 83-134 Filed 1-3-83; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 993

Dried Prunes Produced in California; Proposed Changes in the Time for Filing Reports and Conforming Changes

AGENCY: Agricultural Marketing Service USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend § 993.172 (b) and (d) of the Administrative Rules and Regulations to change the time requirements for handlers to file the monthly "New Crop Supply and Inbound Prune Report" and the "Report of Shipments". This change would enable the Prune Marketing Committee (PMC) staff to prepare and release its statistical data on supply and shipments sooner each month, thereby better meeting the needs of the prune industry.

In addition, minor conforming changes would be made in the Administrative Rules and Regulations to reflect the change in the name of the Prune Administrative Committee to Prune Marketing Committee. This change was made when the marketing order was amended last December.

DATES: Written comments on this proposal must be received by February 28, 1983.

ADDRESSES: Written comments should be submitted in duplicate to the Hearing

Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447-5697.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated 13 handlers.

The proposal under consideration would amend Subpart—Administrative Rules and Regulations (7 CFR 993.101-993.174) to change form filing deadline dates and to make minor conforming changes. This subpart is issued under the marketing agreement, as amended, and Order No. 993, as amended (7 CFR 993), regulating the handling of California dried prunes. The marketing agreement and order are collectively referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal is based on a unanimous recommendation of the PMC.

Current, § 993.172(b) requires handlers to file with the PMC, for each month, prior to the 10th calendar day of the next succeeding month a signed report on Form PMC 11.1 "New Crop Supply and Inbound Prune Report". The proposed change would require handlers to file this report prior to the 5th calendar day of the next succeeding month.

Similarly, under § 993.172(d) handlers currently are required to file with the PMC, for each month prior to the 10th calendar day of the next succeeding month, a signed report on Form PMC 12.1 "Report of Shipments". The proposed change would require handlers to file this report prior to the 5th calendar day of the next succeeding month.

The purpose for changing this reporting date is to enable the PMC staff to prepare its monthly report on supply and shipments sooner than they can under the current provisions. The prune industry and others use this report extensively and would benefit by having it sooner each month. All handler members on the PMC supported these changes. Both reports are authorized under § 993.72 of the order.

In addition, minor conforming changes in the Administrative Rules and Regulations should be made to reflect a change in the name of the Committee from the Prune Administrative Committee to the Prune Marketing Committee. This change was made when the order was amended on December 18, 1981 (47 FR 61635).

List of Subjects in 7 CFR Part 993

Marketing agreements and orders, Plums and prunes, and California.

PART 993—AMENDED

Therefore, the proposal is to amend Subpart—Administrative Rules and Regulations (7 CFR 993.101-993.174) as follows:

§ 993.172 [Amended]

1. Section 993.172(b) (amended) is revised by changing the phrase "prior to the 10th calendar day" to "prior to the 5th calendar day", and by changing the phrase "Form PAC" to "Form PMC".

2. The first sentence of § 993.172(d) (amended) is revised to read as follows:

* * * * *

(d) *Shipments by handlers.* Each handler shall file with the Committee for each month, prior to the 5th calendar day of the next succeeding month, a signed report on Form PMC 12.1 "Reports of Shipments" reporting shipments of prunes during the crop year through the last day of the immediately preceding month. Such report shall contain at least the following information:

* * * * *

§ 993.102 [Amended]

3. A conforming change in § 993.102 (amended) is made by changing the phrase "Prune Administrative Committee" to "Prune Marketing Committee".

§§ 993.149-993.174 [Amended]

4. Conforming changes should be made in §§ 993.149-993.174 (amended) by changing the phrase "Form PAC" to "Form PMC" wherever it appears in those sections.

Dated: December 29, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 83-133 Filed 1-3-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 210

[Docket No. ERA-R-82-03]

General Allocation and Price Rules; Recordkeeping

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: In order to reduce the burden on firms the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) proposes to amend the regulation set forth at 10 CFR Part 210.1 which requires the maintenance of records that resulted from requirements in 10 CFR Parts 210, 211, and 212 that were in effect on January 27, 1981. ERA is proposing to eliminate this requirement with respect to most firms whose activities were limited to the resale of refined petroleum products or residual fuel oil, the production of crude oil, or the sale of natural gas liquids.

ERA will receive written comments with respect to this proposal.

DATE: Comments by February 3, 1983.

ADDRESSES: Send comments to Public Hearing Management, Department of Energy, Room 4130, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: William Funk, Office of General Counsel, Department of Energy, Room 6A-141, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6736.

Jack Vandenberg, Office of Public Information, Economic Regulatory Administration, U.S. Department of Energy, Room 4309, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, (202 633-8108).

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 1981, in E.O. 12287 President Reagan exempted crude oil and petroleum products from price and allocation controls. The Order expressly retained all reporting and record-keeping requirements then in effect until eliminated or modified by the Secretary of Energy. On April 3, 1981, DOE eliminated and modified a large number of the previous reporting requirements, but adopted 10 CFR 210.1 to ensure that all firms continued to maintain those historical records that were required under the regulations in 10 CFR Parts 210, 211 and 212 that were in effect on January 27, 1981. (46 FR 28506, April 3,

1981). DOE acted to preserve these records in order to maintain the information necessary to determine whether enforcement actions should be continued or commenced.

Since the adoption of 10 CFR 210.1 DOE has endeavored to complete the enforcement activities under 10 CFR Parts 210, 211 and 212 and has completed, to a large extent, the audit phase of its effort in the area of product resellers, crude producers, and sellers of natural gas liquids. Because the maintenance of records can impose a burden on firms, especially small firms which many of these firms are, ERA is proposing to amend 10 CFR 210.1 to eliminate certain recordkeeping requirements with respect to many of these firms.

Specifically, Section 210.1 would be amended to exempt from its requirements the records of firms whose *only* business subject to Part 212 was limited to (1) the reselling or retailing of refined petroleum products or residual fuel oil, (2) the first sale of domestically produced crude oil, and/or (3) the sale (including the processing) of natural gas liquids or natural gas liquid products. The exemption, however, would not apply to any firm in one of these groups if the firm is the subject of an enforcement activity or a party to court action. For purposes of this provision, a firm would be considered to be the subject of an enforcement activity if (1) it has received a subpoena, a Notice of Probable Violation, or a Proposed Remedial Order, unless it has been formally rescinded or withdrawn, and (2) there has been no final (that is, non-appealable) administrative or judicial resolution or settlement regarding alleged violations or DOE has not informed the firm in writing that the Department's review of the matter is completed. A firm would be considered to be a party to a court action if the court action involves any issue under the EPAA or the regulations thereunder, whether or not the firm is a plaintiff, defendant, or other party, and whether or not DOE or the United States is a party to the action. The exemption from the recordkeeping requirement of Section 210.1 also would not apply to any firm specifically notified by DOE that it was not subject to the exemption. DOE would so notify a firm if it is still being audited, if it is subject to a remedial order that requires or permits further review, or if its records are needed to reconstruct the activities of another firm. DOE would make this notification within 60 days of the publication of a final rule, and before its effective date.

Firms within these groups, even if they were not presently subject to an enforcement activity or a court action, or were not notified by DOE, would still have to retain any records relating to the tertiary incentive program (former § 212.78) or the entitlements program (§ 211.67–69). For example, crude producers would have to retain those records necessary to confirm their reports on Forms ERA–424A, 424B, 424C, and to confirm their certifications or recertifications of crude oil as tertiary incentive oil. An importer of residual fuel oil into the East Coast would have to retain its records to confirm its reports on ERA–49.

The Department would like to narrow further the scope of 10 CFR 210.1 if it is possible to do so without compromising existing or potential enforcement activity. Accordingly, we invite comments from firms such as refiners and crude oil resellers, which are not covered by this proposal, and firms with multiple roles (such as a producer that also acted as a reseller), as to ways in which their recordkeeping requirements might be reduced consistent with appropriate enforcement needs. Such commenters should also document the financial and resource burden involved in retaining these historical records.

It should be noted, especially with regard to product resellers, that an elimination of these recordkeeping requirements would not affect the Office of Hearings and Appeals requirement in Subpart V proceedings for firms making claims for refunds to document their claims. Moreover, this amendment would not affect any reporting or recordkeeping requirements that stem from sources other than § 210.1, for example, the currently effective section 212.78 or a consent agreement that might impose certain reporting or recordkeeping requirements.

DOE has tentatively determined that whether or not product resellers retain their records will not affect the feasibility or lack of feasibility of DOE tracking how refiner or crude oil overcharges were passed through the commercial chain to determine which persons or firms actually suffered from such overcharges and to what extent. DOE requeests comments on this issue.

II. Comment Procedures

A. *Written Comments*

You are invited to participate in this proceeding by submitting information, views, or arguments with respect to the proposed amendment of 10 CFR Part 210.1. Comments should be submitted no later than [insert date 30 days from date of publication] to the address indicated in the "ADDRESSES" section of this preamble and should be identified on the outside envelope and on the document with the docket number and the designation: "Recordkeeping Requirements Reduction, Docket No. ERA–R–82–03". Ten copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. *Public Hearing*

DOE believes that the amendment proposed in this Notice presents no substantial issue of fact or law and is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Accordingly, DOE is not scheduling a public hearing as provided by section 501(c) of the Department of Energy Organization Act (DOE Act), Pub. L. 95–91, and the Administrative Procedure Act (5 U.S.C. 553). If a significant number of persons should request an opportunity for oral presentation of views, data and arguments, a public hearing could be held after public notice.

III. Other Matters

A. *Executive Order 12291*

Section 3 of Executive Order 12291 (46 FR 13193, February 19, 1981) requires that DOE determine whether a proposed rule is a "major rule", as defined by section 1(b) of E.O. 12291, and prepare a regulatory impact analysis for each major rule. Since the amendment would eliminate requirements and thus, reduce costs to firms, DOE has determined that the proposed repeal does not meet the E.O. 12291 definition of a major rule as one likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

B. *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 Pub. L. 96-354, (5 U.S.C. 601-612) requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rule, unless it determines that the rule will not have a "significant economic impact" on a substantial number of small entities. The proposed amendment would not impose any additional burdens on small entities, but rather it would reduce an obligation on a number of small entities. Nevertheless, DOE does not believe the obligation involved has a significant impact on small entities, and accordingly, as required by section 605(b), DOE certifies that the amendment will not have a significant economic impact on a substantial number of small entities.

C. *Environmental Review*

DOE has determined that the proposed amendment, which is essentially administrative in nature, clearly is not a major federal action with significant environmental impact. Consequently, the proposed amendment does not require preparation of an Environmental Assessment of Environmental Impact Statement under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*

List of Subjects in 10 CFR Part 210

Petroleum price regulations, Reporting requirements.

(Federal Energy Administration Act of 1974, Pub. L. 93-275; Department of Energy Organization Act, Pub. L. 95-91)

In consideration of the foregoing, Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, D.C. December 22, 1982.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

PART 210—[AMENDED]

Section 210.1, of Subpart A of Title 10 CFR is revised to read as follows:

§210.1 Records.

(a) The recordkeeping requirements that were in effect on January 27, 1981 in Parts 210, 211 and 212 will remain in effect for (1) all transactions prior to February 1, 1981; and (2) all allowed expenses incurred and paid prior to April 1, 1981 under § 212.78 of Part 212. These requirements include, but are not limited to, the requirements that were in effect on January 27, 1981 in § 210.92 of this part; in §§ 211.67(a)(5)(ii); 211.89; 211.109; 211.127; and 211.223 of Part 211; and in §§ 212.78(h)(5)(ii); 212.78(h)(6); 212.82(c)(2)(iii)(E)(I); 212.83(c)(2)(iii)(E)(II); 212.83(c)(2)(iii) "Fit"; 212.83(i); 212.93(a); 212.93(b)(4)(iii)(B)(I); 212.93(l)(4); 212.94(b)(2)(iii); 212.128; 212.132; 212.172; and § 212.187 of Part 212. (OMB Control No. 1903-0073)

(b) Effective (sixty days after publication of final rule), paragraph (a) of this section shall not apply to a firm that had no activity subject to Part 212 other than the reselling or retailing of refined petroleum products or residual fuel oil, the first sale of domestically produced crude oil, or the sale of natural gas liquids or natural gas liquid products, unless that firm is the subject of an enforcement activity or a court action or that firm is notified by DOE within sixty days of the publication of this paragraph that it must maintain its records. Provided that, if a firm that would be exempted from paragraph (a) of this section by reason of this paragraph ever had any entitlements purchase or sale obligations under § 211.67 or 211.69 or ever was a qualified producer or project operator under § 212.78(a)(2) (as it existed on January 27, 1981), then the firm shall be subject to paragraph (a) with respect to all its records relating to and reflecting the basis for its entitlements obligations or relating to the tertiary project and tertiary oil sold pursuant thereto, respectively.

(c) For purposes of this section: (1) A firm is "the subject of an enforcement activity" if (i) it has received a subpoena, a Notice of Probable Violation, or a Proposed Remedial Order, unless it has been formally rescinded or withdrawn, and (ii) there has been no final (that is, non-appealable) administrative or judicial resolution or settlement regarding alleged violations or DOE has not informed the firm in writing that the Department review of the matter is completed.

(2) Refined petroleum product does not include natural gas liquids or natural gas liquid products.

(3) A firm means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any entity however organized, including charitable, educational, or other eleemosynary institutions, and State and local governments. A firm includes a parent and the consoldiated and unconsilidated entities (if any) which it directly or indirectly controls.

(4) The sale of natural gas liquids or natural gas liquid products includes the processing of such items.

(5) A firm is "the subject of a court action" if it is involved in any way with a court action for which there has been no final (that is, non-appealable) judicial resolution and which involves any issue under the Emergency Petroleum Allocation Act or the regulations thereunder, whether or not the firm is a plaintiff, defendant, or other party, and whether or not DOE or the United States is a party to the action.

[FR Doc. 83-122 Filed 1-3-83; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of the Secretary

15 CFR Part 303

Allocation of Watch Quotas for Calendar Year 1983 Among Producers Located in the Virgin Islands, Guam and American Samoa

AGENCY: Import Administration, International Trade Administration, Commerce, and Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: Pursuant to Section 3 of the Departments' Codified Watch Quota regulations (15 CFR Part 303), calendar year 1983 provisions are being proposed. The Departments are proposing only minor changes from the 1982 provisions. The Departments are also proposing to change the procedures for publishing the annual allocation formula and other special provisions. See the discussion in Supplementary Information below.

DATE: Comments must be received on or before Feburary 3, 1983.

ADDRESS: Comments should be sent to: Statutory Import Programs Staff, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12291 dated February 17, 1981, the Departments of Commerce and the Interior have determined that these rules do not constitute a "major rule" as defined by Section 1(b) of the Order. They are not likely to result in:

(1) Annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices in either the public or private sector; or

(3) Significant adverse impact on the domestic economy or on the ability of U.S. enterprises to compete with foreign enterprises.

The General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Finally, the Departments have determined that publication of this rule will impose no change in the information collection burden on the public. That burden is limited solely to those entities receiving the associated Federal benefits and the information collection is made on ITA form 334P under OMB approval number 0625-0040. Accordingly, publication of these rules is consistent with the Departments' responsibilities under the Paperwork Reduction Plan Act of 1980.

We are proposing two substantive changes from the 1982 provisions: Applications from new firms for a portion of the Virgin Islands quota would not be invited. Applications from new firms for 500,000 units of the Guam quota would be invited. The only other changes would be editorial to conform the rule with these substantive changes and with the proposed amendment of the codified provisions discussed below.

Last year, a commenter on the proposed rules for 1982 urged the Departments to conduct an "examination" of the need to revise their assembly criteria with respect to quartz analog watches and to establish a standard not "less stringent" than the existing standard. The Departments agreed that such a need existed and invited specific recommendations for a new standard for possible inclusion in the 1983 rule. No recommendations have be received. The Departments again invite specific recommendations from interested parties.

The Departments also propose to amend the existing 15 CFR 303.3 entitled "Publication of Annual Rules." The existing rule provides for the annual issuance, by notice in the **Federal Register**, of proposed and final rules containing the allocation formula and other special rules and provisions. The proposed amendment provides for the issuance of such rules as an appendix to this Part which may or may not, at the Departments' discretion, be amended annually. With this change, contrary to past practice, annual provisions would not automatically expire at the end of the calendar year and would continue in force until such time as new provisions were adopted.

List of Subjects in 15 CFR Part 303

Imports, Customs duties and inspection, Watches and jewelry, Marketing quotas, Administrative practice and procedure, Reporting requirements, American Samoa, Guam, Virgin Islands.

PART 303—[AMENDED]

For the above reasons, the Departments propose to revise § 303.3 and to include an Appendix to Part 303 as follows:

§ 303.3 Annual allocation formula and other special provisions.

(a) The appendix to this part contains the criteria or formulae which will be used by the Secretaries in calculating each producer's annual watch quota allocation, and such other special rules or provisions as the secretaries may periodically adopt in order to carry out their responsibilities in a timely manner while taking into account changing circumstances.

(b) References in the appendix to the quota, unless indicated otherwise, are to that quota available for allocation or reallocation in the current calendar year. Specifications of or references to data or bases to be used in the calculation of current year quotas (e.g., economic contributions and shipments) are, unless indicated otherwise, those which were generated in the year prior to the current year.

(c) The Secretaries may proposed changes to the appendix at any time they consider such changes necessary to fulfilling their responsibilities. Normally, however, such changes will be proposed towards the end or at the beginning of each calendar year.

(d) Interested parties shall be provided an opportunity to submit written comments on all proposed changes.

Appendix

Section 1. (a) A portion of the Virgin Islands quota determined in accordance with subsection (c) below will be allocated on the basis of (1) the net dollar amount of economic contributions to the Virgin Islands consisting of the dollar amount of wages, up to a maximum of $23,000 per person, paid by each producer to Virgin Islands residents and attributable to each producer's headnote 3(a) watch and watch movement assembly operations plus the dollar amount of income taxes paied by each producer attributable to its headnote 3(a) watch and watch movement assembly operations (excluding penalty and interest payments and deducting income tax refunds and subsidies paid by the Virgin Islands government), and (2) the number of units of watches and watch movements assembled in the Virgin Islands and entered by each producer duty-free into the customs territory of the United States.

(b) In making allocations under this formula, a weight of 80 percent will be assigned to the economic contributions factor and a weight of 20 percent will be assigned to the shipments factor. In calculating each producer's economic contributions, the Departments shall deduct from creditable wages any negative tax balances. That is, if the total of a producer's income tax payments (excluding penalties and interest charges) is smaller than the total of refunds and subsidies received from the Virgin Islands government, the difference of the two sums shall be deducted from the producer's creditable wages for allocation purposes.

(c) An amount representing that portion of the Virgin Islands quota equal to the ratio of general headnote 3(a) shipments of watches and watch movements from the territory to the total Virgin Islands quota in the previous year will be allocated among the producers in the Virgin Islands, in accordance with the allocation factors and weights specified in (b) above.

Section 2. Except as specified in Section 4, the Guam quota may be allocated, pursuant to § 303.5(a)(2) of this part, to the single Guam producer (see also subsection 3(b) and Section 6, below).

Section 3. (a) The portion of the Virgin Islands quota not allocated pursuant to Section 1, except as specified in Section 4, will be allocated among firms meeting the requirements of paragraphs (1) or (2) of this section. Eligible firms will be allocated quota in accordance with the factors and weights specified in Section 1. Allocation of the portion of the Virgin Islands quota under this Section will be made to firms which: (1) Assembled all watch movements shipped from unassembled movements having at least 26 discrete components and all watches (that is, cased movements) from at least 29 discrete components, including at least 26 movement components and at least 3 case components; or (2) Made wage payments in the territory averaging not less than $.75 per watch movement and $.95 per watch assembled and shipped into the customs territory of the United States. In determining a firm's eligibility under this criterion, the Departments may make appropriate data adjustments to take into account wages paid for units assembled but not shipped or shipped but not assembled during the calendar year prior to the year of the allocation.

(b) Allocation of the portion of the Guam quota not allocated pursuant to Section 2 may be allocated pursuant to § 303.5(b) of this part.

Section 4. Quota set aside for new firms in Guam under subsection 5(b) shall be subtracted from the quota amount allocable under Section 2, before allocations are made pursuant to that subsection.

Section 5. (a) Applications from new firms are invited for the American Samoa quota. Due to the limited size of the American Samoa quota, the Departments will allocate that quota to the single firm which offers the best prospect of a meaningful long-term contribution to the economy of the territory.

(b) Applications from new firms are invited for 500,000 units of the Guam quota.

(c) Applicants for new-entrant quotas must complete applicable sections of Form ITA-334P, copies of which may be obtained from the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Detailed instructions for completing

ITA–334P will be provided by the Statutory Import Programs Staff together with copies of the application form.

(d) The Departments will consider new entrant applications only from firms which certify to the Departments that they are able and willing to meet the minimum assembly or wage contribution criteria established in Section 3. Following the Secretaries' determination that a qualifying application has been received, an announcement will be published in the **Federal Register** establishing a closing date for further applications. The closing date shall be 30 days from the date of such notice. If the Departments do not receive prior to September 1 a qualifying application for quota set aside by subsection (b) above, that quota may be reallocated among eligible producers pursuant to § 303.5(b) of this part.

Section 6. Reallocation of quota that becomes available will be restricted to those firms satisfying the criteria established in subsection 3(a), to any new entrant firms selected pursuant to Section 5 above, and to the existing Guam firm, provided its operations at the time of the reallocation satisfy the criteria established in subsection 3(a).

Section 7. As used in Section 3 of this Appendix:

(a) "Wages" means all wages up to $23,000 per person paid to residents of the territories employed in a firm's headnote 3(a) watch and watch movement assembly operations. Excluded, however, are wages paid (i) accountants, lawyers, or other professional personnel who may render special services to the firm, (ii) persons assembling non-headnote 3(a) watches and watch movements, (iii) persons engaged in the repair of non-headnote 3(a) watches and watch movements, and (iv) persons engaged in the strapping and packaging of watches. Wages paid to persons engaged in both headnote 3(a) and non-headnote 3(a) assembly and repair activities shall be credited proportionately for their headnote 3(a) activities, provided the firm maintains production and payroll records adequate for the Departments' verification of the headnote 3(a) portion.

(b) "Discrete movement components" means screws, parts, components and subassemblies not assembled together with another part, component or subassembly at the time of importation into the territory. (A mainplate containing set jewels or shock devices, together with other parts, would be considered a single discrete component, as would a barrel bridge subassembly.) Excluded are dials, dial washer, dial screws, hour wheels, hands, automatic mechanisms and related parts, day-date mechanisms and calendar features, and jewels.

Section 8. (a) All firms must, as a condition for receipt of allocations or reallocations based on subsection 3(a) criteria, certify to the Departments that they will not alter assembly operations in a manner which would result in their failure to satisfy the respective criteria.

(b) If the Departments have reason to believe that a producer has not complied with or is not complying with the certification required by subsection (a) of this section, they may issue an order requiring the producer to show cause within 30 days of receipt of the order why the duty-free quota to which it would otherwise be entitled should not be cancelled or reduced by the Departments.

Section 9. (a) The quarterly reporting requirements of § 303.8(a) of this part are suspended and copies of Form ITA–321P will not be forwarded to producers at the times specified by that provision.

(b) Each producer must comply with § 303.8(b) of this part and report any changes in ownership, interest and control which have occurred during any quarter by April 15, July 15 and October 15, respectively, but may do so by letter.

(Pub. L. 89–805; 80 Stat. 1521 (19 U.S.C. 1202) as amended, 15 CFR 303)

Issued at Washington, D.C. on December 28, 1982.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration, Department of Commerce.

Pedro A. Sanjuan,

Assistant Secretary for Territorial and International Affairs, Department of the Interior.

[FR Doc. 83-75 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-10-M
BILLING CODE 3510-25-M

FEDERAL TRADE COMMISSION

16 CFR Part 419

Games of Chance in Food Retailing and Gasoline Industries; Advanced Notice of Proposed Rulemaking

AGENCY: Federal Trade Commission.

ACTION: Advanced Notice of Proposed Rulemaking and Request for Comments.

SUMMARY: This notice requests comments on the Commission's staff recommendation regarding a petition requesting modification of the advertising disclosure requirements of the Trade Regulation Rule Relating to Games of Chance in the Food Retailing and Gasoline Industries ("the Rule") and, pursuant to the Paperwork Reduction Act of 1980, staff's proposals to reduce the paperwork burden on those individuals subject to the Rule. The Commission also invites comments on other issues related to the Rule which might be the subject of future petitions. Specifically, staff recommends amending the advertising disclosure provision to permit marketers and users of games of chance to employ broadcast media without the necessity of disclosing full prize and odds-of-winning information, and amending the recordkeeping provision to reduce the time period for retention of the winners lists to one year.

DATE: The Commission shall accept written comments until March 7, 1983.

ADDRESSES: Send comments to Federal Trade Commission, Cleveland Regional Office, Suite 500, The Mall Building, 118 St. Clair Avenue, Cleveland, Ohio 44114. Comments should be addressed: Attention Advanced Notice of Rulemaking/Games of Chance Rule.

FOR FURTHER INFORMATION CONTACT: Noble F. Jones, Consumer Protection Specialist, Federal Trade Commission, Cleveland Regional Office, Suite 500, The Mall Building, 118 St. Clair Avenue, Cleveland, Ohio 44114. Telephone: (216) 522–4207.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

On August 19, 1969, the Federal Trade Commission published, at 34 FR 13,302, the Trade Regulation Rule Relating to Games of Chance in the Food Retailing and Gasoline Industries. Commission staff now recommends institution of rulemaking proceedings in order to make two amendments to the Rule. Specifically, staff recommends amending the advertising disclosure provision to permit marketers and users of games of chance to employ broadcast media without the necessity of disclosing full size and odds-of-winning information, and amending the recordkeeping provision to reduce the time period for retention of the winners lists to one year. Section 22(d) of the Federal Trade Commission Act requires the Commission to publish annually a regulatory agenda reflecting proposed rulemakings. Because this rulemaking has been initiated in response to an unanticipated industry petition and a cutback in the Commission's burden hours allowance under the Paperwork Reduction Act of 1980, it did not appear on the Commission's recent regulatory agenda. However, pursuant to Section 22(d)(4) of the Federal Trade Commission Act, the Commission may propose rulemaking which was not included in the regulatory agenda if the Commission publishes an explanation of the circumstances surrounding the omission. The Commission has made no determination on the findings and recommendations of the staff, and is seeking public comment before doing so. The Commission is requesting public comments on the issues presented by the petition and the Paperwork Reduction Act proposals, as well as comments on any other issues interested parties may wish to raise, and on what action, if any, the Commission should take.

Staff has recommended that the Commission propose two amendments to the Trade Regulation Rule for Games

of Chance in the Food Retailing and Gasoline Industries, 16 CFR 419, promulgated in 1969. The first of the two proposed amendments will affect the advertising provision of the Trade Regulation Rule, 16 CFR 419.1(b), and the second proposed amendment will affect the recordkeeping provision of the Rule, 16 CFR 419.1(f).

The proposed advertising provision amendment is in response to an industry petition requesting an exemption from the required full prize and odds-of-winning disclosures. Presently, the Rule mandates that all advertisements must clearly and conspicuously disclose:

(1) The exact number of prizes in each category or denomination to be made available during the game program and the odds of winning each such prize made available;

(2) The geographic area covered by the game;

(3) The total number of retail outlets participating in the game; and

(4) The scheduled termination date of the game.

While there does not appear to be any difficulty in making disclosures required by items (2), (3), and (4), above, there does appear to be some difficulty in presenting full odds-of-winning and prize information required by item (1) in a typical 30- or 60-second commercial.

The petition filed on behalf of the American Advertising Federation, the National Association of Broadcasters, and Telecom Productions, Inc., requests that marketers and users of games of chance promotions be exempted from the necessity of disclosing the full prize and odds-of-winning information in radio and television adertising. The petitioners believe that the Rule unfairly discriminates by requiring the full disclosures for games run by supermarkets and retail gasoline stations, yet other retail establishments involved in identical chance promotions are under no obligation to make such disclosures. Additionally, the petition argues that, because of the requirement to disclose visual and audio information simultaneously in a clear and conspicuous manner, the Commission's 1970 *Enforcement Policy Statement in Regard to Clear and Conspicuous Disclosure in Television Advertising* virtually forecloses the use of television as a medium for game advertising which is subject to the Trade Regulation Rule.

In connection with the proposed advertising provision amendment, the Commission invites public comment on whether there are fair and feasible alternatives to complete elimination of the present requirements for disclosing full prize and odds-of-winning information in radio and television advertising. For example, could the above-referenced Enforcement Policy Statement, as it applies to this Rule, be modified to require only visual presentation of the disclosures, or modified in other ways to permit the disclosures to be made without undue burden to the advertiser? Could the disclosures still be fairly prescribed for 60-second advertisements, if not for 30-second spots? Could an abbreviated disclosure be designed and prescribed for broadcast advertisements, such as one alerting the viewer or listener to the availability of full prize and odds-of-winning information at the point of purchase? Are there any other specific alternatives that the Commission should consider, in addition to these?

A specific goal of the Paperwork Reduction Act of 1980 is to minimize the burden imposed on businesses and individuals by governmental recordkeeping requirements. The statutory target was to reduce the paperwork burden by 15% during fiscal year 1982. To further the goal of a 15% burden reduction, staff has recommended an amendment of the recordkeeping provision in the Rule. The Rule currently requires that promoters of games of chance covered by the Rule retain winners lists for a period of three years. The proposed amendment would reduce the record retention period to one year.

Finally, the Commission, in this Advanced Notice of Proposed Rulemaking, is offering all interested parties an opportunity to raise other issues which might be subject to future petitions such as:

(1) Should marketers and users of games of chance be allowed to mix winning and non-winning game pieces on a batch basis as opposed to the total random method currently required?

(2) Should marketers and users of games of chance be allowed to add winning game pieces during the course of a promotion?

(3) What effect does the requirement of game termination dates have on game piece distribution?

Part B—Objectives

The objective of the Commission's actions in both these areas is to reduce the regulatory burden imposed on businesses and individuals. The principal question the Commission wishes to explore in the advertising disclosure proposal is whether there will be any negative impact if the information is not disclosed in broadcast advertisements. With regard to the record retention proposal, the Commission wishes to explore the proposal's impact on future enforcement actions. By inviting general comments, it is the Commission's hope that other issues related to the Games of Chance Rule will be thoroughly explored.

Part C—Regulatory Alternatives Under Consideration

The Commission currently has no regulatory alternatives under consideration other than staff's recommended rulemaking to effect the amendments.

Part D—Rulemaking Procedures

If the Commission determines that amendments are appropriate, a notice of proposed rulemaking asking for public comment on specific proposed amendments will be published in the **Federal Register.** The Commission intends to utilize expedited rulemaking procedures pursuant to § 1.20 of the Commission's Rules of Practice. These procedures will be similar to those employed during previous amendment proceedings regarding the hiatus provision of the Rule.[1]

Part E—Request for Comments

The Commission has not reached any conclusions concerning the two Rule amendments proposed by staff. Prior to making a decision, the Commission wishes to receive public comments on the arguments raised in the petition, as well as staff's recommended course of action regarding both the petition and the Paperwork Reduction Act objectives.

The Commission believes that such public comment could greatly enhance its understanding of the issues that need to be considered. Interested persons are invited to address any issues of fact, law, policy, or procedure, and to suggest any alternative course of action which they believe should be considered by the Commission.

List of Subjects in 16 CFR Part 419

Advertising, Foods, Games, Gasoline, Trade practices.

By direction of the Commission.

Issued: December 2, 1982.

Carol M. Thomas,

Secretary.

[FR Doc. 83-96 Filed 1-3-83; 8:45 am]

BILLING CODE 6750-01-M

[1] 44 FR 51828 (Sept. 5, 1979).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

[Docket No. RM82-15-000]

Petition of Amoco Production Co. for Initiation of Rulemaking To Establish Statutory Exemption From Natural Gas Act Certificate Requirement, or, in the Alternative, for Institution of a Blanket Certificate Program

Issued: December 23, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Denial of petition for a rulemaking.

SUMMARY: The Amoco Production Company recently filed a petition for a rulemaking to amend the Commission's regulations by establishing either an exemption from Natural Gas Act certificate requirements or a blanket certificate program under the Natural Gas Act. In this order, the Commission denies Amoco's petition for rulemaking partly because the relief requested is duplicative of an ongoing rulemaking and partly because the problem is not significant enough to merit the requisite expenditure of Commission resources.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Malloy, Office of General Counsel, Room 8100, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 16, 1982, Amoco Production Company (Amoco) filed a petition for a rulemaking to amend the Commission's regulations by establishing either an exemption from Natural Gas Act certificate requirements or a blanket certificate program under the Natural Gas Act. By this order, the Commission denies Amoco's petition for rulemaking.

II. Background

Amoco's petition concerns natural gas previously subject to the Natural Gas Act (NGA), but removed from that Act's jurisdiction by operation of the Natural Gas Policy Act of 1978 (NGPA). Under section 7 of the NGA, a producer is required to obtain a certificate of public convenience and necessity (section 7 certificate) before selling natural gas that is subject to NGA jurisdiction. 15 U.S.C. 717F (1976).

Natural gas which would otherwise be subject to the NGA is removed from NGA jurisdiction by section 601(a)(1)(B) of the NGPA if such gas receives a final determination [1] that it meets the qualifications for one of the following categories of natural gas:

(1) High-cost natural gas (as defined in section 107(c)(1) through (4) of the NGPA);

(2) New natural gas (as defined in section 102(c) of the NGPA);

(3) Natural gas produced from a new, onshore production well (as defined in section 103(c) of the NGPA).

15 U.S.C. 3431 (Supp. IV 1980). Even though a final determination will remove the gas from the Commission's NGA jurisdictional, a producer must obtain a section 7 certificate in order to sell such gas before the jurisdiction agency determination becomes final. Once the determination is final, however, the section 7 certificates becomes unnecessary.

Amoco's petition suggests that filing for a section 7 certificate for natural gas that will eventually be removed from the Commission's NGA jurisdiction is an unnecessary burden on producers and contrary to the interests of natural gas consumers. Amoco notes that this problem is "most acute for Outer Continental Shelf (OCS) gas." Amoco requests that the Commission allow producers to avoid the necessity of obtaining a section 7 certificate by either exempting sales of gas that would be removed from NGA jurisdiction after an affirmative NGPA determination or issuing blanket certificates under the NGA to individual companies for such sales.

III. Discussion

The Commission has recently proposed a rule which, if promulgated, would eliminate the necessity of obtaining section 7 certificates for natural gas produced from new OCS leases. "Reduction in Filing Requirements for Well Category Applications Under Sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978," Docket No. RM83-3-000, issued November 23, 1982, 47 FR 53,907 (1982). Under this proposal, a determination that natural gas qualifies as gas produced from a new OCS lease under section 102(c)(1)(A) of the NGPA will be made on a lease-by-lease basis, rather than on a well-by-well basis. The proposal would permit the grant of a new OCS lease by the Department of Interior to constitute a determination that gas produced from wells on that lease will qualify under section 102.

Therefore if the Commission finally adopts this proposed rule, it would not be necessary for a producer to obtain a section 7 certificate for gas produced from a new OCS lease because the determination most likely would be final prior to any drilling on the lease and any subsequent first sales of such gas. Thus, the Commission's proposal would rectify the problem noted by Amoco's petition in the situation in which it is allegedly "most acute." Since the proposed rule covers the principal thrust of Amoco's request, the initiation of a separate rulemaking is unnecessary and duplicative. Therefore, the portion of Amoco's petition relating to new OCS leases is being denied on these grounds.

The Commission recognizes that there are other instances in which section 7 certificates may still be required for gas that eventually will be freed of NGA jurisdiction by an affirmative jurisdictional agency determination, such as certain production from section 103 wells where the gas is otherwise subject to NGA jurisdiction. The Commission notes that the NGPA has been in effect for over four years; thus, there should be very few situations left in which a producer has not received either a section 7 certificate or a final well category determination that would remove the sale from NGA jurisdiction. Since the Commission's certificate jurisdiction only pertains to gas committed or dedicated to interstate commerce before November 9, 1978, the amount of gas subject to NGA jurisdiction continues to decline with the passage of time.

The Commission has balanced the potential burden on its resources that would result from the initiation of a rulemaking to rectify these few situations against the burden on producers of filing for these section 7 certificates. On balance, the Commission believes that these instances are too few to merit the expenditure of Commission resources to develop a program to eliminate the need for a section 7 certificate. Accordingly, the Commission is not now inclined to propose a rule to cover these instances. Therefore, the Commission is denying this portion of Amoco's petition because it does not consider the problem significant enough to merit such an expenditure of Commission resources.

The Commission orders:

That the "Petition of Amoco Production Company for Initiation of Rulemaking to Establish Statutory Exemption from Natural Gas Act

[1] A determination made by a jurisdictional agency becomes final 45 days after the Commission receives notice thereof if the Commission does not issue a preliminary finding reversing such determination. See NGPA section 503(b), 15 U.S.C. 3413(b) (Supp. IV 1980); 18 CFR 275.202 (1982).

Certificate Requirement or, In the Alternative, for Institution of a Blanket Certificate Program" is hereby denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-111 Filed 1-3-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Baudette and Warroad, Minnesota, and Dunseith, North Dakota; Change in Hours of Service

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed change in hours of service; solicitation of comments.

SUMMARY: This notice solicits public comments on a proposed change in the hours of service currently provided at the Customs ports of entry at Baudette and Warroad, Minnesota, and Dunseith, North Dakota, located on the U.S. Canadian border, in the Pembina, North Dakota, Customs district. Currently, service at these ports is provided on a 24-hour basis daily by Customs and Immigration and Naturalization Service (INS) personnel. However, recently INS withdrew one inspector at each of these ports for duty elsewhere. Due to budgetary and personnel restraints, Customs cannot now replace the inspectors withdrawn by INS with Customs personnel. Consequently, it is necessary to reduce the operating hours at these ports since Customs staffing is not adequate to continue to provide the necessary coverage on a 24-hour basis. If the proposal is adopted, the new hours would be 9:00 a.m. to 10:00 p.m. daily. The change would enable Customs to obtain more efficient use of its personnel, facilities, and resources.

DATES: Comments must be received on or before March 7, 1983.

ADDRESS: Comments (preferably in triplicate) should 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: Richard C. Coleman, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

Section 101.6, Customs Regulations (19 CFR 101.6), provides that each Customs office shall be open for the transaction of Customs business between the hours of 8:30 a.m. and 5:00 p.m. on all days of the year except Saturdays, Sundays, and national holidays. It also provides that services performed outside a Customs office generally shall be furnished between the hours of 8:00 a.m. and 5:00 p.m. Many offices provide service during hours in addition to those specified in the regulations.

Currently, the Customs ports of entry at Baudette and Warroad, Minnesota, and Dunseith, North Dakota, located on the U.S. Canadian border, in the Pembina, North Dakota, Customs district, provide service on a 24-hour basis, daily. Customs and Immigration and Naturalization Service (INS) personnel jointly staff a number of ports of entry along the border, including those named above. However, recently INS withdrew one inspector at each of these ports for duty elsewhere. Due to budgetary and personnel restraints, Customs cannot now replace the inspectors withdrawn by INS with Customs personnel. Consequently, Customs finds it necessary to reduce the operating hours at these ports since Customs staffing is not adequate to continue to provide the necessary coverage on a 24-hour basis, daily.

While the proposed change would result in a substantial reduction in the service hours at the affected ports and may result in some inconvenience to the public, these ports would nevertheless remain open beyond the normal business hours set forth in the regulations, and area businesses requiring port service after hours could contact local Customs officials for service which would be provided on a reimbursable basis.

Accordingly, it is proposed to change the hours of service at Baudette and Warroad, Minnesota, and Dunseith, North Dakota, to 9:00 a.m. to 10:00 p.m. daily.

Comments

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. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

List of Subjects in 19 CFR Part 101

Harbors, Organization and functions (Government agencies), Seals and insignia.

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.

Dated: December 21, 1982.

William von Raab,

Commissioner of Customs.

[FR Doc. 83-44 Filed 1-3-83; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404, 410, 416, 422

Reopening and Revising Determinations and Decisions Expedited Appeals Process

AGENCY: Social Security Administration, HHS.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Social Security Administration plans to make five unrelated changes in its rules on when a determination or decision affecting someone's rights under programs administered by the Social Security Administration may be reopened and revised. The programs are Old-Age, Survivors, and Disability Insurance; Black Lung Benefits (Part B); and Supplemental Security Income for the Aged, Blind, and Disabled. Most of the changes expand the exceptions to the time limits on reopening. Two of the changes are to take account of recent legislative changes. The other three add longstanding policies to the regulations.

In addition, the Social Security Administration plans to make the time limit for appealing a determination or decision on benefit rights to a Federal district court pursuant to the "expedited appeals process," the same as the time limits for other appeals of its determinations or decisions. This change will allow slightly more time for people to appeal under the "expedited appeals process" and will make the rules on appeals more consistent.

FOR FURTHER INFORMATION CONTACT: Richard Dzingeleski, Room 3-A-21, Operations Building, 6401 Security

Boulevard, Baltimore, Maryland 21235, telephone (301) 594–3334.

SUPPLEMENTARY INFORMATION: The regulatory change will affect 20 CFR 404.927, 404.988, 410.629e, 410.672, 416.1427, and 422.210, and will add new sections 404.991a, 404.996, 410.675a, and 416.1491.

The Department of Health and Human Services has classified the proposed regulations as non-major.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and disability Insurance.

20 CFR Part 410

Administrative practice and procedure, Black lung benefits, Death benefits, Disabled, Miners.

20 CFR Part 416

Administrative practice and procedure, Aged, blind, disabled, Public assistance programs, Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure, Freedom of information, Organization and functions (Government Agencies), Social security.

Dated: December 27, 1982.

John A. Svahn,

Commissioner of Social Security.

[FR Doc. 83-139 Filed 1-4-83 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 161

[Docket No. 80N-0384]

Canned Sardines and Sardine-Type Products; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; termination of consideration.

SUMMARY: The Food and Drug Administration (FDA) is terminating consideration of the establishment of U.S. standards for sardines and sardine-type products based on the "Recommended International Standard for Sardines and Sardine-type Products" (Codex standard) because there is not sufficient need to warrant proposing a U.S. standard for these foods.

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Bureau of Foods (HFF–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1155.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 4, 1980 (45 FR 73092), FDA published an advance notice of proposed rulemaking which offered interested persons an opportunity to review the Codex standard and to comment on the desirability and need for U.S. standards of identity, quality, and/or fill of container for sardines and sardine-type products. The Codex standard was submitted to the United States for consideration for acceptance by the Codex Alimentarius Commission whose worldwide food standards program is sponsored jointly by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). The agency commented in the advance notice that, in keeping with agency policy to limit the number of new regulations, the standard would not be proposed if the comments received did not support a regulation. In the notice, the agency also discussed its view that certain provisions of the standard are potentially confusing to U.S. consumers. The agency continues to believe this potential exists.

Five comments were received in response to the advance notice of proposed rulemaking; one of which generally favored establishing U.S. standards, but contained no data to support the need for such standards. Three of the comments were opposed to establishing standards because current laws, in particular, the Federal Food, Drug, and Cosmetic Act, adequately govern the wholesomeness and labeling of these foods. These three comments also expressed the opinion that a regulation would result in increased costs to both packers and government, with no benefit to consumers. The fifth comment took no position on whether standards for sardines and sardine-type products are necessary but contained information for consideration, should standards by established.

Having considered the comments received, FDA has concluded that there is not sufficient need to warrant proposing U.S. standards of identity, quality, or fill of container for sardines and sardine-type products at this time, under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing U.S. standards of identity, quality, and fill of container for sardines and sardine-type products based on the Codex standard. This action is without prejudice to further consideration of the development of U.S. standards of identity, quality, and/or fill of container for sardines and sardine-type products upon appropriate justification.

FDA will inform the Codex Alimentarius Commission that an imported food which complies with the requirements of the Codex standard may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: December 27, 1982

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-48 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 182, 184, and 186

[Docket No. 82N-0167]

Zinc Salts; Proposed Affirmation of GRAS Status; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period on its proposal to affirm that certain zinc salts are, with specific limitations, generally recognized as safe (GRAS). The Continental Can Co. asked for the extended comment period.

DATE: Comments by March 7, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Bureau of Foods (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Tuesday, October 26, 1982 (47 FR 47441), FDA issued a proposal to affirm zinc salts as GRAS. The proposal stipulated a comment period to run until December 27, 1982.

Under 21 CFR 10.35 and 10.40(b)(3), the Continental Can Co. petitioned FDA to extend the comment period for 60 days beyond the December 27, 1982 closing date. Continental said the proposal could adversely affect it and its customers, and it wanted more time to review the proposal and submit its comments.

Under 21 CFR 10.35(e), the Commissioner of Food and Drugs is granting Continental's petition. This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.10).

Interested persons may, on or before March 7, 1983, submit to the Dockets Management Branch (address above), written comments regarding the subject proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 27, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-35597 Filed 12-30-82; 11:05 am]

BILLING CODE 4160-01-M

21 CFR Part 357

[Docket No. 82N-0166]

Orally Administered Drug Products for Relief of Symptoms Associated With Overindulgence in Alcohol and Food for Over-the-Counter Human Use; Advance Notice of Proposed Rulemaking; Extension of Time for Comments and Reply Comments

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; extension of comment periods.

SUMMARY: The Food and Drug Administration (FDA) is extending to January 28, 1983, the comment period and to February 28, 1983, the reply comment period for the advance notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food. FDA is taking this action in response to a request to allow more time for interested persons to review the advance notice of proposed rulemaking in order to prepare and provide useful comments.

DATES: Written comments by January 28, 1983, and reply comments by February 28, 1983.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFN-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 1, 1982 (47 FR 43540), FDA issued an advance notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food for OTC human use. This advance notice of proposed rulemaking, which was based on the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products, is part of the ongoing review of OTC drug products conducted by FDA. Interested persons were given until December 30, 1982, to comment on the advance notice of proposed rulemaking and until January 31, 1983, for reply comments.

Miles Laboratories, Inc., has requested a 29-day extension of the comment and reply comment periods in order to produce more useful comments to the advance notice of proposed rulemaking. Miles Laboratories, Inc., has pointed out that it was one of five companies that submitted data and information on these drug products to the Panel and that it has an active interest in the products that will be covered by this monograph. The company has explained that for the past several months its employees' time has been preempted by the need to take steps promptly and effectively to prevent tampering with its OTC products. Also, two major national holidays, Thanksgiving and Christmas, fall within the comment period and have decreased the time for its employees to review the notice and to prepare thoughtful comments.

FDA has carefully considered the request. The agency believes that an extension of the comment and reply comment periods may be of assistance in establishing the safety and effectiveness of OTC orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food and is in the public interest. The agency considers an extension of the comment period to January 28, 1983, as requested, to be appropriate. Accordingly, the comment period for submissions by any interested person is extended to January 28, 1983, and the reply comment period is extended to February 28, 1983. Interested persons may submit written comments to the Dockets Management Branch (address above). Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-35500 Filed 12-28-82; 12:04 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1907

[Docket No. S-105]

Accreditation of Testing Laboratories

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) plans to revise its regulation at 29 CFR Part 1907, "Accreditation of Testing Laboratories." This regulation established the criteria and procedures that OSHA would use to accredit testing laboratories desiring to test equipment required to be "acceptable" or "approved" under OSHA standards. To date, OSHA has not implemented this regulation, originally published on September 11, 1973, and proposed for revocation on June 3, 1974.

The purpose of this notice is to solicit information regarding the appropriate content, scope, and format of a complete revision of 29 CFR Part 1907 and complementary changes to 29 CFR Part 1910. This notice is not a proposal to revise the regulation; when the proposal is developed, it will be published in the **Federal Register.**

DATE: The written information requested in this notice should be postmarked on or before February 15, 1983.

ADDRESS: Written comments should be submitted, in quadruplicate, to the Docket Office, Docket S-105, Room S6212, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Higgins, Deputy Director.

Directorate of Safety Standards Programs, Room N3605, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523–8081.

SUPPLEMENTARY INFORMATION:

Background

Certain occupational safety and health standards, particularly in 29 CFR Part 1910, require acceptability or approval of equipment, materials, or installations by a "nationally recognized testing laboratory." (*E.g.*, 29 CFR 1910.155(c)(3), 29 CFR 1910.35(h), and 29 CFR 1910.399(a)). These standards do not define "nationally recognized testing laboratory," but offer as examples of such laboratories Underwriters' Laboratories, Inc., (UL) and Factory Mutual Engineering Corp. (FM).

In order that additional laboratories could be recognized by OSHA as acceptable under such standards, the agency published, on September 11, 1973, a new Part 1907 of Title 29 of the Code of Federal Regulations (38 FR 25150). Entitled "Accreditation of Testing Laboratories," Part 1907 established the criteria and procedures that OSHA would use to accredit testing laboratories desiring to test products which require approval under Parts 1910 and 1926. The regulation was adopted under Section 8(g)(2) of the Occupational Safety and Health Act of 1970. Because of the perceived need to act without delay to provide laboratories with a system for recognition, the regulation was published without notice and comment. After promulgation, however, interested persons were given an opportunity to comment on the rule through written submissions and a public hearing. Over 130 written submissions were received. In addition, approximately 200 pages of testimony, 32 exhibits, and numerous post-hearing comments were received as a result of an informal hearing.

After reviewing these submissions, OSHA concluded that several major problems needed resolution, including whether the agency should change the requirement that laboratories be independent from manufacturers and vendors and whether the agency had sufficient resources to implement the regulation. In light of these problems, OSHA decided to reconsider the entire matter of accreditation and seek the aid of an advisory committee. On June 3, 1974, in order to give such an advisory committee the widest possible scope in its deliberations, the agency proposed to revoke the regulation (39 FR 19507).

The notice of proposed revocation invited interested persons to submit written comments on the proposal by July 3, 1974. In response, 165 written submissions were received. An informal hearing was then held, which resulted in 245 pages of testimony, 30 exhibits, and post-hearing comments.

Through their comments, parties raised several major issues. Among these were: (1) whether revocation would produce anticompetitive results, such as delay in product approval or increased charges for this service; (2) whether the rule as promulgated established barriers to international trade; (3) whether the agency should revoke the rule and simply accept the results of other laboratory accreditation systems, which where then in the process of being developed; and (4) whether the rule should be retained, with amendments to specific provisions, such as the requirement that laboratories be independent from manufacturers and vendors.

The record on the proposed revocation closed July 31, 1975 (40 FR 27691). Since that time, the matter has been in abeyance. No advisory committee has been appointed, and OSHA has neither revoked, amended, nor implemented Part 1907.

OSHA is concerned that its failure to determine how best to deal with Part 1907 has created problems for testing organizations and employers. OSHA has received complaints recently that its inaction has caused testing companies other than UL and FM to lose business and has resulted in delays to companies needing to have products tested. Because its failure to implement Part 1907 may be contributing to this situation, OSHA wishes to determine what action would now be appropriate. Through the rulemaking that will follow this ANPR, the agency will decide whether to revoke Part 1907 or to amend and implement it.

The agency's present intention is to amend Part 1907 to create a recognition system that will be administratively workable and will take advantage of recent developments by others in organizing and evaluating product certification systems. The agency also intends to amend 29 CFR Part 1910 as necessary to reflect the revised Part 1907. Such amendments would supply necessary cross references to Part 1907 and eliminate references to specific testing organizations by name.

OSHA presently plans to limit changes effected by this rulemaking to Parts 1907 and 1910 and to make needed revisions to Part 1926 (and Parts 1915 and 1918) in subsequent proceedings. This sequence will enable the agency to accomplish the present rulemaking more speedily than if other Parts were included. In addition, the agency will be able to take advantage of its experience with the revised recognition system in the subsequent amendment process.

Comments and Information Requested

At this time, OSHA requests the submission of all information, comments, and regulatory proposals related to this subject. The value to the public in general, and to OSHA, of having each interested or affected entity actively participating in this developmental stage cannot be overestimated; such input is greatly encouraged at this time by OSHA.

Current Agency Views Concerning Revisions to Part 1907

To stimulate public comment in response to this ANPR, OSHA's preliminary views concerning revisions to Part 1907 are set forth below.

As indicated by the title to Part 1907, its orientation is toward "accreditation of testing laboratories." It is questionable, however, whether that orientation is an appropriate one. Much of the activity involved in the testing and approval of equipment referred to in OSHA standards is more complicated than merely conducting tests in a laboratory setting. Rather, the process seems to involve "third party certification programs," as this activity has come to be known. This requires action by a "third party," *i.e.*, an entity that is neither the vendor nor buyer, to carry out such activities as determination of appropriate testing procedures and methods, evaluation of whether the product as used in the workplace conforms to the testing criteria, and assurance to employers and OSHA that the product meets the agency's standards.

Although portions of Part 1907 indicate that the regulation was aimed at evaluating a more complicated activity than merely testing in a laboratory setting (*e.g.*, 29 CFR 1907.12 (d) and (e)(3)), the accreditation system was not designed with the present concept of third party certification in mind. Nor could the regulation, promulgated 9 years ago, take advantage of recent developments in third party certification programs. Therefore, this rulemaking gives OSHA an opportunity to conduct a major overhaul of the current regulation, adopting a substantially different focus and approach. The revised rule would explicitly relate OSHA's recognition system to third party certification

programs, not laboratory testing activities.

In addition, the rule would be drafted with an eye toward the work of public and private entities that have given considerable attention to product evaluation activities. Such entities include: (1) the American National Standards Institute (ANSI) Certification Committee, which proposes to accredit third party certifiers; (2) the ANSI Committee Z34, under the secretariat of the American Council of Independent Laboratories, which has recently promulgated its Standard for Third Party Certification, Z34.1–1982; (3) the U.S. Department of Housing and Urban Development, which, under 24 CFR 200.935, allows organizations acceptable to HUD to validate manufacturers' certifications that building products and materials meet applicable standards; (4) the U.S. Commerce Department's National Bureau of Standards, which through its National Voluntary Laboratory Accreditation Program ("NVLAP") accredits laboratories based upon their ability to perform certain established tests on specified products; (5) the American Society for Testing and Materials, which has expressed a strong interest in systematizing laboratory accreditation; (6) the American Association for Laboratory Accreditation, which proposes to accredit laboratories, by specific technical disciplines, for product testing within each discipline; and (7) the U.S. Coast Guard, which approves laboratories as competent to test and certify manufacturers' products used in ships.

OSHA anticipates that it will integrate into its regulation some degree of reliance on activities conducted by groups such as these. Indeed, a positive evaluation of an applicant by one of these accrediting groups could possibly be substituted—as appropriate and to the extent warranted—for many of the more generic requirements now in Part 1907.

It is expected that after a certifier has met the requirements for OSHA recognition under Part 1907, provision would be made for public review of and comment on the application before the agency would issue its decision.

It may also be desirable to include in the revision of Part 1907 appendices concerning (a) equipment, materials, and installations requiring certification, (b) test standards required for use in testing and certification, and (c) third-party certification programs recognized by OSHA. In addition, the rulemaking could include development of guidelines for third party certifiers to use in evaluating testing laboratories.

Alternatively, OSHA may wish to limit such testing activity only to laboratories accredited through a pertinent accreditation program, such as the National Bureau of Standards' NVLAP.

Under the contemplated revision, specific product-related requirements would not be contained in Part 1907 itself. Such requirements would continue to be set out in applicable standards, such as those in Part 1910. No new product approval requirements would be proposed in this revision. Existing Part 1910 standards that now require approval of products or processes would be amended to reflect the new direction taken by the revised Part 1907. Substitute language for such a standard could read, for example:

> To be acceptable, type "w" equipment shall conform to ANSI standard W37–1982 and shall be certified as in conformance by a third party certifier recognized under 29 CFR Part 1907.

Through its revised recognition process, OSHA would not be attempting to control or systematize this Nation's product evaluation industry under the guise of creating an "OSHA accreditation" system. The agency intends to maintain its involvement with certifiers and testing laboratories only to the extent necessary to fulfill its legislated mandate—providing for improved safety and health conditions in the Nation's workplaces through standards-setting and related enforcement and assistance activities.

Updated Economic Information Also Requested

In addition to the technical information requested above, OSHA requests that interested parties provide certain economic information. OSHA's need for this information is based upon Executive Order 12291 and the Regulatory Flexibility Act, which require that OSHA perform an Economic Impact Assessment and a Regulatory Flexibility Analysis for every regulatory change. In order to perform these tasks, OSHA requests that interested parties provide the following information:

1. What are the typical laboratory charges for testing a firm's products? Is this a major cost in the product's development. What are the typical laboratory charges for periodic retesting?

2. How much time typically elapses between the time a manufacturer or vendor requests that a product be tested and the time the product is approved? Is there significant variation among types of products?

3. How many OSHA-related products are tested and approved (or certified) yearly? How many of these are new certifications? How many are recertifications? What are the most recent valid data available?

4. What would be the cost to testing laboratories of applying to OSHA for approval under the criteria in the current Part 1907? Which provisions, if any, in the current Part 1907 would be considered particularly burdensome economically?

5. How many persons are employed in independent testing laboratories which provide product testing and approval and presumably would be affected by this regulation?

6. What is the typical revenue annually of an independent testing laboratory? Would anticipated OSHA-related revenues be a significant addition?

7. How much OSHA-related business would independent testing laboratories anticipate receiving if the current Part 1907 is implemented? How much would be received if OSHA were to shift to third-party certification systems?

8. What would be the costs to third-party certifiers of establishing a methodology to determine whether a testing laboratory should be allowed to test a product? How long would this development take and what procedures would thrid-party certifiers use to evaluate these laboratories? If such procedures are in place now, what would their application costs be, in their entirety and to laboratories only?

9. What would third-party certifiers expect to charge a testing laboratory for evaluation and acceptance? Would the cost vary by size of laboratory? Would it vary by product class or discipline evaluated?

10. Are additional tests of products required in present Part 1910 that are not required for consumer product safety, state and local building, public safety, and other code requirements? What do these additional tests cost?

11. What burdens do the many different state and local requirements impose on testing agencies and certifying bodies? For economic burdens, what is the yearly cost?

Written Comments and Information

The written comments and information requested in this notice should be postmarked by February 15, 1983, and submitted in quadruplicate to the Docket Officer, Docket No. S–105, Room S–6212, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

All information submitted will be considered by OSHA in development of

proposed revisions to Parts 1907 and 1910. In addition these submissions will be available for inspection and copying during normal business hours at the OSHA Docket Office.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. (Secs. 6 and 8, 84 Stat. 1593, 1600 (29 U.S.C. 655, 657); Sec. 107, 83 Stat. 96 (40 U.S.C. 333); 5 U.S.C. 553; 29 CFR Part 1911; Secretary of Labor's Order No. 8–76 (41 FR 25059)).

List of Subjects in 29 CFR Part 1907

Laboratories, Occupational Safety and Health, Research, Safety.

Signed at Washington, D.C. this 28th day of December, 1982.

Thorne G. Auchter

Assistant Secretary of Labor.

[FR Doc. 83-7 Filed 1-3-83; 8:45 am]

BILLING CODE 4510-26-M

Mine Safety and Health Administration

30 CFR Parts 55, 56, 57, 75 and 77

Wire Rope Standards: Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice to extend period for public comment.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment on its proposed rule for the use of wire rope at coal and metal and nonmetal mines. The proposed rule would apply to wire ropes used to hoist personnel or to handle loads in shafts where people may be endangered by the load lifted. The comment period is extended to February 18, 1983.

DATES: Written comments must be received on or before February 18, 1983.

ADDRESS: All comments should be sent to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On November 16, 1982 (47 FR 51684), MSHA published a proposed rule to update and clarify existing safety standards for the selection, use, examination and retirement of wire ropes. The standard would address the use of wire ropes to hoist personnel or to handle loads in shafts where people may be endangered by the load lifted.

The Agency established January 17, 1983, as the date for submission of written comments on the proposed rule. However, due to requests from several interested parties, MSHA has decided to extend the comment period to February 18, 1983. All members of the mining community who would be affected by the proposed rule are encouraged to submit comments within this time.

MSHA wishes to clarify that it does not intend to apply the proposed standards to draglines; elevators equipped with a governor rope; or cranes used to lift materials, other than cranes used in shaft and slope sinking operations where people work below the loads lifted. The Agency is aware that some mine operators use cranes to hoist personnel in applications other than shaft and slope sinking. MSHA specifically requests further comment from both manufacturers and users on the appropriateness of the proposed standards to wire rope used on cranes to hoist people.

The Agency has received a request for public hearings in this rulemaking and will publish a notice of public hearings in the **Federal Register** at the close of the comment period. The notice will include a schedule of hearings and list the major issues addressed by written comments.

Dated: December 28, 1982.

Thomas J. Shepich,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 83-51 Filed 1-3-83; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 903

Surface Mining and Reclamation Operation Under a Federal Program for Arizona

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

ACTION: Cancellation of promulgation process for a Federal program.

SUMMARY: The Office of Surface Mining (OSM) is announcing the withdrawal of the proposed Federal program to regulate surface coal mining and reclamation operations for Arizona because there are no known coal deposits on non-Indian lands in that State.

DATES: None.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Branch of Regulatory Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343–5866.

SUPPLEMENTARY INFORMATION: On October 6, 1982, the Office of Surface Mining proposed a Federal program for the State of Arizona in the **Federal Register** which would regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in that State. 47 FR 44194. The notice provided for a public comment period and a hearing in order to receive comments but further stated that if no person indicated an intention to testify by December 3, 1982, the hearing would be cancelled. As of close of business on December 3, 1982, no persons had contacted OSM indicating that they wished to testify and, therefore, the Director of OSM cancelled the hearing.

During the comment period OSM was informed by Arizona officials that all known coal reserves in Arizona are located on Indian reservation lands. The Surface Mining Control and Reclamation Act in Sections 503 and 504, 30 U.S.C. 1253 and 1254, and OSM's regulations, 30 CFR 736.11, require that there be an approved State or Federal regulatory program in States having coal on non-Federal or non-Indian lands and in which there is a likelihood of either exploration or development before June 1985. Since Arizona does not have any known coal deposits on either non-Federal or non-Indian lands, a regulatory program is not required. Therefore, promulgation of the proposed regulatory program for Arizona is being withdrawn. Should information come to light which indicates the presence of coal on non-Federal, non-Indian lands within the State, promulgation of the required program wil be reinitiated by subsequent rulemaking notice.

Dated: December 27, 1982.

William B. Schmidt,

Assistant Director, Program Operations and Inspection, Office of Surface Mining.

[FR Doc. 83-127 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. A-1-FRL 2264-7]

Approval and Promulgation of Implementation Plans; Rhode Island; Energy Initiative

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan revisions submitted by the State of Rhode Island. These revisions will provide temporary variances from sulfur-in-fuel and particulate emission limitations for small fuel burning sources which commit to convert to a fuel other than oil or to establish permanent energy conservation measures or to bubble allowable emissions. The intended effect of this action is to provide cost-effective energy alternatives to Rhode Island sources with only a minimal increase in emissions, while assuring no violations of the National Ambient Air Quality Standards (NAAQS).

DATES: Comments must be received on or before February 2, 1983.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2312, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2111, JFK Federal Bldg., Boston, MA 02203 and the Division of Air and Hazardous Materials, Room 204, 45 Davis Street, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: Betsey Horne, (617) 223-5130.

SUPPLEMENTARY INFORMATION: The origianl Rhode Island State Implementation Plan (SIP) approved by EPA on May 31, 1972 (37 FR 10891), and revised on November 3, 1975 (40 FR 51044) established limits for the sulfur content of residual fuel oil under Regulation No. 8, "Sulfur Content of Fuels." High sulfur fuel (greater than .55 pounds of sulfur per million Btu heat release potential or greater than 1% sulfur oil by weight) could only be used where approved control equipment could limit stack sulfur dioxide emissions to 1.1 pounds per million Btu gross heat input. Otherwise, only low sulfur fuel burning (no greater than .55 pounds per million Btu heat input or 1% sulfur oil by weight) was permitted.

Rhode Island has now proposed that sources which meet specific criteria and which comply with its new state procedures may burn higher sulfur fuel. EPA's proposed approval of the State's November 9, 1982 submittal also includes amended federal procedures. Today's notice constitutes a proposed approval of the Rhode Island regulations as well as for each complying source. Under the federal procedures the State would be required to forward a SIP revision for each complying applicant to EPA and the Agency would publish only final rulemaking approving the source's use of the higher sulfur fuel. This process will considerably shorten the period between a source's application and the date it can commence burning the higher sulfur fuel. A description of the new regulations follows.

Rhode Island's Regulations

A. Subsection 8.3.2, "Emission Bubbling"

Rhode Island's regulation would allow bubbling of sulfur dioxide emissions on a plant-wide basis. Bubbling provides the owner of more than one fuel burning device to act as if there was a dome over his source. Under existing Regulation 8, each fuel burning device must meet the same specified emission limitations. With bubbling, by placing the dome over all fuel burning units, the owner may meet the total allowable emission control requirements of the existing regulations through a different mix of fuels and/or control technology. By bubbling, a source may "over-control" emissions from one unit under the dome while "under-controlling" another unit. This can be a cost-effective method of operation while allowing no greater amount of pollution than would be the case if existing control limits were placed on each emission unit.

The Rhode Island bubble would allow applicant sources to use high sulfur fuel, up to 1.21 pounds of sulfur per million Btu heat release potential, in individual fuel burning units provided the sulfur dioxide emissions from the entire plant do not exceed the existing SIP limit equivalent of 1.1 pounds per million Btu actual heat input. Similarly, total suspended particulate (TSP) emissions from the bubble could not exceed the current SIP limit of .10 pounds per million Btu heat input and no single emission unit within the bubble could emit greater than .15 pounds per million Btu actual heat input. Each applicant must: certify that all fuel burning units are at the same plant and under common control; identify each emission point and its physical and operating parameters; perform specific air quality modeling procedures to assure maintenance of the applicable NAAQS and Prevention of Significant Deterioration (PSD) increments; assure that no PSD or nonattainment permit is compromised nor any New Source Performance Standard or National Emissions Standard for Hazardous Air Pollutants is violated by the bubble. These conditions as well as unit by unit emission limits must be specified in a permit issued by Rhode Island. Specific emission limits for each emission point will be enforced through a State permit. Initial bubble approvals will be in effect for three years. The State may extend or terminate the bubble for each applicant at the end of the 3-year period based on air quality, control technology advances or other considerations. Should the state extend the bubble, it must submit another SIP revision to EPA. The modeling requirements may be waived if there is no increase in actual emissions and the bubble meets other requirements that will assure no degradation in ambient air quality.

As it is presently written, the Rhode Island bubble regulation does not conform to EPA's Emissions Trading guidelines on generic rules (47 FR 15076, April 7, 1982), and therefore cannot be approved as such. Under the terms of a generic rule that has been approved by EPA as replicable and fully protective of air quality, further EPA approval of each individual bubble application is not necessary. Although Rhode Island's bubble rule does not meet EPA's criteria for generic rules, it is appropriately designed to warrant a generic proposal by EPA to approve all bubbles submitted in accordance with Rhode Island's rule. Thus, EPA will take final action on all such individual bubbles without further proposed action. Section IV of this notice describes the applicable SIP revision procedures in greater detail.

In the narrative that accompanied the November 9, 1982 submittal, Rhode Island committed to limit bubbling to fuel burning devices with an energy input capacity of less than 250 million Btu heat input. Should the State submit a bubble for a larger source, EPA would not take rulemaking action under this expedited procedure but would publish both proposed and final rulemaking notices.

B. Subsection 8.3.3, "Conversion and Conservation Initiative"

Rhode Island's regulation would allow fuel burning devices with an energy input capacity of less than 250 million Btu's per hour to burn, for a period not to exceed 30 months, higher sulfur fuel having a sulfur content of no greater than 1.21 pounds of sulfur per million

Btu's heat release potential (or 2.2% sulfur by weight).

The burning of less expensive higher sulfur fuel oil will provide the sources with some of the money needed to pay the capital costs of conversion to a fuel other than residual fuel oil or to implement permanent energy conservation measures. At the end of the temporary period during which the sources may burn the higher sulfur content fuel, the sources will be required to return to the original sulfur dioxide and particulate emission requirements.

The proposed regulation would require sources currently burning residual fuel oil and desiring permission to burn the higher sulfur fuel to make a commitment to either (a) commence conversion to an alternate fuel with equipment to insure that existing sulfur and TSP emission limitations will be met, or (b) implement energy conservation measures to reduce residual fuel oil consumption such that no greater level of sulfur oxides or TSP will be emitted burning higher sulfur fuel than is presently allowed.

A source must complete its conversion or conservation measures within a period not to exceed 30 months from the date of commencement of burning higher sulfur oil, unless the State finds good cause for a longer period. Financial difficulty will not be considered good cause. At the end of the period during which the source was allowed to burn higher sulfur fuel, the source must comply with one of the following: (a) the source shall return to burning fuel with a sulfur content no greater than that permitted before it was approved to burn the higher sulfur content fuel, unless a new emission standard has been adopted; (b) a source providing permanent energy conservation measures must reduce oil consumption by at least 50,000 gallons per year; (c) a source which, prior to its approval under the new regulation, was limited to 1% sulfur fuel oil may continue to burn fuel containing up to 2.2% sulfur provided that, through permanent energy conservation measures approved by the State, the source reduced its consumption of petroleum products at the facility by at least 56 percent; or (d) a source which has converted to a non-petroleum based fuel and which, prior to its approval under the new regulation was limited to 1% sulfur fuel oil, must provide that the heat input rate of the converting unit will at least be equal to the estimated average heat input rate when that unit burned high sulfur fuel oil. The State may waive this requirement if an increase in the unit's efficiency would decrease its required capacity.

Applicants under this regulation must: perform specific air quality modeling procedures to assure maintenance of the applicable NAAQS and PSD increments; sign a consent agreement with specific milestones toward completing the conversion or conservation measures; submit a quarterly report on fuel costs and usage during the 30-month period; agree to conduct stack or fuel testing after conversion to verify compliance with emission limitations and post a bond for the estimated savings in fuel costs over the variance period. This sum would be forfeited if the conversion or conservation measures do not take place.

C. Other Changes to Regulation 8

In addition to the regulatory changes discussed above, Rhode Island has substantially rewritten Regulation 8 to more effectively implement its program. Additions have been made to sections concerning definitions, general limitations and determinations of compliance. EPA is proposing to approve these subsections since the State has made certain narrative commitments as follows:

Subsection 8.4, "Determination of Compliance"—Under 8.4.1 this regulation would allow the Director to determine compliance with emission limitations using a procedure he deemed equivalent to Appendix A of 40 CFR 60. In its November 9, 1982 narrative, Rhode Island has committed to seek written approval from EPA prior to making such a determination.

Subsection 8.4.4, which allows special averaging time for compliance testing for sulfur and particulate emissions, is not approvable for particulates. EPA is proposing to approve this subsection with the understanding that the State will eliminate the words "and particulates" from its regulation and in the interim, uses only EPA emission test Method 5 as an enforcement procedure. The State has agreed to make this change by November 30, 1983.

In its November 9, 1982 narrative, Rhode Island outlined the procedures that will be used to enforce Regulation 8. These procedures include a State check on both the individual source's and its supplier's fuel use records.

D. Regulation 13, "Particulate Emissions From Fossil Fuel Fired Steam or Hot Water Generating Units"

Rhode Island has rewritten Regulation 13 to create a comprehensive particulate emission limiting control mechanism. The State has created subsections dealing with definitions, limitations, determinations of compliance, exemptions and compliance schedules. In terms of the energy initiatives described in A. and B. above, subsection 13.4.2 under "Exemptions" has been added.

Rhode Island's existing particulate emission limitation is .10 pounds per million Btu actual heat input. For sources approved under the bubble or the conversion-conservation regulations discussed above, the State has amended that limit in 13.4.2. For bubble applicants, particulate emissions may not exceed .10 pounds per million Btu heat input on a plant-wide basis while individual units have an emission limit of .15 pounds per million Btu heat input. For conversion or conservation sources the limit on individual fuel burning devices would also be raised to .15 pounds per million Btu heat inputs during the variance period. Subsection 13.4, "Exemptions," includes the phrase "in any 24-hour period" in its discussion of the TSP emission rate for sources bubbling their emissions. In order to determine compliance with the bubble procedures, the State, in its narrative submitted on November 9, 1982, has committed to delete these words from its regulation by November 30, 1983 and, in the interim, to use only EPA emission test Method 5 to enforce the regulation.

Modeling Requirements

Applications to burn high sulfur fuel oil under these proposed regulations will be reviewed by the State on a source by source basis to assure they will not cause a violation of any NAAQS or PSD increment, and will not have a significant impact on any nonattainment area. The NAAQS are maximum allowable ambient air pollutant concentrations which are set to protect public health and welfare. The PSD increments are allowable incremental increases in ambient pollutant concentrations, as calculated by modeling, which are set to limit the degradation of air quality over baseline levels in areas currently attaining the NAAQS. The baseline levels for the State of Rhode Island, which is itself the Section 107 designated attainment area, are the actual air quality levels as of June 5, 1981.[1] Significant impacts on nonattainment areas are defined as increases in ambient levels, as calculated by air quality modeling, which would be expected to exacerbate an existing nonattainment problem.

[1] This date was set by the filing of the first Rhode Island PSD permit application filed by the Rhode Island Solid Waste Management Corporation.

The Rhode Island regulations require applicants to demonstrate compliance with the above regulatory limits by means of air quality modeling described in the *Rhode Island Guideline for Air Quality Modeling*, hereafter referred to as the RI Guideline. The RI Guideline has been reviewed by EPA and is today being proposed for approval for use by Rhode Island in administering the regulations described above.

The EPA *Guideline on Air Quality Models* (EPA–450/2–78–027), hereafter referrred to as the EPA Guideline, describes two levels of modeling. Screening modeling normally uses simple models with assumed worst-case meteorology to yield conservative upper bound predictions. If this screen is failed, a more resource-consuming second level of analysis is recommended by the EPA Guideline. This level uses more complex models with actual recorded meteorological data. This level of anaylsis is commonly referred to as refined modeling.

The RI Guideline details a screening modeling procedure consistent in most respects with the EPA screening procedures described in EPA's *Guidelines for Air Quality Maintenance Planning and Analysis Volume (10) Revised: Procedures for Evaluating Air Quality Impacts of New Stationary Sources* (EPA–450/4–77–001) which is recommended by the EPA Guideline. All relevant model inputs and options, as well as the treatment of background air quality, are detailed in the RI Guideline. Single and multiple source screening are addressed in both simple and complex terrain. Building wake downwash is also addressed. EPA believes the procedures detailed in the RI Guideline are at least as conservative as EPA's procedures.

Due to the complexity of refined modeling the RI Guideline does not specify detailed refined modeling techniques. Instead, the RI Guideline requires that a written modeling protocol outlining the analysis be approved by EPA Region I prior to the execution of a refined analysis. This protocol will conform to EPA guidance. In the SIP submittals to EPA for individual applications under these regulations, Rhode Island has agreed that refined modeling will be fully documented in a modeling report detailing all relevant modeling information including choice of models, model options and model input, as well as the results of the analysis.

However, because the RI Guideline is quite specific on required screening modeling procedures and because these regulations are limited to small sources with an emissions cap of 1.21 pounds of sulfur per million Btu, SIP submittals using screening modeling will normally only summarize the results with comparison to all applicable regulatory limits, and certify that the screening procedures in the RI Guideline were followed. However, EPA reserves the right to review any screening modeling analysis in detail on a case-by-case basis before taking final rulemaking on any individual source.

The Rhode Island Guideline may also be applicable to other regulatory actions for individual stationary sources of sulfur dioxide and TSP (e.g., new source review, SIP revisions). However, the certification concept described above is being approved only for the proposed regulations described in today's notice. Detailed documentation of modeling analyses, screening or refined, must be submitted to EPA for all other regulatory actions requiring EPA review.

SIP Revision Procedures

A. Proposed Approvals

EPA is proposing to approve amendments to: Regulation 8, "Sulfur Content of Fuels" and Regulation 13, "Particulate Emissions from Fossil Fuel Fired Steam or Hot Water Generating Units", the Rhode Island Guideline for Air Quality Modeling and the narrative implementing these additions to Rhode Island's SIP, all submitted on November 9, 1982. After receiving comments EPA will take final action on these revisions.

B. Individual Sources

Today EPA is also proposing to approve the revised sulfur-in-fuel limitation for all sources which meet the eligibility requirements as specified by Rhode Island in accordance with the provisions of the new regulations. The procedures to be used will involve concurrent State/EPA procedures.

This concurrent approach is a departure from EPA's normal rulemaking process for sulfur relaxations in Rhode Island which involves completion of State review before EPA commences its review and proposes rulemaking. This process has taken from four to six months, or even longer in some cases, and has involved duplication of effort by EPA and the State.

Under today's proposal, EPA will be conducting its proposed rulemaking process concurrent with the State's review. Rhode Island will review the applications for sulfur relaxations under the new regulations for eligibility and will evaluate the sources in accordance with EPA-approved modeling procedures. The State will provide a thirty-day public notice and comment period for each relaxation under the new regulations. Those persons who would normally comment during EPA's comment period should instead comment directly to Rhode Island during the State comment period. In the narrative submitted on November 9, 1982, the State has committed to maintain a mailing list of persons who wish to receive notices of proposed action on individual sources by mail. Persons wishing to be placed on the mailing list should notify the State by writing to Mr. Thomas E. Wright, Chief, Division of Air and Hazardous Materials, Room 204, Davis Street, Providence, RI 02908.

After the State reviews applications of specific sources, it will submit copies of its final decisions to EPA, including a copy of the State-issued permit containing the new emission limitations. The State will also submit all comments received (and the Division's response). The State will submit a certification to EPA indicating that the source meets the eligibility requirements of the new regulations, that the State has used EPA-approved modeling, and has followed the approved public notice and comment procedures.

By today's Notice of Proposed Rulemaking EPA is putting the public on notice that it is proposing to approve all individual sources submitted to EPA by Rhode Island as described above. Notice of the specific individual sources to be approved will be given only by the State in accordance with its review procedures (including mailing such notices to persons on the mailing list referred to above). The public is encouraged to participate in the notice and comment period. EPA will, of course, be free to participate in the comment period.

Prior to taking its final action, EPA will review public comments submitted to the State during its review process. Any member of the public wishing to submit comments to EPA should, therefore, submit comments to the State during the State review process, since EPA will not conduct an independent proposed rulemaking proceeding.

EPA believes that these procedures will provide the public with adequate notice and opportunity to comment both to Rhode Island and EPA on the rulemaking regarding each individual source. Similar procedures have been approved by EPA in Massachusetts (45 FR 82675, Dec. 16, 1980) and Connecticut (46 FR 43418, Aug. 28, 1981).

After receiving the State's submittal containing its final decision regarding

relaxations for an individual source or group of sources, EPA will then promulgate final rulemaking by publishing the action in the Federal Register. The effective date of the approval will be the date of such publication.

Because Rhode Island will be using EPA-approved modeling procedures and will be providing adequate public notice and comment, and because EPA will review each submittal from the State to determine that these requirements are met, EPA will not conduct a separate proposed rulemaking after Rhode Island has fully completed its review. As a result the time required for EPA's review will be shortened substantially. EPA's final rulemaking for relaxations for any individual source or group of sources will incorporate the new individual source emission limits into the SIP and these limits will be enforceable by EPA under the Clean Air Act.

EPA anticipates that this concurrent State/EPA approach will save substantial time over EPA's normal review process and will thus be a significant regulatory reform.

Public comment is specifically solicited at this time on these proposed procedures.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709, Jan. 27, 1981.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to sections 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: December 2, 1982.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 83-100 Filed 1-3-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[AD-FRL; AG-FRL 2247-5]

Approval and Promulgation of Implementation Plans; Texas: Lead Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: As required by Section 110 of the Clean Air Act and the October 5, 1978, (43 FR 46246), promulgation of national ambient air quality standards (NAAQS) for lead, the State of Texas has submitted a State Implementation Plan (SIP) for lead. This action proposes approval of the SIP, which provides for attainment and maintenance of the NAAQS for lead in all areas of the State except Dallas and El Paso, Texas. These areas will be addressed in a future rulemaking.

DATES: Interested persons are invited to submit comments on this proposed action on or before March 7, 1983.

ADDRESSES: Written comments should be sent to John Hepola, Chief, State Implementation Plan Section, EPA (6AW-AS), 1201 Elm Street, Dallas, Texas 75270. Copies of the plan, the public hearing minutes, and the evaluation report which explains EPA's actions are available for public review at the following locations:

Texas Air Control Board, 6330 Hwy. 290 East, Austin, Texas 78723

Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270

FOR FURTHER INFORMATION CONTACT: Ken Greer at (214) 767-9855 or FTS 729-9855.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, the NAAQS for lead was promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (μg lead/m^3) averaged over a calendar quarter. As required by Section 110 of the Clean Air Act (CAA), and the October 5, 1978, promulgation of Lead SIP requirements (43 FR 46264), all States must submit a SIP which will provide attainment and maintenance of the lead NAAQS. Texas has developed and submitted such a SIP.

The general requirements for a SIP are outlined in Section 110 of the Clean Air Act and EPA regualtions in 40 CFR Part 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E. These provisions require the submission of air quality data, emission data, air quality modeling, control strategies for each area exceeding the NAAQS, a demonstration that the NAAQS will be attained within the time frame specified by the CAA, and provisions for maintenance of the NAAQS. EPA has evaluated this plan by comparing it to the requirements for an approvable SIP, as set forth in the above mentioned regulations. [See Evaluation Report, available at addresses listed above].

II. Description of the Texas SIP

On June 12, 1980, the Governor of Texas submitted to EPA the State's SIP for attainment and maintenance of the NAAQS for lead, after holding 4 public hearings during August of 1979. The plan identified eleven point sources of lead for which attainment of the lead standard must be demonstrated. The significant point sources include one primary lead smelter-ASARCO, Inc.; five secondary lead smelters—ESB Inc., Dixie Metals Corp., Houston Lead Co., Gould Inc., and RSR Corp.; two tetraethyl lead producers—Ethyl Corp. and PPG Industries; one gasoline additive manufacturing plant—Nalco Chemical Co.; one steel mill—Lone Star Steel; and one grey iron foundry—Tyler Pipe Co.

Dispersion modeling for the eleven significant point sources of lead demonstrated that the lead NAAQS will not be exceeded around three of those point sources: PPG Industries, Beaumont, Texas; Tyler Pipe, Tyler, Texas; and Nalco, Freeport, Texas. In addition, of the 11 identified lead emission point sources in Texas, three sources are now permanently shut down: Ethyl, Pasadena, Texas; Houston Lead, Houston, Texas; and ESB, Dallas, Texas. The State has agreed to assure EPA that these three shut down sources would be subject to permit review or, if needed, control plan development if they began operating again although resumption of operations is highly unlikely.

An acceptable control plan for another point source, Gould Inc. in Frisco, Texas, for which dispersion modeling demonstrated possible exceedances of the lead NAAQS, has been adopted by the TACB in a Board Order, number 82-11, and the TACB has agreed to submit the Board Order to EPA as part of the Lead SIP. This control strategy requires Gould to limit lead emissions from more than a dozen emission points in the secondary smelter. The emission reductions are obtained from improvements to the ventiliation system for different areas of the plant plus enclosure and ventilation

of the blast furnace in the plant. The control strategy and emission limitations are included in a TACB approved Board Order which TACB has agreed to submit to EPA in a letter from Bill Stewart, Executive Director, TACB, dated October 14, 1982.

Dispersion modeling has been done by TACB for Lone Star Steel, Dixie Metals, and RSR Corp., but questions remain concerning the modeling for those three sources. In order to determine if the lead NAAQS is being exceeded in the Dallas, Texas, area, TACB is conducting monitoring around Dixie Metals and RSR Corp. in Dallas. The State has agreed to submit a control strategy for the areas in Dallas where the monitoring data, when validated, shows an exceedance of the standard, and has agreed to submit all validated monitoring and modeling data to EPA for the Dallas area. In order to determine if the lead NAAQS is being exceeded in the Lone Star, Texas, area, TACB has agreed to install and operate a monitoring system for lead around Lone Star Steel. Since Lone Star Steel has recently shut down its lead-emitting operations for an indeterminate amount of time, the monitoring should continue for two full quarters while the operations are shut down and for a year after start-up to determine if the area is and will remain in attainment of the lead NAAQS after Lone Star Steel resumes normal operations.

For the remaining significant point source, ASARCO in El Paso, Texas, the SIP includes modeling for the source but no exceedances of the lead standard are listed. Questions remain concerning the modeling since a breakdown of the emission points and emission rates is not included in the SIP, and two different emission levels (in tons of lead per year) are mentioned in the SIP for ASARCO. Also, the modeled receptor point values are not compared to monitoring information at local monitoring sites in El Paso to validate the modeling results. Since the local monitoring data for the El Paso area was not included in the SIP and since no comparison of modeled and monitored data was included, the modeling results cannot be fully evaluated. Furthermore, the New Mexico State Agency has raised questions concerning the attainment of the lead standard in the El Paso area and in the Anapra, N.M. area (located across the State line from El Paso). The TACB is currently conducting a study for the El Paso area which is intended to analyze and possibly identify the lead pollution problem(s) in the El Paso areas.

Of the air quality data including in the SIP, one monitor was identified in downtown El Paso that showed exceedances of the NAAQS. The State determined that the ASARCO smelter and vehicle exhaust emissions were the primary influences on the monitored concentration. Rollback calculations were used by the State to demonstrate that the automotive gasoline lead phasedown program, and particulate control measures required at ASARCO by TACB Order 75–5 and an Agreed Order of Injuction, May 14, 1975, would be sufficient to attain the standard. However, data from local monitors were not used in the SIP. Since the local monitors are located throughout the city, with a few monitors located near the smelter, submittal of all valid monitoring data for the El Paso area has been requestd by EPA. The TACB has agreed to submit validated monitoring data to the Regional Office for inclusion in the State's SIP.

The State is now conducting a study for the El Paso area which will include the local monitoring data, will determine the level of lead emissions and the source(s) of lead pollution for the El Paso area, and will include an identification of sources in New Mexico and Mexico, if any, which may be contributing to lead pollution in the El Paso area. Results of this study should be available in late 1982 and the State has agreed to submit a schedule for development of additional control measures, if necessary, shortly thereafter.

In addition to information concerning lead point sources, modeling, and monitoring data, the SIP listed the attainment date for the lead NAAQS for the State of Texas as November 5, 1982. The SIP and the Governor's submittal letter also requested that a two-year extension of the attainment date be granted by EPA, to November 5, 1984. The SIP further explained that the State had the necessary resources and legal authority to implement the lead control plan and enforce the point source compliance schedules included in the SIP. Finally, the lead SIP explained that the procedures for review of new lead sources and the procedures for source surveillance of lead emitting facilities are similar to the procedures described in the "New Source Review" and the "Source Surveillance" sections in the Texas Air Pollution Control Plan.

III. Results of EPA Review

As explained above and in more detail in the evaluation report (available at the locations listed in the **ADDRESSES** section of this notice), the Regional Office has reviewed the Texas Lead SIP and the additional information submitted by Texas. The Texas Lead SIP is adequate for the attainment and maintenance of the Lead NAAQS in all areas of the State except for the two areas of the State for which TACB is developing additonal information and control strategies where necessary. The Regional Office has found the Resources Section and Legal Authority Section of the Lead SIP as adequate. The State met the requirements for a public hearing by holding four public hearings throughout the State. Texas has agreed to assure EPA that the State requires a public notice and permit review of all new lead sources with potential to emit five tons or more of lead per year. The State's assurance was received by the Regional office in a letter dated October 14, 1982, from Bill Stewart, Executive Director of TACB.

The Texas Lead SIP lists an attainment date for lead of November 5, 1982, for sources in the State. Since most areas of the State are presently in attainment, except for possibly the Dallas and El Paso areas of the State, EPA agrees with the November 5, 1982, attainment date since the State should show attainment as expeditiously as practicable for areas in the State which can be or are in attainment. For the Dallas and El Paso areas, for which control strategies will be developed, if needed, the attainment date will be determined when EPA announces its action on those areas in a future rulemaking.

In addition, pursuant to Section 110(e)(1) and (2) of the Clean Air Act, the governor of Texas requested that a two year extension of the attainment date for the primary lead standard be granted by EPA. An extension can only be granted if the Administrator determines that: (1) One or more emission sources are unable to comply within the initial three years because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance; and (2) the State includes in its SIP a consideration and application of any reasonably available alternative means of attaining the standard and justifiably concludes that attainment cannot be achieved. The State did not include in its SIP the required alternatives consideration nor were any sources identified to EPA as being unable to comply because of the lack of necessary technology. Also, for the areas of the State which EPA is proposing action on, the SIP has demonstrated that the lead standard is being attained. Therefore, EPA is proposing that the two year extension of the lead attainment date is not

necessary and need not be granted for the Sections of the Texas Lead SIP which EPA is proposing action on.

EPA's Action

EPA has evaluated the Texas Lead SIP and determined that with the exceptions of the Dallas and El Paso areas, it meets the requirements of Section 110(a) of the CAA and 40 CFR Part 51 Subparts B and E. EPA believes that the SIP is adequate to attain and maintain the lead NAAQS and is, therefore, proposing approval of it except for the areas of Dallas and El Paso, Texas. Those areas will be acted on by EPA in a future rulemaking. EPA finds that the Texas SIPs that have been approved for other NAAOS's contain regulations that satisfy general regulations not specifically mentioned in this lead SIP and that these general regulations can be incorporated into the lead SIP.

The Regional Administrator hereby issues this notice setting forth EPA's proposed approval, with exceptions, of the Texas Lead SIP and advises the public that interested persons may participate by submitting written comments to the Region VI Office. Comments received on or before the date listed in the **DATES** section will be considered. Comments received will be available for public inspection at the EPA Region VI Office and at the locations listed in the **ADDRESSES** section of this notice.

The Administrator's final decision to approve or disapprove the Texas Lead SIP will be based on the comments received and on a determination whether the SIP meets the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Subpart B and E. EPA's final rulemaking action will not be taken until EPA receives the information which the TACB has committed to submit to EPA.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response are available for public inspection at the EPA Region VI office (see address above).

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This notice of proposed rulemaking is issued under the authority of Section 110(a) of the Clean Air Act, 42 U.S.C. 7410(a).

Lists of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, and Intergovernmental relations.

Dated: October 4, 1982.

Frances E. Phillips,

Regional Administrator.

[FR Doc. 83-68 Filed 1-3-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-2224-7]

Standards of Performance for New Stationary Sources; VOC Fugitive Emission Sources; Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit emissions of volatile organic compounds (VOC) from fugitive emission sources in the petroleum refining industry. The proposed standards would: (1) Require a leak detection and repair program to reduce VOC emissions from pumps and valves; and (2) specify the use of certain equipment to reduce VOC emissions from compressors, sampling connection systems, and open-ended valves. The proposed standards would also allow no detectable emission from pressure relief devices during normal operations.

The proposed standards implement the Clean Air Act and are based on the Administrator's decision that fugitive emission sources of VOC in the petroleum refining industry contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. As required by Section 111 of the Clean Air Act, the proposed standards are intended to require new, modified, and reconstructed sources in the petroleum refining industry to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impact and energy requirements.

A public hearing will be held to provide interested persons an opprotunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments:* Comments must be received on or before March 21, 1983.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by February 11, 1983, a public hearing will be held on February 23, 1983 beginning at 10 a.m. Persons interested in attending the hearing should call Mrs. Naomi Durkee at (919) 541-5578 to verify that a hearing will occur.

Requests to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by February 21, 1983.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Central Docket Section (A-130), Attention: Docket No. A-80-44, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, the public hearing will be held at the Office of Administration Auditorium, Research Triangle Park, N.C. Persons interested in attending the hearing should call Mrs. Naomi Durkee at (919) 541-5578 to verify that a hearing will occur.

Persons wishing to present oral testimony should notify Mrs. Naomi Durkee, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Background Information Document. The background information document (BID) for the proposed standards is contained in the docket and may be obtained from the U.S. EPA library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "VOC Fugitive Emissions In Petroleum Refining Industry—Background Information for Proposed Standards" (EPA-450/3-81-015a).

Docket. Docket No. A-80-44, containing supporting information used in developing the proposed standard, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Susan R. Wyatt, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

SUPPLEMENTARY INFORMATION:

Summary of Proposed Standards

The proposed standards of performance cover fugitive emission

sources of volatile organic compounds (VOC) within petroleum refineries. The proposed standards would apply to new, modified, and reconstructed compressors and new, modified, and reconstructed fugitive emission sources within process units. The proposed standards would reduce fugitive emissions of VOC from pumps, valves, sampling connections, pressure relief devices and open-ended valves in VOC service within process units and from compressors in VOC service. "In VOC service" means that a fugitive emission source contains or contacts a fluid containing 10 or more percent by weight VOC.

The proposed standards are different from most standards of performance because they are mainly work practices and equipment standards rather than emission standards and they cover several emission sources. The proposed standards would require: (1) A leak detection and repair program for valves in gas or light liquid service and for pumps in light liquid service; (2) certain equipment for compressors, sampling connection systems, and open-ended valves; and (3) no detectable emissions from pressure relief devices in gas service during normal operation. "In gas service" means that a fugitive emission source contains VOC fluids in the gaseous or vapor state. "In light liquid service" means that a fugitive emission source contains VOC liquids which will have more than 10 percent of the liquids evaporated at a boiling point of 150° C, as determined by ASTM Method D 86. While still assuring that equivalent emission reduction will be achieved, the proposed standards allow the use of alternative equipment for valves, pumps, compressors and sampling connection systems. In addition, the proposed standards provide alternative standards for valves and a procedure for determining the equivalency of alternative control measures.

Summary of Environmental, Energy, and Economic Impacts

The proposed standards of performance would reduce fugitive emissions of VOC from new, modified, and reconstructed compressors and process units (production facilities) by about 70 percent from the emission levels that would result with control means currently practiced by the industry. In 1986, the proposed standards would reduce uncontrolled fugitive emissions of VOC from new, modified, and reconstructed production facilities by approximately 46,000 megagrams (Mg), a reduction of emissions from 64,000 megagrams of VOC per year (Mg/yr) to about 18,000 Mg/yr. By 1986, some States will require control of petroleum refinery fugitive emission sources of VOC through their State implementation plans (SIP's). Consequently, the VOC emission reduction attributable to the proposed standards after these SIP's are established by 1986 would be 31,000 Mg, a reduction of emissions from 49,000 Mg/yr to about 18,000 Mg/yr.

The proposed standards or performance would not increase the energy usage within petroleum refineries. In general, the controls required by the proposed standards do not require energy. Furthermore, the effect of the proposed standards would be to increase efficiency of raw material usage, so that a net positive energy impact would result. Implementation of the proposed standards could result in a minor adverse solid waste impact. In contrast, the proposed standards would also cause a positive impact on water quality by containment of potential liquid leaks.

The proposed standards would require a cumulative capital investment of $8.2 million for newly constructed production facilities and up to $19.0 million for modified and reconstructed production facilities through 1986. This capital investment would not defer construction of petroleum refinery units. The industry-wide net annualized cost for new, modified, and reconstructed production facilities could be as much as $8.2 million in 1986. These costs would be distributed among about 100 newly constructed production facilities and up to 182 modified and reconstructed production facilities that could be affected by 1986. Significant price increases are not expected to result from implementation of these standards because the annualized cost of the proposed standards is a small fraction (0.1 percent or less) of the yearly revenue expected from new, and modified, reconstructed production facilities.

Rationale

Selection of Sources and Pollutants

The Priority List (40 CFR 60.16, 44 FR 49222, August 21, 1979) includes, in order of priority for standards development, various major source categories that the Administrator has determined contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The order of the listed categories is based on consideration of the three factors specified in Section 111(f) of the Clean Air Act: (1) The quantity of air pollutant emissions which each category will be designed to emit, (2) the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare, and (3) the mobility and competitive nature of each category. The Priority List identifies the source categories for which EPA must promulgate standards of performance. The category "Petroleum Refineries: Fugitive Sources" ranks third on the list.

Fugitive emission sources at petroleum refineries include compressors, pumps, valves, flanges, pressure relief devices, open-ended valves, sampling connection systems, process drains, wastewater separators, and cooling towers. Process drains and wastewater separators are part of the wastewater system within a petroleum refinery. Studies are currently being conducted which should allow development at a later date of standards of performance for fugitive emission sources which are part of a refinery wastewater system. Presently available refinery data on cooling towers indicate that new cooling towers use indirect heat transfer and that emissions from these cooling towers are much less than emissions from cooling towers that use direct heat transfer. Additionally, control techniques for indirect cooling towers are not well defined. Adequate information is available, however, to develop standards of performance for compressors, pumps, flanges, valves, pressure relief devices, sampling connection systems, and open-ended valves. Therefore, EPA selected compressors, pumps, flanges, valves, pressure relief devices, sampling connection systems, and open-ended valves as the fugitive emission sources covered by the proposed standards.

Fugitive emission sources covered by the proposed standards emit volatile organic compounds (VOC) that contribute to atmospheric photochemical reactions. As discussed in Appendix E of the BID, about 100 newly constructed production facilities and as many as 182 modified or reconstructed production facilities could become covered by the proposed standards during the period from 1982 to 1986. If the fugitive emission sources covered by the proposed standards in these 282 production facilities are controlled only by existing maintenance procedures, an estimated 64,000 megagrams of VOC per year (Mg/yr) would result from these facilities in 1986. If however, these sources are controlled by SIP's in States not attaining the national ambient air quality standard (NAAQS) for ozone and by existing maintenance procedures in States attaining the NAAQS for ozone, an estimated 49,000 Mg/yr would

result from these facilities in 1986. The proposed standards, as presented in this preamble, would reduce these emissions to about 18,000 Mg/yr in 1986.

In summary, as required by Section 111(f) of the Clean Air Act, EPA selected fugitive emission sources at petroleum refineries as a source category for which EPA must promulgate standards of performance. After considering the adequacy of available information, EPA decided to propose standards for compressors, pumps, flanges, valves, pressure relief devices, sampling connection systems, and open-ended valves. In 1986, emissions of VOC would be reduced by at least 31,000 Mg/yr for the fugitive emission sources covered by the proposed standards.

Standards of performance have other benefits in addition to achieving emissions reductions. Standards of performance establish a degree of national uniformity to air pollution standards, and, therefore, preclude situations in which some States may attract new industries as a result of having relaxed standards relative to other States. Further, standards of performance provide documentation that reduces uncertainty in case-by-case determinations of best available control technology (BACT) for facilities located in NAAQS attainment areas and of lowest achievable emission rates (LAER) for facilities located in NAAQS nonattainment areas. This documentation includes identification and comprehensive analyses of alternative emission control technologies, development of associated costs, evaluation and verification of applicable emission test methods, and identification of specific emission limits achievable with alternate technologies. This documentation also provides an economic analysis that reveals the affordability of controls in a study of the economic impact of controls on an industry.

The rulemaking process that establishes standards of performance ensures adequate technical review and promotes participation of representatives of the industry being considered for regulation, government, and the public affected by that industry's emissions. The resultant standards represent a balance in which government resources are applied in a well publicized national forum to reach a decision on a pollution emission level that allows for a dynamic economy and a healthful environment.

Selection of Affected Facilities

The choice of the affected facility for the proposed standards is based on EPA's interpretation of Section 111 of the Clean Air Act and on the judicial construction of its meaning [ASARCo, Inc., v. EPA, 578 F.2d 319 (D.C. Cir. 1978)]. Under Section 111, standards of performance for new stationary sources must apply to "new sources;" "source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant" [Section 111(a)(3)]. Most industrial plants, however, may consist of numerous facilities—equipment or groups of equipment—which emit air pollutants and which, consequently, may be viewed as "sources." EPA uses the term "affected facility" to designate the equipment or groups of equipment, within a particular kind of plant, chosen as the "source" affected by given standards of performance.

In choosing the affected facility, EPA must decide which equipment or groups of equipment is the appropriate unit, or the "source," for separate standards of performance in the particular industrial context involved. EPA must do this by examining the situation in light of the terms and purpose of Section 111 of the Clean Air Act. One major consideration in determining the definition of a source is that the use of a narrower designation results in bringing replacement equipment under standards of performance sooner. If, for example, an entire plant is designated as the affected facility, no part of the plant would be covered by the standards unless the plant as a whole is "modified" (see 40 CFR 60.14) or "reconstructed" (see 40 CFR 60.15). The plant as a whole could be considered modified only if the replacement resulted in an increase in the aggregate emissions from the entire plant. The plant as a whole could be considered reconstructed only if the cost of the replacement exceeded 50 percent of the cost of an entire new plant. If, on the other hand, each piece of equipment is designated as an affected facility, then as each piece is replaced, the replacement piece will be a new source subject to the standards regardless of the cost of the replacement or whether the replacement caused emissions from the plant as a whole to increase. Since the purpose of Section 111 is to minimize emissions by application of the best demonstrated system of emission reduction at all new and modified sources (considering cost, nonair quality health and environmental impacts, and energy requirements), there is a presumption that a narrower designation of the affected facility is proper. This ensures that new emission sources within plants will be brought under the coverage of the standards as they are installed. This presumption can be overcome, however, if EPA concludes either that: (a) A broader designation of the affected facility would result in greater emission reduction; or (b) consideration of the other relevant statutory factors (technical feasibility, costs, nonair quality health and environmental impacts, and energy requirements) leads to the conclusion that a broader designation is appropriate.

Affected facilities for standards that would cover fugitive emission sources could be defined as individual emission sources (equipment components), groups of equipment components that are operated in conjunction with each other (process units), or groups of process units at one location (plant sites). In determining which alternative definition of affected facilities to select for petroleum refinery fugitive emission sources, EPA first considered the roles of modifications and reconstructions and how they affect the overall emission reduction potential for these sources. As a result, EPA concluded that a definition of an affected facility which is based on the plant site would provide the lowest emission reduction potential. It was further concluded that a definition that is based on equipment components would provide an emission reduction potential similar to a definition that is based on process units. Therefore, EPA rejected the plant site basis and considered the equipment component basis and process unit basis definitions, in conjunction with other relevant factors, before defining the affected facility for petroleum refining fugitive emission sources.

The alternative of defining facilities on the basis of equipment components was reviewed first. Equipment components (such as pumps and valves) are typically much smaller than the average source covered by Section 111, and there are many of these equipment components per process unit. If EPA selected equipment components as the basis for defining affected facilities, situations would arise in which replaced equipment components in existing process units would be subject to the standards, while adjacent components would not be subject to the standards. With such a mixture of new and existing components, the effort to keep track of equipment components covered by the standards and components not covered by the standards would be costly. Implementing a leak detection and repair program, the principal control technique considered for the proposed standards, for a very small proportion of all the equipment components at a plant site would be too costly. As discussed below, compressors are an exception to

these considerations. Therefore, EPA rejected the equipment component designation for fugitive emission sources other than compressors. Consequently, EPA examined the next most narrow alternative (the group of equipment components within a process unit) for fugitive emission sources other than compressors.

The alternative of defining an affected facility as the group of equipment components, other than compressors, within a process unit would achieve as much emission reduction as the first alternative. In addition, it would have no associated cost of distinguishing between those sources covered by the standards and those not covered. Consideration of the other relevant statutory factors did not lead to the conclusion that designating each group of equipment components in a process unit as an affected facility would lead to adverse impacts. Therefore, EPA selected the group of equipment components within a process unit as the affected facility for fugitive emission sources other than compressors.

Relatively few compressors are located in petroleum refinery process units; in fact, may process units do not contain compressors. When a compressor is used in a process unit, it is designed for use only within that process unit. In general, there are no spare compressors in petroleum refineries, and compressors that are in place are readily identifiable. Thus, it would not be costly for an owner or operator to keep track of compressors covered by the standards and compressors not covered by the standards. EPA considered the relevant statutory factors before selecting the alternative as the basis for defining the affected facility for compressors located at petroleum refineries. Based on these considerations, EPA selected the equipment component as the affected facility for compressors.

Even though all new compressors can be designed to use the control technology described in Chapter 4 of the BID, a few existing compressors are not designed to allow reasonable retrofitting of this control technology. A few existing reciprocating compressors cannot be retrofitted with this control technology without completely replacing the distance piece or, in some cases, completely replacing the compressor. The cost of replacing a distance piece or compressor in order to bring an existing reciprocating compressor into compliance with the proposed standards would be exorbitant.

It is unlikely that any existing compressors would be covered by the standards through the modification provisions of 40 CFR 60.14 because increases in fugitive emissions from a compressor are unlikely. However, some existing compressors would be covered by the standards through the reconstruction provisions of 40 CFR 60.15. Since each compressor would be an affected facility, EPA would make a determination that it is technically or economically feasible for an existing reciprocating compressor to meet the standards [see 40 CFR 60.15(e)] before the compressor would be covered through the reconstruction provisions. This determination could be used to exempt the few existing reciprocating compressors which are not designed to allow reasonable retrofitting of the control technology described in Chapter 4 of the BID. If compressors were included among other fugitive emission sources in defining affected facilities, then an existing compressor could become subject to the standards under the modification provisions and an independent determination would not be used to consider whether an existing reciprocating compressor can be reasonably retrofitted with the control technology. These considerations support the selection of the equipment component as the affected facility for compressors.

In summary, the proposed standards apply to two types of affected facilities. Each refinery compressor in VOC service is one type of affected facility. The second type of affected facility comprises all fugitive emission sources in VOC service, other than compressors, within a refinery process unit. A process unit is defined as equipment components assembled to perform any of the physical and chemical operations within a petroleum refinery. More specifically, a process unit has discrete boundaries that consist of the points where process fluid is discharged from the preceding refining activity and where the physically or chemically treated process fluid is discharged for storage or further refining. For example, a crude oil atmospheric distillation unit is a process unit because crude oil enters the unit's column through the crude oil desalter and the preheater furnace and then the fractions separated by the column are discharged through several pipelines for further refining by other process units. There may be several columns associated with one process unit. For example, a prefractionation column may be used to separate light gasoline from the crude oil before the crude oil is separated into heavy naphtha, kerosene, and heavy gasoline. If a vacuum distillation column is employed to refine the heaviest fractions (bottoms) from the atmospheric distillation column, the vacuum distillation column is a separate process unit consisting of all equipment between the atmospheric distillation column bottoms discharge and vacuum distillation column discharge points. Other examples of petroleum refinery process units include, but are not limited to, equipment comprising fluid catalytic cracking units, storage vessels, and coking units. Thus, the process unit is used as the basis for defining an affected facility, but coverage is limited to fugitive emission sources. In addition the proposed standards would exempt additions made for process improvements if they are made without incurring a "capital expenditure" as defined in the General Provisions. Exemptions are made for routine replacement and for additions made to increase production rate if they can be accomplished without capital expenditures. There are many specific reasons for routine additions and changes made in a process unit. For example, a small number of fugitive emission sources might be added in making changes to increase productivity, to increase ease of maintenance, to improve plant safety, and to correct minor design flaws.

Sources covered by the standards of performance for VOC fugitive emission sources within the synthetic organic chemical manufacturing industry, the standard for benzene fugitive emission sources, and standards of performance being developed for fugitive emission sources within natural gas processing plants would be excluded from these standards.

Control Techniques for Fugitive Emission Sources

There are basically two types of control techniques available for fugitive emission sources: (1) Leak detection and repair programs and (2) equipment, design, and operational requirements. Leak detection and repair programs reduce fugitive emissions of VOC by establishing a procedure which includes monitoring fugitive emission sources to detect those that leak VOC's and steps to repair leaking fugitive emission sources. Both types of control techniques apply to pressure relief devices, valves in gas/vapor and light liquid service, and pumps. Equipment, design, and operational requirements apply to open-ended valves, compressors, and sampling connection systems. The control techniques considered for each fugitive emission source covered by the proposed standards are summarized below and

are described more fully in Chapter 4 of the BID.

VOC emission reduction and control cost of some fugitive emission source leak detection and repair programs were determined using the leak detection and repair (LDAR) model. The LDAR model is an empirical model developed for estimating the fraction of fugitive emission sources screened for leaks during each selected monitoring interval, the fraction of sources repaired each period, and the emission reduction efficiency of each leak detection and repair program. Detailed information required for LDAR model input is available for valves and pumps. However, because detailed LDAR model data input are not available for pressure relief devices, engineering judgment along with the LDAR model were used to determine the impacts associated with leak detection and repair programs for pressure relief devices. The LDAR model and LDAR model impact analyses are discussed in detail in Appendix F of the BID.

Based on emission reductions and control costs as estimated in the BID, control costs per megagram of VOC emission reductions were calculated. These estimates are presented in Table 1 for each control technique for fugitive emission sources covered by the proposed standards.

Pressure Relief Devices. Fugitive emissions of VOC from pressure relief devices result from leakage of process materials through the pressure relief device valve seat. VOC emissions can be controlled by a leak detection and repair program or by installation of a rupture disc between the process stream and pressure relief device.

The annualized costs and VOC emissions reductions achieved for a quarterly leak detection and repair program and for use of control equipment (rupture discs) were determined for pressure relief devices. A quarterly leak detection and repair program is less expensive than using rupture discs. However, rupture discs achieve a higher degree of fugitive VOC emission control. The control costs per megagram of VOC reduced and the emission reductions achieved are presented in Table 1.

Table 1.—Control Costs Per Megagram of VOC's Reduced[a]

Fugitive emission source	Control technique[b]	Emission reduction (mg/yr)[c]	Average[d] $/mg	Incremental[e] $/mg
Pressure relief devices	Quarterly leak detection and repair	4.4	[f](170)	[f](170)
	Rupture discs[g]	9.8	440	930
Compressors	*Controlled degassing vents*[g]	16.5	160	160
Open-ended valves	*Caps on open ends*[g]	2.8	460	460
Sampling connection systems	*Closed purge sampling*[g]	2.6	610	610
Valves	Quarterly leak detection and repair	31.7	[f](90)	[f](90)
	Monthly leak detection and repair[g]	37.1	[f](40)	300
	Sealed bellows valves	110.0	4,500	6,790
Pumps	Annual leak detection and repair	3.0	3,480	3,480
	Monthly leak detection and repair[g]	11.5	960	80
	Dual mechanical seal systems	13.9	2,200	8,200

[a] Costs and emission reductions based on fugitive emission source (component) counts in Model Unit B from the BID, EPA-450/3-81-015a, page 6-3.
[b] Further discussion of control techniques used can be found in Chapters 4 and 6 of the BID.
[c] Emission reductions are for Model Unit B. Refer to BID Tables 3-1, 7-1, and F-14.
[d] Average dollars per megagram (cost effectiveness) = net annualized cost per component ÷ annual VOC emission reduction per component.
[e] Incremental dollars per megagram = (net annualized cost of the control technique − net annualized cost of the next less restrictive control technique) ÷ (annual emission reduction of control technique − annual emission reduction of the next less restrictive control technique).
[f] Values in parentheses denote savings.
[g] Control techniques selected as the basis for the proposed standards are italicized.

Compressors. Packed seals, mechanical seals, or liquid film seals are used to limit leakage of process gases around compressor drive shafts. These seals can emit VOC as a result of seal deterioration or imperfections. VOC also can be emitted from barrier fluid degassing vents that are used on some types of dual mechanical seals. Fugitive emissions of VOC from compressor seals can be controlled by venting the leakage to an air pollution control device (controlled degassing vents). The annualized costs and emission reductions associated with venting the leakage to an air pollution control device results in control costs per megagram of VOC reduced and emission reductions as presented in Table 1.

Open-Ended Valves and Sampling Connection Systems. Fugitive emissions of VOC result from leakage of process fluids around open-ended valves in the shut position or around incompletely closed open-ended valves. These emissions can be controlled by the installation of a cap or a second valve. Fugitive emissions of VOC arise when process fluids are purged from sampling lines. These emissions can be reduced through the use of closed sampling systems. The control costs per megagram of VOC reduced and the emission reductions achieved are presented in Table 1.

Valves. Fugitive emissions of VOC result when valve packings or O-rings that are used to limit leakage of process fluids around valve stems deteriorate. VOC emissions from valves can be reduced through leak detection and repair programs or the use of sealed bellows valves.

The annualized costs per megagram of VOC emissions reduced and emission reductions achieved were determined for leak detection and repair programs and the use of sealed bellows valves. These costs and emission reductions are presented in Table 1. Quarterly monitoring for leaks from valves in gas/vapor and in light liquid service results in savings. Monthly leak detection and repair of valves in gas/vapor and light liquid service increases the degree of emission reduction while maintaining the savings; however, the magnitude of these savings are less than the savings obtained for a quarterly leak detection and repair program. Sealed bellows valves provide the highest degree of VOC control; however, the control cost per megagram of VOC reduced is substantially greater than the costs for any of the leak detection and repair programs.

Pumps. Fugitive emissions of VOC result from leakage of process fluids around pump drive shafts and through deteriorated seal packings or worn mechanical seal faces. VOC can also be emitted from the barrier fluid degassing vents used on some types of dual mechanical seal systems. VOC emissions from pump seals can be reduced through leak detection and repair programs or through the use of dual mechanical seals with controlled degassing vents.

The control costs incurred for each megagram of VOC emissions reduced and emission reductions achieved were determined for leak detection and repair programs and the use of dual mechanical seals with controlled degassing vents. These costs and emission reductions are presented in Table 1. Dual mechanical seals with controlled degassing vents provide the greatest amount of VOC emission reduction; however, the control cost per megagram of VOC reduced is greater than that for either leak detection and repair program.

Selection of the Basis for the Proposed Standards

Section 111 of the Clean Air Act, as amended, requires that standards of performance be based on the best system of continuous emission reduction that has been adequately demonstrated, considering costs, nonair quality health and environmental impact and energy requirements (best demonstrated technology). As a first step toward determining which control techniques should be selected as the basis of the proposed standards, EPA analyzed the annualized cost of controlling VOC emissions and the resultant VOC reduction for each alternative control technique. EPA also considered the nonair environmental, energy, and economic impacts associated with selecting alternative control techniques as the basis for the proposed standards.

The control costs per megagram of VOC reduced are presented in Table 1. These costs do not represent the actual amounts of money spent at any particular plant site. The cost of VOC emission reduction systems will vary according to the petroleum product being produced, production equipment, plant layout, geographic location, and company preferences and policies. However, these costs are considered typical of control techniques for fugitive emission sources within petroleum refineries and can be used in making decisions about the level of control to be required.

After review of control costs per megagram of VOC reduced, EPA judged that the cost of certain control equipment on fugitive emission sources is unreasonably high. The analysis presented in Table 1 shows that leakless equipment on valves in gas/vapor and light liquid service have incremental control costs per megagram of VOC reduced that are about $6,800. The analysis also shows that dual mechanical seal systems on pumps have an incremental control cost per megagram of VOC reduced of about $8,200. After examining these costs and resulting emission reductions, EPA determined the control costs per megagram of VOC reduced for leakless equipment on valves and dual mechanical seal systems on pumps to be unreasonably high.

EPA decided that a leak detection and repair program with monthly monitoring for pumps and valves and the use of control equipment for pressure relief devices, open-ended valves, sampling connection systems, and compressors have reasonable control costs per megagram of VOC reduced. These control techniques are italicized in Table 1. The incremental control costs per megagram of VOC reduced for these control techniques range from a cost of $80 to a cost of about $900 and are considered reasonable. Petroleum refineries are large emitters of VOC with fugitive emission sources comprising a significant VOC emitting segment in petroleum refineries. These control techniques would result in a nationwide reduction of at least 31,000 Mg of VOC in the fifth year after proposal. It is reasonable to expect that a reduction of this size in VOC emissions from the petroleum refining industry would be of significant benefit to the environment. After considering the results of the analysis of the control costs per megagram reduced by these control techniques, EPA tentatively selected them as the basis for the proposed standards. Economic, energy, and nonair quality environmental impacts were then examined to determine if they would alter this selection of control techniques.

In considering the potential economic impacts of the control techniques, EPA examined regulatory alternatives that included six combinations of the control techniques for fugitive emission sources. That is, each regulatory alternative included one of the control techniques considered for each fugitive emission source. For example, Regulatory Alternative V included rupture discs on pressure relief devices, controlled degassing vents on compressor seals, caps on open-ended valves, closed purged sampling for sampling connection systems, monthly leak detection and repair programs for valves in gas/vapor and light liquid service, and dual mechanical seal systems on pumps. Regulatory Alternative VI was the most costly and had the greatest emission reducton. The regulatory alternatives are described in detail in Chapter 6 of the BID; the economic impacts of the regulatory alternatives are discussed in Chapter 9 and Appendix F of the BID.

The economic analysis shows that the only regulatory alternative which could cause a significant adverse economic impact on petroleum refineries included the use of leakless equipment on valves (Alternative VI). The analysis shows that any combination of the control techniques presented in Table 1, excluding the use of leakless equipment on valves, would not have a significant adverse economic impact on petroleum refineries. The analysis shows that the control techniques for which it was decided the costs per megagram of VOC reduced are reasonable would result in no adverse impact on profitability (decrease less than 0.5 percent), would have a potential to slightly increase the consumer price of petroleum products (0.1 percent or less), and would have no adverse impact on capital availability for construction of petroleum refineries. Since consideration of costs per megagram of emission reduction eliminated the only control technique which could have contributed to an adverse economic impact, consideration of economic factors played no further role in the selection of the basis of the proposed standards.

EPA also examined the nonair quality environmental and energy impacts of the control techniques considered for each source. Analysis of these impacts for the various regulatory alternatives are presented in Chapter 7 and Appendix F of the BID. There were no significant adverse impacts identified; therefore, the nonair quality environmental and energy impacts did not affect the decision on the basis of the proposed standards.

In summary, the most effective control techniques which were considered to have reasonable costs per megagram of VOC emissions reduced were selected as the basis of the proposed standards.

These control techniques include a monthly leak detection and repair program for pumps and valves, and control equipment for pressure relief devices, open-ended valves, sampling connection systems, and compressors. Less restrictive control techniques were not considered further because they achieved less emission reduction, and there were no cost, economic, energy, or nonair quality environmental impacts which necessitated further examination of these control techniques.

Selection of Format for the Proposed Standards

Several formats could be used to implement the control requirements selected as the basis for the proposed standards. Section 111 of the Clean Air Act requires that a standard of

performance be prescribed unless, in the judgment of the Administrator, it is not feasible to prescribe or enforce such a standard. Section 111(h) defines two conditions under which it is not feasible to prescribe or enforce a performance standard. These conditions are: (1) If the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations, or (2) if the pollutants cannot be emitted through a conveyance device. If a performance standard is not feasible to prescribe or enforce, then the Administrator may instead promulgate a design, equipment, work practice, or operational standard or combination thereof.

A performance standard allows for some flexibility because any control technique may be used if it achieves the level of emission reduction represented by the standard. However, for most refinery fugitive emission sources, it is not feasible to prescribe a performance standard. One approach to prescribing a performance standard is to limit emissions directly. Except in those cases in which standards can be set at "no detectable emissions," the only way to measure emissions from refinery fugitive emission sources, such as pumps and valves, would be to use a bagging technique for each of the sources in a process unit. The great number of sources and their dispersion over large areas would make such a requirement economically impracticalbe. Therefore, EPA has not selected this type of performance standard format in prescribing the proposed standards.

Another approach for prescribing a performance standard would be to specify a number or percent of fugitive emission sources that would be allowed to leak. This approach would be more qualitative than an approach based on quantitative emission measurements such as bagging. This format would be based on a leak frequency limit rather than an emission limit and would have some of the same benefits of flexibility. The only fugitive emission source for which a leak frequency limit would be applicable is valves because other fugitive emissions are too few in number to allow a meaningful percent to be determined. But, the variability in the percentage of valves leaking among process units and the resulting correlation to emissions precludes setting an allowable percentage of valves leaking that could be achieved by all process units within the refining industry. This variability is observed even among units in which leak detection and repair programs are being implemented. Therefore, establishing an allowable percentage of leaking valves is not practicable.

However, establishing an allowable percentage of valves leaking based on cost considerations and levels of performance is possible. If a process achieves this level of good performance, then the owner or operator may elect for the valves to comply with an alternative standard for valves. Because this approach would add flexibility to the proposed standards, the proposed standards incorporate this approach. This is discussed in more depth in *Alternative Standards for Valves* in the next section of this preamble.

Based on EPA's determination that it is infeasible to prescribe a performance standard for most fugitive sources at refineries, the alternative regulatory formats identified in Section 111(h) were considered. One possible format is an equipment standard. Equipment standards provide well-documented emission reductions. Determining compliance would require an initial check to ensure that the equipment had been installed properly and periodic checks to ensure that the equipment was continuing to operate properly. An inherent disadvantage associated with this type of format is less site-specific flexibility.

In the next section of this preamble, EPA considers emission reductions associated with equipment other than the equipment selected as the basis for the proposed standards. As a consequence, EPA is proposing to allow certain equipment as alternatives to the equipment and work practices required by the proposed standards. Alternative equipment is allowed if it provides a reduction in emissions that is at least equivalent to the reductions achieved by the equipment or work practices required by the proposed standards. In addition, owners and operators of affected facilities would have additional flexibility because they could obtain EPA's approval to employ other equivalent techniques under Section 111(h)(3) and innovative techniques under the waiver provisions of Section 111(j).

Another format is work practices. An example of this format would be a program for leak detection and repair. Inspection methods, inspection time intervals, and time allowed for repair would be defined in detailing the work practices. Compliance with a work practice standard would be determined by judging success in implementing the work practices. Recordkeeping would be needed to serve as the basis for judging this success.

Design and operational standards are other possible formats. Rather than requiring specific control equipment or work practices, a design or operational format would require that a certain design representative of a level of control be attained or that certain procedures be followed during operation of a process. For example, combustion devices may be required to be designed to achieve a specified level of control efficiency.

The proposed standards could incorporate all of the possible formats. Different formats are required for different fugitive emission sources because characteristics of the emission sources, and the available emission control techniques, and the applicability of the measurement method used for fugitive emission sources differ among the sources. In the next section, the rationale for selecting a particular format is explained for each type of fugitive emission source. For each fugitive emission source, the feasibility of prescribing or enforcing a performance standard is discussed. If a performance standard is not feasible, the rationale for selecting another format is presented.

Selection of Emission Limit, Equipment, Work Practice, Design and Operational Standards

Pressure relief devices. Rupture disks were selected as the basis for the proposed standards for gas service pressure relief devices. When the integrity of rupture disks is maintained, fugitive emissions of VOC through the relief device are eliminated. Rupture disks maintain their integrity unless an overpressure occurs. After the occurrence of an overpressure, replacement of the rupture disk once again eliminates fugitive emissions of VOC through the pressure relief device.

For control techniques that eliminate fugitive emissions, an emission limit measurement for "no detectable emissions" is feasible. An instrument reading of less than 500 parts per million by volume (ppmv) above a background concentration based on Reference Method 21 can be used to indicate whether fugitive emissions have been eliminated, that is, have "no detectable emissions." Measurement methods for determining the quantitative emission rate from pressure relief devices are not feasible because they would require bagging each piece of equipment. However, as discussed in Appendix D of the BID, Reference Method 21 does not allow quantitative measurement of emissions, but it does allow the detection of leaks of fugitive VOC

emissions from relief devices. Therefore, the proposed standard for relief devices in gas service is "no detectable emissions."

The "no detectable emission" limit would not apply to discharges through the pressure relief device during overpressure relief because the function of relief devices is to discharge process fluid, thereby reducing dangerous high pressures within the equipment. The standard would specify, however, that the relief device be returned to a state of no detectable emissions within 5 days after such a discharge. The standard would further require an annual test to verify the "no detectable emissions" status of the pressure relief devices.

A test to determine if a fugitive emission source is complying with a "no detectable emissions" requirement is a performance test. As provided in 40 CFR 60.8(f) performance tests require three separate runs, unless otherwise specified in an applicable subpart. A test to determine if a fugitive emission source is complying with a "no detectable emissions" requirement does not need three runs. Thus, performance tests to determine "no detectable emissions" would be exempted from 40 CFR 60.8(f) by the proposed standards.

Performance test requirements under 40 CFR 60.8(d) include a notification to the Administrator 30 days before each performance test. For fugitive emission sources, tests to determine "no detectable emissions" may occur throughout a year and must occur after each overpressure relief. Requiring an owner or operator to notify the Administrator as provided in 40 CFR 60.8(d) is not considered reasonable for these proposed standards. Thus, to reduce the reporting burden on industry, owners or operators of affected facilities are exempted from 40 CFR 60.8(d) by the proposed standards.

As an alternative to the use of rupture disks and other techniques that achieve the "no detectable emission" limit, EPA is proposing to allow owners or operators to vent pressure relief devices to control devices achieving the requirements presented in the *Closed vent systems and control device* portion of this section of the preamble. When venting a pressure relief device, the control device also reduces emissions of VOC that occur during overpressure relief. EPA judges that the emission reduction lost by allowing 95 percent control for fugitive emissions (rather than 100 percent control achieved by the "no detectable emission" limit) is offset by the emission reduction gained by controlling the emissions due to overpressure relief. Thus, EPA is proposing to allow the use of closed vent systems connected to a control device as an equivalent alternative to the "no detectable emission" limit.

Leakless equipment. The proposed standards would not require leakless equipment, such as sealed-bellows and diaphragm valves, canned and diaphragm pumps, and sealless compressors. This equipment is either not widely applicable to refineries, or as indicated in Table 1, the control costs per megagram of emission reduction achieved are unreasonable. However, use of leakless equipment is clearly equivalent to the proposed standards for pumps, compressors, and valves. The proposed standards would allow the use of such equipment as an alternative to the required practices.

Leakless equipment would be required to operate with "no detectable emissions" at all times when this equipment is in service. As with pressure relief devices, a performance test for "no detectable emissions" means an instrument reading of less than 500 ppmv or above a background concentration based on the measurement method of Reference Method 21. The proposed standards require that the leakless status of this equipment be verified annually and at other times if requested by EPA. In addition, the proposed standards would exempt these performance tests from 40 CFR 60.8(d) and 60.8(f) of the General Provisions.

Compressors. The basis of the proposed standards for compressors is mechanical seals with barrier fluid systems and controlled degassing vents. Emission limits for compressors have not been proposed because the application of available measurement methods would not be practicable because of technological or economic limitations. That is, bagging of compressors for emission measurement would be unreasonably expensive and impractical. Thus, EPA selected mechanical seals with barrier fluid systems and controlled degassing vents as the required equipment for compressors. The controlled degassing vents would use a closed vent system and a control device and, therefore, would be required to comply with the requirements discussed in the *Closed vent systems and control devices* portion of this section of the preamble.

EPA reviewed enclosure of the compressor seal area as an alternative to requiring seals with barrier fluid systems. If an enclosure captures all emissions from the compressor seal area, then the fugitive emissions can be captured and transported effectively to a control device by a closed vent system. The level of emission reduction achieved by this alternative is at least equivalent to the level of reduction attained by compressors that are fitted with the equipment that was selected as the basis for the proposed standards. Therefore, EPA proposes to allow enclosure of the compressor seal area and venting of fugitive emissions through a closed vent system to a control device, provided the enclosure captures all the emissions from the seal area. The closed vent system and control device would be required to comply with requirements discussed in the *Closed vent systems and control devices* portion of this section of the preamble.

Section 111(h) of the Clean Air Act requires that when equipment standards are established, requirements must also be established to ensure the proper operation and maintenance of the equipment. A pressure or level indicator on the fluid system would reveal any catastrophic failure of the seal or of the barrier fluid system. This indicator could be monitored in the control room or be equipped with an alarm to signal a failure of the system. Thus, a requirement to include an indicator to detect failure of the system is proposed to ensure the proper operation and maintenance of the mechanical seal system.

As mentioned in the *Selection of Affected Facilities* section of this preamble, there may be some cases in which seals with barrier fluid systems can not be utilized because some existing compressors can not technologically or economically be retrofitted with dual seals and barrier fluid systems. For example, use of a dual seal with barrier fluid or its equivalent could require replacement of the distance piece on a reciprocating compressor or replacement of an entire reciprocating compressor. In these situations, determination of whether installation of a dual seal and barrier fluid system or its equivalent is technologically or economically feasible can take place during the determination of whether an existing compressor will be considered reconstructed and therefore affected by the standards. If EPA determines that an existing compressor can not be technologically or economically retrofitted, then the compressor would not be required to comply with the standards.

Open-Ended Valves. The basis of the proposed standards is equipment that would effect enclosure of the open end. Open-ended valves are not designed to release fugitive emissions to a conveyance, and bagging of these sources for emission measurement

would not be economically or technologically practicable. A "no detectable emissions" standard could not be selected as the format for the proposed standard because VOC could leak through the valve seat and become trapped in the line between the open-ended valve and the enclosure. The trapped VOC could be emitted to atmosphere, even though the VOC emitted to atmosphere would be much less than the VOC emitted without the enclosure. Thus, EPA selected the use of an equipment standard for control of fugitive emissions from open-ended valves.

Enclosure of the open end can be achieved by installing a cap, plug, or a second valve. The control efficiency associated with these techniques is approximately 100 percent, except when the line is used for draining, venting, or sampling operations. Thus, EPA is proposing standards that require open-ended valves to be equipped with a cap, plug, or a second valve. If a second valve is used, the proposed standards require the upstream valve to be closed first. After the upstream valve is completely closed, the downstream valve must be closed. This operational requirement is necessary in order to prevent trapping process fluid between the two halves, which could result in a situation equivalent to the uncontrolled open-ended valve.

Sampling connection systems. Closed-purge sampling was selected as the basis for the standards for sampling connection systems. Closed-purge sampling connection systems eliminate emissions due to purging by either returning the purge material directly to the process or by collecting the purge in a collection system which is not open to the atmosphere. Generally, these sampling connection systems are not designed to release fugitive emissions to a conveyance, and bagging of these sources for emission measurement would not be economically or technologically practicable. Although closed-purge sampling effectively eliminates emissions due to purging, a "no detectable emissions" limit could not be prescribed because closed-purge systems can have detectable emissions. Thus, EPA selected closed-purge sampling as the equipment requirement for sampling connection systems.

In addition to closed-purge sampling, EPA considered closed-vent vacuum systems connected to a control device and *in-situ* sampling systems. Closed-vent vacuum systems that are connected to a control device extract the sample purge and then reduce emissions from the sample purge by transporting the VOC to the control device. *In-situ* sampling systems involve measurement or sampling of process stream conditions without extraction of the sample from the process stream. *In-situ* sampling systems, therefore, result in no emissions of VOC. If closed-vent vacuum systems are not open to the atmosphere and the control device complies with the requirements discussed in the *Closed vent systems and control devices* portion of this section of the preamble, then their reduction of VOC emissions would be equivalent to the reduction achieved by closed-purge sampling connection systems. Based on these considerations, EPA is proposing to allow closed-vent vacuum systems connected to control devices and *in-situ* sampling systems as allowable alternatives to closed-purge sampling.

Valves. Valves are generally not designed to release fugitive emissions to a conveyance, because of the large number of valves, bagging of these sources for emission measurement would not be economically or technologically practicable. As discussed in the *Selection of Format for the Proposed Standards* section of this preamble, an allowable percentage of valves leaking can not be prescribed because of process unit variability. A "no detectable emissions" limit can not be prescribed, because, with the control techniques selected as the basis for the proposed standards, valves will still occasionally leak.

Work practices consisting of periodic leak detection and repair programs were selected as the basis for the proposed standards for valves. Several factors influence the level of emission reduction that can be achieved by a leak detection and repair program. The three main factors are the monitoring interval, leak definition, and repair interval. Training and diligence of personnel conducting the program, the adequacy of repair methods attempted, and other site-specific factors may also influence the level of emission reduction achievable; however, these factors are less quantifiable. The overall emission reduction of a leak detection and repair program depends on the three main factors. Each of these three factors limits the effectiveness of the program. For example, if each of the factors selected for a leak detection and repair program represents a 90 percent effectiveness, then the overall effectiveness would be about 73 percent. Thus, the most effective definition that is reasonable for each factor should be selected.

The *monitoring interval* is the frequency at which individual component monitoring is conducted. The length of time between inspections is best determined by the rate at which new leaks occur and repaired leaks recur. More frequent inspections could then be required for sources which tend to leak more often. Available data indicate that leak recurrence is an important factor in predicting leaks from valves. That is, if a valve leaks, then it is more likely to leak than a valve that has not leaked. However, these data also show that some valves leak less frequently than others. EPA considers the annualized cost of monthly monitoring of valves that leak infrequently to be unreasonably high in comparison to the annualized cost of quarterly monitoring, considering the emission reduction achieved by monthly and quarterly monitoring. However, EPA does not consider the annualized cost of monthly monitoring of valves that leak frequently to be unreasonably high considering the emission reduction achieved by monthly monitoring of these valves. Thus, EPA is proposing that leak detection and repair programs include monthly monitoring for valves, except that quarterly monitoring would be allowed for valves which have been found not to leak for two successive months (monthly/quarterly monitoring).

Some valves are difficult to monitor because access to the valve is restricted. Difficult-to-monitor valves can be eliminated in new facilities but cannot be eliminated in existing facilities. Therefore, for facilities that become affected by a modification or reconstruction, EPA is proposing an annual leak detection and repair program for valves which are difficult to monitor. However, for new affected facilities, all valves would be subject to the proposed monthly leak detection and repair program. Valves which are difficult to monitor are defined as valves which would require elevating the monitoring personnel more than two meters above any readily available support surface. This means that ladders must be used, if needed, to elevate monitoring personnel.

In addition to valves that are difficult to monitor, some valves are unsafe to monitor because monitoring personnel would be subjected to imminent hazards. Valves which are unsafe to monitor cannot be eliminated in new or existing facilities. The proposed standards would allow an owner or operator with valves that are unsafe to monitor to develop a special leak detection and repair program. These special programs would conform with

the routine monitoring requirements of the proposed standards as much as possible, but would allow deviation from a routine monitoring so that monitoring would not occur under unsafe conditions. Valves which are unsafe to monitor are defined as those valves which could, based on the judgment of the owner or operator, expose monitoring personnel to imminent hazards from temperature, pressure, or explosive process conditions.

The *leak definition* is the instrument reading observed during monitoring that defines which sources require repair. As discussed in Appendix D of the BID, the proposed standards would require monitoring to follow Reference Method 21. The best leak definition would be the one that achieves the most emission reduction at reasonable costs. The emission reduction achieved would increase as the leak definition decreased, due to the increasing number of sources that would be found leaking and, therefore, repaired. As a matter of practical consideration, most commonly available hydrocarbon detectors that are considered intrinsically safe have a maximum reading of 10,000 ppm. A leak definition higher than 10,000 ppm, such as 20,000 ppm, could be selected (dilution probes could be used with the portable detectors); however, there would be less emission reduction than with the 10,000 ppm definition and no substantial associated cost savings. Consequently, there was no basis for selecting a leak definition greater than 10,000 ppm. A leak definition lower than 10,000 ppm may be practicable in the sense that leaks can be repaired to levels less than 10,000 ppm. However, EPA is unable to conclude that a leak definition lower than 10,000 ppm is practicable. Because the 10,000 ppm leak definition would achieve emission reductions at reasonable costs and safe available hydrocarbon detectors can accurately read 10,000 ppm, the 10,000 ppm number was selected as the leak definition for valves. This definition was also considered appropriate for pumps. The same portable monitor used for valves would be used for pumps, and consideration of other relevent factors did not indicate that the 10,000 ppm definition should be different for these sources.

The *repair interval* is the length of time allowed between the detection of a leaking source and repair of the source. To provide the maximum effectiveness of the leak detection and repair program, the repair interval should be selected to require expeditious reduction of emissions but allow the owner or operator sufficient time to maintain flexibility in the refinery's overall maintenance schedule.

The length of the repair interval would affect emission reductions achievable by the leak detection and repair program, because leaking sources would be allowed to continue to leak for a given length of time. Repair intervals of 1, 5, 10, 15, 30, and 45 days were evaluated. The effect on the emission reduction potential is proportional to the number of days the source is allowed to leak between detection and repair.

A repair interval of one day could cause severe problems in coordinating activities of personnel involved in leak detection and leak repair, and in some instances would not be technically feasible. A repair interval of one day would essentially require repair of each component as soon as the leak was discovered. Even though some owners or operators may have repair personnel assigned to the leak detection team, only simple field repair could normally be attempted within 1 day.

An initial attempt at repair of a leaking source should be accomplished as soon as practicable after detection of the leak. Most repairs can be done quickly. A 5-day period provides sufficient time to schedule simple field repair. Attempting to repair the leak within 5 days will help maintenance personnel to identify the leaks that can not be repaired with simple field repair or without shutdown of the affected facility.

Valves that are not repairable by simple field repair may require removal from the process for repair. Even repair intervals of 5 and 10 days could cause scheduling problems is repairing these valves. A 15-day interval provides time for isolating pieces of leaking equipment when equipment isolation is needed for repair beyond simple field repairs. A 15-day interval provides the owner or operator with sufficient time for determining precisely which spare parts are needed and provides sufficient time for flexibility in scheduling repair for these valves. In addition, a 15-day interval provides time for better determination of methods for isolating pieces of leaking equipment when equipment isolation is needed for repair beyond simple field repairs.

In general, a 5-day repair interval provides sufficient time to schedule simple field repair. A 15-day repair interval allows more efficient handling of more complex repair tasks while maintaining an effective reduction in fugitive emissions. A repair interval of 30 or 45 days provides less effective reduction in emissions and does not substantially improve the efficiency in handling repair tasks. Thus, the proposed standards require an initial attempt to repair a leaking valve within 5 days and complete repair, except as discussed below, within 15 days.

Delay of repair beyond 15 days would be allowed for leaks that could not be repaired without shutting down an affected facility. In general, these leaks would have to be repaired at the next scheduled facility shutdown. Spare parts for valves can usually be stocked such that all leaks that could not be repaired without shutting down the affected facility could be repaired during the shutdown. Spare parts include packing gland bolts and valve packing material. In a few instances, replacement of the entire valve assembly would be required. EPA is proposing to allow delay of repair beyond an affected facility shutdown for valves which require replacement of the entire valve assembly, provided the owner or operator can demonstrate that sufficient stock of spare valve assemblies had been maintained before the stock had been depleted.

Alternative Standards for Valves. The emission reduction and annualized cost of the proposed leak detection and repair program depend in part on the number of leaking valves that are detected during monitoring. If very few valve leaks are detected in an affected facility, then the amount of VOC that could be reduced by the proposed program for valves is much smaller than the amount that could be reduced in a facility having more leaks. Additionally, the annualized cost of the leak detection and repair program would be larger for an affected facility with fewer leaks than in an affected facility with more leaks, because the annualized cost includes a recovery credit based on the amount of VOC reduced by the program. Thus, the annualized cost per megagram of VOC emission reduction for the proposed leak detection and repair program varies with the number of valves which leak within an affected facility.

For example, a monthly leak detection and repair program for valves in light liquid service and valves in gas/vapor service results in an annualized credit of about $2,100 and achieves an annual emission reduction of 36.6 Mg for a typical small refinery process unit. In contrast, for a small process unit with 2.0 percent of the valves leaking on the average, a monthly leak detection and repair program results in an annualized cost of $3,500 and achieves an annual emission reduction of 4.9 Mg. For a small process unit with 0.5 percent of

the valves leaking on the average, a monthly leak detection and repair program results in an annualized cost of $4,200 and achieves an annual emission reduction of about 0.4 Mg.

There is no precise breakpoint in the annualized cost and emission reduction relationship. However, EPA judges that the emission reduction and annualized cost relationship is unreasonably high for process units having on the average fewer than 1.0 percent of valves leaking. Based on this judgment, an allowable percent of valves leaking was determined that reflects the average of 1.0 percent of valves leaking, as discussed below.

An allowable percent of valves leaking was selected that included the variability inherent in leak detection of valves. The variability in leak detection of valves can be characterized as a binominal distribution around the average percent of valves leaking. Inclusion of the variability in leak detection of valves is accomplished by straightforward statistical techniques based on the binominal distribution. An allowable percent of valves leaking of 2.0 percent, to be achieved at any point in time, would provide an owner or operator a risk of about 5 percent that greater than 2.0 percent of valves would be determined leaking when the average of 1.0 percent was actually being achieved. Based on these considerations, EPA considers an allowable percent of valves leaking of 2.0 percent to represent an average of 1.0 percent of valves leaking.

EPA is proposing two alternative standards which would exempt valves within process units from the required (monthly/quarterly monitoring) leak detection and repair program. Owners or operators of affected facilities may identify and elect to achieve either of the alternative standards. The alternative standards would allow owners or operators to tailor fugitive emissions control programs to their own operations. An owner or operator would report which alternative standard he or she had identified and elected to achieve.

The first alternative standard would limit the maximum percent of valves leaking within an affected facility to 2.0 percent. This type of standard would provide the flexibility of a performance standard. As previously pointed out in the *Selection of Format for the Proposed Standards* section of this preamble, an industry-wide performance standard which could be achieved at all facilities was not possible for valves. This was due to the variability in valve leak frequency and variability in the ability of a leak detection and repair program to reduce these leaks among all affected facilities within the industry. However, this alternative standard would allow any affected facility the option of complying with an allowable percent of valves leaking for a particular affected facility. Choosing this alternative standard would allow for the possibility of different leak detection and repair programs and substitution of engineering controls at the discretion of the owner or operator. This alternative standard would also eliminate a large part of the recordkeeping associated with the monthly/quarterly leak detection and repair program for valves.

Performance tests as specified in 40 CFR 60.8(f) require three runs. Three runs for performance tests to determine the percent of valves leaking are unnecessary. Thus, performance tests are exempt from § 60.8(f) in the proposed standards. However, this alternative standard would require a minimum of one performance test per year. Additional performance tests could be requested by EPA. If the results of a performance test showed that greater than 2.0 percent of the valves leak, the owner or operator could be cited for violation of the standards.

In certain circumstances, an owner or operator may want to request a waiver of future tests as provided in the General Provisions of 40 CFR Part 60. This would provide flexibility for owners and operators of petroleum refineries where, for whatever reason, routine leak detection and repair is not needed to effectively control emissions. This would include refineries which use superior equipment either due to the value or hazardous nature of the product, refineries which have effective occupational safety and health programs, or refineries which simply do not leak for unexplained reasons. Based on performance tests that demonstrate the achievability of the 2.0 percent standard and information that indicates that this standard would be achieved on a continuing basis, EPA could waive the annual performance tests.

The second alternative standard would allow the use of skip-period leak detection for valves. Under skip-period leak detection, an owner or operator could skip from routine leak detection for valves to less frequent leak detection. This skip-period leak detection program would require that a performance level of 2.0 percent be achieved on a continuous basis with more than 95 percent certainty. An owner or operator would choose one of two skip-period leak detection programs for valves and then implement that program. The first skip-period leak detection program could be used when fewer than 2.0 percent of the valves had been leaking for two consecutive quarterly leak detection periods. The first skip-period leak detection program would allow an owner or operator to skip every other quarterly leak detection period; that is, leak detection can be performed semi-annually. Under the second skip-period leak detection program, if fewer than 2.0 percent of the valves had been leaking for five consecutive quarterly leak detection periods, the owner or operator may skip three quarterly leak detection periods; that is, leak detection can be performed annually. When more than 2.0 percent of valves are found to leak monthly/quarterly leak detection would be required to be resumed.

Pumps. As with some of the previously discussed fugitive emission sources, pumps are generally not designed to release fugitive emissions to a conveyance. Because of the difficulty of routinely bagging pumps, bagging of these sources for emission measurement would not be economically or technologically practicable. Even though Reference Method 21 can be used to detect leaks from pumps, the number of pumps and the variability in the number of pumps leaking within process units does not allow the establishment of a performance standard. A "no detectable emissions" limit can not be prescribed because, with the control technique specified as the basis for the proposed standards, pumps can still leak.

In the analysis for the basis for the proposed standards, EPA selected a work practice consisting of periodic leak detection and repair program for pumps. As with valves, the effectiveness of the leak detection and repair program for pumps is limited by the selection of the monitoring interval, leak definition, and repair interval. The same leak definition and repair interval selected for valves was selected for pumps for the reasons discussed previously. Monthly monitoring was selected as the monitoring interval for pumps based on cost considerations, as discussed in the *Selection of Basis for the Proposed Standards* section of this preamble. One month provides the most effective leak detection and repair program for pumps without imposing difficulties or unreasonable costs in implementing the program.

Delay of repair beyond 15 days would be allowed for leaks that could not be repaired without shutting down the affected facility. These leaks would have to be repaired as soon as practicable, but not later than by the end of the next facility shutdown. Spare parts are generally stocked by refineries

in order to provide expeditious repair of pump seal failures. Sufficient stocks of spare parts can be maintained to complete pump seal repair during scheduled facility shutdown without imposing an unreasonable burden on industry. Therefore, delay beyond a shutdown is not allowed.

Several types of pumps with ancillary equipment can achieve emission reductions of VOC at least equivalent to that achieved by a monthly leak detection and repair program for pumps. These include dual mechanical seal systems that utilize a barrier fluid between the seals, enclosure of the pump seal area, and sealess pumps. If the barrier fluid in a dual seal system is maintained at a pressure greater than the pump stuffing box pressure, any leakage between the seals would be from the barrier fluid to the process fluid, so no process fluid would be emitted to the atmosphere. If the pump stuffing box pressure is greater than the barrier fluid pressure (for example, tandem seals), the barrier fluid collects the leakage from the inner seal; the process fluid collected by the barrier fluid is controlled by either (1) connection the barrier fluid degassing system to a control device with a closed vent system, or (2) by returning the barrier fluid to the process stream. Because these duel mechanical seal systems are at least equivalent to a monthly leak detection and repair for pumps, they have been exempted from the monthly monitoring provisions of the proposed standards.

Section 111(h) of the Clean Air Act requires that when equipment standards, such as dual mechanical seal systems, are established, requirements must also be established to assure the proper operation and maintenance of the equipment. A pressure of level indicator on the barrier fluid system would reveal any catastrophic failure of the inner or outer seal, or of the barrier fluid system. This indicator could be monitored in the control room or equipped with an alarm to signal a failure of the system. Thus, EPA is proposing these requirements to assure the proper operation and maintenance of the dual mechanical seal system.

Sealless pumps, such as diaphragm or canned pumps, do not have a potential leak area and, therefore, are at least equivalent to monthly leak detection and repair and dual seal systems. Thus, any equipment that complies with a "no detectable emissions" limit is equivalent to the monthly leak detection and repair program required in the proposed standards. As with other leakless equipment, the proposed standard requires an initial performance test, using the procedures specified in Reference Method 21, to verify that the piece of leakless equipment meets the "no detectable emissions" limit, and annual rechecks to ensure continued operation with "no detectable emissions."

In many cases, the seal area of a pump could be completely enclosed, and this enclosed area could be connected to a control device with a closed vent system. The control efficiency of this arrangement is dependent on the control efficiency of the combustion or vapor recovery system. The closed vent system could require a flow-inducing device to transport emissions from the seal area to the control device. However, some owners or operators may decide that this approach is preferable to leak detection and repair. Enclosing the seal area and venting the captured emissions to a control device by means of a closed vent system is a reasonable alternative because this system would be at least as effective as a monthly leak detection and repair program. Therefore, the EPA is proposing to allow pumps to be equipped with enclosed seal areas that are connected to a control device by a closed vent system.

Closed vent systems and control devices. Control devices would be used to reduce VOC captured and transported through closed vent systems. These control devices would be existing and would be designed to dispose of organic vapor streams from other sources in the plant. Because the streams from the closed vent systems will usually be low-flow or intermittent in comparison to streams from other sources, emissions in closed vent streams will often contribute a very small and varying portion of the total organic vapor stream going to the control device. Measurement techniques that reflect the effectiveness of these control devices to reduce fugitive emissions of VOC are limited. Because these measurements would require elaborate and costly material balancing of the VOC entering the control devices, it is not economically practicable to measure the emissions from these control devices. For this reason an emission standard is not proposed for control devices used to reduce VOC that are captured and transported by closed vent systems.

Control devices were selected as part of the best technological system of emission reduction for some fugitive emission sources (such as compressors) and are part of alternative approaches to achieving compliance with the standards for other fugitive emission sources (such as closed-vent vacuum systems connected to a control device). These control devices would already be in place in existing refineries and therefore would not be designed solely to reduce VOC streams from fugitive emission sources. Flares are almost always present in refineries. Enclosed combustion devices and vapor recovery systems are present in most, if not all, refineries. These existing control devices provide varying degrees of emission reduction, and, therefore, selecting standards of performance for these devices may not reflect the emission reduction capability of new control devices, nor the capability of devices specifically designed for control of fugitive emission sources.

Flares are used in petroleum refineries mainly as a means of handling emergency releases of combustible material from process units within the refinery. Flares also can be used in petroleum refineries to combust certain waste gas streams that might otherwise pose a safety problem if allowed to vent uncontrolled into the ambient air. EPA has examined recent flare studies in an effort to select a representative destruction efficiency estimate for calculating emission impacts of flares. The number of flare studies is limited, and no data specifically address conditions present within vent streams of fugitive emissions from petroleum refining process unit. Five flares studies provide information on flare gas composition, flowrate, and destruction efficiency. Each study can be found in complete form in the docket. In recent tests, smokeless steam-assisted elevated flares and smokeless elevated flares with no assist were found to be as efficient as other combustion devices (i.e., 98 percent efficient) in destroying VOC over a broad range of operating conditions if the heat content of the flared gas was maintained above 7.45 MJ/scm (200 Btu/scf), or 11.2 MJ/scm (300 Btu/scf), depending upon flare design, and the exit velocity of the flare is 22 m/sec (73 ft/sec) or less.

According to the current knowledge of flare design, the best available flare design or state-of-the-art flare design is the smokeless flare. The smokeless flare inducts combustion air into the flame by steam injection. The injection of steam increases the mixing of VOC within the flame zone thereby increasing destruction of the compounds. Smoking flares are environmentally less desireable because they emit particulates.

There are a number of techniques currently in use within industry which

help flares achieve smokeless operation. One technique involves the use of staged elevated flare systems, where a small diameter flare is operated in tandem with a large diameter flare. The system is designed such that the small flare takes the continuous low flow releases and the larger flare accepts emergency releases. A second technique involves the use of a small, separate conveyance line to the flare tip in order to maintain a high exit velocity for the continuous low flow, low pressure, gas flow. A third technique, sometimes used in conjuction with either of the above techniques, involves the use of continuous flare gas recovery. In the third technique, a compressor is used to recover the continuously generated flare gas "base load." The compressor is sized to handle the "base load," and any excess gas is flared. These techniques can be used to help provide smokeless operation of a flare which is used to reduce fugitive emissions of VOC that are captured and transported by closed vent systems.

EPA considered the available control devices and their VOC reduction efficiency before selecting the proposed requirements for these devices. The flares in operation within petroleum refineries are smokeless flares. Based on the available studies and a comparison of vent stream characteristics between these studies and fugitive emission sources, EPA believes that the average destruction efficiency of an in-place petroleum refinery smokeless flare would be about 98 percent destruction efficiency. Most enclosed combustion devices are designed and can be operated to achieve VOC emission reductions of at least 98 percent. Vapor recovery systems are available which are designed and can be operated to achieve VOC emission reductions of at least 95 percent. EPA considers control devices achieving 98 percent emission reduction too costly to add to a process unit solely to control fugitive emissions in light of the presence of control devices that can achieve 95 percent control. Therefore, EPA selected a VOC reduction efficiency of 95 percent for control devices used to reduce VOC's from fugitive emission sources.

EPA selected design and operational requirements for flares, enclosed combustion devices, and vapor recovery systems used to reduce VOC's from fugitive emission sources. These requirements reflect application of the best technological system of emission reduction for these control devices. The design and operation requirements for flares, discussed above, require smokeless operation and the presence of a flame. The presence of a flame can be ensured by monitoring the flare's pilot light with a thermocouple or some other heat sensor connected to an alarm. Smokeless oepration of the flare is ensured through visible emission requirements. The proposed standards would limit visible emissions from a flare to less than 5 minutes in any 2-hour period as determined by Reference method 22. (Revisions to Reference Method 22 wil be proposed soon in the **Federal Register** to broaden its applicability to flares. Comments on the use of Reference Method 22 for flares will be requested at that time.) The visible emission requirement is reasonable because may refineries currently comply with State limits similar to this requirement. In addition, steam assisted flares would have to be operated with exit velocities less than 22 m/sec combusting gases with heat contents greater than 11.2 MJ/scm. Flares operated without assist would have to be operated with exit velocities less than 22 m/sec combusting gases with heat contents greater than 7.4 MJ/scm. Because enclosed combustion devices and vapor recovery systems exist that provide at least 95 percent emission reduction, a 95 percent emission reduction design requrement is proposed for these control devices. For enclosed combustion devices that do not use catalysts to aid in combustion of organic vapor streams, provisions for a minimum vapor residence time of 0.75 seconds at a minimum temperature of 816° C will be considered equivalent to at least a 95 percent emission reduction efficiency.

Miscellaneous. Flanges in all services, pressure relief devices in liquid service, and all componets in "heavy liquid" (VOC fluids of which less than 10 percent evaporate at a temperature of 150° C) VOC service would be excluded from the routine monitoring and inspection requirements. However, if leaks are detected from these sources, the same allowable repair interval which applies to compressors, pumps, and valves would apply. These sources would be excluded from routine monitoring on the basis tof data from EPA testing in petroleum refineries. Flanges in refineries have very low emission rates; and although they represent 69 percent of the total number of VOC sources in refineries, their total contribution to overall emissions is about 5.2 percent. In EPA testing of fugitive emission sources in refineries, pressure relief devices in liquid VOC service also exhibited very low emission rates. These sources contribute only 0.2 percent of all emissions from refineries. Components in "heavy liquid" VOC service have emission rates that are much lower than "light liquid" or gas service components. Since all three of these types of sources contibute a very small portion of overall emissions, applying the technology selected as BDT would result in an exorbitant cost per megagram; therefore, including them in the monitoring and equipment requrements was not considered reasonable.

Also excluded would be equipment operating under a vacuum because leaks to atmosphere would not occure while the equipment is operated at subatmospheric internal pressures.

Selection of Recordkeeping and Reporting Requirements

Recordkeeping would be required by the proposed standards to document compliance with: (1) Work practice standards, (2) equipment standards. (3) design standards. (4) emission standards, and (5) operationtional standards. Review of records would provide information for plant personnel and enforcement personnel to assess implementation of the proposed standards. Compliance with the proposed standards would be determined by inspection and review of records.

Three recordkeeping alternatives were considered in evaluating the amount of recorded information needed to assess compliance with the proposed standard.

The first alternative would require no formal recordkeeping. If recorded documentation of the proposed leak detection and repair program were not required; no mechanism would be provided for checking the thoroughness of efforts to reduce fugitive emissions. Many owners or operators would institute recordkeeping requirements to manage the efforts of their plant personnel. However, some owners or operators may not institute such programs.

The second alternative would require recordkeeping to document results of the leak detection and repair program and information relating to equipment specifications and design standards. Information would be recorded in sufficient detail to enable owners or operators to ensure that their emission reduction programs are being implemented effectively and to demonstrate compliance with the proposed standards. This alternative would require the maintenance of quantitative records of repaired and unrepaired leaking components. This alternative would require only that

amount of records necessary to manage implementation of the required programs and to ensure the effective implementation of the proposed standards.

The third alternative would require recordkeeping of all the information generated by the proposed standards. This information would include, for example, the leak rate (ppmv) detected for all components monitored at a given facility. The usefulness of this information for managing implementation of the required programs or for ensuring the effective implementation and maintenance of the proposed standards is unclear.

The second alternative was selected as the basis for the recordkeeping requirements of the proposed standards. As a consequence, general information pertaining to the leak detection and repair would be recorded. Each valve found to leak during the first month of a quarter would be marked with a readily visible, weatherproof identification. Each pump found to be leaking during a monthly monitoring would also be identified. The identification could be a tag attached to the valve or pump or a number designation permanently marked on the valve or pump. The identification could be removed after a valve is repaired and found not to leak for the next two successive months and after a pump is repaired.

A log would be maintained to record the efforts by an owner or operator pertaining to the leak detection and repair program. The log would contain the instrument and operator identification numbers, the leaking source identification number, the date of detection of the leaking source, the date of the first attempt to repair the leaking source, repair methods applied to repair the source, and the date of final repair. The log would be kept for 2 years following the survey. If the leaking component could not be repaired within 15 days, the reasons for unsuccessful repair and the date of anticipated successful repair would be recorded on the leak report form. Once the leaking source was successfully repaired, the date of repair would be recorded on the leak report form. These records would be needed to provide the information necessary to allow the owner or operator to evaluate the effectiveness of repair efforts and to allow enforcement personnel to assess compliance with the work practice standards.

For equipment specifications, records would be maintained of the dates of installation, start-up, equipment repair, and equipment modifications. The dates and descriptions of any control equipment failures, including times when the pilot light of a flare is extinquished, would also be recorded. These records would be needed to provide information necessary to allow endorcement personnel to assess the effectiveness of implementation and maintenance of equipment standards. For design standards, records would be maintained of the location and type of equipment to which the standards apply. As an example, if a combustion source is used as a VOC emission control device, then the design fuel and air usage rates, the firebox volume, and the average firebox temperature and other design specifications would be recorded.

Reporting was considered for the proposed standards. Three alternatives were considered in evaluating the reporting information needed to assess compliance with the proposed standards. These alternatives represent varying levels of enforcement monitoring of the proposed standards. Enforcement personnel would review the reports submitted by industry personnel on the status of implementing the proposed standards. Review of reports reduces the need for in-plant inspections.

The first alternative would require no formal reporting of compliance with the proposed standards other than notifications of construction, anticipated startup and actual startup, and an intention to comply with one of the alternative standards discussed in this preamble. This alternative would not provide a mechanism for checking the thoroughness of the industry's efforts to reduce fugitive emissions of VOC. Thus, compliance with the proposed standards would be assessed through in-plant inspections.

The second reporting alternative would require the submittal of information in sufficient detail to ensure the implementation and maintenance of the proposed standards. These requirements would stipulate the submittal of quarterly reports. Included in the reports would be a minimum summary of information on the leaking components which had been detected during the quarter. This summary of information would most likely contain less information than that which a plant manager would desire to be recorded to ensure effective emission reduction. This requirement would provide enforcement personnel with an overview of the repair of leaking components. A statement signed by the plant owner or operator attesting to the validity of the results of the monitoring surveys and instrument calibration procedures would allow enforcement personnel to assess the compliance of facilities with the work practice standards. The report would also attest to the proper application and operation of the equipment required by the proposed standards.

The third reporting alternative would require the submittal of all the information obtained while conducting leak detection and repair programs. This information would include the information reported in the second alternative and, additionally, comprehensive information on all tested components. This reporting alternative would necessitate the reporting of all information included in the recordkeeping requirements and would require more resources than the second alternative.

The first alternative was selected as the reporting requirement for the proposed standards. This alternative provides no routine reporting; therefore, compliance would be assessed through inspection of plant records and in-plant testing. A State or local agency delegated the responsibility for enforcement of the proposed standards might implement the second alternative level of reporting to facilitate enforcement of the standard; however, this would not be required by the proposed standard.

The reporting requirements of the General Provisions of Subpart A of 40 CFR Part 60, the requirements for notification of intention to comply with an alternative standard, and the reports necessary for determination of equivalence of alternative means of emission limitation would apply.

The Paperwork Reduction Act (PRA) of 1980 (Pub. L. 96-511) requires clearance from the Office of Management and Budget (OMB) of reporting and recordkeeping requirements that qualify as an "information collection request" under the PRA. OMB is currently clearing information collection requests for a period of 2 years. For the purposes of OMB's review, an analysis of the burden associated with the reporting and recordkeeping requirements of this regulation has been made. During the first 2 years of this regulation, the average annual burden of the reporting and recordkeeping requirements would be about 12 person-years, based on an average of 56 respondents per year.

Equivalence of Alternative Means of Emission Limitation

Under the provisions of Section 111(h) of the Clean Air Act, if the Administrator establishes work practices, equipment, design or operational standards, then the Administrator must allow the use of

alternative means of emission limitations if they achieve a reduction in air pollutants equivalent to that achieved under requirements of a standard of performance. Sufficient data would be required to show equivalency, and a public hearing would be required.

Individual owners or operators could request alternatives for specific requirements, such as the proposed equipment and the proposed leak detection and repair program. Sufficient information would have to be collected by a facility to demonstrate that the alternative control techniques would be equivalent to the control techniques required by the proposed standard. This information would then be submitted to EPA in a request for a determination of equivalence. If the Administrator does not deny an equivalency request, a public hearing notice would be published in the **Federal Register.**

After public notice and opportunity for public hearing, the Administrator would determine the equivalence of an alternative means of emission limitation and would publish his or her determination in the **Federal Register.**

Public Hearing

A public hearing will be held to discuss these proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the ADDRESSES section of this preamble and should refer to docket number A–80–44.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see ADDRESSES section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow members of the public and industries involved to identify and locate documents so they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous

As prescribed by Section 111 of the Clean Air Act, establishment of standards of performance for the petroleum refining industry was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that sources within this industry contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. EPA welcomes comments on all aspects of the proposed regulations, including economic and technological issues. This regulation will be reviewed 4 years from the date of promulgation. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and the reporting requirements.

"Major Rule" Determination. Under Executive Order 12291, the Administrator is required to judge whether a regulation is a "major rule" and, therefore, subject to certain requirements of the Order. The Administrator has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." Fifth-year annualized costs of the proposed standards would be as much as $8.2 million for the 282 newly constructed, modified, and reconstructerd production facilities projected that could be affected by the standards during the first 5 years. Significant price increases are not expected to result from implementation of these proposed standards because the annualized cost is a small fraction (0.1 percent or less) of the yearly revenue expected for the new, modified, and reconstructed units affected during the 5-year period. The Administrator has also concluded that this rule is not "major" under any of the criteria established in the Executive Order. The Administrator has concluded, therefore, that the proposed regulation is not a "major rule" under Executive Order 12291.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Regulatory Flexibility Analysis Certification. The Regulatory Flexibility Act of 1980 requires that adverse effects of all Federal regulations upon small businesses be identified. According to current Small Business Administration guidelines, a small business in the petroleum refining industry is one that has 1,500 employees or fewer. Currently, about as many as one-third of existing refineries employ fewer than 1,500 people. A reason for this high percentage is Department of Energy (DOE) subsidies that promoted their growth. These subsidies have been discontinued with decontrol of crude oil prices, and relatively little new unit construction will occur at these refineries. Since Section 111 of the Clean Air Act standards applies only to newly constructed, modified, and reconstructed production facilities, few of these small refineries are expected to be subject to the proposed standards. Even if facilities at small refineries do become subject to the proposed standards, none will be adversely affected. This conclusion is based on the fact that, in doing the economic analysis for this proposal, the price increase and profitability impacts have been estimated from the perspective of the smaller refinery units in operation. Therefore, the finding that the annualized cost of the proposed standards would be 0.1 percent or less of the yearly revenue expected for units affected by the proposed standards accurately reflects the impacts for small refiners.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

Dated: December 27, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

PART 60—[AMENDED]

It is proposed that 40 CFR Part 60 be amended by adding a new subpart as follows:

Subpart GGG—Standards of Performance for Fugitive Emission Sources of VOC in Petroleum Refineries

Sec.

60.590 Applicability and designation of affected facility.
60.591 Definitions.
60.592–1 Standards: General.
60.592–2 Standards: Pumps in light liquid service.
60.592–3 Standards: Compressors.
60.592–4 Standards: Pressure relief devices in gas/vapor service.
60.592–5 Standards: Sampling connection systems.
60.592–6 Standards: Open-ended valves or lines.
60.592–7 Standards: Valves in gas/vapor service and valves in light liquid service.
60.592–8 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.
60.592–9 Standards: Delay of repair.
60.592–10 Standards: Closed vent systems and control devices.
60.593–1 Alternative standards for valves—allowable percentage of valves leaking.
60.593–2 Alternative standards for valves—skip period leak detection and repair.
60.594 Equivalence of a means of emission limitation.
60.595 Test methods and procedures.
60.596 Recordkeeping requirements.
60.597 Reporting requirements.

Authority: Secs. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart GGG—Standards of Performance for Fugitive Emission Sources of VOC in Petroleum Refineries

§60.590 Applicability and designation of affected facility.

(a)(1) The provisions of this subpart apply to affected facilities in petroleum refineries.

(2) A compressor is an affected facility.

(3) The group of all fugitive emission sources within a process unit is an affected facility.

(b) Any affected facility under paragraph (a) of this section that commences construction or modification after January 4, 1983, would be subject to the requirements of this subpart.

(c) Addition or replacement of fugitive emission sources for the purpose of process improvement which is accomplished without a capital expenditure shall not by itself be considered a modification under this subpart.

(d)(1) Affected facilities covered by Subpart VV or Subpart KKK of 40 CFR Part 60 and affected facilities producing natural gasoline from natural gas are excluded from this subpart.

(2) If a fugitive emission source is subject to the provisions of 40 CFR Part 61 Subpart J and 40 CFR Part 60 Subpart GGG, the source will only be required to comply with the provisions of 40 CFR Part 61 Subpart J.

§60.591 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act or in Subpart A of Part 60, and the following terms shall have the specific meanings given them.

"Closed Vent System" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow inducing devices that transport gas or vapor from a compressor or a fugitive emission source to a control device.

"Connector" means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment.

"Control Device" means an enclosed combustion device, vapor recovery system, or flare.

"First Attempt at Repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to atmosphere using best practices.

"Flare" means a single burner tip elevated above ground level used to burn vent gases in essentially a diffusion flame.

"Fugitive Emission Source" means each valve, pump, pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service.

"In Gas/Vapor Service" means that a compressor or a fugitive emission source contains process fluid that is in the gaseous state at operating conditions.

"In Light Liquid Service" means that a fugitive emission source contains a liquid that meets the conditions specified in § 60.595(e).

"In-situ sampling systems" means nonextractive samplers or in-line samplers.

"Open-Ended Valve or Line" means any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side that can be open to the atmosphere, either directly or through open piping.

"Petroleum Refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through the distillation of petroleum, or through the redistillation, cracking, or reforming of unfinished petroleum derivatives.

"Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

"Pressure Release" means the emission of materials from processes resulting from the system pressure being greater than the set pressure of the pressure relief device.

"Process Improvement" means routine changes made for safety and occupational health requirements, for energy savings, for better utility, for ease of maintenance and operation, for correction of design deficiencies, for bottleneck removal, for changing product requirements, or for environmental control.

"Process Unit" means equipment assembled to produce intermediate or final products from petroleum, unfinished petroleum derivatives, or other intermediates; a process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product.

"Quarter" means a 3-month period; the first quarter concludes on the last day of the last full month during the 180 days following initial startup.

"Repaired" means that a fugitive emissions source is adjusted or otherwise altered in order to reduce fugitive emissions below 10,000 ppm, as provided in §§ 60.592–2(c)(1), –7(d)(1), –8(c)(1); or below the leak level as defined in §§ 60.592–2(d)(6)(i) and –3(f).

"Sensor" means a device that measures a physical quantity or the change in a physical quantity such as temperature, pressure, flow rate, or pH.

"In Vacuum Service" means that a fugitive emission source is operating at an internal pressure which is at least 5kPa below ambient pressure.

"Volatile Organic Compound (VOC)" means any organic compound which participates in atmospheric photochemical reactions. An organic compound participates in atmospheric reactions unless the Administrator determines that it does not.

"In VOC Service" means that a compressor or a fugitive emission source contains or contacts a process fluid that is at least 10 percent VOC by weight as determined according to the provisions of § 60.595.

§ 60.592–1 Standards: General.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements of § 60.592–1 to § 60.592–10 as soon as practicable, but not later than 180 days after initial startup.

(b) Compliance with § 60.592–1 to § 60.592–10 will be determined by review of records, review of performance test results, and inspection

using the methods and procedures specified in § 60.595.

(c)(1) A determination of equivalence of alternative means of emission limitation to the requirements of §§ 60.592–2, –3, –5, –6, –7, –8, and –10 may be requested as provided in § 60.594.

(2) If the Administrator determines that a means of emission limitation is at least equivalent to the requirements of §§ 60.592–2, –3, –5, –6, –7, –8, or –10 the requirements of that determination will apply.

(d) Fugitive emission sources that are in vacuum service may be excluded from the requirements of §60.592–1 to § 60.592–10 if they are identified as required in § 60.596(e)(4).

§ 60.592–2 Standards: Pumps in light liquid service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in § 60.595(b), expect as provded in § 60.592–1(c) and §§ 60.592–2 (d), (e), and (f).

(2) Each pump shall be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected, or

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected except as provided in § 60.592–9.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(3) If repair requires that the pump be equipped with a dual mechanical seal system that includes a barrier fluid system, then repair shall be completed no later than 6 months after the leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of § 60.592–2(a) provided the following requirements are met:

(1) Each dual mechanical seal system is:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed vent system to a control device as described to § 60.592–10; or

(iii) Equipped with a system that purges the barrier fluid into a process stream with no VOC emission to atmosphere.

(2) The barrier fluid is not in light liquid service or gas/vapor service or is not in VOC service.

(3) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump is checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seal.

(5)(i) Each sensor as described in § 60.592–2(d)(3) is checked daily or is equipped with an audible alarm, and

(ii) Based on design considerations and operating experience, the owner or operator shall demonstrate a criterion that indicates failure of the seal system, the barrier fluid system, or both as determined by the owner or operator for each sensor.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected except as provided in § 60.592–9.

(iii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) Any pump that is designated, as described in § 60.596(e)(1), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of §§ 60.592–2(a), (c), and (d) if the pump:

(1) Has no externally actuated shaft penetrating the pump housing,

(2) Is operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the methods specified in § 60.595(c), and

(3) Is tested for compliance with § 60.592—2(e)(2) initially, annually, and at other times requested by the Administrator.

(f) If any pump is equipped with a closed vent system capable of capturing and transporting any leakage from the seal or seals to a control device as described in § 60.592–10, it is exempt from the §§ 60.592–2(a)–(e).

§ 60.592–3 Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of VOC to the atmosphere, except as provided in § 60.592–1(c) and §§ 60.592–3(h) and (i).

(b) Each compressor seal system as required in § 60.592–3(a) shall be:

(1) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure; or

(2) Equipped with a barrier fluid system that is connected by a closed vent system to a control device as described in § 60.592–10; or

(3) Equipped with a system that purges the barrier fluid into a process stream with no VOC emission to the atmosphere.

(c) The barrier fluid is not in light liquid service or gas/vapor service or is not in VOC service.

(d) Each barrier fluid system as described in § 60.592–3(a) shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in § 60.592–3(d) shall be checked daily or shall be equipped with an audible alarm.

(2) Based on design considerations and operating experience, an owner or operator shall demonstrate a criterion that indicates failure of the seal system, the barrier fluid system, or both shall be determined by the owner or operator for each sensor installed on a compressor seal system.

(f) If the criterion determined under § 60.592–3(e)(2) is registered by the sensor, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected except as provided in § 60.592–9.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(h) Any compressor that is not equipped as described in §§ 60.592–3(a) and (b) shall be equipped with a closed vent system capable of capturing and transporting any leakage from the seal to a control device as described in § 60.592–10.

(i) Any compressor that is designated, as described in § 60.596(e)(1), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of §§ 60.592–3(a)–(h) if the compressor:

(1) Is operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the methods specified in § 60.595(c); and

(2) Is tested for compliance with § 60.592–3(i)(1) initially, annually, and at other times requested by the Administrator.

§ 60.592-4 Standards: Pressure relief devices in gas/vapor service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background, as measured by the methods specified in § 60.595(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after the pressure release, except as provided in § 60.592-9.

(2) No later than 5 calendar days after the pressure release the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of 500 ppm above background, as measured by the methods specified in § 60.595(c).

(c) Closed vent systems and control devices, as described in § 60.592-10, that are used to comply with §§ 60.592-4(a) and (b) shall be designed and operated on at all times when VOC emissions may occur.

§ 60.592-5 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed purge system.

(b) Each closed purge system as required in § 60.592-5(a) shall:

(1) Return the purged process fluid directly to the process line without VOC emissions to atmosphere, or

(2) Collect and recycle the purged process fluid without VOC emissions to atmosphere.

(3) Be designed and operated to capture and transport all the purged process fluid to a control device complying with the requirements of § 60.592-10.

(c) In-situ sampling systems are exempt from §§ 60.592-5(a) and (b).

§ 60.592-6 Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second closed valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

§ 60.592-7 Standards: Valves in gas/vapor service and valves in light liquid service.

(a) Each valve shall be monitored monthly to detect leaks by the methods specified in § 60.595(b) and shall comply with §§ 60.592-7(b)-(e), except as provided in §§ 60.592-7 (f), (g), and (h) and § 60.593-1 and 2.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for 2 successive months may be monitored the first month of every quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for 2 successive months.

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 60.592-9.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) Tightening of bonnet bolts;

(2) Replacement of bonnet bolts;

(3) Tightening of packing gland nuts;

(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in § 60.596(e)(1), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of § 60.592-7(a) if the valve:

(1) Has no external actuating mechanism in contact with the process fluid,

(2) Is operated with emissions less than 500 ppm above background as determined by the method specified in § 60.595(c), and

(3) Is tested for compliance with § 60.592-7(f)(2) initially, annually, and at other times requested by the Administrator.

(g) Any valve that is designated, as required in § 60.596(f)(1), as an unsafe-to-monitor valve is exempt from the requirements of § 60.592-7(a) if:

(1) The owner or operator of the valve demonstrates that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with § 60.592-7(a), and

(2) The owner or operator of the valve has a written plan that requires monitoring of the valve as frequent as practicable during safe-to-monitor times.

(h) Any valve that is designated, as required in § 60.596(f)(2), as a difficult-to-monitor valve is exempt from the requirements of § 60.592-7(a) if:

(1) The owner or operator of the valve demonstrates that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) The process unit within which the valve is located becomes an affected facility through § 60.14 or § 60.15, and

(3) The owner or operator of the valve has a written plan that requires monitoring of the valve at least once per calendar year.

§ 60.592-8 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid and heavy liquid service, and flanges and other connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid and heavy liquid service, and flanges and other connectors shall be monitored within 5 days by the method specified in § 60.595(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 60.592-9.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under § 60.592-7(e).

§ 60.592-9 Standards: Delay of repair.

(a) Delay of repair of compressors and fugitive emission sources for which leaks have been detected will be allowed if the repair is technically infeasible without a complete or partical process unit shutdown.

(b) Delay of repair beyond a process unit shutdown will be allowed for valves, if valve assembly replacement is necessary during the process until shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted.

§ 60.592-10 Standards: Closed vent systems and control devices.

(a) Owners or operators of closed vent systems and control devices used to comply with provisions of this subpart shall comply with the provisions of this section.

(b) Vapor recovery systems (for example, condensers and adsorbers) shall be designed and operated to

recover the organic vapors vented to them with an efficiency of 95 percent or greater.

(c) Enclosed combustion devices shall be designed and operated to reduce the VOC emissions vented to them with an efficiency of 95 percent or greater or to provide a minimum residence time of 0.75 seconds at a minimum temperature of 816°C.

(d)(1) Flares shall be designed for and operated with no visible emissions except for periods not to exceed a total of 5 minutes during any period of 2 consecutive hours as determined by methods in § 60.595(g).

(2) Flares shall operate with a flame at all times.

(3) Flares shall be operated with exit velocities less than 22 meters per second as determined for the gas being combusted at the flare tip.

(4) Flares shall be elevated above ground level and operate without assist or with steam assist.

(5) Steam assisted flares shall combust gases with the net heating value of the gases greater than 11.2 Megajoule per standard cubic meter (300 Btu/scf).

(6) Flares operated without assist shall combust gases with the net heating value of the gases greater than 7.4 Megajoule per standard cubic meter (200 Btu/scf).

(e) Owners or operators of control devices that are used to comply with the provision of this subpart shall monitor these control devices to ensure that they are operated and maintained in conformance with their design.

(f)(1) Closed vent systems shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the methods specified in § 60.595(c).

(2) Closed vent systems shall be monitored annually and at other times requested by the Administrator.

(3) Leaks, as indicated by an instrument reading greater than 500 ppm, shall be repaired within 15 calendar days.

(g) Closed vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

§ 60.593–1 Alternative standards for valves—allowable percentage of valves leaking.

(a) An owner or operator may elect to have the valves comply with an allowable percentage of valves leaking of equal to or less than 2.0 percent.

(b) The following requirements shall be met if an owner or operator wishes to have the valves comply with an allowable percentage of valves leaking:

(1) An owner or operator must notify the Administrator that the owner or operator has elected to have the valves comply with the allowable percentage of valves leaking before implementing this alternative standard.

(2) A performance test as specified in § 60.593–1(c) shall be conducted initially, annually, and at other times requested by the Administrator.

(3) If a valve leak is detected, it must be repaired in accordance with § 60.592–7(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves in gas/vapor service and light liquid service within the affected facility shall be monitored within 1 week by the methods specified in § 60.595(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves for which leaks are detected by the number of valves in gas/vapor and light liquid service within the affected facility.

(d) Owners and operators who elect to comply with this alternative standards shall not have an affected facility with a leak percentage greater than 2.0 percent.

(e) If an owner or operator no longer wishes the valves to comply with § 60.593–1, the owner or operator must notify the Administrator in writing that the work practice standard described in §§ 60.592–7(a)–(e) will be followed.

§ 60.593–2 Alternative Standards for valves—skip period leak detection and repair.

(a)(1) An owner or operator may elect to comply with one of the alternative work practices specified in § 60.593–2(b).

(2) An owner or operator must notify the Administrator before implementing one of the alternative work practices of § 60.593–2(b), as specified in § 60.597(b).

(b)(1)(i) An owner or operator shall comply with a reference leak detection program.

(ii) The reference leak detection program shall conform to the requirements for valves in gas/vapor service and valves in light liquid service, as described in § 60.592–7.

(2) After 2 consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0, an owner or operator may begin to skip 1 of the quarterly leak detection periods.

(3) After 5 consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0, an owner or operator may begin to skip 3 of the quarterly leak detection periods.

(4) If the percent of valves leaking is greater than 2.0, the owner or operator shall comply with the reference leak detection program, as described in § 60.592–7, but can again elect to use §§ 60.593–2(b)(2) or –2(b)93).

§ 60.594 Equivalent means of emission limitation.

(a) Each owner or operator subject to the provisions of this subpart may apply to the Administrator for determination of equivalence for any means of emission limitation that achieves a reduction in emissions of VOC at least equivalent to the reduction in emissions of VOC achieved by the controls required in this subpart.

(b) Determination of equivalence to the equipment, design, and operational requirements of this subpart will be evaluated by the following guidelines:

(1) Each owner or operator applying for an equivalence determination shall be responsible for collecting and verifying test data to demonstrate equivalence of any equivalent means of emission limitation.

(2) The Administrator will compare test data for the equivalent means of emission limitation to test data for the equipment, design, and operational requirements.

(3) The Administrator may condition the approval of equivalence on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the equipment, design, and operational requirements.

(c) Determination of equivalence to the required work practices in this subpart will be evaluated by the following guidelines:

(1) Each owner or operator applying for a determination of equivalence shall be responsible for collecting and verifying test data to demonstrate equivalence of an equivalent means of emission limitation.

(2) For each affected facility for which a determination of equivalence is requested, the emission reduction achieved by the required work practice shall be demonstrated.

(3) For each affected facility, the emission reduction achieved by the equivalent means of emission limitation shall be demonstrated.

(4) Each owner or operator applying for a determination of equivalence shall commit to compliance with a performance that provides for emission reductions equal to or greater than the

emission reductions achieved by the required work practice.

(5) The Administrator will compare the demonstrated emission reduction for the equivalent means of emission limitation to the demonstrated emission reduction for the required work practice and will consider the commitment in § 60.594(c)(4).

(6) The Administrator may condition the approval of equivalence on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the required work practice.

(d) An owner or operator may offer a unique approach to demonstrate the equivalence of any equivalent means of emission limitation.

(e)(1) After a request for determination of equivalence is received, the Administrator will publish a notice in the **Federal Register** and provide the opportunity for public hearing if the Administrator judges that the request may be approved.

(2) After notice and opportunity for public hearing, the Administrator will determine the equivalence of means of emission limitation and will publish the determination in the **Federal Register.**

(3) Any equivalent means of emission limitation approved under this section shall constitute a required work practice, equipment, design or operational standard within the meaning of Section 111(h)(1) of the Clean Air Act.

(f)(1) Manufacturers of equipment used to control fugitive emissions of VOC may apply to the Administrator for determination of equivalence for any equivalent means of emission limitation that achieves a reduction in emissions of VOC achieved by the equipment, design, and operational requirements of this subpart.

(2) The Administrator will make an equivalence determination according to the provisions of §§ 60.594(b), (c), (d), and (e).

§ 60.595 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Monitoring, as required in §§ 60.592, 60.593, and 60.594, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21.

(2) The VOC detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the methods specified in Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 3 ppm of hydrocarbon in air); and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately but less than 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When compressors or fugitive emission sources are tested for compliance with no detectable emissions as required in §§ 60.592–2(e), –3(i), –4, –7(f) and –10(e), the test shall comply with the following requirements:

(1) The requirements of §§ 60.595(b)(1)–(4) shall apply.

(2) The background level shall be determined, as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d)(1) For purposes of determining the percent VOC content of the process fluid that is contained in or contacts a compressor or a fugitive emission source, procedures that conform to the methods described in ASTM Method E–260 (incorporated by reference as specified in § 60.18) shall be used.

(2) If an owner or operator decides to exclude nonphotochemically reactive substances from the percent VOC content of the process fluid, the exclusion will be allowed provided:

(i) Those substances excluded are considered nonphotochemically reactive by the Administrator; and

(ii) The owner or operator demonstrates that the percent VOC content, excluding nonphotochemically reactive substances, can be reasonably expected never to exceed 10 percent VOC by weight.

(e) A fugitive emission source is in light liquid service if the percent evaporated is greater than 10 percent at 150°C as determined by ASTM Method D–86 (incorporated by reference as specified in §60.18).

(f) Samples used in conjunction with §§ 60.595(d) and (e) shall be representative of the process fluid that is contained in or contacts the fugitive emission source.

(g) Reference Method 22 shall be used to determine the compliance of flares with the provisions of this subpart.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

§ 60.596 Recordkeeping requirements.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(b) When each leak is detected as specified in §§ 60.592–2, –3, –7, and –8, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the source identification number, shall be attached to the leading source.

(2) The identification on a valve may be removed after it has been monitored for 2 successive months as specified in § 60.592–7(c) and no leak has been detected during those 2 months.

(3) The identification on a compressor or fugitive emission source, except on a valve, may be removed after it has been repaired.

(c) When each leak is detected as specified in §§ 60.592–2, –3, –7, and –8, the following information shall be recorded in a log and shall be kept for 2 years in a readily accessible location:

(1) The instrument and operator identification numbers and the fugitive emission source identification number.

(2) The date the leak was detected and the dates of each attempt to repair the leak.

(3) Repair methods applied in each attempt to repair the leak.

(4) "Above 10,000" if the maximum instrument reading measured by the methods specified in § 60.595(a) after each repair attempt is greater than 10,000 ppm.

(5) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(6) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a process shutdown.

(7) The expected date of successful repair of the leak if a leak is not repaired within 15 days.

(8) The date of successful repair of the leak.

(d) The following information pertaining to the design requirements for closed vent systems and control devices described in § 60.592–10 shall be recorded and kept in a readily accessible location:

(1) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(2) The dates and descriptions of any charges in the design specifications.

(3) Periods when the closed vent systems and control devices required in

§§ 60.592–2, –3, –4, and –5 are not operated as designed, including periods when a flare pilot light does not have a flame.

(4) Dates of startups and shutdowns of the closed vent systems and control devices required in §§ 60.592–2, –3, –4, and –5.

(e) The following information pertaining to all compressors and fugitive emission sources subject to the requirements in §§ 60.592–2, –3, –4, and –7 shall be recorded in a log that is kept in a readily accessible location:

(1)(i) A list of identification numbers for fugitive emission sources that the owner or operator elects to designate for no detectable emissions under the provisions of §§ 60.592–2(e), –3(i), and –7(f).

(ii) The designation of these sources as subject to the requirements of §§ 60.592–2(e), –3(i), or –7(f) shall be signed by the owner or operator.

(2) A list of source identification numbers for pressure relief devices required to comply with § 60.592–4.

(3)(i) The dates of each compliance test required in §§ 60.592–2(e), –3(i), –4, and –7(f).

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the source during each compliance test.

(4) A list of identification numbers for fugitive emission sources that are in vacuum service.

(f) The following information pertaining to all valves subject to the requirements of §§ 60.592–7 (g) and (h) shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the expected date for monitoring each valve.

(g) The following information shall be recorded in a log that is kept in a readily accessible location:

(1) Design criterion required in § 60.592–2(d)(5) and § 60.592–3(e)(2) and an explanation of the design criterion; and

(2) Any changes to this criterion and the reasons for this change.

(h) The provisions of §§ 60.7 (b) and (d) do not apply to affected facilities subject to this subpart.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

§ 60.597 Reporting requirements.

(a) An owner or operator electing to comply with the provisions of §§ 60.593–1 and –2 shall notify the Administrator of the alternative standard selected 90 days before implementing either of the provisions.

(b) The provisions of § 60.8(d) do not apply to affected facilities subject to the provisions of this subpart except that an owner or operator shall notify the Administrator of the schedule for the initial performance tests 30 days before the initial performance tests.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

[FR Doc. 83-99 Filed 1-3-83; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 480, 482, 483, 484, 485, 486, 487, and 488

Medicare and Medicaid Programs; Conditions of Participation for Hospitals

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

ACTION: Proposed rule.

SUMMARY: We are proposing a general revision of the Conditions of Participation for hospitals. The Conditions are those requirements that hospitals must meet in order to participate in the Medicare and Medicaid programs (titles XVIII and XIX of the Social Security Act). This proposed rule is part of the Department's regulatory relief efforts and is designed to reduce Federal requirements, simplify and clarify regulations, and provide maximum flexibility in administration, while protecting patient health and safety.

DATE: To assure consideration, comments should be submitted by March 7, 1983.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BPP–519–P, P.O. Box 17073, Baltimore, Maryland 21235.

In addition please address a copy of your comments on the information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503, Attention: Desk Officer for HHS.

In commenting, please refer to BPP–519–P.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., Washington, D.C., or to Room 132, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's Office at 200 Independence Ave., S.W., Washington, D.C 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Alan Spielman, Acting Director, Division of Standards and Certification, OCP, BPP, 1–D–3 Dogwood East, 1849 Gwynn Oak Avenue, Baltimore, Md. 21207 (301) 594–3775.

SUPPLEMENTARY INFORMATION:

A. Background

Conditions of Participation (Conditions) is the term used for the requirements that hospitals must meet in order to participate in the Medicare and Medicaid programs. These requirements are based on section 1861 (e), (f), and (g) of the Social Security Act (the Act); the utilization review provisions in section 1814(a)(7), 1861(k), 1903(g) of the Act; and the general rulemaking authority in sections 1102 and 1871 of the Act.

The current requirements for participating hospitals are presented as 21 Conditions, containing 128 Standards, and are located in the existing Federal regulations at 42 CFR Part 405, Subpart J. There has been no substantial revision of the Conditions since they were first published in 1966, despite changes in the state of the art.

On June 20, 1980, the Department published a notice of proposed rulemaking (NPRM) proposing a revision of the hospital Conditions (45 FR 41794). Subsequent to this publication, HCFA initiated a process of regulatory reform as part of the Secretary's efforts to reduce the burden of Federal regulations. Therefore, the June 20, 1980 NPRM was not prepared for final rule. We established criteria for reviewing the existing Conditions applicable to hospitals. Those criteria are as follows:

1. Requirements should be necessary to protect the health and safety of patients.

2. The Conditions should contain only provisions authorized by the statute.

3. Requirements should not unnecessarily overlap with similar

requirements enforced by other Federal, State, or local government programs.

4. Requirements should permit maximum flexibility for facility compliance.

As a result of our review, we have decided to proceed with another proposed rule. These proposals are intended to simplify and clarify requirements, to focus on patient care, to emphasize outcome rather than the means used to achieve those ends, to promote cost containment while maintaining quality care, and to achieve more effective compliance with Federal requirements. The basic function of the Conditions in protecting patient's health and safety has been maintained, and in some areas, such as the new Conditions, and Standards that have been elevated to Conditions, enhanced. We have considered and, as appropriate, provided for the comments received to the 1980 NPRM. In developing the final rule, we will base our decisions on this proposed rule, and on comments specifically submitted in response to its publication.

B. General Approach to Proposed Rule

The hospital industry is heavily regulated in this country. In addition to Federal regulations, hospitals are subject to substantial State inspection through licensure programs. Further, nationally recognized standards of practice are well accepted and are adhered to generally through the voluntary accreditation process. Recognizing the scrutiny under which hospital care is provided, we believe it is appropriate to eliminate unnecessary regulation in the existing conditions of participation. We also believe that it is important to modernize the regulations in light of significant changes in the organizational structure of hospitals and the dramatic technological advancements since 1965. At the same time, we are aware that it is necessary to impart sufficient flexibility into the regulations to allow their application to both the smallest rural facility and to the most modern urban hospital centers. Therefore, in the framing of these proposals, we used the following approach.

1. First, we were careful to assure that our attempts to eliminate unnecessary regulation, and provide hospitals with greater flexibility, would not adversely affect patient health and safety. Consequently, in our view, certain key additions and modifications would be necessary to underscore the hospital's accountability for the services it provides. For example, we are proposing a new Condition, Quality Assurance (§ 482.21) that would require that the hospital actively evaluate its services. The Condition is sufficiently flexible to permit a variety of assessment mechanisms and plans, but would place responsibility on the hospital for ensuring that quality of care is an ongoing goal. Further, we would clarify that the hospital is accountable for its services provided under contract. In recognition of high patient-risk areas, we are proposing to elevate certain Standards to the Condition level (e.g., Surgical Services, Anesthesia Services, Infection Control). This would place greater emphasis on the certification process in these areas.

2. Generally, we replaced most prescriptive adminstrative requirements with language that was stated in terms of expected outcome. For example, mandatory committees and committee meetings would be deleted from the governing body and medical staff Conditions (§§ 482.12 and 482.22). Instead, the objective that was intended, e.g., good and direct governance, would be stated in postive terms.

3. Next, we would balance the need for personnel to have certain credentials against hospital accountability and flexibility in determining personnel requirements. Recognizing that personnel achieve competency through many routes (education, training, and experience), we would frequently place the responsibility on the hospital for choosing its own staff and delineating staff responsibilities (e.g., Radiology, Medical Records).

This in no way diminishes our interest in high standards for hospital personnel. When, in our view, specific degrees or experience would be necessary to the provision of safe care the Condition would clearly state those requirements.

4. In most Conditions, we would delete specific references to adequate and safe facilities in favor of a general comprehensive statement under the physical environment Condition (§ 482.4). In those areas of the hospital requiring special concern for safe practices, such as Nuclear Medicine services and Radiologic services, we would maintain specific language to assure additional protection.

5. We would delete most of the references to "Departments" by using the more encompassing term "services". This would be done in order to clarify that a hospital's organizational structure would not determine whether or not services would be subject to the Conditions. Further, use of the term "services" would avoid any implied suggestion that hospitals should organize their services into formal "Departments".

We believe that the numerous proposed modifications and deletions to the regulations would result in an improved set of Conditions of Participation. We believe that the proposed language of the regulations offers better protection to our beneficiaries. At the same time, hospitals, when functioning properly, should be administratively unburdened by the Conditions of Participation. We would like to mention, however, that hospitals accredited by the JCAH (the majority of the 5200 accredited hospitals) will be affected by JCAH's similar efforts to lessen overly prescriptive requirements while increasing administrative flexibility. The JCAH's revised standards will focus, as do our proposed Conditions, on provision of quality care more than on the means of achieving it. Although we comment on each draft of JCAH's proposed revisions, JCAH's efforts are not directly linked to ours; that is, the adoption of new JCAH standards will be unrelated to the possible implementation of new Medicare Hospital Conditions.

C. Proposed Revisions

1. *Compliance with State and Local Laws.* Section 1861(e)(7) of the Act addresses State and local licensure requirements. If State or local laws provide for the licensing of hospitals, the Act requires the hospital to be licensed or to be approved by the appropriate State or local licensing authority as meeting the standards for licensure. Current regulations at 42 CFR 405.1020 restate these statutory requirements and expand upon them by requiring compliance with all relevant laws (e.g., laws relating to staff licensure, postmortem examinations, communicable diseases). We are proposing to revise these regulations (see § 482.11) by simply restating statutory requirements and deleting other requirements. The regulations would also require hospitals to comply with applicable Federal laws.

2. *Governing Body.* Under the revised Condition relating to the governing body (see proposed § 482.12) we would make these changes:

a. *Bylaws, meetings, committees, liaison.* The current provisions regarding bylaws, meetings, committees, and liaison (42 CFR 405.1020(a)–(d)) would be deleted since we consider them unnecessarily prescriptive. We believe that it is not necessary for Federal regulations to address these specific administrative issues. Rather, these provisions should fall under the

discretion of individual facility management.

b. *Medical Staff.* Current regulations (42 CFR 405.1021(e)) specify the details of the relationship between the governing body and the medical staff. We are proposing to revise these regulations to indicate simply that the medical staff must be accountable to the governing body and be organized under bylaws as required by Section 1861(e)(3) of the Act. (See proposed § 481.12(a).)

c. *Hospital Administrator.* Regulations at 42 CFR 405.1021(f) and (g) specify that the governing body must appoint a hospital administrator, describe the qualifications for this position, and specify the details of how the administrator should perform this function. We are proposing to revise these regulations by eliminating education and experience requirements applicable to an administrator. Proposed regulations at § 482.12(b) would simply require the Governing Body to appoint an Administrator or Chief Executive officer responsible for administration of the hospital. The functions would remain, but the detail of how to accomplish the tasks would be deleted.

d. *Physician Services.* Section 1861(e)(4) of the Act mandates that every patient be under the care of a physician. Current regulations (at 42 CFR 405.1021(h)) require that a hospital have policies to assure patients are under the care of a physician. We are proposing (see § 482.12(c)) to require *that* patients actually be under a physician's care, not merely to require that the hospital have an established policy. We would also relocate current requirements for a health history and physical examination to this Standard because these are the responsibility of the attending physician.

The term "physician", as it is defined in § 482.3, would include all practitioners provided for by Section 1861(r) of the Act. Thus, the use of the term "physician" in regulations will be consistent with its use in the statute. However, individual hospitals would retain the authority to determine who has admitting privileges in their hospital.

e. *Physical Plant.* Current regulations at 42 CFR 405.1021(i) require that the governing body be actively involved in maintaining the physical plant. We are proposing to delete this requirement as the intent of the Standard (a safe and effective physical plant) is met through other regulations. (See Physical Environment in current 42 CFR 405.1022, and proposed 42 CFR 482.41.)

f. *Institutional Planning.* Sections 1861(e)(8) and 1861(z) of the Act require a hospital to have an annual operating budget and capital expenditure plan. Current regulations at 42 CFR 405.1021(j) expand upon the statutory requirement. We are proposing (see proposed § 482.12(d)) to modify the regulations by simply incorporating the basic provisions contained in the statute.

g. *Contracted Services.* The use of contracted services in hospitals has increased dramatically since 1965. Today, services frequently provided through contractual arrangements include nursing, pharmacy, emergency, dietary, laboratory, and radiology. Our concern regarding these contracted services is twofold. First, although the services might be subject to survey under other Conditions (e.g., § 482.23, Nursing; § 482.25 Pharmacy), it is difficult to survey for all aspects of these services when thy are not provided on the hospital premises. For example, hospital food may be prepared elsewhere, and certain ancillary services may be provided off-site.

Second, comments received as a result of the 1980 NPRM highlighted the fact that there does not appear to be a clear understanding, or acceptance, of the hospital's responsibility for services provided under contract. We would clarify that the hospital has ultimate responsibility for services, whether they are provided directly, such as by its own employees, or by leasing, or through arrangment, such as formal contracts, joint ventures, informal agreement, or shared services. Because many contracted services are integral to direct patient care and are important aspects of health and safety, a hospital cannot abdicate its responsibility simply by providing that service through a contract with an outside resource. For purposes of assuring adequate care, the nature of the arrangment between the hospital and the "contractor" is irrevelant.

As a result of the increased reliance on contracting for temporary nursing personnel by hospitals, we would include specific requirements to ensure that hospitals provide adequate supervision and evaluation of the clinical activities of non-employee licensed nursing personnel (see § 482.23(b)(6)). This would ensure that contracted nursing employees are required to perform at the same level of competence as nurses employed directly by the hospital.

h. *Discharge Planning.* We are proposing (see § 482.12(f)) to add a new Standard that requires discharge planning. We believe this requirement is important since discharge planning has been linked to decreased rates of hospital readmission

3. *Quality Assurance.* Many of the current regulations specify procedural requirements that hospitals must follow to assure quality care (e.g., organizational characteristics, committee functions, personnel). These requirements are currently located in several of the Conditions (e.g., Governing Body and Medical staff). We believe a focused requirement would better address quality of care. Therefore, we are proposing to establish a new Condition on Quality Assurance at § 482.21. We would require that the hospital establish a hospital-wide quality assurance program aimed at identifying and correcting patient care problems. Specifically, we would require that the hospital—

(a) Have a written quality assurance plan;

(b) Evaluate all organized services, nosocomial infections, and medication therapy;

(c) Evaluate all surgery; and

(d) Document deficiencies and take appropriate remedial action.

4. *Medical Staff.* Current regulations at 42 CFR 405.1023 provide specific requirements for medical staff, such as requiring very detailed bylaws, committees, meetings, and staff qualification. In proposed § 482.22 we would delete those provisions that we now believe to be overly prescriptive or unnecessary and modify others as follows:

a. In proposed § 482.22(a)(1) and (2) we use the term "medical staff", not "physicians". This would grant maximum flexibility to the hospital in granting privileges and organizing its professional staff. Nurse practitioners and nurse-midwives for example, could be granted staff privileges. This reflects the present hospital trend of extending patient care responsibilities to practitioners other than physicians.

We note that proposed § 482.12(c) would require each patient to be under the care of a physician. In that case, "physician" would be interpreted as defined in section 482.3 of this regulation; that is, a doctor of medicine, osteopathy, dentistry, or other discipline cited in that section.

b. We would delete the Standard regarding staff responsibilities to support hospital policies since such detail is not necessary for Federal regulations. We would, however, retain the requirement that bylaws be enforced (proposed § 482.22(b)).

c. We would delete the Standard on securing autopsies since autopsies depend on the consent of next-of-kin, except when legally mandated.

d. We would delete requirements regarding consultations. There is no indication that consultations, which are the direct responsibility of the attending

physician, are being improperly conducted.

e. We would combine and simplify requirements regarding staff appointments, staff qualifications, and staff officers (see current 42 CFR 405.1023(d), (e), and (h)). Proposed regulations would require: (1) a well organized medical staff accountable to the governing body for the quality of medical care given to patients; (2) periodic appraisals of members of the staff; (3) the granting of clinical privileges only to those legally, professionally, and ethically qualified; and (4) and individual physician with responsibility for the organization and conduct of the medical staff. These requirements would be maintained since there is evidence that a strong and responsible medical staff organization is positively related to the provision of quality care.

f. The requirements regarding "other staff" (current 42 CFR 405.1023(g)) would be deleted since they are prescriptive without an apparent relationship to patient health and safety.

g. The requirement on bylaws would be simplified. Proposed regulations would require bylaws that enable the medical staff to carry out its responsibilities, and include a statement of qualifications for admittance to the staff and responsibilities of each category of medical staff.

h. Requirements on various specified committees (current 42 CFR 405.1023(j)-(o)) would be deleted as unnecessary and overly prescriptive. For example, the medical staff should have flexibility in determining whether a medical records committee is necessary. Also, the issue of quality of care that formerly gave rise to the tissue committee (current 42 CFR 405.1023(o)] is now provided for under a new Condition, Quality Assurance (proposed § 482.31).

i. Requirements concerning meetings (current 42 CFR 405.1023(p)] would be deleted. These meetings, such as those focusing on review of clinical work, were intended to assure quality of care. That intent would be provided for under the new quality assurance Condition (proposed § 482.21).

j. Requirements regarding medical staff departments and chiefs of services that are in current 42 CFR 405.1023(q) and (r) would be deleted as unnecessary and not affecting health and safety.

5. *Nursing Services.* Section 1861(e)(5) of the Social Security Act requires that a hospital provide 24-hour nursing services. Current regulations at 42 CFR 405.1024 implement this requirement. Several of the requirements of this Condition are overly prescriptive, inflexible, and, in some areas overlapping. We are proposing to replace the Condition statement with the statutory language that requires 24-hour nursing care given or supervised by a registered nurse. We are proposing to retain requirements on organization, staffing, administration of drugs, and delivery of care. We would delete Standards on working relationships and staff meetings because we believe these issues are best addressed by the individual hospitals (see proposed § 482.23).

Section 949 of Pub. L. 96-499 provides authority to HCFA to temporarily waive the statutory 24-hour registered nursing service requirements for rural hospitals of 50 or fewer beds. Regulations implementing this law have been issued separately.

6. *Medical Records.* Section 1861(e)(2) of the Act requires that a hospital maintain clinical records on all patients. Regulations at 42 CFR 405.1026 currently implement this requirement. This Condition consists of 10 Standards and 32 factors, many of which overlap, are inflexible, and are overly prescriptive. In addition, parts of this rule have been made obsolete by changes in technology. In proposed § 482.24 we are recommending the following changes, the majority of which are intended to focus on outcome-related requirements, rather than process-oriented requirements:

a. *Preservation.*—We would remove the reference to statute of limitations and require retention of medical records for 5 years.

b. *Personnel.*—We would delete all specific credential requirements for medical records personnel. We have seen no evidence that specific credential requirements are indispendable in assuring the quality of the medical records.

c. *System Details.*—We would modify these requirements to retain the requirements that the hospital maintain a system ensuring prompt location of a patient record by diagnosis and procedure; that the content of the medical record contains sufficient information; and that the appropriate person sign the medical record.

7. *Pharmacy.* Current regulations at 42 CFR 405.1027 mandate that pharmaceutical services be administered in accordance with accepted professional principles and recognized standards of practice to assure safe, accurate pharmacological regimes for patients. As currently written, this Condition limits the hospital's ability to establish its own system for the control and administation of drugs. We are proposing (see § 482.25) to eliminate many of the specific and prescriptive details. We would also modify the personnel Standard to specify that if the hospital does not have a staff pharmacist, a designated individual must have responsibility for the day-to-day operations of the pharmacy services. We would also specify that when a pharmacist is not available, drugs may be removed only by personnel designated by the medical staff or pharmacy.

8. *Radiology.* Regulations at 42 CFR 405.1029 provide that basic radiology services must be available to patients and that these services be provided in accordance with professionally approved standards for safety and personnel qualifications. We are proposing (see proposed § 482.26) to revise the Condition statement to define more specifically what constitutes radiological services. We would retain the basic factors relating to safety hazards. We are proposing to revise the personnel Standard to require that only a qualified radiologist, either full or part-time, supervise the department and interpret films that require specialized knowledge. The present language had been interpreted by some to mean that a radiologist must interpret or reinterpret every film. Proposed language would also make it clear that the radiologist needs to sign reports only of his or her interpretations.

We are proposing to allow the medical staff and the individual responsible for radiological services to designate who is qualified to use rediological apparatus. We would also modify the Standard on signed reports to require that records of departmental activities be maintained and that radiological reports and films be preserved for five years. Specific references to fluoroscopy and radium would be deleted since the term radiology includes these items.

9. *Laboratories.* Current regulations at 42 CFR 405.1028 specify requirements to ensure the health and safety of patients who are furnished laboratory services in hospitals. Under current rules, and these proposed rules, if a hospital arranges for laboratory services from an outside laboratory, the outside laboratory must be a Medicare approved hospital or independent laboratory.

The main thrust of the proposed revisions to this Condition is to consolidate similar factors, clarify the intent, and establish uniformity in clinical laboratory requirements. The Standards affected by the consolidation are: adequacy of laboratory services, clinical laboratory examinations, availability of facilities and services, laboratory report, tissue examination,

and reports of tissue examinations. The revision would also consolidate all personnel requirements in a single Standard in order to eliminate the ambiguity in qualifications and clarify the responsibilities of the laboratory director. Of particular note is the distinction between those laboratory services that can be directed by a laboratory specialist qualified by a doctoral degree and those laboratory services that, by their nature, must be under the direction of an individual at the physician level. Additionally, the preference for American Society of Clinical Pathologists registry would be eliminated in order to permit fair competition for technologist positions by otherwise qualified non-registered professionals.

We propose to delete the requirement for routing urinalysis and hemoglobin or hematocrit on admission of each patient. HCFA has requested Medicare insurance carriers to stop automatic payments for a variety of clinical tests which have sometimes been routinely performed on all Medicare admissions. This deletion would ensure that the regulations would be consistent with reimbursement actions. Requirements on participation in staff, departmental, and clinicopathic conferences would be deleted as unnecessarily prescriptive. We believe such conferences should be subject to administrative discretion based on the needs of the individual facility.

HCFA is coordinating, with the Food and Drug Administration and the Centers for Disease Control of the Public Health Service, future revisions of the regulations concerning blood banking, personnel, proficiency testing, and quality control. When this process is completed, joint proposals will be published and the public will be afforded the opportunity to comment specifically on these various issues.

10. *Food and Dietetic Services.* Current regulations at 42 CFR 405.1025 provide for the existence of a professionally staffed dietary department integrated into the hospital. We are proposing to retain a Condition on food and dietetic services, but to delete requirements that are overly prescriptive and details that are no longer necessary. (See proposed § 482.28.)

a. References to requirements for policies and procedures and the supervision of the staff would be deleted.

b. The specific details on the organization of the department would be deleted.

c. The detailed requirements for the facilities of the dietary department would be deleted, and we would provide for a general statement under physical environment (proposed § 482.41(c)(4)) that the kitchen and dietetic services areas must be well-ventilated and properly equipped and maintained.

d. The specific details relating to therapeutic diets would be deleted.

e. The requirement that the director of dietetics participate in meetings with other department heads would be deleted.

We believe that this revision would not lower the quality of the dietetic services. Regulations at proposed § 482.28(a) would still require a full-time employee to serve as director of the food services and would continue to require a qualified dietitian on a full-time, part-time, or consultation basis.

11. *Utilization Review.* Current regulations at 42 CFR 405.1035 discuss the requirements for a hospital utilization review plan. We are proposing (see § 482.30) to replace the language in the current regulation with language from the statute. This would eliminate the overly prescriptive and detailed specifics. The revised rule would require the review of admissions, durations of stay, and professional services, with respect to medical necessity and for the purpose of promoting the most efficient use of facilities and services. Reviews would be conducted by a hospital committee or outside group and written notification of findings made to the patient, the physician, and the institution. The regulations would also specify who can make final determinations and the timeframe for notification of these decisions. Finally, we would retain a provision found in current regulations that prohibits the committee's review from being conducted by a physician who was professionally involved in the case being reviewed or who is financially interested in the hospital. (See current 42 CFR 405.1035(e)(3) and proposed § 482.30(b)).

12. *Physical Environment.* Section 1861(e)(9) of the Act permits the Secretary to mandate requirements for hospitals relating to the health and safety of patients. Some of these requirements are found in current regulations under 42 CFR 405.1022, which address physical environment and related Standards. This proposed rule would provide for the following revisions:

a. Current 42 CFR 405.1022(a) contains many details regarding the functional features of the physical plant. We are proposing to revise the requirements to state that the condition of the physical plant and overall hospital environment must be developed and maintained so that the safety and well-being of all patients are maintained. We have deleted specific reference to isolated power since requirements pertaining to isolated power are contained in the Life Safety Code. We would retain the elements addressing emergency power, gas, water, lighting, and obstacle-free corridors. All other elements and details would be deleted as redundant.

b. Current 42 CFR 405.1022(b) mandates that hospitals comply with the 1967 edition of the Life Safety Code (LSC). We are proposing to maintain this Standard but revise it to update to the 1981 edition. The 1981 LSC is more flexible since it contains more options for compliance than previous editions. A "grandfather clause" would provide for facilities meeting the 1967 edition of LSC.

c. Regulations at 42 CFR 405.1022(d) require the hospital to provide adequate facilities for diagnostic and therapeutic services. We would modify this provision by specifically requiring hospitals to provide adequate facilities for all services, not just diagnostic and therapeutic services. (See proposed § 482.41(c)).

13. *Infection Control.* Current regulations at 42 CFR 405.1022(c), under the Condition Physical Environment, discuss the sanitary environment of the hospital. In the United States nosocomial (originating in a hospital) infections occur in approximately 5% of the patients admitted to acute-care hospitals. This prolongs hospital stay by several days on the average, and leads to more than an extra billion dollars a year in direct hospital charges. Because of the enormity of the problem, we are proposing (see § 482.42) to elevate infection control provisions to the level of a separate Condition of Participation. This proposed revision would place more accountability on hospitals to prevent, control, and report hospital infections, and less emphasis on the number of persons necessary to accomplish the task. The revision would delete the current requirement for an infection control committee and instead would require designation of an infection control officer(s). This flexibility would give hospitals the option of retaining existing committees, but hospitals with limited staff could comply by the designation of one person. We are also proposing to require that the hospital keep a log to identify problems and that improvement be made when problems are identified.

14. *Complementary Services.* Current regulations at 42 CFR 405.1031 consist of four Standards that represent five different services of the hospital. These

requirements are applicable if the hospital offers surgery, anesthesiology, respiratory care, dental services, or rehabilitative services. We are proposing to delete the Standard on dental services because our proposed definition of physician (§ 482.3) includes doctor of dentistry. Thus, standards for dental services are included in the standards for medical staff. We would convert the other provisions into four Conditions as follows:

a. *Surgical Services.*—We are proposing (see § 482.51) to retain most of the current language on surgical services, while deleting the overly prescriptive details about the operation of the service (such as the location of the operating room and the posting of operating room rules). We would also include under this Condition the provisions regarding operating room circulating nurses that are currently under Nursing Department located at 42 CFR 405.1024(d)(2).

We would specify that only registered nurses may perform circulating duties in the operating room. The 1980 NPRM revisions would have permitted licensed practical (vocational) nurses and surgical technologists to perform circulating duties. We have evaluated large numbers of comments received in response to the NPRM and have concluded that, while many of the functions of the circulator are task-oriented and may be performed by personnel of lesser training, the responsibility for assessing various patient signs, symptoms, and responses require registered nurse qualifications. We would provide for an exception to the registered nurse restriction only when HCFA determines that rigid application of the requirement would be a hardship to the facility. The exception, however, would only be granted when HCFA determines that patient health and safety would not be adversely affected (see § 482.51(2)(4)).

b. *Anesthesia—Services.*—Many factors contribute to the risk associated with exposure to anesthesia. The anesthesia itself poses a threat, especially to the patient's respiratory and cardiovascular systems. Other factors identified by studies as affecting anesthesia outcome are the skills and knowledge of the anesthestist, familiarity with equipment, adequacy of the preanesthesia work-up, and the method and circumstances of anesthesia administration. Anesthesia services is considered a "high risk" area. Because of these factors, we would elevate the anesthesia services requirements to the level of a Condition (see proposed § 482.52).

We would retain the concept of the preanesthetic examination but require that the examination be done no longer than 48 hours before surgery by an anesthesiologist or person administering the anesthesia. The proposed requirements would permit an anesthesia assistant (physician's assistant with specialized training in anesthesia) to administer anesthesia under the supervision of a physician. We are also proposing to modify the Condition to change the term "registered nurse anesthetist" to "certified registered nurse anesthetist (CRNA)".

c. *Rehabilitation Services.*—We would simplify these provisions (see § 482.56) by stating that if the hospital provides for physical or occupational therapy (whether or not the services are provided by a distinct department), those services would have to be furnished under the supervision of a qualified therapist. We would then cross-refer to 42 CFR 405.1702(d) or 405.1202(f), respectively where qualifications of therapists are specified. This would avoid unnecessary duplication in Federal regulations. We would also expand these provisions by requiring speech pathology services to be provided under the supervision of a qualified speech pathologist, as defined in 42 CFR 405.1702(j).

d. *Respiratory Care Services.*—The new Condition (§ 482.97) would apply only if the hospital has organized respiratory care services. Regulations would describe staffing requirements.

15. *Nuclear Medicine.* We are proposing to add a new Condition, Nuclear Medicine (proposed § 482.53). The requirements of this Condition would apply only to those hospitals that choose to provide nuclear medicine services. These requirements are necessary because of the inherent risks of procedures that expose patients to non-contained (uncovered) radiation and the increase in the number of hospitals offering these services. Specifically, the regulations would require that the director of the services be a physician qualified in nuclear medicine. Recognizing that there are a number of ways for a physician to become qualified in nuclear medicine, we have not defined "qualified". We would also require that radioactive materials be handled in accordance with acceptable standards of practice, that the facilities be maintained for safe and efficient performance, and that signed and dated reports be maintained. If the hospital does not have organized nuclear medicine services, radiopharmaceuticals would be evaluated under the laboratory, radiology, or pharmacy services, as appropriate.

16. *Outpatient Services.* Current regulations at 42 CFR 405.1032 require that organized outpatient departments have effective policies and procedures, be appropriately staffed, maintain medical records, and have suitable facilities. We are proposing to modify this Condition to retain only two of the Standards, organization and personnel, and delete the others as being overly prescriptive and duplicative of requirements found in other Conditions. (See proposed § 482.54.)

17. *Emergency Services.* Current regulations at 42 CFR 405.1033 specify requirements for hospitals that choose to provide emergency services. We are proposing to remove those Standards that are overly prescriptive and overlap with requirements of other Conditions. We are proposing to modify the Condition statement to assure that the hospital meets the emergency needs of patients in accordance with acceptable standards of practice. We would also add a new Standard to specify that if the hospital does not have an emergency department, it must have at least written referral procedures or be part of a community-wide emergency services program. (See proposed § 482.55).

18. *Specialty Hospitals.* a. *Special Rules for Psychiatric and Tuberculosis Hospitals.*— Current regulations at 42 CFR 405.1036 describe the special Conditions that apply to psychiatric and tuberculosis hospitals. We are proposing to simplify these provisions. The revised Condition (see § 482.60) would require these facilities to be accredited by the Joint Commission on Accreditation of Hospitals or, if a distinct part of an institution, meet the requirements in proposed 42 CFR 482.11 through 482.57. We would also require that they keep sufficient clinical records and meet staffing requirements determined by HCFA to be necessary for carrying out an active treatment program.

b. *Special Medical Records Requirements for Psychiatric Hospitals.*— Current regulations at 42 CFR 405.1037 specify special medical record requirements for psychiatric hospitals. We are proposing (see § 482.61) to retain this Condition and elevate the requirements on the psychiatric evaluation, the treatment plan, progress notes, and the discharge summary, to Standards. These Standards form the most critical elements of the psychiatric record. Adequate documentation provides the means for measuring the degree and intensity of active treatment mechanisms employed. Specifically, the

psyhciatric evaluation, which contains a mental status examination, forms the foundation of the diagnostic decision-making process. The psychiatric evaluation, completed within 60 hours of admission, provides a critical data base upon which decisions regarding specific methods of treatment are based.

The individualized treatement plan is critical because (1) it forces the focus of attention on each patient as a unique individual; (2) it provides a systematic approach to care of patients and the documentation of what happens to them; (3) it assists staff in their understanding of the patient and his or her needs; and (4) it is in keeping with legislative and judicial concerns that treatment be appropriate and that reimbursement be for active psychiatric treatment rather than custodial care.

Documentation of progress is necessary to determine patients' response to treatment planning, treatment, and discharge planning. It serves to apprise all staff about patients' progress and any new problems or regression.

Discharge planning and follow-up services are part of the continuum of total care and treatment planning. The GAO, in a 1976 Report to Congress, emphasized the critical need to provide appropriate discharge planning and follow-up services. Appropriate discharge planning assists in reducing unnecessary readmissions.

c. *Special Staff Requirements for Psychiatric Hospitals.*—Current regulations at 42 CFR 405.1038 specify special staff requirements for psychiatric hospitals. We would provide for these requirements in proposed § 482.62, and we note the following:

(1) The current detailed specifications regarding staff in general have been simplified to reflect instead the responsibilities and functions that are appropriate to a psychiatric hospital staff. (See proposed § 482.62(a).)

(2) We would retain the requirement (§ 482.62(b)) that the director of the inpatient psychiatric services meet the requirements for examination by the Board Of Psychiatry and Neurology. We believe that a director with these qualifications is necessary to monitor and assure the appropriateness of physician services. Similarly, in proposed § 482.62(d) we have retained the qualifications for the director of psychiatric nursing services to assure quality care.

(3) Under psychological services (§ 482.62(e)) we use the general language of the 1980 NPRM by stating that the director must be eligible to be considered a professional psychologist according to the American Psychological Association's standards for providers of psychological services. Current regulations at 42 CFR 405.1038(e) discuss such details as whether or not the director has a doctoral degree.

(4) Under social services (proposed § 482.62(f)) we would allow equivalent training and experience to substitute for the master's degree requirement for the director of social services.

HCFA is considering the feasibility of flexibly applying the medical records and staffing requirements for psychiatric hospitals (items b and c above) to inpatient psychiatric units of general (acute) hospitals. When the general hospital Conditions were originally developed, very few acute care hospitals had psychiatric sections. Those that did, generally had small units. Currently there are more than 1,600 psychiatric units in general hospitals, but there are no specialized standards applicable to those units.

We believe that psychiatric patients should be afforded equal protection regardless of the setting. Therefore, we invite public comments on whether the two special psychiatric conditions should be applied to psychiatric units of general hospitals. We are paricularly interested in knowing which portions, if any, of these Conditions would be appropriate.

d. *Special Medical Record and Staff Requirements for Tuberculosis Hospitals.*—Current regulations at 42 CFR 405.1039 and 405.1040 require hospitals to maintain records for all patients and to have adequate numbers of qualified staff. We are proposing (see §§ 482.63 and 482.64) to modify these Conditions to limit the requirements to the statutory language. Also, in view of the small number of hospitals to which these requirements apply, we do not propose further revisions.

19. *Medical Library.* Current regulations (42 CFR 405.1030) require the hospital to maintain a medical library, in or adjacent to the facility, containing modern textbooks, journals, and periodicals. We would delete the provisions that address medical libraries. We believe this should not be a Federal requirement, but that each hospital should have the flexibility of deciding if it wants to have a medical library.

20. Social Services. The proposed rule would delete requirements addressing the provision of social services. Current Federal regulations at 42 CFR 405.1034 specify the requirements hospitals must meet if they have a social service department, including details on the organization of the social work department and the qualifications of the persons providing social work. However, the Act does not specify that hospitals must provide social services to their patients and the current regulations do not require hospitals to have a social work department. Therefore, we believe this is a service that does not require Federal regulation. While social services can be helpful as part of total patient care planning, there is no indication that direct risks to patient health or safety may result in the absence of Federal standards. In fact, we believe that with the elimination of these prescriptive requirements, hospitals may feel freer to provide social services to their patients. Although there would no longer be a Condition on social services, social services would continue to be a covered service under HCFA reimbursement policies.

D. Impact Analysis

Executive Order 12291

We have determined that these regulations would not result in an annual economic effect of $100 million or otherwise meet the criteria of section 1(b) of the Order. Therefore, under the Order, a regulatory impact analysis is not required.

Section 2 of the Order establishes a general requirement that, among alternative approaches to any given regulatory objective, an agency shall, to the extent permitted by law, choose the approach involving the least cost to society. We have abided by this principle in developing these regulations.

Under existing regulations, approximately 5200 of the 6700 hospitals participating in Medicare and Medicaid are voluntarily accredited by the JCAH or the AOA, and are therefore deemed to meet the Conditions of Participation. Accredited hospitals are generally larger than non-accredited hospitals. In fact, 1,065 of the 1,495 non-accredited hospitals have fewer than 50 beds.

We expect these regulations to reduce costs incurred by non-accredited hospitals in meeting the conditions of participation. We do not have sufficient information to reliably estimate the amount of the reduction. However, taking into account our experience with existing regulations, and the number and size of the hospitals affected, we believe that these reductions, while significant (see regulatory flexibility discussion below) will not reach $100 million.

Regulatory Flexibility Act

We have determined that these regulations would have significant impact on a substantial number of small entities. Thus, under 5 U.S.C. 603,

enacted by the Regulatory Flexibility Act (Pub. L. 96-354), we are required to prepare and make available for public comment an initial regulatory flexibility analysis. The preamble to these proposed regulations constitutes our initial regulatory flexibility analysis.

As stated earlier, one of the criteria used in reviewing existing regulations was that requirements should permit maximum flexibility for facility compliance. Our intention is to focus on outcome rather than the process used. This is consistent with 5 U.S.C. 603(c)(3), which requires that, as applicable, an initial regulatory flexibility analysis discuss the use of performance (i.e., outcome) rather than design (i.e., process) standards.

These regulations would affect the 1,495 hospitals which participate in Medicare or Medicaid but are not accredited by the JCAH or the AOA. Nearly all of these hospitals are small entities for purposes of a regulatory flexibility analysis.

By taking advantage of the administrative flexibility offered by these regulations, hospitals may reduce costs incurred in complying with conditions of participation. We believe these economies, in comparison to total revenues, would be significant, particularly for the 1,065 non-accredited hospitals of fewer than 50 beds.

Therefore, since these regulations will have a significant and beneficial impact on a substantial number of small hospitals, we believe we have accomplished the stated objectives of the Department's regulatory relief effort.

Paperwork Reduction Act of 1980

Sections 482.12, 482.22, 482.24, 482.41, 482.51, 482.52, 482.53, and 482.61 of this proposed rule contain information collection requirements. As required by 44 U.S.C. 3504(h), enacted by the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should follow the instructions in the "ADDRESS" section of this preamble.

E. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and respond to them in the preamble to that rule.

F. List of Subjects

42 CFR Part 405

Administrative practice and procedure,
Certification of compliance,
Clinics,
Contracts (Agreements),
End-Stage Renal Disease (ESRD),
Health care,
Health facilities,
Health maintenance organizations (HMO),
Health Professions,
Health suppliers,
Home health agencies,
Hospitals,
Inpatients,
Kidney dieseases,
Laboratories,
Medicare,
Nursing homes,
Onsite surveys,
Outpatient providers,
Reporting requirements,
Rural areas,
X-rays.

42 CFR Part 482

Administrative practice and procedure,
Certification of compliance,
Contracts (Agreements),
Health care,
Health facilities,
Health professions,
Hospitals,
Laboratories,
Medicare,
Onsite surveys,
Outpatient providers,
Reporting requirements,
Rural areas,
X-rays.

42 CFR Chapter IV is amended as set forth below:

A. Chapter IV is amended by designating a new Subchapter E, adding and reserving Parts 480, and 483–488, and adding a new Part 482. The Table of Contents for Chapter IV, Subchapter E, reads as follows:

* * * * *

SUBCHAPTER E-STANDARDS AND CERTIFICATION

Part
480 [Reserved].
481 Certification of certain health facilities.
482 Conditions of participation for hospitals.
483 –488 [Reserved].
489 Provider agreements under Medicare.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

B. Part 405 is amended as follows:

1. The table of contents for Part 405 is amended by removing the title and content of Subpart J.

2. The content of 42 CFR Part 405, Subpart A, §§ 405.1011 through 405.1040 is redesignated as Part 482 and revised.

SUBCHAPTER E—STANDARDS AND CERTIFICATION FOR PARTICIPATION IN MEDICARE AND MEDICAID

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

Subpart A—General Provisions

482.1 Basis and scope.
482.2 Provisions of emergency services by nonparticipating hospitals.
482.3 Definitions.

Subpart B—Administration.

482.11 Condition of participation: Compliance with Federal, State and local laws.
482.12 Condition of Participation: Governing body.

Subpart C—Basic Hospital Functions

482.21 Condition of participation: Quality assurance.
482.22 Condition of participation: Medical staff.
482.23 Condition of participation: Nursing services.
482.24 Condition of participation: Medical record services.
482.25 Condition of participation: Pharmaceutical services.
482.26 Condition of participation: Radiologic service.
482.27 Condition of participation: Laboratories.
482.28 Condition of participation: Food and dietetic services.
482.30 Condition of participation: Utilization review.
482.41 Condition of participation: Physical environment.
482.42 Condition of participation: Infection control.

Subpart D—Optional Hospital Services

482.51 Condition of participation: Surgical services.
482.52 Condition of participation: Anesthesia services.
482.53 Condition of participation: Nuclear medicine services.
482.54 Condition of participation: Outpatient services.
482.55 Condition of participation: Emergency services.
482.56 Condition of participation: Rehabilitation services.
482.57 Condition of participation: Respiratory care services.

Subpart E—Requirements for specialty Hospitals

482.60 Special provisions applying to psychiatric and tuberculosis hospitals.
482.61 Condition of Participation: Special medical record requirements for psychiatric hopsitals.
482.62 Condition of Participation: Special staff requirements for psychiatric hospitals.

482.53 Condition of participation: Special medical record requirement for tuberculosis hospitals.
482.54 Condition of participation: Special staff requirements for tuberculosis hospitals.

Authority: Secs. 1102, 1861(e) (f), (g) and (k), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x (e), (f), (g), and (k) and 1395hh)

Subpart A—General Provisions

§ 482.1 Basis and scope.

(a) *Basis in legislation.* (1) Section 1861(e) of the Act provides that—

(i) Hospitals participating in Medicare must meet certain specified requirements; and

(ii) The Secretary may impose additional requirements if they are found necessary in the interest of the health and safety of the individuals who are furnished services in hospitals.

(2) Section 1905(a) of the Act provides that "medical assistance" (Medicaid) payments may be applied to various hospital services. Regulations interpreting those provisions specify that hospitals receiving payment under Medicaid must meet the requirements for participation in Medicare. See § 440.10 of this chapter.

(b) *Scope.* The provisions of this part serve as the basis of survey activities for the purpose of determining whether a hospital qualifies for a provider agreement under Medicare and Medicaid.

§ 482.2 Provision of emergency services by nonparticipating hospitals.

(a) The services of an institution that does not have an agreement to participate in the Medicare program may, nevertheless, be reimbursed under the program if—

(1) The services are emergency services; and

(2) The institution meets the requirements of section 1861(e) (1) through (5) and (7) of the Act. See 42 CFR 405.152, 405.157, and 405.158 for provisions regarding emergency services

(b) Section 440.170(e) of this chapter defines emergency hospital services for purposes of Medicaid reimbursement.

§ 482.3 Definitions

For purposes of this part: "Physician" means the following categories of practitioners, functioning within the restrictions of Section 1861(r) of the Social Security Act:

(a) Doctor of Medicine or Osteopathy;

(b) Doctor of Dental Surgery or Dental Medicine;

(c) Doctor of Podiatric Medicine;

(d) Doctor of Optometry; and

(e) Chiropractor.

Subpart B—Administration

§ 482.11 Condition of participation: Compliance with Federal, State and local laws.

(a) The hospital must be in compliance with applicable Federal laws.

(b) The hospital must be—

(1) Licensed; or

(2) Approved as meeting applicable standards by the agency of the State or locality responsible for approval.

§ 482.12 Condition of participation: Governing body.

The hospital must have an effective governing body legally responsible for the conduct of the hospital as an institution. However, if a hospital does not have an organized governing body, the persons legally responsible for the conduct of the hospital must carry out the functions specified in this Part that pertain to the governing body.

(a) *Standard: Medical staff.* The governing body must ensure that the medical staff—

(1) Is accountable to the governing body for the quality of patient care;

(2) Organizes itself under bylaws; and

(3) Provides that a physical examination be performed and a health history obtained no more than 7 days before or 60 hours after admission.

(b) *Standard: Chief executive officer.* The governing body must appoint a chief executive officer responsible for managing the hospital.

(c) *Standard: Physician care.* The governing body must ensure the availability of physician care. Physician is defined in section 1861(r) of the Act.

(1) Every patient must be under the care of a physician.

(2) Patients must be admitted to the hospital only on the recommendation of a physician.

(3) A doctor of medicine or doctor of osteopathy must be on duty or on call at all times.

(d) *Standard: Institutional plan.* The institution must have an overall institutional plan and budget that meets the following conditions:

(1) It is prepared according to generally accepted accounting principles.

(2) It provides for an annual operating budget that includes all anticipated income and expenses. This provision does not require that the budget identify item-by-item the components of each anticipated income or expense.

(3) It provides for a capital expenditures plan for at least a 3-year period, including the year in which the operating budget specified in paragraph (d)(2) of this section is applicable. The plan must include and identify in detail and the objectives of the anticipated sources of financing for, each anticipated expenditure in excess of $100,000 related to the following:

(i) Acquisition of land;

(ii) Improvement of land, buildings, and equipment;

(iii) The replacement, modernization, and expansion of buildings and equipment.

(4) It provides for annual review and updating.

(5) It is prepared—

(i) Under the direction of the governing body; and

(ii) By a committee consisting of representatives of the governing body, the administrative staff, and the medical staff of the institution.

(e) *Standard: Contracted services.* The governing body must be responsible for services furnished in the hospital whether or not they are furnished under contracts, including shared services and joint ventures.

(1) The governing body must ensure that the services performed under a contract are provided in a safe and effective manner.

(2) The hospital must maintain a list of all contracted services, including the scope and nature of the services provided.

(f) *Standard: Discharge planning.* The governing body must ensure that the hospital has an effective, ongoing discharge planning program that facilitates the provision of follow-up care.

(1) Discharge planning must be initiated in a timely manner.

(2) Patients, along with necessary medical information, must be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed for follow-up care.

Subpart C—Basic Hospital Functions

§ 482.21 Condition of participation: Quality Assurance.

The governing body must ensure that there is an effective, hospital-wide quality assurance program encompassing all practicing hospital staff.

(a) *Standard: Plan.* The organized, hospital-wide quality assurance program must be ongoing and have a written plan of implementation.

(1) All organized services must be evaluated.

(2) Noscomial infections and medication therapy must be evaluated.

(3) All surgery performed in the hospital must be evaluated as it relates

to appropriateness of diagnosis and treatment.

(b) *Standard: Implementation.* The hospital must take and document appropriate remedial action to address deficiencies found through the quality assurance program.

§482.22 Condition of participation: Medical staff

The hospital must have an organized medical staff that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the hospital.

(a) *Standard: Staff appointments and qualifications.* The medical staff must be well-organized and accountable to the governing body for the quality of medical care given to patients.

(1) The medical staff must periodically conduct appraisals of its members.

(2) Staff must be legally, professionally, and ethically qualified.

(3) An individual physician must be assigned the responsibility for the organization and conduct of the medical staff.

(b) *Standard: Bylaws.* The medical staff must adopt and enforce bylaws to carry out responsibilities. The bylaws must include a statement of—

(1) The necessary qualifications for admittance to the staff; and

(2) The duties and privileges of each category of medical staff.

§ 482.23 Condition of participation: Nursing services.

Ths hospital must have an organized nursing service that provides 24-hour nursing services furnished or supervised by a registered nurse. There must be a licensed practical nurse or registered nurse on duty at all times, except for rural hospitals as specified in section 1861(e) of the Act.

(a) *Standard: Organization.* The hospital must have a well-organized service with a plan of administrative authority and delineation of responsibilities for patient care. The director of the nursing service must be a licensed registered nurse. He or she is responsible for the operation of the service, including determining the types and numbers of nursing personnel and staff necesary to provide nursing care for all areas of the hospital.

(b) *Standard: Staffing and delivery of care.* The nursing service must have adequate numbers of licensed registered nurses, licensed practical (vocational) nurses, and other personnel to provide nursing care to all patients as needed. There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the immediate availability of a registered nurse for bedside care of any patient. There must be registered nurse on duty at all times and available for all patients on a 24-hour basis.

(1) The hospital must have 24-hour nursing services on each tour of duty, except for rural hospitals as specified in 1861(e) of the Act.

(2) The nursing service must have a procedure to ensure that hospital nursing personnel for whom licensure is required have valid and current licensure.

(3) A registered nurse must supervise and evaluate the nursing care for each patient.

(4) The hospital must ensure that the nursing staff develops, and keeps current, a nursing care plan for each patient.

(5) A registered nurse must assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the preparation and competence of the nursing staff available.

(6) Non-employee licensed nurses who are working in the hospital must adhere to the policies and procedures of the hospital. The director of nursing service must provide for the adequate supervision and evaluation of the clinical activities of non-employee nursing personnel.

(c) *Standard: Administration of drugs.* Drugs must be prepared and administered according to established policies and accepted patterns of practice.

(1) Drugs must be administered in accordance with applicable State laws by only the following:

(i) A registered nurse.

(ii) Under the supervision of a registered nurse, the following individuals:

(A) A licensed practical nurse.

(B) A student nurse in an approved school of nursing.

(C) A psychiatric technician or a medication technician who has completed a State-approved training program in medication administration.

(2) All orders for drugs and biologicials must be in writing and signed by the physician. When telephone or oral orders must be used, they must be—

(i) Accepted and transcribed by registered nurses of licensed practical (vocational) nurses;

(ii) Signed or initialed by the prescribing physician as soon as possible; and

(iii) Used sparingly.

(3) Blood transfusions must be administered by registered nurses, in accordance with State law, and only by those who have had special training.

(4) There must be a hospital procedure for reporting transfusion reactions, adverse drug reactions, and errors in administration of drugs.

§ 482.24 Condition of Participation: Medical Record Services.

The hospital must have a medical record service with administrative responsibility for medical records. A medical record must be maintained for every individual evaluated or treated in the hospital.

(a) *Standard: Organization and staffing.* The organization of the medical record service must be appropriate to the scope and complexity of the services performed. The hospital must employ adequate personnel to ensure prompt completion, filing, and retrieval of records.

(b) *Standard: Form and retention of record.* The hospital must maintain a medical record for each inpatient and outpatient. Medical records must be accurately written, promptly completed, properly filed and retained, and accessible. The hospital must use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries.

(1) Medical records must be retained in their original or legally reproduced form for a period of 5 years.

(2) The hospital must have a system of coding and indexing medical records. The system must allow for immediate retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) The hospital must have a procedure for ensuring the confidentiality of patient records. Records must be released to authorized individuals only and the hospital must ensure that unauthorized individuals cannot gain access to or alter patient records.

(c) *Standard: Content of record.* The medical record must contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medications and services.

(1) All entries must be legible and complete, and must be authenticated and dated promptly by the person (identified by name and discipline) who is responsible for ordering, providing, or evaluating the service furnished.

(i) The author of each entry must be identified and must authenticate his or her entry.

(ii) Authentication may include signatures, written initials or computer entry.

(2) All records must document the following, as appropriate:

(i) Evidence of a physical examination, including a health history, performed no more than 7 days prior to admission or within 60 hours after admission.

(ii) Admitting diagnosis.

(iii) Results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient.

(iv) Documentation of complications, hospital acquired infections, and unfavorable reactions to drugs and anesthesia.

(v) Properly executed informed consent forms.

(vi) All physicians' orders, nursing notes, reports of treatment, medication records, radiology and laboratory reports, and vital signs and other information necessary to monitor the patient's condition.

(vii) Discharge summary with prognosis, disposition of case, and provisions for follow-up care.

(viii) Final diagnosis with completion of medical records within 30 days following discharge.

§ 485.25 Condition of Participation: Pharmaceutical services.

The hospital must have pharmaceutical services that meet the needs of the patients. The institution must have a pharmacy directed by a registered pharmacist or a drug storage area under competent supervision. The pharmacy or drug storage area must be administered in accordance with accepted professional principles.

(a) *Standard: Pharmacy management and administration.* There must be a pharmacy directed by a registered pharmacist, or a drug storage area under competent supervision and direction.

(1) A full time, part-time, or consulting pharmacist must be responsible for developing, supervising, and coordinating all the activities of the pharmacy services.

(2) The pharmaceutical services must have an adequate number of personnel to ensure quality pharmaceutical services, including emergency services.

(3) If the hospital does not have a staff pharmacist, a designated employee of the hospital must have overall responsibility for day-to-day operation of the services.

(4) If the hospital maintains only a drug storage area, a pharmacist must provide regular consultation, assist in overseeing control and distribution of drugs, and visit the hospital as needed.

(5) Current and accurate records must be kept of the receipt and disposition of all drugs.

(b) *Standard: Delivery of services.* Distribution and administration of drugs must be done in accordance with acceptable standards of practice in order to provide patient safety.

(1) All compounding, packaging, and dispensing of drugs must be under the supervision of a pharmacist.

(2) Drugs must be kept in a locked storage area.

(3) Outdated, mislabelled, or otherwise unusable drugs must not be dispensed or distributed.

(4) If a pharmacist is not available, drugs must only be removed from the pharmacy or storage area by personnel designated in the policies of the medical staff or pharmacy.

(5) Toxic or dangerous medications, not specifically prescribed as to time or number of doses, must automatically be stopped after a reasonable time that is predetermined by the medical staff.

(6) Drug administration errors, adverse drug reactions, and incompatibilities that are brought to the attention of the pharmacy staff must be immediately reported to the attending physician and, if appropriate, to the hospital-wide quality assurance program.

(7) Abuses and losses of controlled substances must be reported to the director of the pharmacy and the chief executive officer, as appropriate.

(8) The following must be available for use by the professional staff:

(i) Information relating to drug interactions.

(ii) A current drug list, or formulary.

§ 482.26 Condition of participation: Radiologic services.

The hospital must maintain, or have available, diagnostic radiologic services. If therapeutic services are also provided, they, as well as the diagnostic services, must meet professionally approved standards for safety and personnel qualifications. The provisions specified in this section apply only to ionizing radiology procedures.

(a) *Standard: Radiologic services.* The hospital must maintain, or have available, radiologic services according to needs of the patients.

(b) *Standard: Safety for patients and personnel.* The radiologic services must be free from hazards for patients and personnel.

(1) Proper safety precautions must be maintained against radiation hazards. This includes adequate shielding for patients, personnel, and facilities, as well as appropriate storage, use, and disposal of radioactive materials.

(2) Periodic inspection of equipment must be made and hazards identified must be promptly corrected.

(3) Radiation workers must be checked periodically, by the use of exposure meters or badge tests, for amount of radiation exposure.

(4) Radiologic services must be provided only on the order or a practitioner with clinical privileges.

(c) *Standard: Personnel.*

(1) A qualified radiologist, full-time or part-time, must supervise the service and interpret tests that require specialized knowledge.

(2) Only personnel designated as qualified by the individual responsible for the service or by the medical staff may use the radiologic equipment and administer procedures.

(d) *Standard: Records.* Records of radiologic services must be maintained.

(1) The radiologist must sign reports of his or her interpretations.

(2) The hospital must maintain the following for five years:

(i) Copies of reports and printouts.

(ii) Films, as appropriate.

§ 482.27 Condition of participation: Laboratories.

The hospital must maintain, or have available, adequate clinical laboratory services to meet the needs of its patients. The hospital must ensure that all laboratory services provided to its patients are performed in a Medicare approved facility.

(a) *Standard: Adequacy of laboratory services.* The hospital must have laboratory services available, either directly or through a contractual agreement with a Medicare approved hospital or independent laboratory, that meet the needs of the patients and the medical staff.

(1) Emergency laboratory services must be available during all hours of operation.

(2) A written description of services provided must be available to the medical staff.

(3) The laboratory must make provision for proper receipt and reporting of tissue specimens.

(i) The medical staff and a pathologist must determine which tissue specimens require a macroscopic (gross) examination, or microscopic examination, or both.

(ii) Except as specified in paragraphs (a)(3) (iii) and (iv) of this section, the pathologist must sign the tissue examination reports.

(iii) In the case of tests limited to skin pathology, the tissue examination

reports may be signed by an individual—

(A) Certified in dermatopathology by the American Board of Dermatology and American Board of Pathology; or

(B) Possessing qualifications that are equivalent to those required for certification (board eligible).

(iv) In the case of tests limited to oral pathology, the tissue examination reports must be signed by an individual—

(A) Certified in oral pathology by the American Board of Oral Pathology; or

(B) Possessing qualifications that are equivalent to these required for certification (board eligible).

(4) For emergency situations, the hospital must—

(i) Directly provide a minimum blood supply;

(ii) Have a list of donors and equipment to obtain blood quickly; or

(iii) Contract with blood banks or other institutions to obtain blood quickly.

(b) *Standard: Laboratory management.* The clinical laboratory must meet the management requirements specified in § 405.1316 of this chapter.

(c) *Standard: Personnel.* The facility must provide personnel to direct and conduct the laboratory services.

(1) The laboratory director must be technically qualified to supervise the laboratory personnel and test performance.

(i) The director must be a pathologist or other physician with training and experience in the areas of services offered, or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in the areas of services offered.

(ii) If the laboratory performs anatomic pathology services, the tissue examination must be performed under the technical supervison of a pathologist or other individual who meets the requirements of paragraphs (a)(3) (iii) and (iv) of this section.

(iii) If the laboratory performs blood banking and transfusion services they must be performed under the technical supervision of a pathologist or other physician with at least two years of experience in immunohematology subsequent to graduation.

(2) The laboratory director must—

(i) Provide technical supervision of the laboratory services; and

(ii) Assure that tests, examinations, and procedures are properly performed, recorded, and reported.

(3) The laboratory director must ensure that the staff—

(i) Has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(ii) Is sufficient in number for the scope and complexity of the services provided; and

(iii) Receives in-service training appropriate to the type and complexity of the laboratory services offered.

(4) The laboratory technologists must be technically competent to perform test procedures and report test results promptly and proficiently.

(d) *Standard: Blood and blood products.* The hospital must ensure that there are facilities for procurement, safe keeping, and transfusion of blood; and that blood products are provided or readily available.

(1) The hospital must maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

(2) In the case of services provided by an outside blood bank, the hospital must have an agreement governing the procurement, transfer, and availability of blood that is reviewed and approved by the medical staff and administration.

(3) There must be provision for prompt blood grouping, antibody detection, and identification and compatibility testing; and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

(4) Blood storage facilities in the hospital must have an adequate temperature alarm system that is regularly inspected.

(5) The hospital, according to its established procedures, must retain samples of each unit of blood used at the hospital for further testing in the event of reactions. The hospital must promptly dispose of blood not retained for further testing that has exceeded its expiration date.

(6) The hospital, according to its established procedures, must promptly investigate all transfusion reactions occurring in its own facility and make recommendations to the medical staff regarding improvements in transfusion procedures.

(e) *Standard: Proficiency testing.* The laboratory must meet the proficiency testing provisions specified in §§ 405.1310(c) and 405.1314(a) of this chapter.

(f) *Standard: Quality Control.* The laboratory must meet the quality control requirements specified in § 405.1317 of this chapter.

§ 482.28 Condition of participation: Food and dietetic services.

The hospital must have organized dietary services that are directed and staffed by adequate qualified personnel. However, a hospital that has a contract with an outside food management company may be found to meet this Condition of participation if the company has a dietitian who serves, on a full-time, part-time, or consultant basis to the hospital, provided the company maintains at least the minimum standards specified in this section and provides for constant liaison with the hospital medical staff for recommendations on dietetic policies affecting patient treatment.

(a) *Standard: Organization.*

(1) The hospital must have a full-time employee who—

(i) Serves as director of the food and dietetic service; and

(ii) Is responsible for the daily management of the dietary services.

(2) There must be a qualified dietitian, full-time, part-time, or on a consultant basis. A qualified dietitian is an individual who is registered or eligible for registration, by the American Dietetic Association or who has the documented equivalent in education, training, and experience.

(3) There must be administrative and technical personnel competent in their respective duties.

(b) *Standard: Diets.* Menus must meet the needs of the patients.

(1) Therapeutic diets must be prescribed by the physician.

(2) Nutritional needs must be met in accordance with the current Recommended Dietary Allowances of the Food and Nutrition Board, National Research Council, and in accordance with physician's orders.

(3) A current therapeutic diet manual approved by the dietitian and medical staff must be readily available to all medical, nursing, and food service personnel.

§ 482.30 Condition of participation: Utilization review.

The hospital must have in effect a utilization review plan that provides for review of services furnished by the institution to individuals entitled to benefits under the Medicare and Medicaid programs. The provisions of this section do not apply to a hospital for which a Professional Standards Review Organization has assumed binding review.

(a) *Applicability of UR plan requirements under titles XVIII and XIX.*

(1) Except as specified in paragraph (a)(2) of this section, for title XVIII purposes the facility must meet the UR requirements specified in this section.

(2) If HCFA determines that the UR procedures established by the State under title XIX of the Act are superior to the procedures required in this section, HCFA may require hospitals in that State to meet the UR plan requirements under §§ 456.50 through 456.245 of this chapter.

(b) *Standard: Composition of utilization review committee.* A UR committee consisting of two or more physicians, with or without participation of other professional personnel, must carry out the UR functions.

(1) Except as specified in paragraphs (b) (2) and (3) of this section, the UR committee must be one of the following:

(i) A staff committee of the institution;

(ii) A group outside the institution—

(A) Established by the local medical society and some or all of the hospitals in the locality; or

(B) Established in a manner approved by HCFA.

(2) If, because of the small size of the institution, it is impracticable to have a properly functioning staff committee, the UR committee must be established as specified in paragraph (b)(1)(ii) of this section.

(3) The commitee's or group's reviews may not be conducted by any physician who—

(i) Is financially interested in that hospital; or

(ii) Was professionally involved in the care of the patient whose case is being reviewed.

(c) *Standard: Scope and frequency of reviews.*

(1) The UR plan must provide for the review with respect to medical necessity of admissions to the institution, the duration of stays, and the professional services (including drugs and biologicals) frunished.

(2) Expect as specified in paragraph (e) of this section, the reviews may be conducted on a sample basis.

(d) *Standard: Final determination relgarding admissions or continued stays.*

(1) The final determination that an admission or continued stay is not medically necessary—

(i) May be made by on physician on the UR committee in cases where the attending physician concurs with the determination or fails to present his or her views when afforded the opportunity; and

(ii) Must be made by at least two physicians on the UR committee in all other cases.

(2) Before making a final determination that an admission or continued stay is not medically necesary, the UR committee must consult the attending physician and afford him or her the opportunity to present his or her views.

(3) If the committee decides that further stay in the hospital is not medically necessary, written notification must be given—

(i) To the hospital, the attending physician, and the individual;

(ii) No later than two days after the determination;

(iii) No later than two days after the end of the certified period.

(e) *Standard: Extended stay review.* The UR committee must make a periodic review, as specified in the UR plan, of each current inpatient receiving hospital services during a continuous period of extended duration.

(1) The scheduling of the periodic reviews may—

(i) Be the same for all cases; or

(ii) Differ for different classes of cases.

(2) The UR committee must make the periodic review no later than 7 days after the day required in the UR plan.

(f) *Standard: Review of professional services.* The committee must review professional services provided, to determine medical necessity and to promote the most efficient use of available health facilities and services.

§ 482.41 Condition of participation: Physical environment.

The hospital must be constructed, arranged, and maintained to ensure the safety of the patient, and to provide facilities for diagnosis and treatment and for special hospital services appropriate to the needs of the community.

(a) *Standard: Buildings.* The condition of the physical plant and the overall hospital environment must be developed and maintained in such a manner that the safety and well-being of patients are assured.

(1) There must be emergency power and lighting in at least the operating, recovery, intensive care, and emergency rooms, and stairwells. In all other areas not serviced by the emergency supply source, battery lamps and flashlights must be available.

(2) There must be facilities for emergency gas and water supply.

(3) Corridors and passageways must be free of obstacles.

(b) *Standard: Life safety from fire.*

(1) The facility must meet the provisions of the 1981 edition of the *Life Safety Code* of the National Fire Protection Association that apply to hospitals. (Incorporation of the 1981 edition of the Life Safety Code was approved by the Director of the Federal Register on September 28, 1981). The code is available for inspection at the Office of the Federal Register Information Center, Room 8301, 1110 L Street, NW., Washington, D. C. Copies may be obtained from the National Fire Protection Association; Battery March Park; Quincy, Mass. 02269.

(i) Any facility that on December 4, 1980 complied, with or without waivers, with the requirements of the 1967 edition of the *Life Safety Code*, is considered to be in compliance with this standard so long as the facility continues to remain in compliance with that edition of the Code.

(ii) The provisions of the *Life Safety Code* do not apply in a State where HCFA finds that the State Fire and Safety Code adequately protects patients in hospitals.

(iii) After consideration of State Survey agency findings, HCFA may waive specific provisions of the Code which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of patients.

(2) The hospital must have procedures for the proper routine storage and prompt disposal of trash.

(3) The hospital must have written fire control plans that contain provisions for prompt reporting of fires; extinguishing fires; protection of patients, personnel and guests; evacuation; and cooperation with fire fighting authorities.

(c) *Standard: Facilities.* The hospital must maintain adequate facilities for its services.

(1) Diagnostic and therapeutic facilities must be located for the safety of patients.

(2) Facilities, supplies, and equipment must be maintained to ensure an acceptable level of safety and quality.

(3) The extent and complexity of facilities must be determined by the services offered.

(4) There must be proper ventilation, light, and temperature controls in pharmaceutical, food preparation, and other approprate areas.

§ 482.42 Condition of Participation: Infection control.

The hospital must provide a sanitary environment to avoid sources and transmission of infections. There must be an active program for the prevention, control, and investigation of infection and communicable diseases.

(a) *Standard: Organization and policies.* A person (or persons) must be

designated as infection control officer(s) to develop and implement policies governing asepsis and infecton control.

(1) The infection control officer(s) must develop a system for identifying, reporting, investigating, and controlling infections of patients and personnel.

(2) The chief executive officer, the medical staff, and the director of nursing services must ensure that the hospital-wide quality assurance program and training programs address problems identified by the infection control officer(s).

(3) The chief executive officer, the medical staff, and the director of nursing service must be responsible for the implementation of successful corrective action plans is affected problem areas.

(4) A log of incidents related to infections must be maintained.

Subpart D—Optional Hospital Services

§ 482.51 Condition of Participation: Surgical Services.

If the hospital provides surgical services, the services must be well organized and provided in accordance with acceptable standards of practice. If outpatient surgical services are offered the services must be consistent in quality with inpatient care in accordance with the complexity of services offered.

(a) *Standard: Organization and staffing.* The organization of the surgical services must be appropriate to the scope of the services offered.

(1) The operating rooms must be supervised by an experienced professional registered nurse.

(2) Licensed practical nurses (LPNs) and surgical technologists (operating room technicians) may serve as "scrub nurses" under the supervision of a registered nurse

(3) Only qualified registered nurses may perform circulating duties in the operating room, except that LPNs and surgical technologists may assist in circulatory duties under the direct supervision of a qualified registered nurse.

(4) Surgical privileges must be delineated for all physicians performing surgery in accordance with the competencies of each physician. The surgical service must maintain a roster of physicians specifying the surgical privileges of each physician.

(b) *Standard: Delivery of service.* Surgical services must be consistent with needs and resources. Policies governing surgical care must be designed to assure the achievement and maintenance of high standards of medical practice and patient care.

(1) There must be a complete history and physical work-up in the chart of every patient prior to surgery, except in emergencies. If this has been dictated, but not yet recorded in the patient's chart, there must be a statement to that effect and an admission note by the physician in the chart.

(2) A properly executed informed consent form for the operation must be in the patient's chart before surgery, except in emergencies.

(3) The following equipment must be available to the operating room suites: call-in-system, cardiac monitor, resuscitator, defibrillator, aspirator, thoracotomy set, and tracheotomy set.

(4) There must be adequate provisions for immediate post-operative care.

(5) The operating room register must be complete and up-to-date.

(6) An operative report describing techniques, findings, and tissues removed or altered must be written or dictated immediately following surgery and signed by the surgeon.

§ 482.52 Condition of Participation: Anesthesia services.

If the hospital furnishes anesthesia services, they must be provided in a well organized manner under the direction of a qualified physician. The service is responsible for all anesthesia administered in the hospital.

(a) *Standard: Organization and Staffing.* The organization of anesthesia services must be appropriate to the scope of the services offered.

(1) Anesthetics must be administered by only—

(i) A qualified anesthesiologist; or

(ii) A physician qualified to administer anesthesia, a certified registered nurse anesthetist (CRNA), or an anesthesia assistant. In these cases the persons administering the anesthesia must be under the supervision of the operating physician.

(2) An anesthesia assistant under paragraph (a)(1)(ii) must have successfully completed a four year educational program for a physician's assistant, that includes two years of specialized academic and clinical training in anesthesia.

(b) *Standard: Delivery of services.* Anesthesia services must be consistent with needs and resources. Policies on anesthesia procedures must include the delineation of preanesthesia and post anesthesia responsibilities. The policies must ensure that the following are provided for each patient;

(1) A preanesthesia evaluation by an anesthesiologist or anesthetist performed within 48 hours prior to surgery.

(2) An intraoperative anesthesia record.

(3) A post anesthesia follow-up report by an anesthesiologist or individual administering the anesthesia written within 48 hours after the operation, noting any postoperative abnormalities or complications.

§ 482.53 Condition of Participation: Nuclear medicine services.

If the hospital provides nuclear medicine services, those services must meet the needs of the patients in accordance with acceptable standards of practice.

(a) *Standard: Organization and staffing.* The organization of the nuclear medicine service must be appropriate to the scope and complexity of the services offered.

(1) There must be a director who is a physician qualified in nuclear medicine.

(2) The qualifications, training, functions, and responsibilities of nuclear medicine personnel must be specified by the service director and approved by the medical staff.

(b) *Standard: Delivery of service.* Radioactive materials must be prepared, labeled, used, transported, stored, and disposed of in accordance with acceptable standards of practice.

(1) In-house preparation of radiopharmaceuticals is by, or under, the direct supervision of an appropriately trained registered pharmacist or physician.

(2) There is proper storage and disposal of radioactive material.

(3) If clinical laboratory tests are performed in the nuclear medicine service, the unit must meet the requirement for clinical laboratories with respect to management, adequacy of facilities, proficiency testing and quality control (see § 482.27 (a), (b), (e), and (f)).

(c) *Standard: Facilities.* Equipment and supplies must be appropriate for the types of nuclear medicine services offered and must be maintained for safe and efficient performance. The equipment must be—

(i) Maintained in safe operating condition; and

(ii) Inspected, tested, and calibrated at least annually by qualified personnel.

(d) *Standard: Records.* Signed and dated reports of nuclear medicine interpretations, consultations, and procedures must be maintained by the service.

(1) The hospital must maintain copies of nuclear medicine reports for no fewer than 5 years.

(2) The practitioner approved by the medical staff to interpret diagnostic

procedures must sign and date the interpretations of these tests.

(3) The hospital must maintain records of the receipt and disposition of radiopharmaceuticals.

(4) Nuclear medicine services must be ordered only by a practitioner with clinical privileges.

§ 482.54 Condition of participation: Outpatient services.

If the hospital provides outpatient services, the services must meet the needs of the patients in accordance with acceptable standards of practice.

(a) *Standard: Organization.* Outpatient services must be appropriately organized and integrated with inpatient services.

(b) *Standard: Personnel.* The hospital must—

(1) Assign an individual to be responsible for outpatient services; and

(2) Have appropriate professional and nonprofessional personnel available.

§ 482.55 Condition of participation: Emergency services.

The hospital must meet the emergency needs of patients in accordance with acceptable standards of practice.

(a) *Standard: Organization and direction.* If the hospital has an emergency department or service—

(1) It must be organized under the direction of a qualified member of the medical staff;

(2) It must be integrated with other departments of the hospital;

(3) The policies and procedures governing medical care provided in the emergency service or department are established by and are a continuing responsibility of the medical staff; and

(4) The emergency service is supervised by a qualified member of the medical staff.

(b) *Standard: Alternative procedures.* If the hospital does not have an organized emergency service, it must at least have written policies and procedures for appraisal, initial treatment for emergencies, and referral when appropriate.

(c) *Standard: Medical and Nursing personnel.* There must be adequate medical and nursing personnel to meet the written emergency procedures and needs anticipated by the facility.

§ 482.56 Condition of Participation: Rehabilitation services.

If the hospital provides rehabilitation, physical therapy, occupational therapy, audiology, or speech pathology services, the services must be organized and staffed to ensure the health and safety of patients.

(a) *Standard: Organization and staffing.* The organization of the service must be appropriate to the scope of the services offered.

(1) The director of the services must have the necessary knowledge, experience, and capabilities to properly supervise and administer the services.

(2) If physical therapy services are offered, the services must be given by a qualified physical therapy therapist or a qualified physical therapist assistant as defined in § 405.1702(d) and (e) of this chapter. The physical therapist assistant must function under the supervision of a qualified physical therapist.

(3) If occupational therapy services are offered, the services must be given by a qualified occupational therapist or qualified occupational therapist assistant as defined in § 405.1202(f) and (g) of this chapter. The occupational therapist assistant must be under the supervision of a qualified occupational therapist.

(4) If speech pathology services are offered, the services must be given by or under the supervision of a qualified speech pathologist. A qualified speech pathologist is one who is qualified as specified in 405.1702(j) of this chapter.

(b) *Standard: Delivery if services.* Services must be furnished in accordance with a written plan of treatment. Services must be given in accordance with physician's orders and the orders must be incorporated in the patient's record.

§ 482.57 Condition of participation: Respiratory care services.

The hospital must meet the needs of the patients in accordance with acceptable standards of practice. The following requirements apply if the hospital has an organized respiratory care service.

(a) *Standard: Organization and Staffing.* The organization of the respiratory care service must be appropriate to the scope and complexity of the services offered.

(1) There must be a director of respiratory care services who is responsible for the service.

(2) There must be adequate numbers of qualified respiratory therapists, respiratory therapy technicians, and other personnel who are trained in respiratory care. A qualified respiratory therapist is one who is eligible to take the registry examination for respiratory therapists administered by the National Board for Respiratory Therapy, Inc.

(b) *Standard: Delivery of Services.* Services must be delivered in accordance with medical staff directives.

(1) Personnel qualified to perform specific procedures and the amount of supervison required for personnel to carry out specific procedures must be designated in writing.

(2) If blood gases or other clinical laboratory tests are performed in the respiratory care unit, the unit must meet the requirements for clinical laboratories with respect to management, adequacy of facilities, proficiency testing, and quality control. (See § 482.27(a), (b), (e) and (f) of this part for requirements applicable to laboratories.)

Subpart E—Requirements for Specialty Hospitals

§ 482.60 Special provisions applying to psychiatric and tuberculosis hospitals.

The hospital must—

(a) Be accredited by the Joint Commission on Accreditation of Hospitals or, if a distinct part of an institution, meet the Conditions of participation for hospitals specified in this part.

(b) Maintain clinical records sufficient to permit the Secretary to determine the degree and intensity of treatment furnished to the beneficiary

(c) Meet the staffing requirements specified in §§ 482.62 and 482.64.

§ 482.61 condition of participation: Special medical record requirements for psychiatric hospitals.

The medical records maintained by a psychiatric hospital must permit determination of the degree and intensity of the treatment provided to individuals who are furnished services in the institution.

(a) *Standard: Development of assessment/diagnostic data.* Medical records must stress the psychiatric components of the record, including history of findings and treatment provided for the psychiatric condition for which the patient is hospitalized.

(1) The identification data must include the patient's legal status.

(2) A provisional or admitting diagnosis must be made on every patient at the time of admission, and must include the diagnoses of intercurrent diseases as well as the psychiatric diagnoses.

(3) The reasons for admission must be clearly documented as stated by the patient and/or others significantly involved.

(4) The social service records, including reports of interviews with patients, family members, and others, must provide an assessment of home plans and family attitudes, and community resource contacts as well as a social history.

(5) When indicated, a complete neurological examination must be

recorded at the time of the admission physical examination.

(b) *Standard: Psychiatric evaluation.* Each patient must receive a psychiatric evaluation that must—

(1) Be completed within 60 hours of admission;

(2) Include a medical history;

(3) Contain a record of mental status;

(4) Note the onset of illness and the circumstances leading to admission;

(5) Describe attitudes and behavior;

(6) Estimate intellectual functioning, memory functioning, and orientation; and

(7) Include an inventory of the patient's assets in descriptive, not interpretative, fashion.

(c) *Standard: Treatment plan.*

(1) Each patient must have an individual comprehensive treatment plan that must be based on an inventory of the patient's strengths and disabilities. The written plan must include—

(i) A substantiated diagnosis;

(ii) Short-term and long-range goals;

(iii) The specific treatment modalities utlilized;

(iv) The responsibilities of each member of the treatment team; and

(v) Adequate documentation to justify the diagnosis and the treatment and rehabilitation activities carried out.

(2) The treatment received by the patient must be documented in such a way to assure that all active therapeutic efforts are included.

(d) *Standard: Recording progress.* Progress notes must be recorded by the physician, nurse, social worker and, when appropriate, others significantly involved in active treatment modalities. The frequency of progress notes is determined by the condition of the patient but should be recorded at least weekly for the first 2 months and at least once a month thereafter and should contain recommendations for revisions in the treatment plan as indicated as well as precise assessment of the patient's progress in accordance with the original or revised treatment plan.

(e) *Standard: Discharge planning and discharge summary.* Each patient must have a discharge summary that includes a recapitulation of the patient's hospitalization and recommendations from appropriate services concerning follow-up or aftercare as well as a brief summary of the patient's condition on discharge.

§ 482.62 Condition of participation: Special staff requirements for psychiatric hospitals.

The hospital must have adequate numbers of qualified professional and supportive staff to evaluate patients, formulate written, individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning.

(a) *Standard: Personnel.* The hospital must employ or undertake to provide adequate numbers of qualified professional, technical, and consultative personnel to:

(1) Evaluate patients;

(2) Formulate written individualized, comprehensive treatment plans;

(3) Provide active treatment measures; and

(4) Engage in discharge planning.

(b) *Standard: Director of inpatient psychiatric services; medical staff.* Inpatient psychiatric services must be under the supervision of a clinical director, service chief, or equivalent who is qualified to provide the leadership required for an intensive treatment program. The number and qualifications of physicians must be adequate to provide essential psychiatric services.

(1) The clinical director, service chief, or equivalent must meet the training and experience requirements for examination by the American Board of Psychiatry and Neurology.

(2) The director must monitor and evaluate the quality and appropriateness of services and treatment provided by the medical (physician) staff.

(c) *Standard: Availability of physcians and other personnel.* Physicians and other appropriate professional personnel must be available to provide necessary medical and surgical diagnostic and treatment services. If medical and surgical diagnostic and treatment services are not available within the institution, qualified consultants or attending physicians must be immediately available or a satisfactory agreement must be established for transferring patients to a Medicare certified general hospital.

(d) *Standard: Nursing services.* The hospital must have a qualified director of psychiatric nursing services. In addition to the director of nursing, there must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under each patient's active treatment program and to maintain progress notes on each patient.

(1) The director of psychiatric nursing services must have a master's degree in psychiatric or mental health nursing, or its equivalent from a school of nursing accredited by the National League for Nursing, or be qualified by education and experience in the care of the mentally ill. The director must demonstrate competence to participate in interdisciplinary formulation of individual treatment plans; to give skilled nursing care and therapy; and to direct, monitor, and evaluate the nursing care furnished.

(2) The staffing pattern must insure the availability of a registered professional nurse 24 hours each day. There must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide the nursing care necessary under each patient's active treatment program.

(e) *Standard: Psychological services.* The hospital must provide or have available psychological services to meet the needs of the patients. If there are organized psychological services, there must be a director who is eligible to be considered a professional psychologist according to the American Psychological Association's standards for providers of psychological services. The director must monitor psychological services and evaluate their quality and appropriateness. The services must be furnished in accordance with acceptable standards of practice, service objectives, and established policies and procedures.

(f) *Standard: Social services.* There must be a director of social services who monitors and evaluates the quality and appropriateness of social services furnished. The services must be furnished in accordance with accepted standards of practice and established policies and procedures.

(1) The director of the social work department or service must have a master's degree from an accredited school of social work or must be qualified by education and experience in the social services needs of the mentally ill. If the director does not hold a masters degree in social work, at least one staff member must have this qualification.

(2) Social service staff responsibilities must include, but are not limited to, participating in discharge planning, arranging for follow-up care, and developing mechanisms for exchange of appropriate information with sources outside the hospital.

(g) Standard: Therapeutic activities. The hospital must provide a therapeutic activities program.

(1) The program must be apropriate to the needs and interests of patients and be directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(2) The number of qualified therapists, support personnel, and consultants must

be adequate to provide comprehensive therapeutic activities consistant with each patient's active treatment program.

§ 482.63 Condition of participation: Special medical record requirements for tuberculosis hospitals.

The medical records maintained by a tuberculosis hospital must permit determination of the degree and intensity of the treatment provided to individuals who are furnished services in the institution.

482.64 Condition of participation: Special staff requirements for tuberculosis hospitals.

The hospitals must have staff adequate in number and qualifications to carry out an active program of treatment for individuals who are furnished services in the institution. There must be a full-time medical director.

(Catalog of Federal Domestic Assistance Program No. 13.714; Medical Assistance Program, No. 13.773; Medical-Hospital Insurance; No. 13.774; Medicare-Supplementary Medical Insurance.

Dated: July 1, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 2, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 83-35350 Filed 12-30-82; 8:45 am]

BILLING CODE 4120-03-M

Notices

Federal Register
Vol. 48, No. 2
Tuesday, January 4, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Tobacco Inspection; Growers' Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This notice announces that a referendum will be conducted by mail during the period of January 10–14, 1983, of producers of flue-cured tobacco who sell their tobacco at auction in Burlington and Mebane, North Carolina, to determine producer approval of the designation of the Burlington and Mebane tobacco markets as one consolidated auction market.

DATES: The referendum will be held January 10–14, 1983.

FOR FURTHER INFORMATION CONTACT: J. T. Bunn, Deputy Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250; Telephone Number (202) 447–7235.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated Burlington-Mebane, North Carolina, auction market. Burlington and Mebane, North Carolina, were separately designated on June 26, 1942 (7 FR 4811) as flue-cured tobacco auction markets under the Tobacco Inspection Act of 1935 (7 U.S.C. 511 *et seq.*). Under this Act the two markets have been receiving mandatory grading services from USDA.

On June 15, 1981, an application was made to the Secretary of Agriculture to consolidate the designated markets of Burlington and Mebane. This application, filed by the warehousemen in those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 CFR Part 29). On November 17, 1981, an oral hearing was held in Graham, North Carolina, pursuant to applicable provisions of the regulations under the Tobacco Inspection Act.

A review Committee, established pursuant to § 29.3(h) of the regulations (7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, together with other available information which was officially noticed at the hearing relating to the application and the brief filed by the applicants. The Committee recommended to the Secretary that the application for consolidation be granted and the Secretary approved the application on November 18, 1982.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor said designation. It is hereby determined that the referendum will be held by mail during the period of January 10–14, 1983. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Burlington and Mebane, North Carolina, are in favor of or opposed to the designation of the consolidated market for the 1983 and succeeding crop years. Accordingly, if a majority of those tobacco producers voting in the referendum favor this consolidation, a new market will be designated as and be called Burlington-Mebane.

To be eligible to vote in the referendum the tobacco producer must have sold flue-cured tobacco on either the Burlington or Mebane auction market during 1982. Any farmer who believers he or she is eligible to vote in the referendum but has not received a mail ballot by January 10, 1983, should immediately contact Mr. J. T. Bunn at (202) 447–7235.

The referendum will be held in accordance with the provisions of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1312(c)) and the regulations set forth in 7 CFR Parts 29 and 717.

Dated: December 28, 1982.

Richard E. Lyng,

Acting Secretary.

[FR Doc. 83-135 Filed 1-3-83; 8:45 am]

BILLING CODE 3410-02-M

Soil Conservation Service

Mill Creek Watershed, Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality 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 Mill Creek Watershed, Page County, Virginia.

FOR FURTHER INFORMATION CONTACT: Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, P.O. Box 10026, Richmond, Virginia 23240, telephone 804–771–2455.

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, Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include the treatment of 1,400 acres of cropland and 1,300 acres of pastureland. The conservation practices will help protect the resource base, reduce erosion, and improve the water quality of Mill Creek.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Gerald P. Bowie.

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. 10.904, 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.)

Manly S. Wilder,

State Conservationist.

December 21, 1982.

[FR Doc. 83-5 Filed 1-3-83; 8:45 am]

BILLING CODE 3410-16-M

CIVIL RIGHTS COMMISSION

Oklahoma Advisory Committee, Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a press conference to be conducted by the Oklahoma Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 12:00 noon, on January 26, 1983, at the Lincoln Plaza, 4345 Lincoln Boulevard, in the Rotunda Room, Oklahoma City, Oklahoma, 73105. The purpose of this press conference is to release the Committee's report on block grants.

Persons desiring additional information should contact the Chairpersons, Earl D. Mitchell, 3 Summit Circle, Stillwater, Oklahoma, 74074, (405) 624-6212 or the Southwestern Regional Office, Heritage Plaza, 418 South Main, San Antonio, Texas, 78204, (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 28, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-20 Filed 1-3-83; 8:45 am]

BILLING CODE 6335-01-M

New Mexico Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a press conference to be conducted by the New Mexico Advisory Committee to the Commission will convene at 9:30a and will end at 11:00a, on January 26, 1983, at the Hilton Inn—Santa Fe, 100 Sandoval, in the Onate Room, Santa Fe, New Mexico, 87501. The purpose of this press conference is to release the Committee's report on block grants.

Persons desiring additional information should contact the Chairperson, Robert Mondragon, Route 5, Box 343 A, Santa Fe, New Mexico, 87501, (505) 455-7402 or the Southwestern Regional Office, Heritage Plaza, 418 South Main, San Antonio, Texas, 78204, (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 28, 1982.

John I. Binkley,

Advisory Committtee Management Officer.

[FR Doc. 83-21 Filed 1-3-83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Carbon Steel Plate From Romania; Suspension of Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of suspension of investigation.

SUMMARY: The Department of Commerce has decided to suspend the antidumping duty investigation involving hot-rolled carbon steel plate from Romania. The basis for the suspension is an agreement by Metalimportexport, an exporter which accounts for all of the known imports of this product from Romania, to revise its prices to eliminate sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: January 4, 1983.

FOR FURTHER INFORMATION CONTACT: Raymond G. Busen, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230, telephone (202) 377-1784.

SUPPLEMENTARY INFORMATION: On January 11, 1982, the Department of Commerce (the Department) received petitions from United States Steel Corporation, and counsel for Republic Steel Corporation, Inland Steel Corporation, Jones & Laughlin Steel Incorporated, National Steel Corporation and Cyclops Corporation (the Five), filed on behalf of the United States industry producing certain steel products. The petitions alleged that certain steel products from Romania are being sold in the United States at less than fair value, and that such sales are materially injuring, or are threatening to materially injure, a United States industry. On January 26, 1982, the Five withdrew their petitions on carbon steel structural shapes, hot rolled carbon steel bars, hot-rolled alloy steel bars, cold-formed carbon steel bars, and cold-formed alloy steel bars. On January 31, 1982, the Five withdrew their petition on galvanized carbon steel sheet. Counsel for the Five also alleged that "critical circumstances," as defined in section 733(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), exist in this case.

After reviewing the petitions, we determined they contained sufficient grounds to initiate an antidumping investigation on hot-rolled carbon steel plate (carbon steel plate). We notified the United States International Trade Commission (ITC) of our action and initiated such an investigation on February 1, 1982 (47 FR 5752). Concurrent with our initiation, we dismissed the Five's petitions with respect to hot-rolled carbon steel sheet and cold-rolled carbon steel sheet because there had been *de minimis* imports of those products in recent years, and no evidence had been provided of bona fide offers on merchandise for export to the United States. The ITC subsequently found, on February 26, 1982, that there is a reasonable indication these imports of carbon steel plate are materially injuring, or are threatening to materially injure, a United States industry. We determined this case to be "extraordinarily complicated," as defined in section 733(c) of the Act. Therefore, we extended the period for making a preliminary determination by 50 days until August 9, 1982 (47 FR 23509).

The Department also decided that Romania is a state-controlled-economy country for the purposes of this investigation. Subsequently, Finland was selected as the surrogate country for the purposes of determining fair value.

We presented questionnaires concerning the allegations to Metalimportexport, the Romanian exporter, and to Rautaruukki Oy, a steel company in the surrogate country, on May 10 and May 13, 1982, respectively. We verified Metalimportexport's response to the questionnaire on June 24-25, 1982. On June 28-29, 1982, we verified the response supplied by Rautaruukki Oy. We determined that Metalimportexport's exports of carbon steel plate to the United States were made at prices lower than the equivalent Rautaruukki Oy home market prices during the investigatory period of April 1, 1981, through September 30, 1981.

On July 22, 1982, the Court of International Trade in *Republic Steel Corp., et al.* v. *United States* (Slip Op.

82–58) ordered the Department to initiate investigations with respect to hot-rolled carbon steel sheet and cold-rolled carbon steel sheet from Romania. On August 5, 1982, the Department appealed the decision of the Court of International Trade to the Court of Customs and Patent Appeals which directed a stay of the order of the Court of International Trade pending review. On November 19, 1982, the United States Court of Appeals for the Federal Circuit (successor to the Court of Customs and Patent Appeals as of October 1, 1982) ordered that the decision be vacated and the action remanded to the Court of International Trade for dismissal on grounds of mootness.

On August 16, 1982, the Department published a notice (47 Fed. Reg. 35646) announcing an affirmative preliminary determination of sales at less than fair value. We also determined that critical circumstances do not exist in this case. We directed the United States Customs Service to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise on or after August 16, 1982, and to require a cash deposit or bond in the amount of 13.2 percent of the f.o.b. value of the merchandise.

On November 24, 1982, Metalimportexport and the Department initialed a proposed suspension agreement, which was based upon Metalimportexport's agreement to eliminate completely sales of this merchandise to the United States at less than fair value. On the same date, in compliance with the procedural requirements of section 734(e) of the Act, we provided copies of the proposed suspension agreement to the petitioners and to other interested parties for their comments and consulted with the petitioners. Written comments were received from counsel for the petitioners and from counsel for Bethlehem Steel Corporation.

The Five's Comments

Comment 1

The Department must base its foreign market value determination on constructed value rather than on Finnish home market prices because the Department had reasonable grounds to believe or suspect that Finnish prices were at less than the cost of production. This was because of worldwide depression in the steel industry. Further, the Department should have used constructed value instead of choosing Finland as the surrogate country because Finland's stage of economic development was not comparable to that of Romania.

DOC Position

The Department has had no reason to believe or suspect that Finnish prices were at less than the cost of production. Although sales below cost were not a subject of our investigation, our verification of Finnish home market prices did not indicate that sales were made below cost. In regard to using Finland as the surrogate country rather than using constructed value, § 353.8 of the Department's Regulations states a preference for determining foreign market value by using prices in a surrogate country rather than constructing a foreign market value. Section 353.8(b) also states that "to the extent possible" a surrogate country be chosen with a comparable economy to the state-controlled economy. Since we could not locate a comparable economy country which was willing to cooperate in our investigation, we chose Finland and Finland's Rautaruukki Oy steel plant because of the plant's comparability to Romania's Galati plant and Finland's willingness to cooperate in our investigation.

Comment 2

Petitioner questions whether the agreement can be effectively monitored and enforced because Metalimportexport sells its plate in batches which vary by thickness, width, and length. The batch product mix could conceivably be altered so that each batch contains a greater proportion of higher priced plate. The agreement should be revised to prevent such circumvention.

DOC Position

The agreement provides for effective monitoring by requiring that Metalimportexport report all sales (including the product mix of each batch if sold in a batch) and sales prices during each preceding calendar quarter. If it is found, when monitoring under the semiannual foreign market value estimate and the annual 751 review, that the terms of the agreement are being violated, then the provisions of section 734(i) shall apply.

Comment 3

The proposed agreement should expressly safeguard against related party transactions where foreign producers "sell" at fair value to related United States importers who then resell on the domestic market at less than fair value.

DOC Position

The Department has adequate authority under section C of the agreement to monitor the sales of Metalimportexport and under section D to deal with any violations should they occur.

United States Steel Corporation's Comments

Comment 1

The Department failed to comply with the procedural requirements of the Act by not adequately consulting with the petitioners before the suspension and by not properly explaining the operation and enforcement of the proposed agreement.

DOC Position

In accordance with section 732(e) of the Act, the petitioner was notified and a copy of the proposed suspension agreement was provided not less than 30 days prior to the date set for the execution o the agreement. We answered petitioner's questions and provided explanations regarding our computation of foreign market value. We also believe that the section on monitoring adequately explains the enforcement provisions of the agreement.

Comment 2

Petitioner alleges that failure to name the surrogate country in the proposed agreement is inconsistent with the Department's obligation to show how the agreement will meet the statutory requirements.

DOC Position

We did not expressly identify the surrogate country in the event that a situation would arise which would preclude our continued use of Finland as the surrogate country.

Comment 3

Petitioner alleges that Italy should be the appropriate choice of the surrogate country.

DOC Position

Italy was considered as a possible surrogate choice but was disregarded because of distorted home market pricing in its highly protected steel industry.

Comment 4

Petitioner alleges that foreign market value should be based on constructed value because the Finnish producer may not be selling above the cost of production in its home market.

DOC Position

Our position is stated above under comment 1 to the Five.

Comment 5

No change in the surrogate country should be permitted unless detailed standards are set forth in the agreement itself.

DOC Position

This addition is unnecessary. In the event that the Department decides to change surrogates, petitioners will be notified and permitted an opportunity to comment on the contemplated change.

Comment 6

No change in methodology for computing foreign market value should be permitted unless petitioners are first notified and given an opportunity to comment.

DOC Position

The Department will determine whether its computation methodology no longer meets the objectives of the agreement. As stated in the agreement, Metal import export will be notified of the change prior to the effective date of any semiannual estimate. Written comments from interested parties regarding our computation methodology will be considered.

Comment 7

All adjustments to foreign market value should be delineated in the suspension agreement.

DOC Position

The suspension agreement indicates that, as determined by the Department, the estimate of foreign market value will be based on the price of such or similar merchandise in the surrogate country with appropriate adjustments. The term "appropriate adjustments" will allow the Department to change its estimate of foreign market value if it deems that certain adjustments are found to be inappropriate.

Comment 8

The petitioner contends that under the statute the Department's estimates of foreign market value should also be made available to petitioners.

DOC Position

The information which the Department uses to make its estimate of foreign market value is considered to be business confidential. The Department will make available nonconfidential summaries of its estimated foreign market value calculations.

Comment 9

The petitioner contends that Metalimportexport should be required to attach duplicate copies of its invoices to its quarterly report of all carbon steel plate sales and should specify the deadlines for and contents of the United States Custom Service's autidumping reports on Romanian steel plate imports.

DOC position

The agreement already preserves the Department's right to obtain from Metalimportexport any additional information as may be required to ensure that Metalimportexport is fully complying with the terms of the agreement. In regard to specifying deadlines for information to be submitted by the United States Customs Service, this information is normally submitted in a timely manner and need not be further clarified in the agreement.

Bethlehem Steel Corporation's Comments

Comment 1

The information in the agreement as to adjustments contained in the sample calculation of foreign market value is nowhere incorporated into the proposed suspension agreement.

DOC Position

Our position is stated above under Comment 7 to United States Steel Corporation.

Comment 2

The language of the proposed suspension agreement leaves open the identity of the surrogate country.

DOC position

Our position is stated above under Comment 2 to United States Steel Corporation.

Comment 3

There is no indication in the proposed suspension agreement that the domestic producers will have an opportunity before the setting of the price for the next period of time to review the agency's methodology in determining foreign market value or to review the quarterly reports submited by Metalimportexport to make certain that the price at which the merchandise is sold in the United States is at or above foreign market value.

DOC Position

Our position is stated above under Comments 6 and 7 to United States Steel Corporation.

Comment 4

Bethlehem requests that the semiannual estimate of foreign market value be revised more frequently than every six months if the Finnish producer changes its base price or extra charges during the period.

DOC Position

The agreement's quarterly reporting requirement and the Department's subsequent estimate of foreign market value will adequately provide for the elimination of sales at less than fair value.

Comment 5

Bethlehem objects to the Department's failure to provide domestic interested parties with sufficient information on Finnish quality and size extras which prevented it from providing meaningful comments on the proposed suspension agreement.

DOC Position

We were unable to obtain a breakdown of Finnish home market sales according to quality and size extras.

Comment 6

Bethlehem objects to the Department's deductions from foreign market value for freight equalization and interest cost differences.

DOC Position

We have determined that freight equalization and differences in interest costs are allowable deductions from foreign market value.

Scope of the Investigation

For purposes of this investigation the term "carbon steel plate" covers hot-rolled carbon steel plate currently provided for in items 607.6615, 607.94, 608.0710, and 608.11 of the *Tariff Schedules of the United States Annotated.*

Suspension of the Investigation

The Department has considered the comments submitted with respect to the proposed suspension agreement. We have determined that the agreement eliminates sales of this merchandise to the United States at less than fair value, can be monitored effectively, and is in the public interest. Therefore, we find that the criteria for suspension of an investigation pursuant to section 734 of the Act have been met. The terms and conditions of the agreement are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of entries, or withdrawals from warehouse, for consumption of carbon steel plate from Romania effective August 16, 1982, as directed in our notice of "Antidumping Preliminary

Determination of Sales at Less than Fair Value, Carbon Steel Plate from Romania" is hereby terminated. Any cash deposits on entries of carbon steel plate from Romania pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

The Department intends to conduct an administrative review within twelve months of the publication of this suspension agreement as provided in section 751 of the Act.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

December 28, 1982.

Suspension Agreement

Hot-Rolled Carbon Steel Plate From Romania

Pursuant to the provisions of section 734 of the Tariff Act of 1930, as amended (19 U.S.C. 1673c) (the Act), and § 353.42 of the Commerce Regulations (19 CFR 353.42), the Department of Commerce (the Department) and Metalimportexport, 21–25 Mendeleev Street, Bucharest, Romania, enter into the following suspension agreement (the agreement) on the basis of which the Department shall suspend its antidumping investigation initiated on February 1, 1982 (47 FR 5752) with respect to hot-rolled carbon steel plate (carbon steel plate) from Romania, in accordance with the terms and provisions set forth below.

A. Product Coverage

This agreement applies to carbon steel plate which is the subject of the above-referenced investigation and which is directly or indirectly exported to the United States. Carbon steel plate is currently provided for under item numbers 607.6615, 607.9400, 606.0710, and 608.1100 of the *Tariff Schedules of the United States Annotated.*

B. Basis for the Agreement

As of the effective date of this agreement, Metalimportexport, which accounts for all of the known exports of carbon steel plate to the United States from Romania, agrees to make any necessary price adjustments to eliminate completely any sales of carbon steel plate at less than the Department's estimate of foreign market value, as determined by the Department on the basis of the price of such or similar merchandise in the surrogate country with appropriate adjustments.

(1) Beginning on the effective date of the suspension of the investigation, and twice each year after that, the Department shall provide to Metalimportexport the Department's estimate of the foreign market value of the product. Immediately after receipt of the Department's estimate, Metalimportexport will adjust its price charged any United States importer or customer for subsequent sales of carbon steel plate which are entered into the United States, or withdrawn from warehouse, for consumption in the United States, so that the price will not be less than the Department's provided estimate.

(2) The semiannual estimate will apply to sales made from the date on which Metalimportexport receives notice of the estimate until the date on which it receives notice of the next semiannual estimate.

(3) The Department reserves the right to modify its computation mehtodology for estimating foreign market value. The Department shall notify Metalimportexport of any changes in methodology prior to the effective date of any semiannual estimate.

C. Monitoring

Metalimportexport will deliver a report to the Department within 15 days of the beginning of each calendar quarter (January, April, July, October), itemizing all sales of carbon steel plate during the preceding quarter which were exported to the United States directly from Romania or through third countries. These quarterly reports must list all invoiced sales prices, must provide the amount of each adjustment made on each sale price to yield a net (ex factory) price, must show how net prices were calculated, and must show that these prices are at or above the Department's foreign market value estimate.

The Department will conduct administrative reviews under section 751 of the Act annually or at such shorter intervals as the Department deems necessary to ensure that its foreign market value estimate is properly calculated. Pursuant to the section 751 review, Metalimportexport will adjust its price on any sale for export to the United States for which the extension of credit differs from the extension of credit on which the immediately preceding semiannual foreign market value estimate was based so that the net price on such sale is not less than the immediately preceding semiannual foreign market value estimate. Further, Metalimportexport agrees to provide the Department with any additional information as may be required to ensure that Metalimportexport is fully complying with the terms of the agreement. The Department may verify the information on which its administrative review is based and metalimportexport will cooperate with the verification of Romanian information. The Department shall also request the United States Customs Service to direct the ports of entry to forward an Antidumping Report of Importations for all entries of carbon steel plate from Romainia while this agreement is in effect.

D. Reopening of the Investigation

If the Department is unable to obtain the cooperation of a suitable surrogate country, or if it determines that the agreement is being or has been violated or no longer meets the requirements of section 734(b) or (d) of the Act, then the provisions of 734(i) shall apply.

E. Other Provisions

In entering into the agreement, Metalimportexport does not admit that any sales of carbon steel plate have been made at less than fair value.

The effective date of this suspension agreement is the date of publication in the **Federal Register.**

Signed on this 27th day December 1982.

Joseph H. Price,

for Metalimportexport.

I have determined that the provisions of Paragraph B provide for the complete elimination of sales at less than fair value of carbon steel plate from Romania to the United States and that the provisions of Paragraph C ensure that this agreement can be monitored effectively pursuant to section 734(d) of the Act. Furthermore, I have determined that this agreement meets the requirements of section 734(b) of the Act and is in the public interest as required under section 734(d) of the Act.

Department of Commerce.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-118 Filed 1-3-83; 8:45 am]

BILLING CODE 3510-25-M

United States Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on February 2, 1983, at 10:00 a.m. in Room 4830 of the Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97–63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans. A detailed agenda will be published in the **Federal Register** in advance of the meeting.

A limited number of seats will be

available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Christine Hathaway, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, D.C. 20230 (telephone: 202/377-0136) will respond to public requests for information about the meeting.

Peter McCoy,

Under Secretary for Travel and Tourism.

[FR Doc. 83-115 Filed 1-3-83; 8:45 am]

BILLING CODE 3510-11-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Visa Requirements for Ornamented Tents

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Requiring an export visa for ornamented tents in category 669 (T.S.U.S.A. number 386.1105) produced or manufactured in, and exported from, Brazil, China, Colombia, the Dominican Republic, Haiti, India, Korea, Malaysia, Macau, Mexico, the Philippines, Singapore, Taiwan, and Thailand.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709).

SUMMARY: A new breakout in the Tariff Schedules has been established for ornamented tents pursuant to Executive Order 12389 of October 25, 1982, which requires an export visa for ornamented tents in Category 669, (T.S.U.S.A. number 386.1105) exported on or after January 5, 1983 from Brazil, China, Colombia, the Dominican Republic, Haiti, India, Korea, Malaysia, Macau, Mexico, the Philippines, Singapore, Taiwan and Thailand. The purpose of this notice is to advice the public of this new requirement. As necessary, consultations may be held with the affected foreign governments concerning this change.

EFFECTIVE DATE: January 5, 1983.

FOR FURTHER INFORMATION CONTACT: Claire McDermott, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 29, 1982.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the U.S. textile import program, it would be appreciated if you would require effective on January 5, 1983 and until further notice, export visas for ornamented tents in Category 669 (TSUSA number 386.1105) produced or manufactured in, and exported from Brazil, China, Colombia, the Dominican Republic, Haiti, India, Korea, Malaysia, Macau, Mexico, the Philippines, Singapore, Taiwan, and Thailand.

The actions taken with respect to these governments 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. 83-56 Filed 1-3-83; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Restraint Levels for Certain Cotton, Wool, and Man-Made Fiber Textile Products From Colombia, Effective on July 1, 1982 Under a New Bilateral Agreement

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton, wool, and man-made fiber textile products from Colombia during the twelve-month period which began on July 1, 1982 and extends through June 30, 1983.

SUMMARY: On July 1 and August 11, 1982, the Governments of the United States and Colombia signed a new Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement which establishes specific levels for cotton, wool, and man-made fiber textile products in Categories 313, 444 and 641, produced or manufactured in Colombia during the twelve-month period which began on July 1, 1982. It also provides consultation levels for categories, such as 310, 320 and 435 which are not subject to specific ceilings and which may be adjusted during the agreement year. Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool, and man-made fiber textile products in the foregoing categories be limited to the designated twelve-month levels of restraint.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 5, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 29, 1982.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of July 1, 1982, as amended, between the Governments of the United States and Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 5, 1983 and for the twelve-month period beginning on July 1, 1982 and extending through June 30, 1983, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products, exported from Colombia in the following categories, in excess of the indicated twelve-month levels of restraint:

Category—Twelve-Month Level of Restraint [1]

310—3,700,000 square yards
313—11,921,690 square yards
320—7,000,000 square yards
435—5,556 dozen
444—4,388 dozen
641—174,110 dozen

[1] The levels of restraint have not been adjusted to reflect any imports after June 30, 1982.

In carrying out this directive, entries of cotton, wool, and man-made fiber textile products in the foregoing categories, except Category 313, produced or manufactured in Colombia, which have been exported to the United States on and after July 1, 1981 and extending through June 30, 1982, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that twelve-month period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Cotton textile products in Category 313, which have been exported prior to July 1, 1982 shall not be subject to this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of July 1, and August 11, 1982, between the Governments of the United States and Colombia, which provide, in part, that: (1) within the applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may also be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) certain consultation levels may be increased within the applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustment under the provisions of the bilateral agreement, referred to above will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Colombia and with respect to imports of cotton, wool, and man-made fiber textile products from Colombia 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. 83-57 Filed 1-3-83; 8:45 am]

BILLING CODE 3510-25-M

Export Visa Issued by Hong Kong, Korea, and Taiwan To Include Correct Subcategories

December 29, 1982.

Effective on January 5, 1983, export visas from Hong Kong, the Republic of Korea, and Taiwan will be required to include the following subcategories or parts of categories in order to comply with the established "correct category" requirement for merchandise exported on and after January 5, 1983:

Merchandise/Category	Visa must show
HONG KONG	
Tank tops in Categories 338/339	338/339 (1).
Other than tank tops in Categories 338/339.	338/339.
REPUBLIC OF KOREA	
Cordage in Category 605 (TSUSA numbers 316.5500 and 316.5800).	605 "C".
All other TSUSA numbers in Category 605 except 316.5800 and 316.5500.	605 "O".
Shirts other than dress shirts in Category 640.	640 "O".
Dress shirts in Category 640	640 "D".
Headwear in Category 659 (only TSUSA numbers 703.0500, 703.1000, and 703.1515).	659 "H".
Other than headwear in Category 659 (All TSUSA numbers except 703.0500, 703.1000, and 703.1515).	659 "O".
Cordage in Category 669 (only TSUSA numbers 348.0065, 348.0075, and 348.0565, and 348.0575).	669 "C".
Fishnets in Category 669 (only TSUSA numbers 335.4520 and 355.4530).	669 "F".
Polypropylene bags in Category 669 (TSUSA number 385.5300).	669 "P".
Tents in Category 669 (TSUSA numbers 389.6210 and 386.1105).	669 "T".
All other TSUSA numbers in Category 669 except 348.0065, 348.0075, 348.0565, 348.0575, 355.4520, 355.4530, 385.5300, 389.6210, and 386.1150.	669 "O".
TAIWAN	
Hats (only TSUSA numbers 703.0500 and 703.1000).	659 "H".
Caps (only TSUSA number 703.1515)	659 "C".
All other TSUSA numbers in Category 659 except 703.0500, 703.1000, and 703.1515.	659 "O".

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 F.R. 55709).

SUMMARY: The visa systems established with Hong Kong, the Republic of Korea, and Taiwan require that the correct category be shown on the export visa. The bilateral textile and apparel agreements concerning cotton, wool, and man-made fiber textile products from these countries include a number of categories which have sublimits or parts of categories for which the correct designation is also needed. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, effective on January 5, 1983, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile and apparel products in the foregoing categories which do not include the agreed subcategory designations or parts of categories.

EFFECTIVE DATE: January 5, 1983.

FOR FURTHER INFORMATION CONTACT: Claire McDermott, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 29, 1982.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: To facilitate implementation of the U.S. textile import program and pursuant to the established export visa requirements concerning certain cotton, wool, and man-made fiber textile products from Hong Kong, the Republic of Korea, and Taiwan, it would be appreciated if, effective on January 5, 1983, you would require that export visas for merchandise in the following categories of cotton and man-made fiber textile products, produced or manufactured in Hong Kong, the Republic of Korea, and Taiwan include the appropriate subcategory designation or part of the category, as indicated below, in order to be entered into the United States for consumption, or withdrawn from warehouse for consumption, for goods exported on and after January 5, 1983:

Merchandise/Category	Visa must show
HONG KONG	
Tank tops in Categories 338/339	338/339 (1).
Other than tank tops in Categories 338/339.	338/339.
REPUBLIC OF KOREA	
Cordage in Category 605 (only TSUSA numbers 316.5500 and 316.5800).	605 "C."
All other TSUSA numbers in Category 605 except 316.5500 and 316.5800.	605 "O."
Shirts other than dress shirts in Category 640.	640 "O."
Dress shirts in Category 640	640 "D."
Headware in Category 659 (only TSUSA numbers 703.0500, 703.1000, and 703.1515).	659 "H."
Other than headwear in Category 659 (All TSUSA numbers except 703.0500, 703.1000, and 793.1515).	659 "O."
Cordage in Category 669 (only TSUSA numbers 348.0065, 348.0075, and 348.0565, and 348.0575).	669 "C."
Fishnets in Category 669 (only TSUSA numbers 335.4520 and 355.4530).	669 "F."
Polypropylene bags in Category 669 (TSUSA number 365.5300).	669 "P."
Tents in Category 669 (TSUSA numbers 389.6210 and 386.1105).	669 "C."
All other TSUSA numbers in Category 669 except 348.0065, 348.0075, 348.0565, 348.0575, 355.4520, 355.4530, 385.5300, 389.6210 and 386.1105.	669 "C".
TAIWAN	
Hats (only TSUSA numbers 703.0500 and 703.1000).	659 "H."
Caps (only TSUSA number 703.1515)	659 "C."

Merchandise/Category	Visa must show
All other TSUSA numbers in Category 659 except 703.0500, 703.1000, and 703.1515.	659 "O."

The actions taken with respect to imports of cotton and man-made fiber textile products from Hong Kong, Taiwan, and the Republic of Korea 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. 83-55 Filed 1-3-83; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF EDUCATION

Office of the Secretary

Appeals of the State of Nevada; Prehearing Conference

AGENCY: Department of Education.

SUMMARY: This notice advises readers that the Education Appeal Board has scheduled a prehearing conference in the following cases: *Appeals of the State of Nevada,* Docket Nos. 2-(48)-79 and 6-(61)-80, to commence at 10:30 a.m. in Room 1130, 400 Maryland Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (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).

Dated: December 28, 1982.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. not applicable)

[FR Doc. 83-86 Filed 1-3-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Subcommittee of the National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board

Date and Time: Tuesday, January 25, 1983—9:00 a.m.-3:00 p.m.

Place: Loew's L'Enfant Plaza Hotel, Pierre Suite, Eleventh Floor, 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: *Tuesday, January 25, 1983.*

- Welcoming by National Energy Extension Service Advisory Board Subcommittee Chairman.
- Working Group Session on the Development of the NEESAB Annual Report.
- 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 William H. H. King at 252-8290. 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 December 29, 1982.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 83-118 Filed 1-3-83; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research 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 meeting:

Name: Energy Research Advisory Board (ERAB).

Date and Time: February 3-4, 1983, 9 a.m. to 5 p.m.

Place: Department of Energy, Room 8E-089, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Joan Snodderly, U.S. Department of Energy, Forrestal Building, ER-6, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/252-8933.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: Briefings and discussions of:

Overview of fiscal year 1984 DOE Budget.

Progress Reports from ERAB Panels on Conservation R&D, Materials R&D, University Research and LWR Safety and Technology.

Discussion of Draft Working paper on Federal Role in Energy R&D.

Public comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Joan Snodderly at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on December 29, 1982.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 82-17, Filed 1-3-83; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 82-CERT-022]

Long Island Lighting Co.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

On November 16, 1982, Long Island Lighting Company (LILCO), 250 Old Country Road, Mineola, New York 11501, filed with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 an application for certification of an eligble use of approximately 50,000 dekatherms (approximately 50,000 Mcf) of natural gas per day. This gas is estimated to displace the use of approximately 700,000 barrels of residual fuel oil (1.5 percent sulfur) and 20,000 barrels of No. 2 fuel oil (0.3 percent sulfur) at the E. F. Barrett Electric Plant in Island Park, New York, and 95,000 barrels of residual fuel oil (1.0 percent sulfur) at the Glenwood Plant in Glenwood Landing, New York. The eligible seller of the natural gas is Equitable Gas Company and the natural gas will be transported by Texas Eastern Transmission Corporation. Notice of that application was published in the Federal Register (47 FR 55266, December 8, 1982), and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

The ERA has carefully reviewed LILCO's application in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that LILCO's application satisfies the criteria enumerated in 10 CFR Part 595 and therefore, has granted the certification and transmitted that certification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual certification is available for public inspection at the ERA Natural Gas Division Docket Room, Room GA-007, RG-43, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585 from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., December 28, 1982.

Robert Davies,
Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-41 Filed 1-3-83; 8:45 am]
BILLING CODE 6450-01-M

Gladieux Refinery, Inc.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed Consent Order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Gladieux Refinery, Inc. (Gladieux) and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: Comments by February 3, 1983.

ADDRESS: Send comments to: David H. Jackson, Director, Kansas City Office, Economic Regulatory Administration, 324 East 11th Street, Kansas City, Missouri 64106-2466

FOR FURTHER INFORMATION CONTACT: David H. Jackson, Director, Kansas City Office, Economic Regulatory Administration, 324 East 11th Street, Kansas City, Missouri 64106-2466; telephone number (816) 374-2092. Copies of the Consent Order may be obtained free of charge by writing or calling this office.

SUPPLEMENTARY INFORMATION: On December 17, 1982, the ERA executed a proposed Consent Order with Gladieux Refinery, Inc. of Fort Wayne, Indiana. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more excluding interest and penalities, becomes effective no sooner than thirty days after publication of a notice in the Federal Register requesting comments concerning the proposed Consent Order. Although the DOE has signed and tentatively accepted the proposed Consent Order, the DOE may, after consideraton of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. The Consent Order

Gladieux Refinery, Inc., with its home office located in Fort Wayne, Indiana, is a firm engaged in the refining and marketing of crude oil and refined petroleum products and was subject to the Mandatory Petroleum Allocation and Price Regulations at 10 CFR Parts 210, 211, and 212 during the period covered by the Consent Order. To resolve certain potential civil liability arising out of the Mandatory Petroleum Allocation and Price Regulations and related regulations, 10 CFR Part 205, 210, 211, and 212 in connection with Gladieux's transactions involving petroleum products during the period August 19, 1973 through January 27, 1981, the DOE and Gladieux enter into a Consent Order, the significant terms of which are as follows.

A. The Consent Order encompasses all matters relating to Gladieux's compliance with the federal petroleum price and allocation regulations administered by DOE and its predecesor agencies during the period from August 19, 1973 through January 27, 1981.

B. As a result of its audit, ERA raised certain issues with respect to Gladieux's compliance with the federal petroleum price and allocation regulations. Gladieux disputes ERA's allegations and maintains that it has correctly construed, and operated in accordance with the regulatons.

C. Execution of the Consent Order constitutes neither an admission by Gladieux nor a finding by DOE of any violations by Gladieux of any statute or regulation.

II. Refunds

To resolve the issues raised by ERA's audit of Gladieux and to remedy any violations that may have occurred during the audit period, Gladieux has agreed to remedies, described more fully below, totaling $1,300,000.

The $1,300,000 in remedies consists of two elements: First, within thirty days after the Consent Order is effective, Gladieux shall issue credit memoranda totaling $480,000 to purchasers identified in the Consent Order. The memoranda entitle the purchasers to purchase product from Gladieux at a discount of $.0185 per gallon and are fully redeemable in cash three years after the issue date. Second, Gladieux shall refund $820,000 plus interest to the Defense Fuels Supply Center by means of a rollback of one-half cent per gallon off the price set by contract between Gladieux and the Defense Fuels Supply Center. Any balance remaining at the end of three years shall be refunded by cash payment. Interest shall accrue on the outstanding balance during the refund period and shall be paid in a lump sum cash payment within thirty days after the third year anniversary of the effective date of the Consent Order.

III. Submission of Written Comments.

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. Comments would be identified on the outside of the envelope and on the documents submitted with the designation "Comment on Gladieux Refinery, Inc. Consent Order." The DOE will consider all comments it receives by 4:30 p.m., local time, on February 3, 1983. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedure in 10 CFR 205.9(f).

Issued in Kansas City on the 17th day of December, 1982.

David H. Jackson,

Director, Kansas City Office, Economic Regulatory Administraton.

[FR Doc. 82-34 Filed 1-3-83; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Time Oil Co.; Action on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Adoption of Proposed Consent Order.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted the Consent Order with Time Oil Company (Time) executed on October 15, 1982 and published for comment in 47 FR 49882 on November 3, 1982, as a final order of DOE. The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations, except as noted in the Consent Order, for the period August 19, 1973 through January 27, 1981. The Consent Order does not cover Time's rights or obligations under the Entitlements Program. To remedy any violations that may have occurred during the period, Time has agreed to make a payment of $1,187,500.00 to DOE.

As required by the regulation cited above, DOE received comments on the Consent Order for a period of not less than 30 days following publication of the notice cited above. Eleven comments were received by December 3, 1982, the thirtieth day following publication of the notice of the proposed Consent Order. Four additional comments were received after that deadline. DOE has considered all comments, including those which were filed late, and determined that the Consent Order should be made final without modification. The Consent Order was made effective as a final order of the DOE by written notice to Time on December 13, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Cohn, Attorney, Economic Regulatory Administration, U.S. Department of Energy, 333 Market Street (6th Floor), San Francisco, California 94105, (415) 974-7110.

Copies of the Consent Order may be received free of charge by request in person or by written request to: Time Oil Company, Consent Order Request, Economic Regulatory Administration, U.S. Department of Energy, 333 Market Street (6th Floor), San Francisco, California 94105.

SUPPLEMENTARY INFORMATION:

The Consent Order

On November 3, 1982, DOE published notice in the **Federal Register** (at page 49882) announcing the execution of a proposed Consent Order between Time and DOE. In compliance with DOE Regulations, that notice and a subsequent press release summarized the Consent Order and the facts behind it. The notice and press release also gave instructions for obtaining copies of the Consent Order. The Consent Order can be summarized as follows:

1. The Consent Order marks the conclusion of the DOE's audit of Time's compliance with the Federal petroleum price and allocation regulations for the period August 19, 1973 through January 27, 1981. With the exception of the matters specifically excluded from the settlement in the Consent Order, the Consent Order resolves all civil issues not previously resolved concerning the allocation and sale of covered petroleum products during the period August 19, 1973 through January 27, 1981.

2. Within 10 days after the effective date of this Consent Order, Time shall make a payment of $1,187,500.00 to DOE. DOE will distribute $325,000.00 of the funds to the Defense Fuel Supply Center. The remaining funds, totalling $862,500.00, will be distributed proportionately to the treasurers of those states within which Time sold covered petroleum products during the period November 1973—January 1981. DOE has allocated these funds to the states on the basis of Time's retail sales volumes of gasoline, which comprised the majority of Time's sales of covered petroleum products, in the following amounts: California $258,491.00; Hawaii $10,523.00; Idaho $18,716.00; Montana $9,315.00; Nevada $28,118.00; Oregon $115,143.00; and Washington $422,194.00.

3. The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. These matters include Time's obligation under DOE recordkeeping regulations and DOE's obligation to maintain the confidentiality required by law of proprietary data received from Time. The Consent Order provides that Time has waived its right to an administrative or judicial appeal of the Consent Order. The Consent Order does not constitute an admission by Time nor a finding by ERA of a violation of any Federal petroleum price and allocation statutes or regulations.

Comments Received

As noted above, DOE received a total of fifteen comments on the proposed Time Consent Order. Comments were submitted by ten states, three trade and service associations, one reseller and the Defense Fuel Supply Center. DOE has considered all comments and determined that the Consent Order should be made final without modification. The significant points raised by the comments are discussed below.

Some of the comments objected to the remedial provisions of the Consent Order, claiming that since overcharged customers are not receiving refunds the Consent Order does not provide for restitution as required by *Citronelle-Mobile Gathering, Inc.*, v. *Edwards*, 669 F.2d 717 (TECA 1982). In *Citronelle*, TECA affirmed a district court determination in a judicial enforcement action that the seller's prices resulted in overcharges to twelve specifically identifiable customers. TECA declined to permit payment of adjudicated overcharges into the U.S. Treasury without first attempting to refund monies to the identified injured parties. Unlike *Citronelle*, this is not an adjudicated enforcement case. The Consent Order makes no finding of a violation, nor does Time admit to any violations of DOE regulations.

Further, DOE has not been able to identify any specific purchaser who may have been injured or to determine the amount by which such purchaser was injured other than the Defense Fuel Supply Center. There are several reasons for this. The Defense Fuel Supply Center was the only purchaser of jet fuel during the months selected for intensive audit. In addition, purchasers from refiners often are not injured parties since they have passed on the overcharges to others. Finally, to trace cost violations to specific product sales to determine the impact on alleged overcharges would be a difficult if not impossible task. Because the refunded monies cannot be attribued to

specifically identifiable injured parties (other than the Defense Fuel Supply Center), payments to the treasurers of those states in which Time marketed petroleum products is an appropriate remedy in this case.

Several comments, while expressing support for the payment of monies to states, suggested that the states should be required to expend the amounts received for energy related uses in accord with a National Governor's Association policy position. DOE encourages the states to make use of the funds for energy related projects and to provide restitution for their aggrieved citizens. All such efforts are endorsed by the DOE. The designation of state treasurers in the Consent Order was not intended to preclude such uses for the funds, rather was intended to provide the states with maximum flexibility in determining the appropriate use of the monies.

Several comments suggested that the implementation of Subpart V proceedings was mandatory. Others stated that even if not required by the regulations it would be desirable to use such proceedings here. The use of Subpart V proceedings is not mandated by the regulations. Rather, the choice of appropriate remedies in a particular Consent Order is made on a case-by-case basis within the framework of an overall negotiated agreement between ERA and the consenting firm. Here, the parties agreed—and ERA affirms—that in light of the violations alleged, payment to the states and the Defense Fuel Supply center are appropriate remedies.

Having considered all comments received, DOE has determined that the proposed Consent Order with Time should be made final without modification. The Consent Order was made final and effective by written notice to Time on December 13, 1982.

Issued in San Francisco, California, December 14, 1982.

Patrick J. O'Hern,

Director, San Francisco Office, Economic Regulatory Administration.

[FR Doc. 83-35 Filed 1-3-83; 8:45 am]

BILLING CODE 6450-01-M

Mira Oil Company, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Mira Oil Company, Inc., of Spring Valley, New York. This Proposed Remedial Order charges Mira with pricing violations in the amount of $112,949.96 plus interest, connected with the sale of regular and unleaded motor gasoline to its wholesale unbranded retailers (dealers) customers during the period June 1, 1979 through December 31, 1979.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Robert J. McKee, Jr., Director, Philadelphia Field Office, ERA (215) 597-2633. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 12th & Pennsylvania Ave., N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Philadelphia, Pennsylvania on the 15th day of December, 1982.

Robert J. McKee, Jr.,

Director, Philadelphia Field Office, ERA.

[FR Doc. 83-36 Filed 1-3-83; 8:45 am]

BILLING CODE 6450-01-M

Office of Environmental Protection, Safety, and Emergency Preparedness

Certification of Radiological Condition of Five Private Properties Located in Middlesex and Piscataway, New Jersey

AGENCY: Office of Environmental Protection, Safety, and Emergency Preparedness, DOE.

ACTION: Notice of certification.

SUMMARY: The Department of Energy has completed radiological surveys and taken remedial actions to decontaminate properties found to contain low-level, naturally occurring residual radioactive material resembling the uranium ore processed at the nearby Middlesex Sampling Plant while it operated under contract to the Manhattan Engineer District and Atomic Energy Commission. The Department, through the Office of Environmental Protection, Safety, and Emergency Preparedness, has issued the following statement:

Statement of Certification: Five Properties Associated With the Former Middlesex Sampling Plant

The Office of Environmental Protection, Safety, and Emergency Preparedness has reviewed and analyzed the radiological data obtained following remedial action at five of the properties that were contaminated by material similar to that processed at the former Middlesex Sampling Plant in Middlesex, New Jersey. Based on this analysis and the concurrence of the New Jersey Department of Environmental Protection, the Department of Energy certifies that the following properties are in compliance with all applicable decontamination criteria and standards:

- The Rectory of Our Lady of Mount Virgin, located at 650 Harris Avenue, Borough of Middlesex, New Jersey, identified as Block 298, Lots 1–3 (reference Middlesex tax maps).
- A portion of the Rectory schoolyard, located across Drake Avenue from the Rectory, identified as Block 310, Lots 1–19 and 33–49 (reference Middlesex tax maps).
- Parcel 8 (Rosamillia property) located on Wood Avenue, Borough of Middlesex, New Jersey, identified as Block 318, Lots 21–29 (reference Middlesex tax maps).
- Kays' property, located at 312 Mountain Avenue, Borough of Middlesex, New Jersey, identified as Block 287, Lot 1A (reference Middlesex tax maps).
- 432 William Street, Township of Piscataway, New Jersey, identified as Block 185, Lot 1 (reference Township of Piscataway tax map).

This certification of compliance provides assurance that unrestricted use of any of the properties will result in no radiological exposure above applicable criteria and standards to members of the general public or to site occupants.

FOR FURTHER INFORMATION CONTACT: Dr. William E. Mott, Director, Public Safety Division, Office of Operational Safety (EP-323), U.S. Department of Energy, Washington, D.C. 20545, (301) 353-3016.

SUPPLEMENTARY INFORMATION: The Department of Energy has established a program to characterize and, where necessary, correct the radiological conditions at sites formerly used by the Army Corps of Enigneers' Manhattan Engineer District and the Atomic Energy Commission during the early years of nuclear research and development. The ultimate objective of the program is to ensure that these formerly utilized sites, and any associated properties in their vicinity, are within the radiological guidelines established to protect the general public. The former Middlesex Sampling Plant in Middlesex, New Jersey, is one of the formerly utilized sites.

The Middlesex Sampling Plant began operations in November 1943 and, under various contracts, continued in operation until February 1968 when it was declared excess to program needs by the Atomic Energy Commission. Over

the years, the naturally occurring radioactive minerals were inadvertently transported to nearby and remote properties. Initially, the residual radioactive material is being removed from private properties to an interim storage facility on the site.

Radiological surveys completed at the site in 1976 revealed the presence of offsite contamination on nearby properties. An aerial radiological survey conducted in 1978 revealed the presence of contamination on two non-contiguous properties as well. In 1980, five properties were decontaminated and post-remedial action radiological surveys were conducted before and after backfill of the excavated areas. Radon monitoring of the affective area continued before, during, and after remedial action to verify safe conditions.

The Department of Energy coordinated its activities with the New Jersey Department of Environmental Protection, the Borough of Middlesex, and the Township of Piscataway. The New Jersey State Department of Environmental Protection verified Department of Energy results through independent analysis of soil samples.

Based upon the results of the radiological surveys completed at the five properties, the Department of Energy has determnined that radiological conditions on the affected properties are consistent with applicable criteria agreed upon by the New Jersey Department of Environmental Protection and the Borough of Middlesex and that the unrestricted use of the five properties present no radiological hazards to the general public or to site occupants.

These findings are supported by the Department of Energy "Certification Docket for the Five Vicinity Properties Associated with the former Middlesex Sampling Plant, Middlesex, New Jersey." The docket will be available for review between 8:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays), in the Department of Energy Public Document Room located in Room 1E-190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C.

Dated: November 18, 1982.

William A. Vaughan,

Assistant Secretary, Environmental Protection, Safety, and Emergency Preparedness.

[FR Doc. 83-40 Filed 1-3-83; 8:45 am]

BILLING CODE 6450-01-M

Notices of Objection To Proposed Remedial Orders Filed Period of October 11, Through November 19, 1982

Office of Hearings and Appeals

During the period of October 11 through November 19, 1982, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as a non-participants for good cause shown.

Eddy Refining Company, Key Oil Company, Houston, Texas, HRO-0094, Refined Petroleum Products.

On November 19, 1982, Eddy Refining Company and Key Oil Company, P.O. Box 185, Houston, Texas 77001, filed Notices of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement of the Economic Regulatory Administration issued to them on September 21, 1982. On November 22, 1982, the Attorney General of the State of Alabama, c/o James F. Flug, Esq., Lobel, Novins & Lamont, 1523 L Street, N.W., Suite 200, Washington, D.C. 20005, also filed a Notice of Objection to the Proposed Remedial Order.

In the PRO, the Southeast District found that during the period December 1, 1973 through June 30, 1976, Eddy and Key sold refined petroleum products at prices in excess of those permitted by the Mandatory Petroleum Price Regulations. According to the PRO, the violations by Eddy and Key resulted in $1,630,401 of overcharges.

Paul Investments, Inc./A. B. Holding Co., San Antonio, Texas, HRO-0098, Motor Gasoline

On November 19, 1982, Paul Investments, Inc./A. B. Holding Co. (hereinafter collectively referred to as Paul), 7900 Calloghon Road, Suite 220, P.O. Box 32866, San Antonia, Texas 78216, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on September 21, 1982.

In the PRO, the Southeast District found that during the period March 1, 1979 through December 31, 1976, Paul, a reseller-retailer, sold motor gasoline at prices in excess of those permitted under 10 C.F.R. Part 212, Subpart F.

According to the PRO, Paul's violation resulted in $480,364.41 of overcharges.

Petrotech Trading Company, Et Al., Abilene, Texas, HRO-0095, Crude Oil

From November 19, 1982 through November 24, 1982, the following individuals filed Notices of Objection to the Proposed Remedial Order (PRO) which the Houston Audit Director of the DOE Economic Regulatory Administration issued to Petrotech Trading Co., *et al.*, on September 30, 1982:

The Controller of the State of California, c/o James F. Flug, Esq., Lobel, Novins & Lamont, 1523 L Street, NW., Suite 200, Washington, D.C. 20005;

Mr. David L. Hooper, 1215 East South 11th Street, P.O. Box 3215, Abilene, Texas 79604;

Petrotech Trading Company, P.O. Box 3215, Abilene, Texas 79604;

Mr. Kenneth Rogers, 211 Fairmont, Clyde, Texas 79510;

Mr. John T. Troland, 710 Byrd, Abilene, Texas 79601;

Mr. David W. Ratliff, 1298 Kingbury Road, Abilene, Texas 79602.

In the PRO, the Audit Director alleges layering violations in the amount, including interest, of $23,235,822.71, connected with resales of crude oil during the period April 1979 through March 1980. The PRO further alleges that resales of crude oil during the same period were made in circumvention and contravention of the Mandatory Petroleum Price Regulations. The PRO directs the alleged recipients of these overcharges to refund the above amount, plus interest accrued from July 1982, to the DOE.

Varibus Corporation, Beaumont, Texas, HRO-0093, No. 2 Fuel Oil

On November 19, 1982, Varibus Corporation, 285 Liberty Avenue, Beaumont, Texas 77704, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on September 29, 1982.

In the PRO the Southeast District found that during the period October 1, 1973 through October 31, 1974, Varibus charged prices in excess of those permitted by the reseller price rule set forth at 10 CFR Part 212, Subpart F.

According to the PRO the Varibus violation resulted in $7,550,750.32 of overcharges.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: December 22, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 83-33 Filed 1-3-83; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

National Petroleum Council, Thermal Task Group of the Committee on Enhanced Oil Recovery; Meeting

Notice is hereby given that the Thermal Task Group of the Committee on Enhanced Oil Recovery will meet in January 1983. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Enhanced Oil Recovery will investigate the technical and economic aspects of increasing the Nation's petroleum production through enhanced oil recovery. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Thermal Task Group meeting follows:

The Thermal Task Group will hold its second meeting on Friday, January 14, 1983, starting at 8:30 a.m. in Room 37C, Atlantic Richfield Company, ARCO Plaza, 515 South Flower Street, Los Angeles, California.

The tentative agenda for the Thermal Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.

2. Review progress of Task Group study assignments.

3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Thermal Task Group 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 Thermal Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform G. J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353-3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 28, 1982.

Donald L. Bauer,

Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 83-37 Filed 1-3-83; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Costs and Economics Task Group of the Committee on Enhanced Oil Recovery; Meeting

Notice is hereby given that the Costs and Economics Task Group of the Committee on Enhanced Oil Recovery will meet in January 1983. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Enhanced Oil Recovery will investigate the technical and economic aspects of increased the Nation's petroleum production through enhanced oil recovery. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Costs and Economics Task Group meeting follows:

The Costs and Economic Task Group will hold its second meeting on Monday, January 17, 1983, starting at 9:00 a.m. in Room 1820, Stouffer's Greenway Plaza Hotel, Six Greenway Plaza East, Houston, Texas.

The tentative agenda for the Costs and Economics Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.

2. Review progress of Task Group study assignments.

3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Costs and Economics Task Group 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 Costs and Economics Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform G. J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353-3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 28, 1982.

Donald L. Bauer,

Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 83-38 Filed 1-3-83; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Chemical Task Group of the Committee on Enhanced Oil Recovery; Meeting

Notice is hereby given that the Chemical Task Group of the Committee on Enhanced Oil Recovery will meet in January 1983. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Enhanced Oil Recovery will investigate the technical and economic aspects of increasing the Nation's petroleum production through enhanced oil recovery. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Chemical Task Group meeting follows:

The Chemical Task Group will hold its second meeting on Thursday, January 13, 1983, starting at 10:00 a.m. in Room 112, Phillips Petroleum Company, Research Forum, Bartlesville, Oklahoma.

The tentative agenda for the Chemical Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.

2. Review progress of Task Group study assignments.

3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Chemical Task Group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Chemical Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform G. J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353-3032, prior to the meeting and

reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 28, 1982.

Donald L. Bauer,

Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 83–39 Filed 1–3–83; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[A–1–FRL 2277–5]

Delegation of Authority to the Commonwealth of Massachusetts for Prevention of Significant Deterioration of Air Quality Program (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Informational notice.

SUMMARY: EPA Region I has delegated authority for the implementation and enforcement of the Prevention of Significant Deterioration of Air Quality (PSD) program to the Massachusetts Department of Environmental Quality Engineering (DEQE) under 40 CFR 52.21. The Massachusetts DEQE will receive, conduct technical review of, and process all PSD applications as well as issue and enforce final PSD permits.

EFFECTIVE DATE: June 30, 1982.

ADDRESS: Copies of DEQE's request for delegation and the DEQE/EPA Agreement for delegation of authority are available for public inspection at the State Air Programs Branch, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts 02203, (617) 223–5130.

FOR FURTHER INFORMATION CONTACT: Margaret McDonough, State Air Programs Branch, Environmental Protection Agency, Region I, J. F. Kenndy Federal Building, Boston, Massachusetts 02203, 617/223–5130.

SUPPLEMENTARY INFORMATION: On April 29, 1982, the Commissioner of the Massachusetts DEQE submitted to EPA Region I a request for EPA to delegate to DEQE the authority to implement the federal PSD Program. After a thorough review of this request the Regional Administrator determined that the Massachusetts DEQE's procedures for carrying out the PSD program are adequate and effective.

Thus, on June 30, 1982 the Regional Administrator delegated authority for the implementation of the federal PSD program to the Commonwealth of Massachusetts. The conditions of the delegation are delineated in the Regional Administrator's letter to the Commonwealth dated June 30, 1982.

Effective immediately, all applications and other information pursuant to 40 CFR 52. 21 for sources locating in the Commonwealth of Massachusetts should be sent directly to DEQE at the following address: Department of Environmental Quality Engineering, Division of Air Quality Control, 1 Winter Street, Boston, Massachusetts 02108.

Dated: December 20, 1982.

Paul G. Keough,

Acting P.E. Regional Adminstrator.

[FR Doc. 83–88 Filed 1–3–83; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Technical Subgroup of Radio Advisory Committee; Resumes Meeting

The Technical Subgroup of the Advisory Committee on Radio Broadcasting resumes its continuing meeting Tuesday, January 11, 1983 at 10 a.m. in the fourth floor conference room of the National Association of Broadcasters, 1771 N Street N.W., Washington, D.C.

The Subgroup will continue its consideration of recommendations to the Federal Communications Commission concerning matters pertinent to the ongoing United States Canadian discussions on the drafting of a new bilateral AM agreement which, it is expected, will replace the North American Regional Broadcasting Agreement (NARBA).

The Subgroup will also discuss preparations for bilateral discussions which have started with Mexico, looking toward post-Rio revision of the United States-Mexican AM Agreement.

The meeting, a continuing one, will be resumed after the January 11, 1983 session at such time and place as is decided at that session. It is open for prticipation by all interested persons.

For further information, please call the Subgroup Chairman, Mr. Wallace Johnson, at (703) 841–0500.

William J. Tricarico,

Secretary, Federal Communicotions Commission.

[FR Doc. 83–16 Filed 1–3–83; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

On December 23, 1982, the Federal Communications Commission submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96–511.

Copies of these submissions are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632–7513. Comments should be sent to Edward H. Clarke, Office of Management and Budget, OIRA, Room 3201 NEOB, 726 Jackson Place, N.W., Washington, D.C. 20503.

Title: Fee Refund program (Phase I)—Refund Request Form.
Form No.: FCC 199–A/199–B.
Action: Extension.
Respondents: Broadcasters, common carriers, equipment manufacturers, amateur operators.
Estimated Annual Burden: 1,500 Responses; 2,750 Hours.
Title: Fee Refund Program (Phase II)—Refund Request Form.
Form No.: FCC 199–C.
Action: Extension.
Respondents: Individuals and small radio operators.
Estimated Annual burden: 5,000 Responses; 2,500 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83–19 Filed 1–3–83; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–208]

Builders Federal Savings and Loan Association, Rocky Mount, North Carolina; Final Action—Approval of Post-Approval Amendments to Mutual-to-Stock Conversion Application

December 29, 1982.

Notice is hereby given that on December 15, 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 Builders Federal Savings and Loan Association, Rocky Mount, North Carolina ("Association"). The application had been approved by the Board by Resolution No. 80-177, dated March 13, 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 Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 83-107 Filed 1-3-83; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-209]

Dominion Federal Savings and Loan Association McLean, Virginia; Final Action—Approval of Post-Approval Amendment to Mutual-to-Stock Conversion Application

December 29, 1982.

Notice is hereby given that on December 16, 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 Dominion Federal Savings and Loan Association, McLean, Virginia ("Association"). The application had been approved by the Board by Resolution No. 80-436, dated July 9, 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 Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 83-106 Filed 1-3-83; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

BancTexas Group Inc. and Houston Bancshares Inc.; Merger of Bank Holding Companies

BancTexas Group Inc., Dallas, Texas, and its subsidiary, Houston Bancshares Inc., Dallas, Texas, have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) to acquire 100 per cent of the voting shares of East Texas Bancshares, Inc., Tyler, Texas, through merger of East Texas Bancshares, Inc., and Houston Bancshares Inc., and, thereby, acquire 100 per cent of the voting shares of Heritage National Bank, Tyler, Texas, and 100 per cent of the voting shares of Peoples National Bank, Sulphur Spring, Texas. The factors to be considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 21, 1983. Any comment on an application that requests a hearing must include a statement of why 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.

Board of Governors of the Federal Reserve System, December 28, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27 Filed 1-3-83; 8:45 am]

BILLING CODE 6210-01-M

BancTexas Group Inc. and Houston Bancshares Inc.; Merger of Bank Holding Companies

BancTexas Group Inc., Dallas, Texas, and its subsidiary, Houston Bancshares Inc., Dallas, Texas, have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1843) to acquire 100 per cent of the voting shares of Great Southern Bancshares, Inc., Houston, Texas, by merger of Houston Bancshares Inc. and Great Southern Bancshares, Inc., and, thereby, acquire 100 per cent of the voting shares of Great Southern Bank, Houston, Texas. 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)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 21, 1983. 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.

Board of Governors of the Federal Reserve System, December 28, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-28 Filed 1-3-83; 8:45 am]

BILLING CODE 6210-01-M

Keewatin Bancorporation, Inc.; Proposed Acquisition of First National Insurance Agency

Keewatin Bancorporation, Inc., Keewatin, Minnesota, has 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 acquire 100 per cent of the voting shares of First National Insurance Agency, Keewatin, Minnesota.

Applicant states that the proposed subsidiary would conduct general insurance activities in a town of less than 5,000 population. These activities would be performed from offices of Applicant's subsidiary in Keewatin, Minnesota, and the geographic areas to be served are Keewatin, Itasca County, Minnesota. 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 section 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 accompanies by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically an 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 person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 20, 1983.

Board of Governors of the Federal Reserve System, December 27, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-29 Filed 1-3-83; 8:45 am]

BILLING CODE 6210-10-M

Acquisition of Bank Shares by a Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the 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. **Board of Governors of the Federal Reserve System.** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Broadway Bancshares, Inc.*, San Antonio, Texas; to acquire 100 percent of the voting shares of assets or Broadway Air Force National Bank, Randolph Air Force Base, Bexar County, Texas, a proposed new bank. This application maybe inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Comments on this application must be received not later than January 27, 1983.

Board of Governors of the Federal Reserve System, December 28, 1982.

Jamed McAfee,

Associate Secretary of the Board.

[FR Doc. 83-30 Filed 1-3-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Company

The company listed in this notice 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 voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying 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 Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FTS Financial, Inc.*, Williamsburg, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Farmers Trust and Savings Bank, Williamsburg, Iowa. Comments on this application must be received not later than January 26, 1983.

Board of Governors of the Federal Reserve System, December 28, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-31 Filed 1-3-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR § 115.4(b)(1)), for permission to engage de novo, directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to product 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 interest, or unsound banking practices." Any comment that requests a hearing must include 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 that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

A. *American Fletcher Corporation*, Indianapolis, Indiana (residential first mortgage lending; Michigan and Indiana): To engage through its subsidiary, American Fletcher Mortgage Company, Inc., in making first mortgage loans on 1–4 family residences for sale to other investors (serving designated counties in Michigan and Indiana). This activity will be conducted from offices at the following locations which will serve the primary market areas indicated: Battle Creek, Michigan, serving Calhoun, Lenawee, Hillsdale, Branch, Berrien, Van Buren, St. Joseph, Barry, and Allegan Counties, Michigan; Mishawaka, Indiana, serving St. Joseph, Porter, LaPorte, Starke, Pulaski, Lake, Marshall, Fulton, Elkhart, Kosciusko, LaGrange, and Noble Counties, Indiana; Marion, Indiana, serving Grant, White, Tippecanoe, Clinton, Carroll, Cass, Miami, Wabash, Huntington, Whitley, Allen, Adams, Wells, Jay, Blackford, Delaware, Howard, and Madison Counties, Indiana; Carmel, Indiana, serving Hamilton, Tipton, Boone, Hancock, Rush, Marion, and Hendricks, Counties, Indiana. Comments on this application must be received not later than January 19, 1983.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Security Pacific Corporation*, Los Angeles, California (finance and credit life and credit accident and health insurance activities; Pennsylvania): To engage through its subsidiaries, Security Pacific Finance Corp. and Security Pacific Consumer Discount Company in making or acquiring for its own account or for the account of others, loans and extensions of credit, including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or a consumer finance company, and acting as broker or agent for the sale of credit life and credit accident and health insurance. These activities would be conducted from offices of Security Pacific Finance Corp. and Security Pacific Consumer Discount Company located in Exton and King of Prussia, Pennsylvania, serving the State of Pennsylvania. Comments on

this application must be received not later than January 26, 1983.

Board of Governors of the Federal Reserve System, December 28, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-32 Filed 1-3-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82N-0331]

Monooctanoin for Dissolution of Cholesterol Gallstones Retained After Cholecystectomy, Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the signature line of the notice asking for new drug applications (NDA's) for monooctanoin in dissolving gallstones after a cholecystectomy.

FOR FURTHER INFORMATION CONTACT: Roger Gregorio, Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903

SUPPLEMENTARY INFORMATION: In FR doc. 82-33585 at page 55520 in the issue of Friday, December 10, 1982, FDA's Orphan Products Development Office asked for NDA's for the above-referenced drug. Marion J. Finkel, M.D., is the Director of the Office. Her title was incorrectly given as "Associate Director for New Drug Evaluation". It should read "Director, Orphan Products Development."

Dated: December 22, 1982.

Marion J. Finkel,

Director, Orphan Products Development.

[FR Doc. 83-1 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0180]

Scherer Laboratories, Inc., et al.; Withdrawal of Approval of Abbreviated New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of 37 abbreviated new drug applications (ANDA's) based on the written request of the applicants.

EFFECTIVE DATE: February 3, 1983.

FOR FURTHER INFORMATION CONTACT: David Rosen, National Center for Drugs and Biologics (HFN-530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4080.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed below have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA No. and drug	Applicant
80-032 Tri-A-Mul Suspension, 0.5 gm/5 mL.	Scherer Laboratories, Inc., formerly First Texas Pharmaceuticals, Inc., P.O. box 400009, Dallas, TX 75240.
80-033 Tri-A-Mul Table, 0.5 gm.	Do.
80-034 Sodium Aminosalicylate Tablet, 1.0 gm.	ICN Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213.
80-042 Sulfamethizole Table, 500 mg.	Webon Pharmaceuticals Division, Alcon Laboratories, Inc., P.O. Box 1629, Fort Worth, TX 76101.
80-427 Hydrocortisone Cream, 0.25%, 0.5%, 1.0%.	Texas Pharmacal Co., 201 Tabor Rd., Morris Plains, NJ 07950.
80-740 Cyanocobalamin Injection, 1,000 ug/mL.	Ingram Pharmaceutical Co., 202 Green St., San Francisco, CA 94111.
80-777 Gamma Benzene Hexachloride Cream, 1%.	Byk-Gulden, Inc., P.O. Box 730, Hicksville, NY 11802.
80-876 Bedoce Injection, 1,000 ug/mL.	Lincoln Laboratories, Inc., P.O. Box 1139, Decatur, IL 62525.
83-048 Diphenylhydantoin Oral Suspension, 30 mg/5 mL.	Abbott Laboratories, 14th & Sheridan Aves., North Chicago, IL 60604.
83-155 Reserpine Tablet, 0.25 mg.	Tablicaps, Inc., P.O. Box 5555, Franklinville, NJ 08322.
83-175 Ramsed Injection, 25 & 50 mg/mL.	Endo Laboratories, 1000 Stewart Ave., Garden City, NY 11530.
83-197 Propoxyphene Hydrochloride Capsule, 65 mg.	Natcon Chemical Co., Inc., One Fairchild Court, Plainview, NY 11803.
83-225 Sodium Pentobarbital Capsule, 100 mg.	Philips Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216.
83-227 Sodium Pentobarbital Tablet, 1½ gr.	Stayner Corp., 2391 West Winter Ave, Hayward, CA 94545.
83-228 Sodium Pentobarbital Capsule, 1½ gr.	Do.
83-258 Sodium Butabarbital Tablet, ¼ & ½ gr.	Stanlabs Pharmaceutical Co., P.O. Box 3108, Portland, OR 97208.
83-268 Sodium Butabarbital Tablet, ¼ gr.	Stayner Corp.
83-269 Sodium Butabarbital Tablet, ½ gr.	Do.
83-293 Propoxyphene HC1 Capsule, 65 mg.	ADS Laboratories, Inc., 200 Elmora Ave., Elizabeth, NJ 07207.
83-374 Esterified Estrogens Tablet, 0.625 mg.	Scherer Laboratories, Inc.
83-418 Conjugated Estrongens Tablet, 0.3 mg.	Standard Pharmacal Corp., 1300 Abbott Dr., Elgin, IL 60120.
83-432 Semestrin Aqueous Suspension, 2 mg/mL.	Beecham Laboratories, 501 Fifth St., Bristol, TN 37620.
83-454 Lidocaine Ointment, 5%.	Credo Co., 1708 Chase Dr., Fenton, MO 63026.
83-537 Sodium Secobarbital Capsule, 100 mg.	Stayner Corp.
83-578 Sodium Butabarbital; Tablet, 30 mg.	Stanlabs Pharmaceutical Co.
83-756 Piperazine Citrate Syrup, 500 mg/5 mL [1]	Natcon Chemical Co.
83-864 Sodium Secobarbital Tablet, 100 mg.	Stayner Corp.
83-880 Procaps Capsule, 65 mg.	A. H. Robins Co., 1211 Sherwood Ave., Richmond, VA 23220.
83-912 Vitamin A Capsule, 50,000 Units.	Parmaceutical Associates, Inc., P.O. Box 128, Conestee, SC 29636.
83-920 Propoxyphene HC1 Capsule, 65 mg.	Reid-Provident Laboratories, Inc., 25 Fifth St., N.W., Atlanta, GA 30308.
85-149 Reserpine Tablet, 0.1 mg.	Tablicaps, Inc.
85-212 Dextroamphetamine Sulfate Tablet, 5 mg.	Stanlabs Parmaceutical Co.
85-429 Propoxyphene HC1 Capsule, 65 mg.	Richlyn Laboratories, Inc., Castor & Kensington Aves., Philadelphia, PA 19124.
85-431 Hydrocortisone Foam, 1%.	Reed & Carnrick Parmaceuticals, 30 Boright Ave., Kenilworth, NJ 07033.
85-726 Esterified Estrogens Tablet, 1.25 mg.	Scherer Laboratories, Inc.
85-727 Esterified Estrogens Tablet, 2.5 mg.	Do.
85-843 Lorolate Sublingual Tablet, 1.0 mg.	Wallace Laboratories, Formerly Mallinckrodt, Inc., Cranbury NJ 08512.

[1] Note.—Marketing of this drug product will continue under ANDA 80-671.

The agency has determined that, in accordance with 21 CFR 25.24(d)(2) (proposed in the Federal Register of December 11, 1979, 44 FR 71742), this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 050(e), 76 Stat. 782 as amended [21 U.S.C. 355(e)]), and under authority delegated to the Director of the National Center for Drugs and Biologics (21 CFR 5.82), approval of the new drug applications listed above, and supplements thereto, is hereby withdrawn.

This order becomes effective on February 3, 1983.

Dated: December 22, 1982.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 83-22 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0181]

American Pharmaceutical Co., Inc., et al.; Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) offers an

opportunity for hearing on a proposal to withdraw approval of 48 abbreviated new drug applications (ANDA's) on the grounds that the applicants have failed to submit required reports.

DATE: Requests for hearing due by February 23, 1983.

ADDRESSES: Communications in response to this notice should be identified with the docket number appearing in the heading of this notice and directed to the attention of the appropriate office named below:

Requests for hearing: Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20587.

Periodic reports: Division of Generic Drug Monographs (HFN–530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20587.

FOR FURTHER INFORMATION CONTACT: David Rosen, National Center for Drugs and Biologics (HFN–530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20587.

SUPPLEMENTARY INFORMATION: Applicants are required to maintain records on drug products for which an approval is in effect, and to report to FDA periodically concerning the drugs in accordance with 21 CFR 310.300. Although in the past some exemptions from these reporting requirements have been granted, all such exemptions were rescinded, as announced in the **Federal Register** of May 12, 1978 (43 FR 20556). Reports have not been submitted for the drug products listed below, and the firms have not voluntarily waived their opportunity for a hearing. Each applicant was advised by certified letter that it should submit the required reports within 30 days of receipt of the letter or the agency would proceed to publish a notice of opportunity for hearing on a proposal to withdraw approval of the ANDA's on the grounds of failure to report.

The objective of this action is to close a large number of files on drugs that have been discontinued or were never marketed or whose holders are delinquent in submitting the required periodic reports.

ANDA No. and Drug	Applicant
80-004 Propylthiouracil Tablet, 50 mg.	American Pharmaceutical Co., Inc., 120 Bruckner Blvd., Bronx, NY 10454.
80-019 Propylthiouracil Tablet, 50 mg.	Davis/Edwards Pharmacal Corp., P.O. Box 1325, Danbury, CT 06810.
80-115 Isoniazid Tablet, 100 mg.	Do.
80-227 Prednisone Tablet, 5 mg.	Fellows Medical Manufacturing Co., Subsidiary of Chromalloy American Corp., 12741 Capital Ave., Oak Park, MI 48237.
80-248 Prednisone Tablet, 5 mg.	Nysco Laboratories, Inc., 34-24 Vernon Blvd., Long Island City, NY 11106.
80-247 Prednisolone Tablet, 5 mg.	Do.
80-268 Menadione Sodium Bisulfite Injection, 2.5, 5, & 10 mg/mL.	Gotham Pharmaceutical Co. Inc., 1840 McDonald Ave., Brooklyn, NY 11223.
80-312 Phytonadione Injection, 10 mg/mL.	Medical Chemicals Corp., 2137 N. 15th Ave., Melrose Park, IL 60160.
80-318 Desoxycorticosterone Acetate Injection, 5 mg/mL.	Gotham Pharmaceutical Co., Inc.
80-998 Cyanocobalamin Injection, 1,000 ug/mL.	Century Laboratories, Inc., P.O. Box 1038, Turnersville, NJ 08012.
83-030 Prednisolone Tablet, 5 mg.	A.D.S. Laboratories, 200 Elmora Ave., Elizabeth, NJ 07207.
83-031 Prednisone Tablet, 5 mg.	Do.
83-121 Diphenhydramine HC1 Injecton, 10 mg/mL.	Medwick Laboratories, 2137 North 15th Ave., Melrose Park IL 60160.
83-161 Dexamethasone Sodium Phosphate Injection, 4 mg/mL.	Dell Laborstories, Inc., 668 Front St., Teaneck, NJ 07666.
83-208 Cortisone Acetate Injection, 25 & 50 mg/mL.	Medwick Laboratories.
83-233 Hydrocortisone Acetate Injection, 25 & 50 mg/mL.	Do.
83-311 Vitamin A Capsule, 50,000 units.	Arcum Pharmaceutical Corp., 225 Mill St., N.E., Box 38, vienna, VA 22180
83-387 Lidocaine HC1 Injection, 1%.	Dell Laboratories, Inc.
83-388 Lidocaine HC1 Injection, 2%.	Do.
83-389 Lidocaine HC1 Injection, 1% with Epinephrine 1:100,000.	Do.
83-390 Lidocaine HC1 Injection, 2% with Epinephrine 1:100,000.	Do.
83-562 Prednisolone Acetate Injection, 25 mg/mL.	Ferndale Laboratories, Inc., 780 West Eight Mile Rd., Ferndale, MI 48220.
83-674 Diphenhydramine HC1 Elixir, 12.5 mg/5 mL.	The C. M. Bundy Co., 2055 Reading Rd., Cincinnati, OH 45202.
83-675 Prednisolone Tablet, 5 mg.	Do.
83-676 Prednisone Tablet, 5 mg.	Do.
83-771 Pyridoxine HC1 Injection, 50 mg/mL.	Dell Laboratories, Inc.
83-775 Thiamine HC1 Injection, 100 mg/mL.	Do.
83-782 Promethazine HC1 Tablet, 25 mg.	Rover's Pharmacal, Inc., 918 Jersey St., West Babylon, NY 11704.
83-666 Promethazine HC1 Tablet, 50 mg.	Do.
83-929 Cortisone Acetate Tablet, 5 & 25 mg.	Robinson Laboratories, Inc., 355 Brannan St., San Francisco, CA 94107.
83-940 Diethylstilbestrol Tablet, 0.5, 1, & 5 mg.	Do.
83-953 Diphenhydramine HC1 Capsule, 50 mg.	Heather Drug Co., Inc., No 1 Fellowship Rd., Cherry Hill, NJ 08003.
83-958 Propylthiouracil Tablet, 50 mg.	Robinson Laboratories, Inc.
83-959 Rohydra HC1 Capsule, 25 & 50 mg.	Do.
83-960 Prednisolone Tablet, 5 mg.	Do.
83-974 Trihexyphenidyl HC1 Tablet, 2 and 5 mg.	Rover's Pharmacal, Inc.
84-185 Bethanechol Chloride Tablet, 10 mg.	Oak Park Pharmaceuticals, Inc., 100 Wisconsin Ave., Fredonia, WI 53021.
84-186 Bethanechol Chloride Tablet, 25 mg.	Do.
84-524 Diphenhydramine Capsule, 25 mg.	Heather Drug Co., Inc.
85-039 Folic Acid Tablet, 1 mg.	Oak Park Pharmaceuticals, Inc.
85-040 Isoniazid Tablet, 100 mg.	Do.
85-041 Meclizine Hydrochloride Tablet, 25 mg.	Do.
85-042 Methacarbamol Tablet, 500 mg.	Do.
85-044 Reserpine Tablet, 0.25 mg.	Do.
85-170 Prednisolone Tablet, 5 mg.	Tabficaps, Inc., P.O. Box 5555, Franklinville, NJ 08322.
85-207 Reserpine Tablet, 0.25 mg.	Do.
85-270 Methyltestosterone Tablet, 25 mg.	Do.
85-550 Butabarbital Tablet, 30 mg.	The C. M. Bundy Co.

Therefore notice is given to the holders of the abbreviated new drug applications listed above that the Director of the National Center for Drugs and Biologics proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of the abbreviated new drug applications and all amendments and supplements thereto on the grounds that the applicants have failed to submit the reports required under 21 CFR 310.300.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 210, 314), the applicants are hereby given an opportunity for a hearing to show why approval of their abbreviated new drug applications should not be withdrawn.

An applicant who decides to seek a hearing shall file (1) on or before February 3, 1983 a written notice of appearance and request for hearing, and (2) on or before March 7, 1983 the data, information, and analyses relied on to justify a hearing as specified in 21 CFR 314.200.

The failure of the applicant to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by that person not to make use of the opportunity for a hearing concerning the action proposed for the product.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that justifies a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accord with 221 CFR 310.300. If the submission is not complete or if a request for hearing is not made in the required format or with the required reports, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests a

hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice must be filed in four copies. Except for information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to the Director of the National Center for Drugs and Biologics (21 CFR 5.82).

Dated: December 22, 1982.

Harry M. Meyer, Jr.,

Director, National Center For Drugs and Biologics.

[FR Doc. 83-23 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0012; DESI 9049]

Prescription Topical Anti-Infective Drug Products; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice withdraws approval of the new drug application for Neo-Cort-Dame Lotion (NDA 50–307) on the ground that the drug product lacks substantial evidence of effectiveness for its labeled indications. The product is no longer marketed.

EFFECTIVE DATE: February 3, 1982.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 9094 and directed to the Division of Drug Labeling Compliance (HFN–310), National Centers for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Margaret Erickson, National Center for Drugs and Biologics (HFN–8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 25, 1981 (46 FR 47408), the Director of the Bureau of Drugs proposed to withdraw approval of the new applications (NDA's) of certain prescription topical anti-infective drug products and offered an opportunity to request a hearing on the proposal. The basis of the proposal was that the products lack substantial evidence of effectiveness.

In response to the notice, Miles Pharmaceuticals, Division of Miles Laboratories, Inc., 400 Morgan Ln., West Haven, CT 06516, requested a hearing for several products. Miles subsequently informed FDA that the product listed below is no longer marketed and was inadvertently included in its hearing request. Accordingly, approval of the following new drug application is being withdrawn:

NDA 50–307; Neo-Cort-Dome Lotion (0.5 percent and 1 percent) containing neomycin sulfate and hydrocortisone.

Any drug product that is identical, related, similar to the drug product named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address given above).

This notice does not apply to the following products for which Miles requested a hearing:

1. NDA 50–237; Neo-Cort-Dome Cream (0.5 percent and 1 percent) containing hydrocortisone and neomycin sulfate.

2. Iodochlorhydroxyquin and Hydrocortisone Cream and Ointment (no NDA).

This notice does not apply to any other product which is the subject of a pending hearing request. These products are listed in a notice published in the **Federal Register** of April 23, 1982 (47 FR 17677). These products may be marketed pending a final determination of their effectiveness.

The Director of the National Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Sat. 1052–1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82 and 47 FR 26913 published in the **Federal Register** of June 22, 1982), finds, on the basis of new information before him with respect to the drug product, evaluated together with the evidence available to him when the application was approved, that there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or sugested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 50–307 and all its amendments and supplements is withdrawn effective February 3, 1983.

Shipment in interstate commerce of the above product or any idential, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: December 22, 1982.

Harry M. Meyer, Jr.,

National Center for Drugs and Biologics.

[FR Doc. 83-24 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0330/AP]

Tamper-Resistant Packaging Requirements for Certain Over-the-Counter Human Drug and Cosmetic Products; Advisory Opinion

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the agency's advisory opinion that over-the-counter (OTC) drugs in one-piece soft gelatin capsules belong to the category of products that must comply with tamper-resistant packaging requirements by May 5, 1983. The advisory opinion was issued in response to trade correspondence.

ADDRESS: The trade correspondence is on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eileen Hodkinson, National Center for Drugs and biologics (HFN–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 5, 1982 (47 FR 50442), FDA published regulations establishing tamper-resistant requirements for certain OTC human drugs and cosmetic products. Compliance with the regulations becomes effective in steps. The requirement that a tamper-resistant package be used is effective February 7, 1983 for OTC drug products and cosmetics that are the most vulnerable to tampering. These products are oral, vaginal, and rectal drugs, (other than oral and vaginal tablets and vaginal and rectal suppositories), otic drugs, nasal drugs, and ophthalmic drugs. A later effective date of May 5, 1983 is provided for oral and vaginal tablets and vaginal and rectal suppositories that are considered less susceptible to known methods of tampering.

Pharmscaps, Inc., Elizabeth, NJ, filed a request for an exemption from the February 7, 1983 effective date of the tmper-resistant rule asking the agency to distinguish OTC drug products in one-piece soft gelatin capsules from OTC drug products in two-piece hard gelatin

capsules for purposes of compliance with the tamper-resistant packaging requirement.

By letter dated November 23, 1982, the petitioner was informed that because one-piece soft gelatin capsules are less susceptible to tampering than two-piece capsules, it would be more appropriate to place them in the category of drug products that must comply with the tamper-resistant regulations by May 5, 1983.

Under § 10.85(c) (21 CFR 10.85(c)), the Commission of Food and Drugs considers the substance of the November 23, 1983 letter to be an advisory opinion applicable to all OTC human drug products marketed in one-piece soft gelatin capsules. Such products, therefore, should comply with the tamper-resistant packaging requirement by May 5, 1983.

Dated: December 25, 1982.

Joseph P. Hile,

Associate Commission for Regulatory Affairs.

[FR Doc. 83-25 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82F-0374]

Mitsui Petrochemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mitsui Petrochemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for an increase in the level of butene-1 in ethylene/butene-1 copolymers to be used in blends with other permitted polyolefins.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B3674) has been filed by the Mitsui Petrochemical Industries, Ltd., (No. 2,3-Chrome, Kasumigaseki, Chiyoda-ku, Tokyo, Japan) proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for an increase in the butene-1 content in ethylene/butene-1 copolymers for use in blends with other olefin copolymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: December 22, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-26 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80P-0234/P]

Gonorrhea Antibody Test Kits; Refusal To Initiate Proceedings To Withdraw Premarket Approval; Availability of Commissioner's Decision

AGENCY: Food and Drug Administration.

ACTION: Notice of availability of Commissioner's decision.

SUMMARY: The Food and Drug Administration is announcing that the Commissioner of Food and Drugs has issued a final decision concerning a petition filed by the Health Research Group (HRG) requesting the agency to withdraw premarket approval for three blood-screening tests for detection of gonorrhea antibody.

ADDRESS: The decision and all documents related to the decision may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Tenny Neprud, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: Acting as the Commissioner's designee pursuant to 21 CFR 15.30(a), the Deputy Commissioner has determined that HRG has not presented evidence that would justify initiation of proceedings to withdraw premarket approval for these gonorrhea antibody test kits (GAT's) but that labeling for the devices should be revised to communicate more effectively to consumers the performance characteristics of the devices. These revisions in labeling include: (1) Amendment of the special labeling prominently displayed on all packaging and promotional materials to state that the tests will identify as positive a significant number of individuals who do not have the disease, (2) use of examples to illustrate the tests' specificity and sensitivity, (3) discussion of the predictive value of test results, and (4) more prominent placement of the discussion of the tests' performance characteristics. In addition, the decision directs the Office of Medical Devices to consider seriously a requirement that written information concerning the likelihood of false-positive test results accompany the products for distribution directly to patients.

Dated: December 29, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-172 Filed 1-4-83; 8:45 am]

BILLING CODE 4160-01-M

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming small business exchange meeting to be chaired by Ceasar A. Roy, Regional Food and Drug Director, Region II, New York Field Office.

DATE: Thursday, January 20, 1983, at 1 p.m.

ADDRESS: The meeting will be held at the Roosevelt Hall Little Theatre, SUNY at Farmingdale, Farmingdale, NY 11735.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Small Business Representative, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 202-645-6466.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small businesses and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small business persons in FDA's decisionmaking process.

Dated: December 29, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-171 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82P-0382]

Tomato Juice Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that a temporary permit has been issued to Ardmore Farms, Inc., to market test tomato juice prepared from concentrate and preserved by freezing and by refrigeration after subsequent defrosting. The purpose of this temporary permit is to permit the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 days, beginning on the date the food is introduced or caused to be introducted into interstate commerce, but no later than April 4, 1983. However, the permit may terminate sooner, depending upon the final action on FDA's proposal to amend the standard of identity for tomato juice published in the **Federal Register** of May 9, 1978 (43 FR 19864). If the proposal is affirmed, the permit will terminate on the effective date of the final regulation. If the proposal is rejected, the permit will expire 30 days after the negative ruling on the proposal.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: In accordance with § 130.17 (21 CFR 130.17) concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), notice is given that a temporary permit has been issued to Ardmore Farms, Inc.

The permit covers limited interstate marketing tests of tomato juice that deviates from the standard of identity prescribed for tomato juice under § 156.145 (21 CFR 156.145) in that it is prepared from tomato paste and tomato puree that comply with the requirements of § 155.191(a)(1) (21 CFR 155.191(a)(1)) and § 155.192(a)(1) (21 CFR 155.192 (a)(1)), respectively, to which water is added and is preserved by freezing and by refrigeration after subsequent defrosting.

The test product is equivalent to a single-strength tomato juice normally found in the marketplace. The finished product contains not less than 5.5 percent tomato-soluble solids. The permit provides for temporary marketing of 2,000 cases per month of 48 4-ounce plastic cups of the product to be distributed in all 50 of the United States.

The test product is to be packed at the Ardmore Farms, Inc., plant, P.O. Box 183, Deland, FL 32730.

The principal display panel of the label states the product's name as "tomato juice from concentrate." Each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101, except that the tomato ingredients complying with the requirements of § 155.191 (a)(1) and § 155.192(a)(1) are declared as "tomato concentrate." The statement "Keep Refrigerated" is printed on the label and a coded packing date is printed on the shipping container of the frozen food. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than April 4, 1983. However, the permit may terminate sooner, depending upon the final action on FDA's proposal to amend the standard of identity for tomato juice published in the **Federal Register** of May 9, 1978. If the proposal is affirmed, the permit will terminate on the effective date of the final regulation. If the proposal is rejected, the permit will expire 30 days after the negative ruling on the proposal.

Dated: December 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-6 Filed 1-3-83; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Native American Programs; Amendment to Program Announcement 13612–831

AGENCY: Office of Human Development Services, DHHS.

SUBJECT: Amendment to Announcement of Availability of FY 1983 Financial Assistance for Native American Projects.

SUMMARY: The Administration for Native Americans (ANA) is amending the list of Fiscal Year 1982 grantees eligible to apply for funding under Program Announcement 13612–831, Financial Assistance for Native American Projects (47 FR 25726, June 14, 1982). The following list of Fiscal Year 1982 grantees includes those grantees whose budget periods have been changed.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: December 14, 1982.

Casimer R. Wichlacz,

Acting Commissioner, Administration for Native Americans.

Approved: December 27, 1982.

Dorcas R. Hardy,

Assistant Secretary, for Human Development Services.

ADMINISTRATION FOR NATIVE AMERICANS

Grantee	State	BPE	Application due date
All Indian Pueblo Council	NM	Feb. 28, 1983	Dec. 1, 1982
White Earth Reservation Business Committee	MN	do	Do.
Ute Mountain Ute Tribe	CO	do	Do.
Blackfeet Tribe	MT	do	Do.
Pueblo of Laguna	NM	do	Do.
Council on Energy Resource Tribes	DC	do	Do.
Shoshone-Arapano Joint Council	WY	do	Do.
Lincoln Indian Center	NE	do	Do.
Leech Lake RBC	MN	Mar. 31, 1983	Dec. 31, 1982.
Oneida Tribe of Indians	WI	do	Do.
Business Committee of Chippewa Cree	MT	do	Do.
Eight Northern Pueblos	NM	do	Do.
Native Americans for Community Action	AZ	do	Do.
Indian Development Distrct of Arizona	AZ	Apr. 30, 1983	Jan. 31, 1983
Miccosukee Tribe of Florida	FL	do	Do.
Hoopa Valley Indian Reservation	CA	do	Do.
Fort McDermitt Paiute-Shoshone Tribe	NV	do	Do.
Council for Tribal Employment Rights	WA	do	Do.
Pueblo de Acoma	NM	do	Do.
Eastern Band of Cherokee	NC	do	Do.
Saginaw Chippewa Indian Tribe	MI	do	Do.
Community Action for the Urbanized Indian	CA	do	Do.
Muskogee Creek Nation	OK	May 31, 1983	Mar. 3, 1983
Rhode Island Indian Council	RI	do	Do.
Port Gamble Klallum Tribe	WA	do	Do.

[FR Doc. 83-69 Filed 1-3-83; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts at 47 FR 3603–08, January 26, 1982 and 47 FR 30293, July 13, 1982), is amended to reflect the consolidation of all responsibilities associated with the animal drug approval process into the Office of the Director, Bureau of Veterinary Medicine (BVM). The Division of Food Animal Additives, Bureau of Foods (BF), is being abolished and its functions transferred to BVM along with the animal drug related responsibilities of the Divisions of Toxicology, Mathematics, and Chemistry and Physics, BF. Consolidating these functions into a single bureau will streamline and make more efficient the agency's animal drug approval process.

Section HF–B, Organization and Functions, is amended as follows:

1. Delete subparagraph (k–3–iii) of paragraph (k) in its entirety and reserve it for future use:

(k–3–iii) reserved.

2. Delete subparagraph (k–4–i) of paragraph (k) in its entirety and substitute the following:

(k–4–i) *Division of Toxicology (HFFB).* Originates, plans, and conducts research on the toxic effects of substances for which the bureau has regulatory responsibility; i.e., direct and indirect food additives, color additives and other colors, GRAS substances, prior sanction substances, natural and man-made contaminants of food, natural toxicants in food, and cosmetics ingredients, and of metabolites of these substances.

Investigates mechanisms of the underlying toxicological reactions which may directly or indirectly cause adverse effects in man or laboratory animals.

Investigates, develops, and improves bases for establishing and evaluating toxicological injury to man or laboratory animals from substances for which the bureau has regulatory responsibility.

Conducts toxicological studies on various classes of substances for which the bureau has regulatory responsibility to provide data for evaluation of new petitions and proposals and for the review of current tolerances and applications.

Plans and conducts research pertinent to basic toxicity mechanisms affecting cell growth, reproduction, and function.

Performs toxicological evaluation of all chemical substances for which the bureau has regulatory responsibility.

Develops and makes recommendations regarding the establishment and updating of toxicologic evaluation criteria, guidelines, and protocols for application in the approval process of new substances and for the reaffirmation of presently used substances for which the bureau has regulatory responsibility.

Plans and implements discrete phases of the review of approved food additives as they apply to the toxicology component of the program.

Maintains liaison with other Federal agencies for coordinating toxicologic procedures and information exchange.

Serves as the bureau's chief source of advice on the toxicology of substances which are added to or become a component of food or cosmetics.

Interacts with and provides support to the National Toxicology Program (NTP) by identifying substances for which the bureau has regulatory responsibility that should be tested by the NTP, designing appropriate experiments for testing these substances, and assisting in the preparation of reports and other documents as required by NTP.

3. Delete subparagraph (k–4–iii) of paragraph (k) in its entirety and substitute the following:

(k–4–iii) *Division of Mathematics (HFFE).* Develops mathematical methods and models and provides statistical analysis of bureau and field research, extramural, and regulatory programs.

Originates, plans, and conducts research with regard to the mathematical design, analysis, and interpretation of health, sanitation, and economic studies.

Reviews and evaluates experimental design and statistical data submitted in petitions for food and color additives and food standard regulations.

Provides statistical support to all components of the bureau.

Investigates mathematical and statistical techniques for data analysis systems and for translation and interpretation of technical information for bureau use.

4. Delete subparagraph (k–5–i) of paragraph (k) in its entirety and substitute the following:

(k–5–i) *Division of Chemistry and Physics (HFFA).* Devises new methods of analysis for food additives, natural contaminants and their alteration products in foods; recommends analytical procedures, and provides technical support when requested by the field laboratories. Conducts research to elucidate the chemical structure and properties of food components and potentially hazardous substances in foods.

Provides primary scientific evaluation of the chemical data in food additive petitions and provides laboratory support for validation of analytical methods.

Provides expertise in specialized fields of advanced instrumentation and evaluates, designs, and adapts instrumentation to meet analytical needs in food research.

Provides other chemistry services, as requested, in support of bureau and field programs.

5. Delete subparagraph (m–1) of paragarph (m) in its entirety and substitute the following:

(m–1) *Office of the Director (HFV1).* Directs overall bureau activities and coordinates and establishes bureau policy in the areas of research, management, scientific evaluation, compliance, and surveillance.

Directs systems for planning, programming, and budgeting and provides administrative, and information support for the bureau.

Approves new animal drug applications and issues notices of withdrawal of new animal drug approvals when the opportunity for a hearing has been waived.

Authorizes, for use as edible products, animals treated with investigational drugs and terminates exemptions for investigational trials.

In conjunction with the Bureau of Foods, provides FDA policy development and direction on environmental impact matters.

Ensures that industy-submitted new animal drug applications for food-producing animals are reviewed and evaluated with respect to possible effects on the health of humans consuming food from the affected food-producing animals.

Dated: December 23, 1982.

Richard S. Schweiker,

Secretary

[FR Doc. 83–112 Filed 1–03–83; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS)

covers the Social Security Administration (SSA).

Notice is given that Part S as published in the Federal Register on March 21, 1979 (44 FR 17218–19) and as amended by 44 FR 46350 of August 7, 1979 and by 46 FR 41215 of August 14, 1981, is being amended to reflect the functional and organizational realignments required to accomplish the SSA Systems Modernization Plan (SMP). A new position of Deputy Commissioner of Social Security, Systems, is being established with specific responsibility for the accomplishment of agency systems objectives, and for overseeing the modernization of SSA's automatic data processing and telecommunications systems. Three major new offices are established to realign SSA's systems components in a manner consistent with the SMP. The new offices are: (1) The Office of System Operation (OSO) with responsibility for operation and maintenance of existing operational systems, (2) The Office of System Requirements (OSR) with responsibility for identifying and developing user-oriented systems requirements, and (3) The Office of System Integration (OSI) with responsibility for planning and implementation of systems modernization efforts. Broadly stated, OSR represents a realignment of functions currently reflected within the Office of Operational Policy and Procedures under the Office of User Requirements and Validation and the Office of Enumeration and Earnings Records. OSI represents a new component which subsumes the existing organizations devoted to systems design and development, and OSO constitutes a restructuring of the remaining capacity of the existing Office of Systems. The Systems Management Support Staff, which reports directly to the Deputy Commissioner of Social Security, Systems, represents a realignment of the Management Support Staff of the present Office of Systems. The existing Office of Systems is abolished. Additional changes describe the establishment of the position of Deputy Commissioner of Social Security, Programs and Policy, in lieu of the former position of Deputy Commissioner of Social Security, Programs, and other changes of a purely technical nature required to update Chapters S and SA of the Statement of Organization, Functions and Delegations of Authority. The new material and changes are as follows:

Sec. S.10 The Social Security Administration—(Organization):

Retitle Subsection B to read: "B. The Office of System Operations (SB)."

Reletter and retitle Subsection D. to read: "C. The Office of Field Operations (SD)."

Add Subsection: "O. The Office of the Actuary (SN)."

Add Subsection: "P. The Office of System Requirements (ST)."

Add Subsection: "Q. The Office of System Integration (SU)."

Add Subsection: "R. The Systems Management Support Staff (SQ)."

Sec. SA.10 The Office of the Commissioner—(Organization):

Retitle Subsection B to read: "B. *The Deputy Commissioner of Social Security, Programs and Policy (SA).*"

After Subsection C add: "D. *The Deputy Commissioner of Social Security, System (SA).*"

The remaining material, Subsection D, is relettered "E."

Sec. SA.20 The Office of The Commissioner—(Functions):

Retitle and revise subsection B. to read:

"B. *The Deputy Commissioner of Social Security, Programs and Policy* (SA) assists the Commissioner in carrying out his/her responsibility for managing and directing administration of SSA programs, concentrating on program policy issues, public and governmental affairs, intergovernmental relations and the appeals process."

After Subsection C. add:

"D. *The Deputy Commissioner of Social Security, Systems* (SA) assists the Commissioner in carrying out his/her responsibility for managing and directing administration of SSA programs, concentrating on automated data processing and telecommunications systems."

All remaining material; namely, subsections D and E are reordered as follows:

Subsection D. *The Immediate Office of the Commissioner* (SA) is relettered as "E."

Subsection E. *The Executive Secretariat* (SAX) is renumbered as "1." and its subsections are renumbered as "a–*f*."

Chapter SB—*The Office of Systems:*

Chapter SB is deleted. The new material reads as follows:

Sec. SB.00 The Office of System Operations—(Mission):

The Office of System Operations (OSO) directs, manages and coordinates the planning, implementation, operation and maintenance of SSA's computer and telecommunications systems operations. It directs and coordinates the transition, implementation and operation of current/ongoing operating systems software and other operating systems support software, including diagnostic software. OSO interfaces with the Office of System Integration (OSI) in the transition and implementation of redesigned programmatic, administrative and communications application systems to progressively replace existing application systems. It manages several computer and telecommunications operations complexes, which process SSA's programmatic support, administrative, management information and statistical application systems. OSO conducts continuing assessments and engineering analyses of the computer and telecommunications operations, as well as equipment performance analyses and coordinates with OSI the implementation of necessary improvements to existing resources. It directs and coordinates the activities associated with the planning, management, acquisition, procurement and renewal of automated data processing (ADP) equipment, software and technical services to maintain operational systems and to prevent progressive deterioration. OSO develops, controls and implements operational plans, which includes preparing technical specifications, evaluation criteria, acceptance test criteria, facilities engineering plans and budget estimates, to maintain operational systems. It advises the Deputy Commissioner for Systems, SSA Executive Staff and external monitoring authorities, such as the Department of Health and Human Services, the General Services Administration, the General Accounting Office, the Office of Management and Budget and Congress on SSA's operational computer and telecommunications systems.

Sec. SB.10 The Office of System Operations—(Organization):

The Office of System Operations, under the leadership of the Associate Commissioner for System Operations, includes:

A. The Associate Commissioner for System Operations (SB)

B. The Deputy Associate Commissioner for System Operations (SB)

C. The Immediate Office of the Associate Commissioner for System Operations (SB)

D. The Office of Computer Processing Operations (SBP)

E. The Office of Telecommunications Systems Operations (SBJ)

F. The Office of Operational Planning and Control (SBK)

Sec. SB.20 The Office of System Operations—(Functions):

A. *The Associate Commissioner for System Operations* (SB) is directly responsible to the Deputy Commissioner for Systems for carrying out the OSO mission and providing general supervision to the major components of OSO.

B. *The Deputy Associate Commissioner for System Operations* (SB) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for System Operations* (SB) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. *The Office of Computer Processing Operations* (SBP): The Office of Computer Processing Operations (OCPO) plans and directs data processing operations in support of social insurance and income maintenance programs, as well as statistical and administrative information systems. It ensures that systems operational plans are consistent with overall OSO plans. OCPO manages a complex data processing facility of computers and related equipment which process programmatic and management information data. It designs, develops, implements and provides operating control systems software and operational standards for SSA's programmatic and management information ADP equipment. OCPO conducts technical evaluations of operations in the data processing facility and advises the Associate Commissioner for System Operations and other SSA officials on technical matters concerning computer operations. OCPO serves as liaison with other SSA officials on technical matters concerning computer operations. OCPO serves as liaison with other SSA components, Federal and non-Federal agencies and other organizations on operational data processing matters.

E. *The Office of Telecommunications Systems Operations* (SBJ): The Office of Telecommunications Systems Operations (OTSO) operates SSA's nationwide data communications systems in support of all SSA programmatic and administrative activities. OTSO manages a complex nationwide facility which provides data communications for all SSA components. It maintains operating system software and develops operational standards for telecommunications services. It conducts operational evaluations of data communications facilities and provides advice to the Associate Commissioner for System Operations and other SSA officials on all matters concerning data communications operations. OTSO serves as liaison with other SSA components, other Federal and non-Federal agencies and other organizations on operational data communications matters.

F. *The Office of Operational Planning and Control* (SBK): The Office of Operational Planning and Control (OOPC) directs all OSO operational systems planning and control. It directs the development of broad OSO systems plans and determines planning requirements at various levels in OSO. OOPC reviews and approves technical and operational systems priorities among program areas to ensure maximum use of OSO resources. OOPC proposes to the Associate Commissioner for System Operations resource requirements for systems activities in OSO. It plans and develops operational policies, standards and procedures for OSO. OOPC coordinates the resolution of operational problems identified by the Office of System Requirements and the users of OSO systems. It directs and coordinates the OSO activities associated with the operational planning, management, utilization measurement, acquisition and renewal of operational ADP equipment, and software and technical services to maintain operational systems and prevent progressive deterioration. It directs, coordinates and conducts operations analyses and studies in areas such as work force requirements, media and supply logistics, work station to work station communication, supply storage and retrieval and job stream interdependencies and networking. OOPC is the central OSO point of contact for the coordination and transition of redesigned application systems developed by the Office of System Integration into the OSO production environment. It is the control point in OSO responsible for the integrity of the SSA hardware configuration, production software change control and major production job streams. It serves as liaison with other SSA components, the Department of Health and Human Services and external monitoring authorities, including the General Services Administration, the Office of Management and Budget, the General Accounting Office and Congress on SSA's ADP and telecommunications systems operations.

Sec. SJ.10 The Office of Operational Policy and Procedures (Organization):

Delete Subsection: "F. The Office of Enumeration and Earnings Records (SJC)."

Delete Subsection: "J. The Office of User Requirements and Validation (SJR)."

All remaining material lettered G–I is relettered F–H.

Chapter ST—*The Office of System Requirements:*

A new Chapter ST is titled and reads as follows:

Sec. ST.00 The Office of System Requirements—(Mission):

The Office of System Requirements (OSR) directs, develops and coordinates organizational information requirements and functional specifications for new systems and modifications to existing systems in direct support of SSA programs, as well as statistical and administrative information systems. OSR is responsible for long-range planning and analyses to define new and improved systems processes in support of user requirements and maintains a comprehensive, updated and integrated set of system requirement specifications. OSR directs validation of systems operations against user defined requirements and performance criteria, and approves the resulting system for operational acceptance. It directs the development of procedures and instructions to support user needs in effective implementation of all systems. OSR develops security standards and ensures implementation of the standards within OSR. It directs the evaluation of the effect of proposed legislation, policies or regulations to determine the impact on SSA systems and develops information requirements and procedures as they relate to such legislation, regulations and SSA policy directives. It directs the coordination of user requirements with SSA central and field offices to ensure the efficiency and effectiveness of program information needs and overall systems support. Based on input from users, OSR translates organizational information requirements and priorities into plans and, in line with Office of System Integration (OSI) and Office of System Operations (OSO) systems targets, develops SSA's annual agency systems plan and directs the development and maintenance of the plan. OSR serves as primary contact and advocate for SSA user community on issues concerning the development of organizational information requirements, functional specifications

and supporting operational procedures and instructions.

Sec. ST. 10 The Office of System Requirements—(Organization):

The Office of System Requirements, under the leadership of the Associate Commissioner for System Requirements, includes:

A. The Associate Commissioner for System Requirements (ST)

B. The Deputy Associate Commissioner for System Requirements (ST)

C. The Immediate Office of the Associate Commissioner for System Requirements (ST)

D. The Office of Claims and Payment Requirements (STA)

E. The Office of Pre-Claims Requirements (STB)

F. The Office of System Modernization Requirements (STC)

G. The Office of Planning, Control and Validation (STE)

Sec. ST. 20 The Office of System Requirements—(Functions):

A. *The Associate Commissioner for System Requirements* (ST) is directly responsible to the Deputy Commissioner for Systems for carrying out the OSR mission and providing general supervision to the major components of OSR.

B. *The Deputy Associate Commissioner for System Requirements* (ST) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for System Requirements* (ST) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. *The Office of Claims and Payment Requirements* (STA): The Office of Claims and Payment Requirements (OCPR) develops, evaluates and implements organizational information requirements, including security and fraud detection requirements, for modifications to systems in direct support of SSA's multiple social insurance and income maintenance programs, as well as statistical and administrative information systems, and provides data exchange services to Federal and State agencies. OCPR maintains a comprehensive and integrated set of system requirements specifications, participates in the planning and conduct of unit validation tests with the Office of Planning, Control and Validation of systems changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility. OCPR develops procedures and instructions to support user needs in effective implementation of systems, evaluates proposed legislative and policy changes to determine the impact on SSA systems, and develops information requirements and procedures needed to implement legislation, regulations and policy directives. In assigned areas, it coordinates development of user requirements with SSA headquarters and field components, as well as Federal and State agencies, and represents users in resolving systems problems with the Office of System Integration and the Office of System Operations.

E. *The Office of Pre-Claims Requirements* (STB): The Office of Pre-Claims Requirements (OPCR) develops, evaluates and implements organizational information requirements, including security and fraud detection requirements, for modifications to systems which establish, correct and maintain social security earnings records; issues new and duplicate social security cards and related records; records social security earnings for State and local government employees; furnishes Trust Fund information to the Department of the Treasury; accomplishes vested pension rights identification and notification and provides a variety of data information services that relate to enumeration and earnings records. OPCR maintains a comprehensive and integrated set of system requirements specifications, participates in the planning and conduct of unit validation tests with the Office of Planning, Control and Validation of system changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility. It develops procedures and instructions to support user needs in effective implementation of systems, evaluates proposed legislative and policy changes to determine the impact on SSA systems and develops information requirements and procedures needed to implement legislation, regulations and policy directives. In assigned areas, OPCR coordinates development of user requirements with SSA headquarters and field components, as well as Federal and State agencies, and represents users in resolving systems problems with the Office of System Integration and the Office of System Operations.

F. *The Office of System Modernization Requirements* (STC): The Office of System Modernization Requirements (OSMR) develops, evaluates and implements organizational information requirements for all systems modernization efforts for macro-level systems modernization proposals developed by the Office of Planning, Control and Validation (OPCV) and approved by the Deputy Commissioner for Systems. OSMR maintains a comprehensive and integrated set of system requirements specifications, participates in the planning and conduct of unit validation tests with OPCV of system modernization procedures and applications against user-defined requirements and performance criteria and certifies that the system meets specifications. It develops procedures and instruction to support user needs for modernization projects in effective implementation of systems. In assigned areas, OSMR coordinates development of user requirements with SSA headquarters and field components, as well as Federal and State agencies, and represents users in resolving systems problems with the Office of System Integration and the Office of System Operations relating to modernization efforts.

G. *The Office of Planning, Control and Validation* (STE): The Office of Planning, Control and Validation (OPCV) plans, analyzes, evaluates, coordinates and documents user requirements and changes in system processes to support long-term needs in relation to SSA's multiple social insurance and income maintenance programs, and statistical and administrative information systems. OPCV develops security standards and ensures implementation of the standards within OSR. It develops validation standards and requirements, conducts integrated tests of systems application processes, and certifies release of system modification and developmental projects. It develops automated techniques and methodologies for validation of systems processes, and identifies requirements for automated validation tools and test field data bases developed by OSI. OPCV develops and maintains the overall SSA plan for fulfilling immediate and long-range user requirements, including determining, classifying and defining SSA organizational systems needs and publishing the approved plan. It coordinates approved system requirement changes with system modernization plans. OPCV develops and maintains a management support

system which provides resource accounting, project control and workload scheduling, and controls user initiated automated data processing budget items relating to the agency systems plan.

Chapter SU—*The Office of System Integration:*

A new Chapter SU is titled and reads as follows:

Sec. SU.00 The Office of System Integration—(Mission):

The Office of System Integration (OSI) directs SSA's automated data processing (ADP) strategic planning process. It evaluates ADP and telecommunications technology and is responsible for acquiring and, with the Office of System Operations (OSO), implementing such technology at SSA. OSI directs and coordinates a comprehensive SSA systems configuration management program. It manages a detailed project control system for OSI system projects. OSI directs the design and development of software improvement projects. It designs, develops and, with OSO, implements the production of all new or improved data base oriented systems. OSI directs SSA's data base administration/management program. It is responsible for a comprehensive software engineering program and develops and oversees the implementation of standards, methods and procedures in connection with this program. OSI directs and coordinates the development of ADP systems in support of SSA's social insurance and income maintenance programs. It directs the development, maintenance and, with OSO, the implementation of software systems for administrative, management information and statistical applications. OSI develops policies and procedures for the acquisition of ADP/telecommunications equipment (ADP/TC), software and services, and directs the SSA ADP/TC acquisition process as it supports systems improvement and modernization initiatives. OSI directs the integration testing of new or revised hardware and software. It directs the design, development, maintenance and, with OSO, the implementation of SSA's nationwide data communications systems. OSI plans and directs a software development facility to support applications development personnel. It serves as liaison with other SSA components, the Department of Health and Human Services and external monitoring authorities, including the Office of Management and Budget, the General Services Administration, the General Accounting Office and the Congress on SSA systems planning, ADP/TC acquisition, systems development and data communications activities.

Sec. SU.10 The Office of System Integration—(Organization):

The Office of System Integration, under the leadership of the Associate Commissioner for System Integration, includes:

A. The Associate Commissioner for System Integration (SU)

B. The Deputy Associate Commissioner for System Integration (SU)

C. The Immediate Office of the Associate Commissioner for System Integration (SU)

D. The Configuration Management and Project Control Staff (SUA)

E. The Strategic Planning Staff (SUB)

F. The Software Technology and Engineering Center Staff (SUC)

G. The Office of Software Improvement and Engineering (SUE)

H. The Office of Programmatic Systems (SUF)

I. The Office of Administrative and Management Systems (SUG)

J. The Office of System Engineering (SUH)

Sec. SU.20 The Office of System Integration—(Functions):

A. *The Associate Commissioner for System Integration* (SU) is directly responsible to the Deputy Commissioner for Systems for carrying out the OSI mission and providing general supervision to the major components of OSI.

B. *The Deputy Associate Commissioner for System Integration* (SU) assists the Associate Commission in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for System Integration* (SU) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. *The Configuration Management and Project Control Staff* (SUA): The Configuration Management and Project Control Staff (CMPCS) plans, develops and implements policies, standards and procedures for the overall management of the system configuration and control of improvement and modernization systems projects. It prepares and maintains SSA systems configuration management plans in a current status. It is responsible for software and hardware configuration management from requirements definition through the operational phase of system development. CMPCS is responsible for the initiation and operation of the project control system for OSI projects. It evaluates project plans; identifies interfaces, risks and resource requirements; and decides on the standard methods of project management to be utilized. CMPCS prepares all reports which result from the review and audit phases of configuration management, processes all configuration change orders, operates the configuration change control board and monitors achievement of project milestones. It determines plan impacts and prepares progress reports for all OSI projects.

E. *The Strategic Planning Staff* (SUB): The Strategic Planning Staff (SPS) develops, evaluates and recommends major systems goals, evaluates current technology and emerging technology, and prepares proposals for improving existing SSA systems processes. Directs and conducts a comprehensive ADP/TC strategic planning process in order to maintain and update systems modernization plans. Performs analyses of the feasibility, risk, security implications and cost-effectiveness of proposed new systems, proposed major changes to existing systems and the use of new ADP/TC technologies to assess technical impact upon systems modernization plans. Uses modeling and simulation techniques to test and evaluate proposed changes in the SSA environment. Performs applied technological research and documents and disseminates the results of such analyses to the SSA systems community. Coordinates with the Office of System Requirements (OSR), the Office of System Operations (OSO) and other SSA components, as necessary, to determine the progress of SSA in meeting its systems modernization goals.

F. *The Software Technology and Engineering Center Staff* (SUC): The Software Technology and Engineering Center Staff (STECS) plans and directs the establishment and implementation of an SSA software development facility to provide an integrated set of automated tools and techniques in support of applications development personnel during all phases of the software development life cycle, including analysis, design, programming, testing, validation, production and maintenance. STECS directs the phased implementation of a modern software development environment and provides ongoing technical support in the use of contemporary software engineering methodologies and techniques. It monitors compliance with established SSA and Federal standards and advises

SSA management on issues affecting software development, tools and procedures and programmer productivity.

G. *The Office of Software Improvement and Engineering* (SUE): The Office of Software Improvement and Engineering (OSIE) directs the design and development of all new or improved inhouse file access software for SSA data base/master record files, including selection and installation of commercial data base management packages, in connection with systems modernization and design/development initiatives. It identifies, evaluates, selects and manages software improvement projects which are implemented internally by OSIE, are assigned to OSI operational support components or to private contractors. OSIE prepares draft requirements statements and statements of work for the acquisition of software packages/tools and software contractor support services and coordinates the securing of such resources through the Office of System Engineering (OSE). OSIE develops, documents, publishes and maintains software engineering technology; audits and monitors agency components for software standards compliance and chairs an interdisciplinary standards committee responsible for the direction of software/data base engineering technology and the ongoing review of existing standards. It designs and develops new software systems/subsystems based on systems modernization plans or user requirements. OSIE directs the planning, design and implementation of software based security safeguards and controls to prevent unauthorized access, detect fraud or abuse and protect the confidentiality of personal and sensitive data. It designs and develops all new or improved inhouse applications support software designed to promote data base/master record data independence. It is responsible for all analyses in support of data standardization and data quality improvement/assurance in connection with software improvement and design and development initiatives. It establishes and maintains a data dictionary to support and control its function.

H. *The Office of Programmatic Systems* (SUF): The Office of Programmatic Systems (OPS) plans, directs and coordinates the development of operational ADP systems which directly support SSA's social insurance and income maintenance programs. Based on user requirements developed by OSR, it develops and modifies programmatic applications software systems, including systems analysis and design, programming, documentation, testing, implementation and maintenance. OPS coordinates systems development activities with OSR to assure full integration with OSI and SSA plans. It assures implementation of systems operating policies by developing detailed standards, methods and procedures consistent with OSI directives and standards. OPS serves as liaison with other OSI and SSA components, other governmental agencies and private organizations on operational systems development and maintenance functions.

I. *The Office of Administrative and Management Systems* (SUG): The Office of Administrative and Management Systems (OAMS) plans, directs and coordinates the development, implementation and maintenance of software systems for administrative, management information, statistical and specialized software development applications. These systems support SSA research and statistical activities, financial management, quality assurance, program integrity, personnel administration and administrative control programs, and provide information to facilitate executive planning and decisionmaking. OAMS provides complete life cycle support for these systems, including analysis, design, programming, documentation, testing, validation, implementation and maintenance. OAMS provides technical advice and consultation to other SSA components on their needs for new or revised systems, and recommends to them the most cost-effective methods of deveolpment. It advises SSA management on technical and cost factors for reimbursable work for other Federal and non-Federal agencies and organizations.

J. *The Office of System Engineering (SUH):* The Office of System Engineering (OSE) develops SSA policies and procedures for the acquisition of ADP/telecommunications equipment (ADP/TC), software and services, in compliance with SSA, the Department of Health and Human Services, the Office of Management and Budget and the General Services Administration policies and regulations. It directs and coordinates the SSA ADP/TC acquisition process in support of SSA's systems improvements and modernization initiatives, including the development of justification materials and technical specifications. OSE plans, directs and controls the integration test and, in conjunction with OSR and OSO, the production release of new or revised hardware and software. It develops policy and standards for integration test, validation and acceptance of ADP/TC hardware and software. Based on user requirements defined by OSR, OSE plans and directs the design, development and, with OSO, implementation of SSA's nationwide data communications systems and future data communications based systems. It directs and coordinates OSI activities associated with the ADP capacity planning, monitoring and utilization measurement of ADP/TC equipment and software resources. OSE plans and directs the implementation of pilot testing and special studies to test the application of new or improved systems technologies in SSA. It serves as liaison with other SSA components, the Department of Health and Human Services and external monitoring authorities in all systems modernization and improvement matters pertaining to the OSE mission.

Chapter SQ—*The Systems Management Support Staff:*

A new Chapter SQ is titled and reads as follows:

Sec. SQ.00 The Systems Management Support Staff—(Mission):

The Systems Management Support Staff (SMSS) plans, develops and coordinates a variety of general management and budget activities for the Office of System Operations (OSO), Office of System Integration (OSI) and the Office of System Requirements (OSR). SMSS provides support to the Deputy Commissioner of Social Security, Systems, and other Systems' executives on management planning, policies, procedures and operations; ensures that management support services are provided by the Office of Management, Budget and Personnel and other staff offices; and serves as the focal point for the Deputy Commissioner of Social Security, Systems and other Systems' executives on management support and budget activities. It plans, directs and coordinates personnel management activities in such areas as recruitment, placement, and employee relations; assures that training and management information needs are identified and defined and that ongoing management review and special studies are conducted to support management decisions and recommendations; and directs the development and execution of an integrated Systems budget and internal budget procedures.

Sec. SQ.10 The Systems Management Support Staff—(Organization):

The Systems Management Support Staff, under the leadership of the Administrative Officer for Systems, includes:

A. The Administrative Officer for Systems (SQ)

B. The Administrative Support Group (SQA)

C. The Budget Support Group (SQB)

D. The Training Support Group (SQC)

Sec. SQ.20 The Systems Management Support Staff—(Functions):

A. *The Administrative Officer for Systems* (SQ) is directly responsible to the Deputy Commissioner of Social Security, Systems, for carrying out a variety of general management, budget and training activities in support of OSO, OSI and OSR, and the Deputy Commissioner of Social Security, Systems.

B. *Administrative Support Group* (SQA): The Administrative Support Group plans and directs the coordination of Systems' organization requirements and personnel management activities in such areas as recruitment, placement and employee relations; coordinates activities related to facilities and space management, assures that management information needs are identified and defined; and directs the evaluation of management information and assures that trends in data are identified and reported to Systems' executives. It coordinates and consults with the Office of Management, Budget and Personnel and other staff offices regarding services required by the various Systems' components and evaluates services provided to ensure adequate management support. The Group provides advice to the Administrative Officer for Systems and other Systems' executives on management planning, policies, procedures and operations.

C. *The Budget Support Group* (SQB): The Budget Support Group directs the planning, development and execution of the total Systems' budget and develops recommendations for staffing and fund allowances for the various Systems' components. It develops and maintains necessary budgetary controls over components' spending plans and requests to ensure that obligations of funds are within Systems' budgetary limitations. The Group reviews and recommends approval/disapproval of spending and staffing plans and component requests involving salaries and benefits, overtime, travel, transportation, rentals, supplies and equipment, contract services, maintenance and repair costs.

It develops, analyzes and reports to the Administrative Officer for Systems on the rate of expenditure, reprogramming of funds to areas of higher priority, and budget management concerns.

The Group evaluates and provides recommendations to the Administrative Officer for Systems on the impact of legislative proposals, organizational changes, new or expanded automated data processing applications, and policy or procedural changes on the resource requirements of the various System's components.

D. *The Training Support Group* (SQC): The Training Support Group directs the development, coordination, administration, conduct and evaluation of technical training for the various Systems' components. It directs, coordinates and conducts job and task analysis for a cross-section of technical functions or positions, or for organization segments, to assure appropriateness to current job and technical requirements, as well as future needs and state-of-the-art technologies.

Dated: December 23, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 83-113 Filed 1-3-83; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted for Review

December 17, 1982.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. Rick Otis, at 202-395-7340.

Titles: (1) Agreement to Reimburse for Reindeer, 25 CFR Part 243.10(c) Bureau Form Number: JO-NR-3

(2) Permit to Acquire Live Reindeer, 25 CFR Part 243.8 Bureau Form Number: JAO 1668

Frequency: On occasion.

Description of Respondents: Individual Eskimo reindeer ranchers, tribal corporations

Annual Responses: 20 (each form)

Annual Burden Hours: 20 (each form)

Bureau clearance officer: Diana Loper, 202-235-2517

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-72 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-02-M

Sokaogon Chippewa Community (Reservation); Proclaiming Certain Lands as Part of Indian Reservation; Correction

December 9, 1982.

In FR Doc. 82-10958, appearing on pages 17337 and 17338, in the issue for Thursday, April 22, 1982, the land description is hereby corrected by deleting "R. 8 E." under "Parcel D" in the second column and inserting in lieu thereof "R. 12 E." Also on the second line in the last paragraph delete "246.23 acres" and insert in lieu thereof "246.21 acres."

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-790 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[INT DES 82-79]

Proposed Livestock Grazing Management for the Otay Planning Unit; Escondido Project Area, California Desert District, California

Pursuant to Section 102(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft environmental impact statement concerning a proposed grazing management program for the Escondido Project Area in Los Angeles, Riverside, Orange, and San Diego Counties in Southern California. The proposed action would continue present management of the 55,370 acres of public land presently grazed by cattle, permitting the consumption of 4378 AUMs of forage of 28 grazing allotments. Alternatives analyzed include increased livestock grazing (nine new allotments and 5848 AUMs), decreased livestock grazing (3972 AUMs to livestock) and no grazing.

Comments on the Draft Environmental Impact Statement are being solicited from public agencies and interested individuals and entities. The Bureau of Land Management invites written comments on the statement to be

submitted by February 22, 1983 to the District Manager, California Desert District, Bureau of Land Management, Attn: Otay Grazing EIS, 1695 Spruce Street, Riverside, California 92507.

A limited number of copies of this document are available upon request at the California Desert District, (714) 351–6394, and the California State Office, Bureau of land Management, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484–4701.

In addition to the above offices, copies of this EIS are available for public reading and review at: Division of Rangeland Management, Bureau of Land Management Premier Building, Room 909–H, Washington, D.C. 20006.

Ed Hastey,

State Director.

[FR Doc. 83-63 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-84-M

[C-35420]

Realty Action; Exchange of Public Lands in Hinsdale County, Colo.

The following described public lands have been determined to be prospectively suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian

T. 43 N., R. 4 W., N.M.P.M.
Sec. 4, lots 18, 22 and 25 and part of lots 19 and 21 east of the Lake Fork of the Gunnison River.
T. 44 N., R. 4 W., N.M.P.M.
Sec. 34, lots 2, 6, 7, and 11, W½W½S W¼NE¼, W½W½NW¼SE¼, NW¼SW¼S E¼ less patented land, E½SW¼SE¼, W½SE¼SW¼SE¼.
T. 42 N., R. 5 W., N.M.P.M.
Sec. 12, M.S. No. 20607.
Containing 158.71 acres.

In exchange for these lands, the Federal government will obtain non-federal lands in Hinsdale County from William C. and Ruthanna M. Hall, P.O. Box B, Lake City, CO 81235.

New Mexico Principal Meridian

T. 45 N., R. 3 W., N.M.P.M.
Sec. 21, N½NE¼;
Sec. 22, N½N½, SW¼NW¼.
Containing 280 acres.

The purpose of the exchange is to obtain non-federal lands for use in Federal recreation programs in the Powderhorn Primitive Area. The exchange is consistent with the Bureau's planning for the lands involved. The public interest will be well served by making the exchange. The values of the lands to be exchanged are approximately equal and the acreage will be adjusted or money will be used to equalize values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

1. The exchange involves only the surface estate; all minerals in the public lands to be conveyed to non-federal ownership will be reserved to the United States. The United States owns the mineral estate in the private lands that would be conveyed to Federal ownership.

Effective as of the date this notice is published in the **Federal Register**, the public lands selected in the exchange shall be segregated from all the non-discretionary public land laws including the mining laws.

Additional information about the exchange is available for review at the Bureau of Land Management, Gunnison Resource Area Office, 11 S. Park Ave., P.O. Box 1269, Montrose, Colorado 81402.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Montrose District Manager, Bureau of Land Management, 2465 S. Townsend Ave., P.O. Box 1269, Montrose, Colorado 81402.

For a period of 45 days from the date of first publication indicated below, persons asserting a claim to or interest in the described lands may file such claim with the Montrose District Manager, Bureau of Land Management, 2465 South Townsend Ave., P.O. Box 1269, Montrose, Colorado 81402, together with evidence that a copy thereof has been served on the exchange proponent, Mr. and Mrs. William C. Hall, P.O. Box B, Lake City, Colorado 81235.

R. S. Schmidt,

Acting District Manager, Montrose District.

[FR Doc. 83-71 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-84-M

[F-14907-A through F-14907-I]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance (DIC) under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (Supp. IV, 1980)) (ANCSA), will be issued on January 4, 1983 to NANA Regional Corporation, Inc. as successor in interest to Noatak Napaaktukmeut Corporation (for the Native village of Noatak), for approximately 96,252 acres. The lands involved are within the Kateel River Meridian:

T. 27 N., R. 17 W.
T. 26 N., R. 18 W.
T. 27 N., R. 18 W.
T. 24 N., R. 19 W.
T. 25 N., R. 19 W.
T. 26 N., R. 19 W.
T. 27 N., R. 19 W.
T. 23 N., R. 20 W.
T. 24 N., R. 20 W.

The complete decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times when the DIC is issued. A copy may also be obtained by contacting the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (961), 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by the decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until February 3, 1983 to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the

manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: NANA Regional Corporation, Inc. Successor in Interest to Noatak Napaaktukmeut Corporation, P.O. Box 49, Kotzebue, Alaska 99752.

Sandra Thomas,

Acting Chief, Branch of Alaska Native Claims Settlement Act Adjudication.

[FR Doc. 83-81 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-84-M

[AA-38301]

Alaska Native Claims Selection

On February 22, 1982, a Decision of Easement Identification and Modification of Patent No. 50-80-0060 and Interim Conveyance No. 293, was issued to Cook Inlet Region, Inc.

Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), the decision is hereby amended to include the following easements.

One Acre Site.—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading or unloading shall be limited to 24 hours.

j. (EIN 10 C4,D4, N) An easement twenty-five (25) feet in width for an existing trail from an existing road (locally known as Gas Well Road) in Sec. 16, T. 4 N., R. 11 W., Seward Meridian easterly to site easement EIN 10a C4, D4, N at Know Lake in the SE¼, Sec. 16, T. 4 N., R. 11 W., Seward Meridian. The uses allowed are those listed for a twenty-five (25) foot wide trail easement. Parking, loading or unloading within the first twenty-five (25) feet of the easement from its junction with the existing road is permitted.

k. (EIN 10a C4, D4, N) A one-quarter (¼) acre site easement upland of the ordinary high water mark in the SE¼, Sec. 16, T. 4N., R. 11 W., Seward Meridian, on the west bank of Know Lake. The uses allowed are those listed for a one (1) acre site. No overnight camping will be permitted.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Anchorage Daily News.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96-487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, Office of the Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt and parties who received a copy of this decision by regular mail which is not certified, return receipt requested, shall have until February 3, 1983 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is:

Cook Inlet Region, Inc., P.O. Drawer 4-N, Anchorage, Alaska 99509.

Sandy Thomas,

Acting Chief, Branch of Alaska Native Claims Settlement Act Adjudication.

[FR Doc. 83-82 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-84-M

[AA-42144]

Alaska Native Claims Selection

The document entitled Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area was ratified by Public law (Pub. L.) 94-204 (89 Stat. 1145, 1151) on January 2, 1976, and clarified on August 31, 1976. Section II of the Terms and Conditions authorized reconveyance by the United States to Cook Inlet Region, Inc., of lands conveyed by the State of Alaska to the United States. On November 15, 1977, Sec. 3(a) of Pub. L. 95-178 (91 Stat. 1369), authorized the Secretary of the Interior to identify and reserve within 2 years after initial conveyance of such lands to Cook Inlet Region, Inc., any easement he could have lawfully reserved prior to conveyance and issue immediately thereafter a revised conveyance reflecting such reservation.

On May 1, 1981, Patent No. 50-81-0104 and Interim Conveyance No. 404 were issued to Cook Inlet Region, Inc., for 2,008.70 acres and approximately 652 acres, respectively, of the surface and subsurface states of lands conveyed to the United States by the State of Alaska. The lands were conveyed pursuant to Secs. 14(e) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(e), 1621(j)) (ANCSA), and Sec. 12(c) of Pub. L. 94-204 (89 Stat. 1145, 1152), as amended by Sec. 3(a) of Pub. L. 95-178 (91 Stat. 1369), and are described as follows:

Patent No. 50-81-0104 of May 1, 1981

Seward Meridian, Alaska (Surveyed)

T. 6 N., R. 11 W.
Sec. 34, lots 37 and 76.
Containing 5.00 acres.

T. 5 S., R. 12 W.
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, SE¼, E½SW¼;
Sec. 7, lots 1 to 4, inclusive, E½, E½W½;
Sec. 8, N½, N½S½, S½SW¼;
Sec. 9, NW¼, N½SW¼.
Containing 2,003.70 acres.
Aggregating 2,008.70 acres.

Interim Conveyance No. 404 of May 1, 1981

Seward Meridian, Alaska (Surveyed)

T. 1 S., R. 11 W.
That portion of tract "A" previously described as (protracted):
Sec. 3, all.
Containing approximately 652 acres.

There are no easements to be reserved pursuant to Sec. 17(b) of ANCSA. When this decision becomes final, revised conveyance documents will be issued to Cook Inlet Region, Inc., for the above-described lands with no Sec. 17(b) easements reserved. The revised conveyance documents will

remain subject to all the rights, terms, conditions, and covenants contained in Patent No. 50–81–0104 and interim Conveyance No. 404.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Anchorage Times.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, Office of the Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt and parties who received a copy of this decision by regular mail which is not certified, return receipt requested, shall have until February 3, 1983 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of land requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is:

Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509.

Sandy Thomas,

Acting Chief, Branch of Alaska Native Claims Settlement Act Adjudication.

[FR Doc. 83–83 Filed 1–3–83; 8:45 am]

BILLING CODE 4310–84–M

[AA–43766]

Alaska Native Claims Selection

On June 22, 1981, Cook Inlet Region, Inc., filed selection application AA–43766 under provisions of Secs. 12(b)(6) of the act of January 2, 1976 (89 Stat. 1151), and I.C. (2) of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as clarified August 31, 1976, for the surface and subsurface estates of certain lands located near Talkeetna, Alaska.

Section 12(b)(6) of the act of January 2, 1976, authorizes conveyance of lands to Cook Inlet Region, Inc., from a selection pool established by the Secretary of the Interior and the General Services Administrator.

The lands are located inside the boundaries of Cook Inlet Region. The lands within selection AA–43766 were placed in the pool of properties available for Cook Inlet Region, Inc., subject to valid existing rights, by notices dated March 13, 1979, and May 11, 1979.

The selection application of Cook Inlet Region, Inc., as to the lands described below, is properly filed and meets the requirements of the act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition to title.

In view of the foregoing, the surface and subsurface estates of the following described lands, containing 256.95 acres, are considered proper for acquisition by Cook Inlet Region, Inc., and are hereby approved for conveyamce pursuant to Sec. 12(b)(6) of the act of January 2, 1976:

Seward Meridian, Alaska (Surveyed)

T. 26 N., R. 4 W.
Sec. 19, Lot 1, NE¼NW¼;
Sec. 30, lot 5, SE¼SW¼;
Sec. 31, lot 1, NE¼NW¼, E½SE¼NW¼, NE¼, NE¼SW¼.
Containing 256.95 acres.

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act (ANCSA).

The grant of the above-described lands shall be subject to:

1. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g)), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

2. A right-of-way, A–058772, for a Federal Aid Highway, located in Sec. 31, T. 26 N., R. 4 W., Seward Meridian, granted to the State of Alaska, Department of Highways, under the act of August 27, 1958, as amended (23 U.S.C. 317); and

3. A right-of-way, A–059164, for an electric distribution line one hundred (100) feet in width, located in Sec. 31, T. 26 N., R. 4 W., Seward Meridian, granted to Matanuska Electric Association, Inc., under the act of February 15, 1901, as amended (43 U.S.C. 959).

Section 12(b)(6) of Public Law (Pub. L.) 94–204 provides that conveyances pursuant to this section shall be made in exchange for lands or rights to select lands outside the boundaries of Cook Inlet Region as described in Sec. 12(b)(5) of this act and on the basis of values determined by appraisal. The lands described above have been appraised at a value of $375,000. Under Sec. I.C. (2)(e) of the Terms and Conditions, this property constitutes 750 acre/equivalents. Upon acceptance of title to these lands, Cook Inlet Region, Inc., will relinquish its selection rights to 750 acres of its out-of-region entitlement.

Conveyance of the remianing entitlement to Cook Inlet Region, Inc., shall be made at a later date.

There are no inland water bodies considered to be navigable within the lands described.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consective weeks, in the Anchorage Daily News.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the

decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 of Code of Federal Regulations (CFR), Part 4, Subpart E as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, Office of the Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt and parties who received a copy of this decision by regular mail which is not certified, return receipt requested, shall have until February 3, 1983 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. (Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509.

State of Alaska, Department of Natural Resources, Division of Research and Development, Pouch 7–005, Anchorage, Alaska 99510.

Sandy Thomas,

Acting Chief, Branch of Alaska Native Claims Settlement Act, Adjudication.

[FR Doc. 83–84 Filed 1–3–83; 8:45 am]

BILLING CODE 4310–84–M

[AA–42143]

Alaska Native Claims Selection

The document entitled Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area was ratified by Public Law (Pub. L.) 94–204 (89 Stat. 1145, 1151) on January 2, 1976, and clarified on August 31, 1976. Section II of the Terms and Conditions authorized reconveyance by the United States to Cook Inlet Region, Inc., of lands conveyed by the State of Alaska to the United States. On November 15, 1977, Sec. 3(a) of Pub. L. 95–178 (91 Stat. 1369), authorized the Secretary of the Interior to identify and reserve within 2 years after initial conveyance of such lands to Cook Inlet Region, Inc., any easement he could have lawfully reserved prior to conveyance and issue immediately thereafter a revised conveyance reflecting such reservation.

On May 12, 1981, Patent No. 50–81–0106 and on May 1, 1981 Interim Conveyance No. 407 were issued to Cook Inlet Region, Inc., for 606.16 acres and approximately 12.405 acres, respectively, of the surface and subsurface estates of lands conveyed to the United States by the State of Alaska. The lands were conveyed pursuant to Secs. 14(e) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(e), 1621(j)) (ANCSA), and Sec. 12(c) of Pub. L. 94–204 (89 Stat. 1145, 1152), as amended by Sec. 3(a) of Pub. L. 95–178 (91 Stat. 1369), and are described as follows:

Patent No. 50–81–0106 of May 12, 1981

Seward Meridian, Alaska (Surveyed)

T. 6 N., R. 11 W.
Sec. 24, SE¼SE¼, E½SW¼SE¼;
Sec. 25, E½E½, E½W½E½.
Containing 300.00 acres.

T. 5 N., R. 11 W.
Sec. 24, lot 11.
Containing 35.01 acres.

T. 1 S., R. 13 W.
Sec. 4, SW¼SE¼SW¼, NW¼SW¼NE¼, NE¼SE¼NW¼;
Sec. 9, W½NE¼NW¼;
Sec. 18, lot 3, NW¼SE¼NW¼;
Sec. 34, W½SE¼.
Containing 171.15 acres.

T. 1 S., R. 14 W.
Sec. 24, W½SE¼NE¼.
Containing 20.00 acres.

T. 2 S., R. 13 W.
Sec. 3, NE¼SE¼, SW¼SE¼.
Containing 80.00 acres.
Aggregating 606.16 acres.

Interim Conveyance No. 407 of May 1, 1981

Seward Meridian, Alaska (Surveyed)

T. 3 N., R. 12 W.
Sec. 16, Lots 4 and 5 of Block 2, according to Cohoe Alaska Subdivision plat filed in the Kenai Recording District on September 25, 1963, as plat No. K–1348.
Containing approximately 10.455 acres.

T. 7 S., R. 11 W.
Sec. 6, Beginning at corner No. 5 of U.S. Survey No. 1380, Alaska; thence S. 39° 39' 00" W. 309.11 feet; thence S. 09° 40' 00" W. 320.92 feet to a point on the mean high water line of Halibut Cove and the TRUE POINT OF BEGINNING OF THIS DESCRIPTION from which WCMC 4 of ASLS 69–5 bears N. 79° 03' 00" E. a distance of 47.34 feet:
Thence N. 79° 03' 00" E. a distance of 410.85 feet to a point;
Thence S. 15° 11' 00" W. a distance of 248.10 feet to a point;
Thence S. 51° 56' 50" W. a distance of 114.36 feet to a point;
Thence N. 80° 50' 45" W. a distance of 99.96 feet to a point;
Thence N. 53° 28' 15" W. a distance of 204.31 feet to a point;
Thence N. 08° 43' 30" E. a distance of 95.39 feet to the true point of beginning.
Per ASLS 69–5 filed in the Homer Recording District on June 7, 1976, as plat No. 76–41.
Containing approximately 1.96 acres.
Aggregating approximately 12.405 acres.

There are no easements to be reserved pursuant to Sec. 17(b) of ANCSA. When this decision becomes final, revised conveyance documents will be issued to Cook Inlet Region, Inc., for the above-described lands with no Sec. 17(b) easements reserved. The revised conveyance documents will remain subject to all the rights, terms, conditions, and covenants contained in Patent No. 50–81–0106 and Interim Conveyance No. 407.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Anchorage Daily News.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E as revised. However, pursuant to Pub. L. 96–487, this decision

consitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, Office of the solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt and parties who received a copy of this decision by regular mail, which is not certified, return receipt requested, shall have until February 3, 1983 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alasks 99509.

Sandy Thomas,

Acting Chief, Branch of Alaska Native Claims Settlement Act Adjudication.

[FR Doc. 83-85 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-84-M

Battle Mountain District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Grazing Advisory Board meeting.

SUMMARY: In accordance with Pub. L. 94–579, a meeting of the Battle Mountain District Grazing Advisory Board will be held.

DATE: February 12, 1983, begin at 10:00 a.m. in the Battle Mountain District Office conference room at North 2nd and Scott Streets, Battle Mountain, Nevada.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, P.O. Box 194, Battle Mountain, Nevada 89820 or phone 702–635–5181.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. The expenditure of range betterment funds for range improvement,
2. Discussion of the Tonopah Stewardship Program and Allotment Management Plans,
3. Changes in BLM grazing regulations and policies,
4. Discussion of the criteria for categorizing allotments for the Shoshone-Eureka Resource Management Plan/Environmental Impact Statement,
5. Elections and composition of the Board, and
6. Recommendations from the grazing board concerning BLM's rangeland management program.

The meeting is open to the public. Interested persons may make oral statements to the board between 3:30 and 4:00 p.m. on February 12, 1983 or file written statements for the Board's consideration. If you wish to make oral comments please contact H. James Fox by February 4, 1983.

Date signed: December 23, 1982.

H. James Fox,

District Manager, Battle Mountain, Nevada.

[FR Doc. 83-104 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Texaco U.S.A. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 2868, Block 31, Vermilion Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226..

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 21, 1982.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-103 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 3577, Block 69, Ship Shoal Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information

contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 23, 1982.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-105 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Availability of Final Environmental Impact Statement on the General Management Plan/Development Concept Plan, Cape Lookout National Seashore, North Carolina

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, U.S. Department of the Interior, has prepared a Final Environmental Impact Statement for the proposed General Management Plan/Development Concept Plan for Cape Lookout National Seashore, North Carolina. The Final Environmental Impact Statement involves development of an administrative site at East Harker's Island, ferryboat docks, and minimal visitor use/contact facilities on the Outer Banks. Present recreation opportunities (including recreation vehicle use) and resource protection programs will be continued. The three alternatives considered are: no action, extensive development and recreational use, and minimal development and recreational use.

A limited number of copies are available upon request to: Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303, Telephone: (404) 221-5835, FTS 242-5835.

Public reading copies will be available at the address above and at the following location: Superintendent, Cape Lookout National Seashore, P.O. Box 690, Beaufort, North Carolina 28516, Telephone: (919) 728-2121.

Dated: December 7, 1982.

Neal G. Guse,

Acting Regional Director, Southeast Region.

[FR Doc. 83-91 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-70-M

Mid-Atlantic Regional Advisory Committee; Organization of

AGENCY: National Park Service, Interior.

ACTION: Notification of the organization and first meeting of the Mid-Atlantic Regional Advisory Committee.

SUMMARY: This notice sets forth the date and location for the organizational meeting of the Mid-Atlantic Regional Advisory Committee recently established by the Secretary of the Interior. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: February 8, 1983, 9 a.m.

ADDRESS: Independence National Historical Park headquarters, 313 Walnut Street, Philadelphia, Pa. 19106.

FOR FURTHER INFORMATION CONTACT: David Kimball, National Park Service, Mid-Atlantic Regional Office, 143 So. 3rd St., Philadelphia, Pa. 19106 (215) 597-9655.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Regional Advisory Committee is one of nine advisory committees established by the Secretary of the Interior on August 11, 1982, in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463).

The purpose of the committee shall be to advise the regional director on programs, policies and such other matters as may be referred to it by the regional director. The committee shall also function to provide closer communication with the public on such matters.

Agenda items for the meeting shall include: Introduction of advisory committee members; introduction of members of the regional office staff; organization of the advisory committee; statement of purpose; review of regional concerns and issues by the regional director; orientation of committee members to the Mid-Atlantic Region.

The meeting will be open to the public. Any members of the public may file with the advisory committee a written statement concerning agenda items. The statement should be addressed to the Mid-Atlantic Regional Advisory Committee, c/o National Park Service, Mid-Atlantic Regional Office, 143 So. 3rd St., Philadelphia, Pa. 19106. Minutes of the meeting will be available for inspection four weeks after the meeting at the regional office.

Dated: December 22, 1982.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 83-93 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware National Scenic and Recreational River

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: January 28, 1983, 7 p.m.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159 (717/729-7135).

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. § 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include review of Draft Management Plan.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: December 21, 1982.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 83-92 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-70-M

Plan of Operations for Converting Oil and Gas Leases to Combined Hydrocarbon Leases Within and Adjoining Glen Canyon National Recreation Area, Utah

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Request for Issues to be Discussed.

SUMMARY: On December 16, 1982, the Santa Fe Energy Co., Altex Oil Corporation, other lease holders, and Gulf Oil Corporation submitted a plan of operations to the Bureau of Land Management for converting existing oil and gas leases to combined hydrocarbon leases. The plan is for recovering tar sands hydrocarbons in one large unit of land involving some 66,000 acres of Utah's Tar Sands Triangle both within and adjoining the Orange Cliffs portion of Glen Canyon National Recreation Area.

The law establishing Glen Canyon National Recreation Area (16 U.S.C. 460dd) permits the removal of leasable minerals from within the area if the Secretary of the Interior finds that such disposition would not have significant adverse effects on the Glen Canyon project or on the administration of the national recreation area. Moreover, the Combined Hydrocarbon Leasing Act of 1982 and implementing regulations in 43 CFR Part 3140 require the consent of the National Park Service (NPS) to any conversion of a lease or issuance of a new combined hydrocarbon lease in Glen Canyon National Recreation Area. Such consent must be based on a specific environmental finding.

The submitted plan of operations involves four phases. Phase 1, planned for 1984, involves drilling two cores and conducting extensive analysis for one year on recovery processes and well spacing. Phase 2 calls for drilling some fifteen additional corings over 1½ years to better define the extent of the hydrocarbon resource. Phase 3 would be a two- to three-year period of developing a demonstration or pilot project to confirm the feasibility of extracting the tar sands. Phases 1, 2, and 3 would encompass eight to ten years, and if proved feasible, Phase 4 would be commercial development and production.

The NPS believes that the potential magnitude of the plan of operations is such that it has decided to prepare an environmental impact statement (EIS) in order to find whether any significant adverse impacts to resources would occur on Federally-administered lands within the national recreation area. Alternatives to be considered will include no action (disapproval of converting the leases), the proposed plan of operations, a plan with additional stipulations, and converting leases only outside the national recreational area.

The State of Utah, the Bureau of Land Management, and the Minerals Management Service have all been requested to assist in preparing the EIS.

The Combined Hydrocarbon Leasing Act and implementing regulations require that applications to convert leases be acted upon within 15 months of submittal. This requirement means that the EIS must be completed by March 15, 1984, for the NPS to make its finding as to impacts. The public should realize that this time constraint may result in the EIS addressing broad impacts and mitigating measures for a very conceptual plan.

The NPS has identified a number of issues and impacts to be addressed both in the plan of operations and the EIS. These include potential impacts on archeological resources, soils, plants and animals, air quality, water quality and quantity, scenery, safety, and socioeconomic effects. These could encompass further topics such as areas of the national recreation area closed to leasing, effects on Canyonlands National Park, site specific designs to control surface disturbance, off-lease unit requirements, transportation needs and effects, utilities and facilities requirements and impacts, recreational conflicts, and rehabilitation plans. The public is invited to suggest other issues, alternatives or impacts that it believes should be addressed in the EIS. Such comments will be received for 30 days following the publication of this notice at the addresses given below.

A public meeting on the draft EIS itself may be held at a later date; if so, the meeting will be announced well in advance.

FOR FURTHER INFORMATION CONTACT: Mr. John Lancaster, Superintendent, Glen Canyon National Recreation Area, P.O. Box 1507, Page, Arizona 86040, telephone 602/645-2471; or Mr. Bob Kasparek, Compliance Officer, Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, Colorado 80225, telephone 303/234-4942; or Mr. Joel Pickelner, Office of the Assistant to the Regional Director, Utah, Room 3418, 125 South State Street, Salt Lake City, Utah 84138, telephone 801/524-4112.

Dated: December 22, 1982.

James B. Thompson,

Regional Director, Rocky Mountain Region.

[FR Doc. 83-04 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-70-M

United States World Heritage Nominations 1983

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The Department of the Interior, through the National Park Service, announces the nomination of Great Smoky Mountains National Park and San Juan National Historic Site including La Fortaleza to the World Heritage List. The nomination is the result of Interior's annual World Heritage nomination process, which was initiated through a January 13, 1982, **Federal Register** notice (47 FR 1034). The Department earlier announced the identifiction of both sites as proposed U.S. World Heritage nominations (47 FR 33017). The nominations are being submitted to the Secretariat of the World Heritage Committee for consideration through a process that could lead to their inscription on the World Heritage List in fall 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ritsch, Associate Director, Recreation Resources, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240 (202/343-4462).

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 63 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world. The Convention complements each participating nation's heritage conservation programs and provides for:

(a) The establishment of a 21-member World Heritage Committee assisted by UNESCO to further the goals of the Convention and to approve properties for inclusion on the World Heritage List;

(b) The development and maintenance of a World Heritage List to be comprised of natural and cultural properties of outstanding universal value;

(c) The preparation of a List of World Heritage in Danger;

(d) The establishment of a World Heritage Fund, with a primary function

to assist participating coutries in preserving and protecting endangered World Heritage properties;

(e) The provision of technical assistance to participating countries, upon request; and

(f) The promotion and enhancement of public knowledge and understanding of the vital importance of heritage conservation at the international level.

Participating nations identify and nominate their sites for inclusion on the World Heritage List, which currently includes 112 cultural and natural properties. The World Heritage Committee judges all nominations against established criteria. Under the Convention, each participating nation assumes responsibiltiy for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, presentation, and rehabilitation of World Heritage properties situated within its borders.

The Federal Interagency Panel for World Heritage makes recommendations on proposed U.S. World Heritage nominations and related matters. The Panel includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, and the U.S. Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonjan Institution; the Advisory Council on Historic Preservation; the Department of Commerce; and the Department of State.

In the United States, the Interior Department is responsible for directing and coordinating U.S. partcipation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515; 16 U.S.C. 470a-1, a-2). On May 6, 1982, the Interior Department published in the Federal Register the final rules which will be used to carry out this legislative mandate (47 FR 23392). The rules contain further information on the Convention and its implementation in the United States.

United States World Heritage Nominations: 1982.

The Interior Department, in cooperation with the Federal Interagency Panel for World, Heritage, has selected the following properties as United States nominations to the World Heritage Committee for inscription on the World Heritage List.

I. Cultural Property

Puerto Rico

La Fortaleza-San Juan National Historic Site, Puerto Rico. Spanish defenses at San Juan guarded their sea lanes to the Caribbean; at this site they founded one of their earliest colonies in Americas. La Fortaleza, the first fortification of San Juan (built 1533–40), has been the residence of the island's governors since the 1620s. The massive masonary citadel of E1 Morro was in 1591. Criteria: (iv) an outstanding example of a type of structure which illustrates a significant stage in history; and (vi) directly and tangibly associated with events of outstanding universal significance.

II. Natural Property

North Carolina/Tennessee

Great Smoky Mountains National Park, Tennessee/North Carolina. This tract, which includes one of the oldest uplands on earth, has a diversity of lush vegetation assoicated with its veried topography, including spruce-fir, hemlock, deciduous, and mixed forests. The area has been designated a Biosphere Reserve. Criteria: (ii) an outstanding example of biological evolution, and (iii) contains superlative natural phenomena and areas of exceptional natural beauty.

Dated: December 29, 1982.

Ray G. Arnett,

Assistant Seocretary for Fish and Wildlife and Parks.

[FR Doc. 83-137 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Interim Water Service Contract Intent To Negotiate Interim Water Service Contracts

The regional Director of the Lower Missouri Region, Bureau of Reclamation, Department of the Interior, may enter into interim water service contracts for irrigation and municipal and industrial (M&I) water when such water or storage space is available and surplus to project needs. Contracts of this type can be entered into upon short notice to meet emergency or temporary demands. However, such contracts may not exceed 2 years in duration and are limited to 10,000 acre-feet annually per irrigation contract or 2,000 acre-feet annually per M&I contract. All interim contracts will specify quantities, rates, and other terms and conditions in compliance with Reclamation law and Bureau of Reclamation policy.

The Regional Director of the Lower Missouri Region, Denver, Colorado, has authority to execute interim water service contracts in southeastern Wyoming, eastern Colorado, Nebraska, and northern Kansas. For calendar year 1983, it appears that water or storage space, surplus to project needs, will be available for sale from Glendo, Seminoe, and Glen Elder Reservoirs of the Pick-Sloan Missouri Basin Program; Pathfinder Reservoir of the North Platte Project; Ruedi Reservoir and the East Slope System of the Fryingpan-Arkansas Project; and Green Mountain Reservoir of the Colorado-Big Thompson Project. Other Bureau projects in the region with regulated reservoir storage may have minor quantities of surplus water or storage space available to meet temporary demands. All releases will be subject to State laws for beneficial use and prior appropriation rights.

Parties interested in receiving information about the Bureau's interim water or storage space marketing program or obtaining a temporary supply of water or storage space from a Bureau project should contact:

Project Manager, Mills, Wyoming (307) 261-5632—Glendo, Seminoe, and Pathfinder Reservoirs, Wyoming

Project Manager, Grand Island, Nebraska, (308) 382-3660—Glen Elder Reservoir, Kansas

Project Manager, Pueblo, Colorado, (303) 544-8171—Ruedi Reservoir and East Slope System, Colorado

Project Manager, Loveland, Colorado, (303) 667-4410—Green Mountain Reservoir, Colorado

Unless significant public interest in the proposed interim water marketing program is demonstrated in response to this notice and local news release or announcements, the availability of the proposed draft contracts will be limited to those parties who have expressed an interest therein. Written comments from the public on the forms of the proposed contracts should be submitted not later than 30 days after the completed contract drafts are made available.

Dated: December 22, 1982.

H.W. Furman II

Acting Commissioner of Reclamation.

[FR Doc. 83-19 Filed 1-3-83; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Office of Proceedings

Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (Except Fitness-Only); Motor Common Carriers of Passengers (Public Interest); Freight Forwarders; Water Carriers; Household Goods Brokers

The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representtive is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

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 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.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions 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." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted. Please direct status inquiries about the following to Team 2, (202) 275-7030.

Volume No. OP2-001

Decided: December 23, 1982.

By the Commission Review Board No. 1, Members Parker, Chandler, and Fortier. Member Parker not participating.

MC 107012 (Sub-781), filed December 7, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Margaret S. Vegeler (same address as applicant), (219) 429-2213. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with Elxsi, of Santa Clara, CA.

MC 128863 (Sub-1), filed December 13, 1982. Applicant: SANNER BROS. TRUCKING CO., INC., R.D. #3, Box 138A, Meyersdale, PA 15552. Representative: William J. Lavelle, 2310 Grant Bldg., Pittsburgh, PA 15219, 412-471-1800. Transporting *coal and coal products, and cinders*, between points in the U.S., under continuing contract(s) with Venture Coal Sales Company, and Action Mining, Inc., both of Meyersdale, PA, and Sanner Energies, Inc., of Rockwood, PA.

MC 143712 (Sub-2), filed December 8, 1982. Applicant: A & D MOVING & STORAGE CO., INC., 250 Globe St., P.O. Box 835, Radcliff, KY 40160. Representative: Robert J. Gallagher, 1000 Connecticut Avenue, NW., Washington, DC 20036, 202-785-0024. Transporting *household goods*, between points in AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NC, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY, and DC. Condition: the person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343 (A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application for common control to team 2, Room 2379.

MC 150682 (Sub-2), filed December 13, 1982. Applicant: KEDASHAW, INC., P.O. Box 246, Kensington, KS 66951. Representative: Erle W. Francis, 700 Kansas Ave. -Suite 719, Topeka, KS 6603, 913-232-0601. Transporting *cemetery vaults*, between points in Clark County, OH, and Knox County, TN, on the one hand, and, on the other, points in KS and NE.

MC 153843 (Sub-1), filed December 17, 1982. Applicant: THE PILLSBURY COMPANY, 200 South 6th St., Minneapolis, MN 55402. Representative: Gerald D. Siegel (same address as applicant), 612–330–8193. Transporting *general commodities* (except classes A and B explosives, household goods, and commodites in bulk), between points in the U.S. (except AK and HI).

MC 161193, filed December 15, 1982. Applicant: S & N TRUCKING, INC., 3297 Betsy Ross Way, Boise, ID 83706. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, 208–343–3071. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY.

MC 161753, filed December 13, 1982. Applicant: MINORITY UNIVERSAL CARRIERS, INC., 967 40th Lane, Anoka, MN 55303. Representative: Harold Orlofske, 145 W. Wisconsin Ave., Neenah, WI 54948, 414–722–2848. Transporting (1) *clay, concrete, glass or stone products*, between Fairbault, County, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI), (2) *general commodities*, (except classes A and B explosives, household goods and commodities in bulk), between Minneapolis, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI), (3) *transportation equipment*, between points in AR, IA, KS, MN, MO, ND, NE, OK, SD and TX, on the one hand, and, on the other, points in the U.S. (except HI), and (4) machinery, between points in Isanti County, MN, on the one hand, and, on the other, points in the U.S. (except HI).

MC 165163, filed December 13, 1982. Applicant: DWAYNE M. CARROLL, Rt. 1 B 1816, Hermiston, OR 97838. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210, 503–226–3755. Transporting *chemicals and related products*, between points in OR, WA and ID.

MC 165232, filed December 16, 1982. Applicant: AIRLINE MOVING & STORAGE, INC., 142 Stockton St., Jacksonville, FL 32204. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, 904–632–2300. Transporting *household goods and furniture and fixtures*, between points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, IL, IN, KS, KY, LA, ME, MD, MA, MI, MS, MO, NH, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, TN, TX, UT, VA, WA, WV, WI, and DC.

Please direct status inquiries about the following to Team 3 at (202) 275–5332.

Volume No. OP3–65

Decided: December 28, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing. Member Ewing not participating.

MC 20824 (Sub-51), filed December 13, 1982. Applicant: COMMERCIAL MOTOR FREIGHT, INC. OF INDIANA, P.O. Box 41719, Indianapolis, IN 46204. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *general commodities* (except household goods, commodities in bulk and classes A and B explosives), between points in IN, IL, MO, OH, MI, KY, AND TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 67234 (Sub-70), filed December 13, 1982. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105, (314) 727–0777. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with Paradyne Corporation, of Largo, FL.

MC 99975 (Sub-5), filed December 10, 1982. Applicant: CATAWBA TRUCKING CO., INC., P.O. Box 10352, Rock Hill, SC 29731. Representative: Edward L. Nehez, P.O. Box Y–7 Becker Farm Rd., Roseland, NJ 07068, (201) 992–2200. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S (except AK and HI), under continuing contract(s) with Kimlor Mills, Inc., of Petaluma, CA, Ralston Purina Company, of St. Louis, MO, Highworth Trading Co. LTD, of New York, NY, International Freight Brokers, Inc., of Charlotte, NC, United Freight, Inc., of Morrow, GA, Certified Brokerage Services, Inc., of Hagerstown, MD, and Greater Atlanta Shippers Association, Inc., of Atlanta, GA.

MC 117274 (Sub-4(b)), filed December 9, 1982. Applicant: EARLE'S MOVING & STORAGE CO., INC., 2062 Generals Highway, P.O. Box 789, Annapolis, MD 21037. Representative: James J. Fratino, P.O. Box 82, Edgewater, MD 21037, (301) 261–7227. Transporting *household goods*, between points in DE, MA, MD, NJ, NY, NC, OH, PA, SC, VA, WV, and DC.

MC 133314 (Sub-16), filed December 13, 1982. Applicant: SILVAN TRUCKING COMPANY, INC., R.R. 2, Box 137, Pendleton, IN 46064. Representative: Walter F. Jones, Jr., 1111 E. 54th St., Suite 155, Indianapolis, IN 46220, (317) 257–4066. Transporting *general commodities* (except household goods, classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 133604 (Sub-19), filed December 7, 1982. Applicant: LYNN TRANSPORTATION COMPANY, INC., 712 S. 11th St., Oskaloosa, IA 52577. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Transporting *textile mill products*, between points in Whitfield County, GA, on the one hand, and, on the other, points in IL, IA, MN, NE, and WI.

MC 141024 (Sub-4), filed December 13, 1982. Applicant: CLARK TRUCKING, INC., 711 Clymer Rd., P.O. Box 207, Marysville, OH 43040. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *general commodities* (except commodities in bulk, classes A and B explosives and household goods), between points in Union County, OH, on the one hand, and, on the other, points in the U.S. (except AK, HI, IN, KY, MI, OH, PA, and WV.

MC 141255 (Sub-23), filed December 14, 1982. Applicant: TANDY TRANSPORTATION, INC., 2560 East Long Avenue, Fort Worth, TX 76111. Representative: Roy Beans, 2560 East Long Avenue, Fort Worth, TX 76111, (817) 834–0182. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 142125 (Sub-4), filed December 13, 1982. Applicant: WESTERN WISCONSIN TRUCKING CO., INC., Route 1, Independence, WI 54747. Representative: Joseph E. Ludden, P.O. Box 1567, 2707 South Ave., La Crosse, WI 54601, (608) 788–2000. Transporting (1) *cement*, between points in Dakota, Ramsey, Anoka, and Hennepin Counties, MN, on the one hand, and, on the other, points in WS and MN, and (2) *flyash*, between points in Buffalo and Vernon Counties, WS, and Allamakee County, IA, on the one hand, and, on the other, points in MN, IA, and WS.

MC 146964 (Sub-23), filed December 7, 1982. Applicant: RELIABLE TRUCK LINES, INC., R.D. #5, 5 Marianne Dr., York, PA 17402. Representative: Michael Valencik (same address as applicant), (717) 767–6681. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except HI).

MC 153664 (Sub-2), filed December 6, 1982. Applicant: DAVID A. LUNDEEN, d.b.a. FARGO FREIGHT TERMINAL & WAREHOUSE, 1445 5th Ave., N., P.O. Box 1828, Fargo, ND 58107. Representative: Richard P. Anderson,

Fed. Square, 112 Roberts St., P.O. Box 2581, Fargo, ND 58108, (701) 235–3300. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Cook County, IL, on the one hand, and, on the other, points in ND, SD, MT, MN, and WI.

MC 153885 (Sub-6), filed December 10, 1982. Applicant: THE GREAT AMERICAN TRUCKING COMPANY, INC., 21 Northlake Dr., P.O. Drawer 2657, Peachtree City, GA 30269. Representative: David L. Capps, P.O. Box 924, Douglasville, GA 30133, (404) 949–7756. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 162864 (Sub-1), filed December 13, 1982. Applicant: SOUTHWAY TRUCKING CO., INC., P.O. Box 1550, Hickory, NC 28603. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NC 28204, (704) 372–6730. Transporting (1) *food and related products*, between points in WV, VA, NC, SC, GA, and FL, and (2) *furniture and fixtures*, between points in Mitchell and Alexander Counties, NC, on the one hand, and, on the other, points in FL

MC 163244 (Sub-1), filed December 20, 1982. Appplicant: NEW IMAGE TRANSPORT, INC., 117 Anderson Drive, Monaca, PA 15061. Representative: David M. O'Boyle, 1610 Two Chatham Center, Pittsburgh, PA 15219, (412) 765–1600. Transporting (1) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with (a) Babcock Lumber Co, (b) Bennett Supply Co., (c) Duquesne Light Co., and (d) Elwin G. Smith Division, Cyclops Corp., all of Pittsburgh, PA, (2) *metal products*, between points in the U.S. (except AK and HI) under continuing contract with (a) Meadowbrook Corp. of Spelter, WV, and (b) Pittsburgh Tube Co. of Monaca, PA, and (3) *metal products and wire and cable products*, between points in the U.S., under continuing contract(s) with Triangle PWC, Inc., of New Brunswick, NJ.

MC 163414, filed December 13, 1982. Applicant: G. E. PERRY, d.b.a. PERRY RIGGING & STORAGE, 21055 West Rd., Trenton, MI 48183. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722–2848. Transporting (1) *furniture and fixtures*, between Detroit, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *machinery and metal products*, between points in the U.S. (except AK and HI).

MC 164144, filed December 14, 1982. Applicant: BUSTER SHOEMAKE, d.b.a. SHOEMAKE EQUIPMENT RENTAL, P.O. Box 82946, Oklahoma City, OK 73148. Representative: Thomas B. Staley, 1550 Tower Bldg., Little Rock, AR 72201, (501) 375–9151. Transporting *malt beverages*, between points in the U.S., under continuing contract(s) with Bryson, Inc, of Oklahoma City, OK.

MC 165045, filed December 6, 1982. Applicant: TCDC TRANSPORTATION, INC., 2325 Belt Line Rd., Carrollton, TX 75006. Representative: William H. Towle, 180 N. LaSalle St., Room 3520, Chicago, IL 60601, (312) 332–5106. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk, between points in the U.S. (except AK and HI), under continuing contract(s) with Trammell Crow Distribution Corporation of Houston, TCDC of LaPorte, Inc., both of Houston, TX, Trammell Crow Distribution Corporation of Los Angeles, Commerce, CA, Trammell Crow Distribution Corporation of Memphis, Memphis, TN, Trammell Crow Distribution Corporation of Oklahoma City, Oklahoma City, OK, Redman Warehousing Corporation, Trammell Crow Distribution of Utah #2, Trammell Crow Distribution Corporation of Utah #3, and Trammell Crow Distribution Corporation of Utah, all of Clearfield, UT, TCDC Realty Corporation of Baltimore, Dorsey, MD, Columbia Warehouse Corporation, West Columbia, SC, Trammell Crow Distribution Corporation of Denver, Denver, CO, TCDC of Florida, Inc., Orlando, FL, Trammell Crow Distribution Corporation of Dallas, Carrollton, TX, and Trammel Crow Distribution Corporation of Atlanta, Norcross, GA.

MC 165135, filed December 10, 1982. Applicant: WINSTON AIRPORT TRANSPORTATION SERVICE, INC., d.b.a. WINSTON AMERICAN TRANSPORTATION SERVICE, 1650 Sycamore Ave., Bohemia, NY 11716. Representative: Sidney J. Leshin, 3 East 54th St., New York, NY 10022, (212) 759–3700. Over regular routes, transporting *passengers* in the same vehicle with passengers, (1) Between Montauk, NY and Newark Airport, NJ: From Montauk over NY Hwy 27 to junction Conduit Ave., then over Conduit Ave. to junction Van Wyck Expressway, then over Van Wyck Expressway to the J.F.K. International Airport, NY, then over city streets to junction Ft. Hamilton Parkway, then over Ft. Hamilton Parkway to junction Gowanus Expressway, then over Gowanus Expressway to Verazano Bridge, then over Verazano Bridge to junction Interstate Hwy 278, then over Interstate Hwy 278 to junction Interstate Hwy 95, then over Interstate Hwy 95 to Newark Airport; (2) Between Riverhead, NY, and J.F.K. International Airport, NY: From Riverhead over Long Island Expressway to junction Van Wyck Expressway, then over Van Wyck Expressway to J.F.K. International Airport, NY; (3) Between Orient Point, NY and Newark Airport, NJ: From Orient Point over NY Hwy 25 to junction Little Neck Parkway, then over Little Neck Parkway to junction city streets, then over city streets to La Guardia Airport, NY, then over city streets to junction Brooklyn Queen Expressway, then over Brooklyn Queens Expressway to junction Gowanus Expressway, then over Gowanus Expressway to Verazano Bridge, then over Verrazano Bridge to junction Interstate Hwy 278, then over Interstate Hwy 278 to junction Interstate Hwy 95, then over Interstate Hwy 95 to Newark Airport, NJ and (4) between Port Jefferson, NY and LaGuardia Airport, NY: From Port Jefferson, NY over NY Hwy 25A to junction city street, then over city street to LaGuardia Airport, NY, serving all intermediate points in the above routes.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce.

MC 165164, filed December 13, 1982. Applicant: JOHN FAYARD FAST FREIGHT, INC., 10 Parkwood Dr., Gulfport, MS 39501. Representative: Donald B. Morrison, 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205, (601) 948–8820. Over regular routes, transporting *general commodities* (except classes A and B explosives, houshold goods, and commodities in bulk), between New Orleans and Mobile, AL, over U.S. Hwy 90 and Interstate Hwy 10, serving the off-route points of Bayou La Batre, AL, and serving all intermediate points.

MC 165165, filed December 13, 1982. Applicant: LENOX TRUCKING, INC., 551 Murray Rd., Cincinnati, OH 45217. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with The Procter & Gamble Company, of Cincinnati, OH.

MS 165184, filed December 14, 1982. Applicant: LANDPOWER, INC. of FREMONT, Box 474, East Highway 275, Fremont, NE 68025. Representative:

Lavern R. Holdeman, 1610 S. 70th St., Suite 200, Lincoln, NE 68506. (402) 488–0985. Transporting *such commodities* as are dealt in or used by agricultural, construction, lawn and garden, and recreational equipment dealers, between points in ND, SD, NE, IA, MO, KS, and OK.

MC 165234, filed December 16, 1982. Applicant: COLE TRUCKING CO., INC., 404 South 52nd Avenue West, P.O. Box 6007, Duluth, MN 55806. Representative: Thomas J. Van Osdel, 15 Broadway, Suite 502, Fargo, ND 58102, (701) 235–4487. Transporting *lumber and wood products, building materials, construction materials, metal and metal products,* and *such commodities* as are dealt in or used by lumber yards and home buildings centers, between points in the U.S. (except HI).

James H. Bayne,

Acting Secretary.

[FR Doc. 83-68 Filed 1-3-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30095]

Baltimore and Ohio Railroad Co.; Acquisition and Operation of the Newburgh and South Shore Railway Co.

December 28, 1982.

The Baltimore and Ohio Railroad Company (B&O), The Terminal Tower, Cleveland, OH 44101 represented by Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101 and The Newburgh and South Shore Railway Company (Newburgh), 4200 E. 71st Street, Cleveland, OH 44105, represented by Robert N. Gentile and Gary J. Marini, P.O. Box 68, Monroeville, PA 15146 filed on December 14, 1982, with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. 11343 *et seq.* for B&O to acquire all the assets of Newburgh, operating 6 miles of main line and approximately 22 miles of side, yard, and miscellaneous tracks in Cuyahoga County, OH, and to integrate the operations of Newburgh into the operations of B&O. B&O is controlled by The Chesapeake and Ohio Railway Company and is part of CSX Corporation's system of railroads. Newburgh is controlled by the United States Steel Corporation.

The application was filed under our current consolidation regulations, 49 CFR Part 1180 (formerly 49 CFR Part 1111), as modified in *Railroad Consolidation Procedures,* 363 I.C.C. 75 (1982). The transaction is governed by 49 U.S.C. 11343 and the time limits of 49 U.S.C. 11345.

The proposed transaction does not involve the merger or control of two or more Class I railroads, and is not one of regional or national transportation significance within the meaning of 49 U.S.C. 11345(b) and (c). The proposal is a minor transaction within the meaning of that term as used in our consolidation procedures, 49 CFR Part 1180.2(c). Under 49 U.S.C. 11345(d)(2) this evidentiary proceeding must be completed by April 19, 1983.

The application and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, D.C. In addition, they may be obtained from applicant's representatives upon request.

Any interested person may participate in this proceeding by submitting written comments regarding the application. An original and 10 copies must be filed with the Rail Section, Room 5417, Interstate Commerce Commission, Washington, D.C. 20423, no later than February 3, 1983. Written comments shall be concurrently served by first-class mail on the United States Secretary of Transportation, the Attorney General of the United States, and the applicants' representatives: Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101, and Robert N. Gentile and Gary J. Marini, P.O. Box 68, Monroeville, PA 15146. Written comments must also be served upon all parties of record within 10 days of our issuance of the service list in this proceeding. (We plan to issue that service list by 2 weeks after final day for filing comments.) All persons who file timely written comments may be considered as parties of record, but only if they so indicate in their comments. In this event no petition for leave to intervene need be filed.

Written comments must contain the information required in 49 CFR 1180.46(d)(1)(A)–(G).

Preliminary comments from the Secretary of Transportation and the Attorney General must be filed with the Commission by February 18, 1983.

Service of an initial decision will be waived, and determination on the merits of the application will be made in the first instance by the entire Commission, under 49 U.S.C. 11345 by 45 days from completion of evidentiary stage.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-67 Filed 1-3-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30058]

Rail Carriers; Illinois Central Gulf Railroad Company; Abandonment Exemption; Warren County, MS.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the abandonment by the Illinois Central Gulf Railroad Company of 2.0 miles of railroad between milepost 20 and milepost 22 near Redwood Junction, MS, subject to conditions for protection of employees.

DATES: This exemption is effective on February 3, 1983. Petitions to stay must be filed by January 14, 1983; petitions for reconsideration must be filed by January 24, 1983.

ADDRESS: Send pleadings to:

(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, D.C. 20423.

(2) Petitioner's representative: Howard D. Koontz, Illinois Central Gulf Railroad Company, 233 North Michigan Avenue, Chicago, IL 60601.

Pleadings should refer to Finance Docket No. 30058.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, contact T.S. InfoSystems, Room 2227, Interstate Commerce Commission, Washington, D.C. 20423 or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Dated: December 27, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Vice Chairman Gilliam was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-159 Filed 1-3-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387]

Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Provisional Exemptions.

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, D.C. 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) not 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.

Sub-No	Name of railroad, contract No., and specifics	Review Board [1]	Decided date
521	Delaware and Hudson Railway Co., ICC-DH-C-0011, (Newsprint and groundwood)	1	12-27-82
526	Burlington Northern Railroad Co., ICC-BN-C-0228, (Animal feed)	3	12-23-82
527	CP Rail (Canadian Pacific Limited), ICC-CPE-C-0012, (Corn, Dried, Shelled)	1	12-27-82
528	Consolidated Rail Corp., ICC-CR-C-0257, (Bituminous coal) via Ports of Philadelphia and Baltimore	2	12-27-82
529	Consolidated Rail Corp., ICC-CR-C-0259, (Bituminous coal) via Ports of Philadelphia and Baltimore	3	12-23-82

[1] Review Board No. 1, Members Parker, Chandler, and Fortier. Member Parker not participating. 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.

Authority: 49 U.S.C. 10505.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-10 Filed 1-3-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 81-26]

David W. Bradway, M.D., Clearfield, Pennsylvania; Hearing

Notice is hereby given that on or about October 30, 1981, the Drug Enforcement Administration, Department of Justice, issued to David W. Bradway, M.D., an Order To Show Cause as to why the DEA Certificate of Registration, AB7572517, issued to him pursuant to section 303 of the Controlled Substances Act (21 U.S.C. 832), should not be revoked.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, January 11, 1983 in Courtroom No. 3–B, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, D.C.

Dated: December 27, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 83-89 Filed 1-3-83; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 82-21]

Odie Pharmacy; Revocation of Registration

On August 16, 1982, the Acting Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Odie Pharmacy, 5922 West Division Street, Chicago, Illinois 60651 (Respondent) seeking to revoke DEA Certificate of Registration AO8656588 issued to Odie Pharmacy. The statutory predicate under 21 U.S.C. 824 was the February 12, 1982, conviction of Joseph Williams, R.Ph., the managing pharmacist and sole owner of Odie Pharmacy, of felony offenses relating to controlled substances.

Respondent Pharmacy, through counsel, requested a hearing on the matters raised by the Order, and this matter was placed on the docket of Administrative Law Judge Francis L. Young, who ordered the filing of prehearing statements. Counsel for Respondent requested a continuation for the filing of prehearing statements, which Judge Young granted to October 22, 1982. The Government filed its prehearing statement on time but Respondent has neither filed a prehearing statement nor requested a further continuance. On October 26, 1982, Judge Young, *sua sponte*, terminated the proceedings before him. Respondent tendered a prehearing statement a month later and moved to reopen the proceedings before the Administrative Law Judge. Judge Young denied the motion and terminated all proceedings before him in this matter so the Acting Administrator may issue his final order as contemplated by 21 CFR 1301.54(e). The Acting Administrator now issues his final order based on the record as it appears. 21 CFR 1301.54(e), 1301.57.

The Acting Administrator finds that Respondent has waived its right to a hearing by failing to timely file its prehearing statement. The applicable statutes and regulations require only that DEA grant Respondent an opportunity for a hearing. *National Independent Coal Operators* v. *Kleppe*, 423 U.S. 388, 96 S.Ct. 809 (1976); *Costel* v. *Pacific Legal Foundation*, 445 U.S. 198, 100 S.Ct. 1095 (1980); *United States* v. *Consolidated Mines & Smelting Co., Ltd.*, 455 F.2d 432 (9th Cir. 1971). This agency has consistently held that failure to timely file a prehearing statement as ordered can lead to a finding of a waiver of request for hearing. See *Marshall D. Nickerson, Jr., M.D.*, 45 FR 72310 (1980); *Thomas E. Johnston, D.O.*, 45 FR 72311 (1980); *Faunce Drug Store*, Docket No. 82–3, 47 FR 30122 (1982).

Examining the record in this case, the Acting Administrator finds that Joseph Williams was indicted on five counts of possessing pentazocine HCl (Talwin), a Schedule IV controlled substance, with intent to distribute, in violation of 21 U.S.C. 841(a)(1); and five counts of failure to maintain a record required to be kept under 21 U.S.C. 827 and 21 CFR 1304.24, in violation of 21 U.S.C. 824(a)(5). Williams pled guilty to two counts of possession of pentazocine with intent to distribute and one count of failure to maintain a record required to be kept. The Acting Administrator finds that Odie Pharmacy purchased approximately 70,000 dosage units (d.u.) of pentazocine between April, 1980 and June, 1981; in February, 1981, Odie Pharmacy ordered approximately 50,000 d.u. of controlled substances. Odie Pharmacy is a small one-room pharmacy whose only employee is Williams. On June 22, 1981, DEA Compliance Investigators served an administrative inspection warrant on Odie Pharmacy and asked Williams whether the pharmacy handled pentazocine, a Schedule II controlled substance under Illinois law. Williams replied that he never handled pentazocine or other

controlled substances requiring an Illinois triplicate prescription form. The Acting Administrator finds that Williams lied to the Investigators, since invoices, cancelled checks and delivery records clearly show that Odie Pharmacy handled pentazocine at this time. On June 24, 1981, DEA Special Agents served a search warrent on Odie Pharmacy and, sebsequent to the execution of the search warrant, the Special Agents interviewed Williams. The Acting Administrator finds that after the Special Agents gave Williams the *Miranda* warning, he confessed that he had sold pentazocine and Schedule V cough syrups to an individual who was later arrested and convicted after Williams cooperated with DEA in the investigation.

The Acting Administrator has carefully examined the facts in this case and concludes that the cooperation of Williams notwithstanding, there is nothing in the record that would lead to any other result than revocation of the DEA Certificate of Registration issued to Odie Pharmacy. Abuse of the combination of Talwin and pyribenzamine, the so-called "T's and Blues," was widespread in the Chicago area in 1981. Joseph Williams, through Odie Pharmacy, contributed to that abuse. The Acting Administrator concludes that the sale of highly abused controlled substances by a DEA registered pharmacy is not consistent with the high ethical and legal obligations of a pharmacist. DEA has consistently held that the controlled substance felony conviction of a managing pharmacist can lead to the revocation of a pharmacy's DEA Certificate of Registration. See *Nicholas G. Gakidis, t/a New Seabury Pharmacy*, 41 FR 52555 (1976); *Blue Hill Drug Co., David Brothers, Proprietor*, Docket No. 77-14, 42 FR 54963 (1977); *Lynnfield Drug Inc.*, Docket No. 76-6, 42 FR 8435 (1977); *Woodfield Drugs Inc. et al.*, Docket No. 80-20, 46 FR 35397 (1981); *Faunce Drug Store*, Docket No. 82-3, 47 FR 30122 (1982). Accordingly, under the authority vested in the Attorney General by 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration, the acting Administrator hereby orders that DEA Certificate of Registration AO 8656588 issued to Odie Pharmacy be and is hereby revoked, effective February 3, 1983.

Date: December 27, 1982.

Francis M. Mullen, Jr.,
Acting Administrator.

[FR Doc. 83-60 Filed 1-3-83; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-13,054]

Amstar Corporation, Spreckels Sugar Division, Factory No. 1, Spreckels, California; Negative Determination on Reconsideration

On October 29, 1982, the Department issued an Affirmative Determination Regarding Application for reconsideration for former workers of Amstar Corporation's Spreckels Sugar Division's Factory No. 1 in Spreckels, California. This determination was published in the Federal Register on November 16, 1982 (47 FR 51639).

The union in its application for reconsideration claims that the Trade Act of 1974 was misinterpreted by the Department in that almost half of all the sugar consumed in the United States is imported and that since 1974 domestic production costs and sugar prices have been directly influenced and dependent on world prices. The union also claims that the facts were misinterpreted in that the shutdown of Spreckels Factory No. 1 resulted form dumping by the European Community (EC) and the expiration of the Sugar Act in 1974. Further, the percent of imports is greater now than in the previous period when workers at Factory No. 1 were certified. Lastly, the union claims that the Department did not consider all the facts since the circumstances concerning Factory No. 1 are virtually identical to what they were in 1978 when the workers were certified for trade adjustment assistance except that now the situation is more severe resulting in the closure of the plant rather than in a reduction of work.

Initially, the Department found that the worker petition did not meet the increased import criterion of the Trade Act of 1974. The Spreckels Sugar Division of Amstar Corporation, including the petitioning workers at the Spreckels, California Factory No. 1, is engaged in the production of refined sugar. The refined sugar produced at Factory No. 1 was refined from sugar beets purchased from independent growers. U.S. imports of refined sugar decreased both absolutely and relative to domestic production in each year from 1978 through 1981.

On reconsideration, the Department finds that it is appropriate to consider imports of cane and beet sugar and that although such imports have increased in 1981 the increased imports did not contribute importantly to the unemployment of the workers or to the closure of the plant. The Department reviewed the petitioner's claims and finds that while it is true that raw cane and beet sugar imports constitute a substantial share of U.S. consumption, that share has declined since the period of the earlier certification alluded to by the petitioner. The raw cane and beet sugar imports were 99.2 percent and 83.0 percent of domestic production in 1977 and 1978 respectively compared to 82.1 percent in 1981. Although U.S. imports of raw cane and beet sugar increased from 1980 to 1981 so did U.S. production. U.S. production had increased more in 1981 compared to 1978 than had U.S. imports.

Of greater significance to sugar refiners was the continued erosion of their market by producers of high fructose corn syrup (HFCS). In the 1977/1978 period HFCS replaced about 38 percent of the decline in refined sugar consumption; in the 1980/1981 period HFCS consumption increased by 107 percent of the decline in refined sugar consumption. During the recent and continuing recession HFCS prices have dropped by more than a third and been about 10 cents per pound less than refined sugar. Over this same period sugar prices have dropped proportionately less. Industrial users of sweeteners, the principal market of the Spreckels Sugar Division have shifted away from refined sugar and to increasing use of HFCS.

It is clear that recent market conditions are substantially changed from the earlier period when factors warranted certification of the workers.

The Department notes from its files that imports of HFCS are negligible. Domestic production of HFCS has made significant and increasing inroads into the sweetener market and competes most effectively with sugar in industrial uses. U.S. consumption of HFCS increased nearly a half million tons in 1981 compared to 1980. Raw cane and beet sugar imports increased only slightly from 1980 to 1981 and were down when compared with 1979.

The Department considers the impact of the nominal increases of raw cane and beet sugar imports that occurred in 1981 as insignificant in light of the above noted shift away from sugar sweeteners in favor of HFCS.

Further, the Department's denial is not proven wrong by petitioner's allegations that the law and facts were misinterpreted and the fact that workers of Factory No. 1 were certified eligible for trade adjustment assistance in an earlier period, (TA-W-5302).

The petitioner's claim that the expiration of the Sugar Act in 1974 which had the effect of linking domestic

sugar prices more closely to foreign sugar prices continues to have an adverse impact on the domestic industry. The Department notes that sugar prices increased substantially between 1977 and 1980. In 1981, even though prices dropped sharply, refined sugar prices were more than 75 percent greater than 1977 levels.

In summation, the Department's review and reconsideration of the case in light of the petitioner's claims finds that imports supplied a smaller share of the sugar market in 1981 than was true in 1978 and that domestic production of raw sugar has increased in the 1978–1981 period. Sugar consumption was adversely affected by the recession and by the substantial shift by industrial sweetener users to HFCS. Consumption of HFCS more than offset the decline in consumption of refined sugar.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to former workers of Amstar Corporation's Spreckels Sugar Division's Factory No. 1 in Spreckels, California.

Signed at Washington, D.C. this December 27, 1982.

Robert O. Deslongchamps,

Acting Deputy Administrator, Unemployment Insurance Service

[FR Doc. 83-126 Filed 1-3-83; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 20, 1982–December 24, 1982.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–12,979E; Munsingwear, Inc., Paris, TX.

TA–W–12,979F; Munsingwear, Inc., Pawnee, OK.

TA–W–12,979G; Munsingwear, Inc., Winnfield, LA.

TA–W–13,478; Diamond Coat, Hoboken, NJ.

A certification was issued in response to a petition received on May 15, 1982 covering all workers separated on or after October 31, 1981.

TA–W–13,124; Biquette, Inc., West New York, NJ.

A certification was issued in response to a petition received on December 4, 1982 covering all workers separated on or after November 30, 1980 and before December 31, 1981.

TA–W–13,128; Jacques Syl Knitwear, West New York, NJ.

A certification was issued in response to a petition received on December 4, 1981 covering all workers separated on or after November 30, 1980 and before December 31, 1981.

TA–W–13,372; Conflo Manufacturing, Inc., Orrville, OH.

A certification was issued in response to a petition received on March 30, 1982 covering all workers separated on or after March 25, 1981.

TA–W–13,372A; The Lunkenheimer Co., Cincinnati, OH.

A certification was issued in response to a petition received on March 30, 1982 covering all workers separated on or after March 25, 1981.

TA–W–12,373; Conflo Manufacturing, Inc., Wadsworth, OH.

A certification was issued in response to a petition received on March 30, 1982 covering all workers separated on or after March 25, 1981.

TA–W–12,960; Munsingwear, Inc., Crossville, TN.

A certification was issued in response to a petition received on September 8, 1981 covering all workers engaged in employment related to the production of men's and boys' knit sportshirts separated on or after January 1, 1981.

TA–W–12,979; Munsingwear, Inc., Minneapolis MN.

A certification was issued in response to a petition received on September 21, 1981 covering all workers engaged in employment related to the production of men's and boys' knit sportshirts separated on or after January 1, 1981.

TA–W–12,979A; Munsingwear, Inc., Ashland, WI.

A certification was issued in response to a petition received on September 21, 1981 covering all workers engaged in employment related to the production of men's and boys' knit sportshirts separated on or after January 1, 1981.

TA–W–12,979B; Munsingwear, Inc., Ironwood, MI.

A certification was issued in response to a petition received on September 21, 1981 covering all workers engaged in employment related to the production of men's and boys' knit sportshirts separated on or after January 1, 1981.

TA–W–12,979C; Munsingwear, Inc., Little Falls, MN.

A certification was issued in response to a petition received on September 21, 1981 covering all workers engaged in employment related to the production of men's and boys' knit sportshirts separated on or after January 1, 1981.

TA–W–12,979D; Munsingwear, Inc., Montgomery, MN.

A certification was issued in response to a petition received on September 21, 1981 covering all workers engaged in employment related to the production of men's and boys' knit sportshirts separated on or after January 1, 1981.

TA–W–13,467; W. R. Grace & Co., Evans Chemetics, T-Acid Section, Waterloo, NY.

A certification was issued in response to a petition received on May 11, 1982 covering all workers separated on or after April 1, 1982 and before June 1, 1982.

I hereby certify that the aforementioned determinations were issued during the period December 20, 1982–December 24, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 28, 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-123 Filed 1-3-83; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this

notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 14, 1983.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 14, 1983.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 27th day of December 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner (Union/workers or former workers of)	Location	Date received	Date of petition	Petition number	Articles produced
Bendix Corp., (UE)	Greenfield, MA	Dec. 17, 1982	Dec. 15, 1982	TA-W-14,183	Drills, paps, reamers.
Cresco Outerwear, Cresco-Pollak Sportswear, Inc. (workers).	Ashland, Ohio	Dec. 22, 1982	Dec. 3, 1982	TA-W-14,184	Coats, jackets & vest—leather.
Crystal Springs Printing & Finishing Plant of Danville Div. of Dan River, Inc. (Printers & Engravers).	Chickamauga, GA	Dec. 17, 1982	Dec. 14, 1982	TA-W-14,185	Fabric—textile, dyed & printed.
Double Talk, Inc. (workers)	Miami, FL	Dec. 16, 1982	Dec. 11, 1982	TA-W-14,186	Suits, bathing, shorts-terry, shirts, T, pullover.
Duggan of Mississippi (workers).	Pass Christian, MS	Dec. 22, 1982	Dec. 20, 1982	TA-W-14,187	Drawings—steel, structural.
Duggan of Georgia (workers)	Macon, GA	Dec. 22, 1982	Dec. 20, 1982	TA-W-14,188	Drawings—steel, structural.
Duggan of Dixie (workers)	Chattanooga, TN	Dec. 22, 1982	Dec. 20, 1982	TA-W-14,189	Drawings—steel, structural.
Ingersoll-Rand (UE)	S. Deerfield, MA	Dec. 17, 1982	Dec. 15, 1982	TA-W-14,190	Tools—electric.
Jondel Industries, Inc., DBA Malbe Sportswear (ILGWU).	New York, NY	Nov. 29, 1982	Nov. 17, 1982	TA-W-14,191	Apparel—ladies.
Kinney Shoes Corp., Romney No. 2 (wkrs).	Romney, W. VA	Dec. 17, 1982	Dec. 12, 1982	TA-W-14,192	Boots—boy's, sandles—children, women shoes—children.
Lewiston Lustre, Inc. (workers)	Lewiston, MI	Dec. 21, 1982	Dec. 15, 1982	TA-W-14,193	Trim & stampings—automotive.
Sears' Manufacturing (workers)	Brady, TX	Dec. 20, 1982	Dec. 10, 1982	TA-W-14,194	Sportswear—ladies.
W.P. Coal Company (workers)	Omar, W. VA	Dec. 17, 1982	Dec. 15, 1982	TA-W-14,195	Coal mining.
Weather Wise (workers)	New York, NY	Dec. 22, 1982	Dec. 20, 1982	TA-W-14,196	Coats—ladies.
Mickey Blumfield, Inc. (workers).	New York, NY	Dec. 22, 1982	Dec. 20, 1982	TA-W-14,197	Coats—ladies.

[FR Doc. 83-124 Filed 1-3-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13, 414]

Manhattan Fashions, Inc., Union City, New Jersey; Revised Determination on Reconsideration

On December 2, 1982, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at Manhattan Fashions, Inc., Union City, New Jersey. This determination was published in the Federal Register on December 7, 1982 (47 FR 55052).

A company official of the contracting company for ladies' coats (Manhattan Fashions) claims that his only manufacturer imports ladies' coats contrary to what the Department's customer survey revealed.

The Department's review of the initial investigation showed that the Department's notice of Negative Determination was based on the fact that Manahattan Fashions' only manufacturer did not import ladies' coats nor used the services of foreign contractors during 1979, 1980 or 1981.

On reconsideration, the Department found, however, that the manufacturer has been increasing its imports of ladies' coats every year since 1980 and that these imports have contributed importantly to declines in production, sales and employment at Manhattan Fashions.

Manhattan's employment and production of ladies' coats decreased in the fourth quarter of 1981 compared to the same quarter in 1980 and decreased in the first seven months of 1982 compared to the same period in 1981.

U.S. imports of women's, misses' and children's coats and jackets increased absolutely and relatively in 1981 compared to 1980 and increased absolutely in the first six months of 1982 compared to the same period in 1981. The imports to domestic production ratio (I./P.) reached a five year high in 1981 at 98.4 percent.

Conclusion

After careful review of the facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with ladies' coats produced at Manhattan Fashions, Inc., Union City, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers and former workers of Manhattan Fashions, Union

City, New Jersey. In accordance with the provision of the Trade Act of 1974, I make the following revised determination:

"All workers of Manhattan Fashions, Inc., Union City, New Jersey who became totally or partially separated from employment on or after November 1, 1981 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 27th day of December 1982.

Stephen A. Wandner,

Deputy Director, Office of Research, Legislation and Program Policies.

[FR Doc. 83-125 Filed 1-3-83; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas & Electric Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 66 to Provisional Operating License No. DPR-13, issued to Southern California Edison Company and San Diego Gas and Electric company (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station Unit No. 1 (the facility) located in San Diego County, California. The amendment is effective upon issuance; however, the Technical Specifications are to be implemented within 30 days from the date of issuance.

The amendment approves changes to the Appendix A and Appendix B Technical Specifications which incorporate modifications to the Administrative Controls Section.

The application for 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 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 issuance of this amendment.

For further details with respect to this action, see (1) th application for amendment dated December 8, 1981, and its supplement dated August 5, 1982, (2) Amendment No. 66 to License No. DPR-13, 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 San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California. A single 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 28th day of December, 1982.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Acting Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 83-121 Filed 1-3-83; 8:45 am]

BILLING CODE 7590-01-M

Statement of Policy: Further Commission Guidance on Emergency Response Capability

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Policy Statement.

SUMMARY: The Commission announces that a supplement is being issued to NUREG-0737, "Clarification of TMI Action Plan Requirements," on the subject of emergency response capabilities at nuclear power stations. The new guidance applies to all operating nuclear power plants and to all applicants for operating licenses.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Robert A. Purple, Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Phone: 301-492-7980.

SUPPLEMENTARY INFORMATION: On December 24, 1980, the Commission published a Statement of Policy, "Further Commission Guidance to Power Reactor Operating Licenses" (45 FR 85236), modifying an earlier Policy Statement on the same subject (45 FR 41738; June 23, 1980). The Commission's Policy Statement discussed the background of efforts to improve safety requirements in light of experience resulting from the Three Mile Island accident. The Commission indicated that operating license applications would be measured by the Commission's regulations, as augmented by the requirements reflected in NUREG-0737, "Clarification of Action Plan Requirements." The Commission further noted that it will continue to monitor developments with regard to litigation of action plan requirements and continue to offer guidance where appropriate.

Since that time, the NRC staff has developed a number of NUREG documents and other guidance documents which provide information and guidance as to methods of implementation and other details concerning certain NUREG-0737 items relating to emergency response capability. The more important elements of these various staff documents were identified in "NRC Staff Recommendations on the Requirements for Emergency Response Capability," which the NRC staff recommended be adopted by the NRC in order to provide guidance clarifying and amplifying the NUREG-0737 items relating to emergency response capability. The Commission has considered the staff recommendation and approved the requirements with modifications as appropriately clarifying and providing greater detail with respect to the TMI Action Plan Requirements contained in NUREG-0737 relating to emergency response capability. The "Staff Recommendations" document referred to above, with Commission modifications, has been adapted for use by licensees. In this revised form, it has been published as a supplement to NUREG-0737. The provisions for scheduling set forth in this supplement supersede the schedules with respect to related NUREG-0737 items.

Accordingly, the Commission has concluded that this supplement should be used by the staff and by adjudicatory boards as appropriate clarifications and interpretations of related NUREG-0737 items and should be accorded the status of approved NUREG-0737 items as set forth in the December 24, 1980 Statement of Policy. Litigation of the requirements reflected in the NUREG-0737 supplement should be permitted in operating license proceedings under the same conditions as those applicable to NUREG-0737 items in accordance with the December 24, 1980 Statement of Policy. In this regard, it should be understood that the Commission's December 24, 1980 Statement of Policy is

applicable to all operating license applications and that therefore this new guidance on emergency response capability is applicable to all operating license applications.

The supplement to NUREG–0737 is available upon request from the following sources: GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or the National Technical Information Service, Springfield, Virginia 22161.

Dated at Washington, D.C., this 28th day of December 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-47 Filed 1-3-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Decay Heat Removal System; Meeting

The ACRS Subcommittee on Decay Heat Removal Systems will hold a meeting on January 27, 1983, in Room 1046, 1717 H Street, NW, Washington, DC. The Subcommittee will review the status of Task Action Plan A–45, "Shutdown Decay Heat Removal Requirements" and the decay heat removal Capabilities of Combustion Engineering plants with the emphasis on the CESSAR System 80 type of design. Notice of this meeting was published December 22.

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 except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Thursday, January 27, 1983—8:30 a.m. until the conclusion of business.

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. Anthony Cappucci (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: December 28, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-101 Filed 1-3-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittees on Metal Components/Three Mile Island; Meeting

The Combined ACRS Subcommittees on Metal Components/Three Mile Island will hold a meeting on January 28, 1983, Room 1046, 1717 H Street, NW., Washington, DC. The Subcommittees will review the proposed NRC Steam Generator Generic Recommendation Report and the TMI–1 steam generator problems and fixes. Notice of this meeting was published December 22.

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 Subcommittees, their 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 except for those sessions during which the Subcommittees finds it necessary to discuss proprietary and Unclassified Safeguards information. One or more closed sessions may be necessary to discuss such information. (SUNSHINE ACT EXEMPTIONS 3 and 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance. The agenda for subject meeting shall be as follows:

Friday, January 28, 1983—8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees 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. Elpidio Igne or Mr. Richard Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary and Unclassified Safeguards information. The authority for such closure is Exemptions (3) and (4) to the Sunshine Act, 5 U.S.C. 552b(c) (3), (4).

Dated: December 28, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-102 Filed 1-3-83; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Public Information Collection Requirements Submitted to OMB for Review

On November 17, 1982, the Pension Benefit Guaranty Corporation (PBGC) submitted the following public information collection requirement to

OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of this submission may be obtained by calling the PBGC Clearance Office on (202) 254–4776 or by writing to Robert E. Geiger, Office of Management Services, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Comments regarding this information collection should be addressed to Leonard Lenoci, Office of Program Operations (540), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, and to OMB reviewer listed at the end of the entry.

Date Submitted: November 17, 1982.

Submitting Bureau: Pension Benefit Guaranty Corporation.

OMB Number: N/A (new submission).

Form Number: 5500, 5500–C, 5500–K and 5500–R.

Type of Submission: New.

Title: Annual Return/Report of Employee Benefit Plan.

Purpose: Forms listed above are annual information returns filed by employee benefit plans. The PBGC uses the data to determine if the plan appears to be in compliance with Title IV of ERISA (Pub. L. 93–406).

OMB Reviewer: Norman Frumkin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Robert E. Geiger

Senior Agency Official.

[FR Doc. 83–120 Filed 1–3–83; 8:45 am]

BILLING CODE 7708–01–M

POSTAL RATE COMMISSION

[Docket No. A83–11; Order No. 473]

De Borgia, Montana 59830 (Ronald G. Peterson, Petitioner); Filing of Appeal

Issued: December 29, 1982.

On November 30, 1982, the Commission received a petition from Ronald G. Peterson from De Borgia, Montana (hereinafter "Petitioner") concerning the alleged United States Postal Service (hereinafter "Postal Service" or "Service") intent to consolidate De Borgia, Montana post office. The petitioner contends that the Postal Service has incorrectly calculated the cost saving that would result, following consolidation.

The Act requires that the Service provide the affected community with at least 60 days notice prior to issuance of its Final Decision. The requirement is to "* * * ensure that such persons will have an opportunity to express their views." [1] The petition does not mention whether this notice was provided. Moreover, there is no explicit mention in the petition of any hearings, nor is there any indication of any Final Determination, in this matter, pursuant to 39 U.S.C. 404(b)(3).[2] Furthermore, petitioner has neither attached a copy of the Postal Service's Final Determination to his petition as is required by Commission rules of practice, nor made any specific reference to 39 U.S.C. 404(b), which gives the Postal Rate Commission jurisdiction in the matter.

However, the document does clearly indicate that petitioner is requesting the type of review provided by statute. Furthermore, petitioner has made a sufficient statement to enable the Commission to assume jurisdiction in this matter. Thus, we conclude that petitioner has substantially complied with Commission rules of practice and his petition will be considered a petition for review pursuant to section 404(b) of the Postal Reorganization Act (hereinafter "Act").

Applicable Law in This Proceeding

The Postal Reorganization Act states:

> The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urgan and rural communities.[3]

Section 404(b)(2)(C) of the Act specifically includes consideration of this goal in determinations by the Postal Service to close or consolidate post offices. The effect on the community is also a mandatory consideration under section 404(b)(2)(A) of the Act.

Upon preliminary inspection, the petitioner appears to raise only one issue of law; namely, did the Postal Service properly consider the economic savings resulting from the consolidation, pursuant to 39 U.S.C. 404(b)(2)(D) (Supp. 1979). Other issues of law may become apparent when the Commission has had an opportunity to examine the determination made by the Postal Service. Conversely, the determination may be found to resolve adequately one or more of such issues.

Commission Procedure in This Docket

In view of the statutory requirements, and in the interest of expedition of 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 one or more of the issues described above, and/or any further issues of law disclosed by the determination made 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, within 20 days of receiving the Determination and record pursuant to section 113 of the rules of practice [4] make the request by order specifying the issues to be addressed. When such a request is issued, the memorandum shall be due within 20 days of the issuance, and a copy of the memorandum shall be served on Petitioner by the Service.

In addition, the Commission's rules of practice require the Postal Service to file the administrative record of the case within 15 days after the date on which the petition for review is filed with the Commission.[5]

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 Act does not contemplate appointment of an Officer of the Commission in section 404(b) cases, and none is being appointed.[6]

The Commission orders:

(A) The petition from Ronald G. Peterson shall be construed as a petition 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.**

(C) The Postal Service shall file the administrative record in this case on or before December 27, 1982, pursuant to the Commission's rules of practice [39 CFR 3001.112(a)].

By the Commission.

David F. Harris,

Secretary.

Appendix

November 30, 1982—Filing of Petition.

December 29, 1982—Notice and Order of Filing of Appeal.

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[1] 39 U.S.C. 404(b)(1).

[2] Petitioner has not supplied a copy of the Postal Service's Final Determination, if indeed one is in existence.

[3] 39 U.S.C. 101(b).

[4] 39 CFR 3001.113.

[5] 39 CFR 3001.113(a). The Postal Rate Commission informs the Postal Service of its receipt of such an appeal by issuing PRC Form No. 56 to the Postal Service upon receipt of each appeal. The circumstances of this case require an extension of the usual time limit. *See* 39 CFR 3001.113(a).

[6] In the matter of Gresham, S.C., Route #1, Docket No. A78–1 (May 11, 1978).

December 27, 1982—Filing of record by Postal Service [*see* 39 CFR 3001.112(a)].

December 29, 1982—Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

January 9, 1983—Petitioner's initial brief [*see* 39 CFR 3001.115(a)].

January 26, 1983—Postal Service answering brief [*see* 39 CFR 3001.115(b)].

February 10, 1983—

(1) Petitioner's reply brief, if petitioner chooses to file such brief [*see* 39 CFR 3001.115(c)].

(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its descretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument.

March 30, 1983—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5).

[FR Doc. 83-95 Filed 1-3-83; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 12930; 812-5368, 812-5369, 812-5370, 812-5378]

Capital Housing Partners—CXLI, et al.; Filing of Applications for Orders

December 28, 1982.

Notice is hereby given that Capital Housing Partners—CXLI ("CXLI"), Capital Housing Partners—CXLIII ("CXLIII"), Capital Housing Partners—CXLVI ("CXLVI") and Capital Housing Partners CXLVII ("CXLVII"), District of Columbia limited partnerships, and their general partners, C.R.I., Inc. ("CRI"), which is the managing general partner of CXLI, CXLIII, CXLVI and CXLVII, William B. Dockser ("Dockser"), Martin C. Schwartzberg ("Schwartzberg"), and H. William Willoughby ("Willoughby") (CRI, Dockser, Schwartzberg and Willoughby are hereinafter referred to as "General Partners") (CXLI, CXLIII, CXLVI and CXLVIII are referred to hereinafter from time to time as the "Partnerships and the Partnerships, CRI, Dockser, Schwartzberg and Willoughby are referred to as "Applicants"), filed applications pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), One Central Plaza, 11300 Rockville Pike, Rockville, Maryland 20852, for orders of the Commission exempting Applicants from all provisions of the Act and rules thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that CXLI was formed under the District of Columbia Uniform Limited Partnership Act on April 15, 1980, an that CXLIII, CXLVI and CXLVII were organized under that statute on January 1, 1981, each as a vehicle for equity investment in government-assisted rental housing in accordance with the policies and objectives of Title IX of the Housing and Urban Development Act of 1968 ("Title IX"). Applicants further state that the Partnerships will operate as "two-tier" entities, i.e., each Partnership, as a limited partner, will invest in other limited partnerships ("Local Limited Partnerships"), which own or lease, and are developing, government-assisted apartment projects for elderly, handicapped and other persons of low and moderate income. Applicants represent that all such investments will comport with the purposes and criteria set forth in the final paragraph of Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"), which release states the views of the Commission's Division of Investment Management regarding the applicability of the Act to two-tier real estate limited partnerships. It is also stated that an affiliate of CRI will be a partner in each Local Limited Partnership.

Specifically, Applicants state that CXLI will invest in the following three Local Limited Partnerships: (i) Villas de Humacao Limited Dividend Partnership, a Massachusetts limited partnership formed to construct, own and operate a 120-unit apartment project in Humacao, Puerto Rico; (ii) Villa Blanca Limited Dividend Partnership, a Massachusetts limited partnership formed to construct, own and operate a 100-unit apartment project in Caguas, Puerto Rico; and (iii) San Ildefonso Limited Dividend Partnership, a District of Columbia limited partnership formed to rehabilitate, own and operate a 39-unit apartment project in San Juan, Puerto Rico. Applicants further state that CXLIII will invest in five Local Limited Partnerships: (i) a Kentucky limited partnership which owns and is developing a government-assisted apartment project for individuals and families of low and moderate income in Cumberland and Lynch, Harlan County, Kentucky; (ii) a Kentucky limited partnership which owns and is developing a government-assisted apartment project for individuals and families of low and moderate income in Shelbyville, Shelby County, Kentucky; (iii) an Illinois limited partnership which owns and is developing a government-assisted apartment and townhouse project for individual families and elderly persons of low and moderate income in Chicago, Cook County, Illinois; (iv) a Connecticut limited partnership which is leasing and developing a government-assisted apartment project for elderly persons of low and moderate income in Stamford, Connecticut; and (v) a Virginia limited partnership which owns and is developing a government-assisted apartment project for individuals, families and handicapped persons of low and moderate income in Arlington County, Virginia.

It is stated, in addition, that CXLVI will invest in the following Local Limited Partnerships: (i) two Illinois limited partnerships, each of which owns and is developing a government-assisted apartment project in the City of Chicago, Cook County, Illinois, one of which is for elderly persons, individuals and families, and handicapped persons, of low and moderate income, and the other of which is for individuals and families of low and moderate income; (ii) a Pennsylvania limited partnership which owns and is developing a government-assisted apartment project for individuals and families, and handicapped persons, of low and moderate income in Lower Allen Township, Pennsylvania; (iii) a California limited partnership which owns and is developing a government-assisted apartment project for individuals and families of low and moderate income in the City of Santa Rosa, Sonoma County, California; and (iv) a California limited partnership which owns and is developing a government-assisted apartment project for individuals and families of low and moderate income in the City of Hayward, Alameda County, California. Lastly, Applicants state that CXLVII will invest in a single Local Limited Partnership, which owns and is developing, with assistance from the Federal Urban Development Action Grant Program, a 250-unit high-rise apartment development for individuals and families meeting criteria of the Minnesota Housing Finance Agency, with ancillary parking ramp and commercial space, in the City of Minneapolis, Hennepin County, Minnesota.

Applicants state that the Partnerships are organized as limited partnerships because that form of organization is the only one which provides investors with both liability limited to their capital investments and the ability to claim on their individual tax returns the deductions, losses, credits, and other tax items that originate from the Partnerships' interests in the Local Limited Partnerships. Through their investments in the Local Limited Partnerships, it is stated, the Partnerships intend to realize: (i) A potential increase in their equity in the

projects through amortization of the projects' mortgage indebtedness, (ii) cash flow from operations, (iii) a potential increase in the value of the projects, (iv) cash distributions through potential refinancing of the projects, and (v) certain current tax benefits. Although the Partnerships' direct control over the management of each apartment complex is represented to be limited, the Partnerships' ownership of interests in Local Limited Partnerships shall, in an economic sense, it is asserted, be tantamount to direct ownership of the apartment complexes themselves. Applicants state that the interests in Local Limited Partnerships will have no substantial value other than their pro rata share of the value of the apartment complexes. It is also stated that no Local Limited Partnership will generate a substantial amount of income or expense other than as directly related to the development, ownership operation of its apartment complex.

Applicants further state that each Partnership will offer its limited partnership interests ("Units") in reliance upon Rule 506 under Section 4(2) of the Securities Act of 1933. It is represented that CXLI will offer 60 Units in the amount of $3,150,000 at $52,500 per Unit; CXLIII will offer 100 Units at $63,500 per Unit, totaling $6,350,000; CXLVI will offer $8,700,000 of limited partnership interests in 116 Units at $75,000 per Unit; and CXLVII will offer 100 Units at $78,000 per Unit for a total subscription amount of $7,800,000. Applicants further state that subscriptions for half Units may be accepted by the General Partners, and accordingly, the securities of any Partnership could be held by more than 100 persons. It is also stated that (i) in the case of CXLI, CRICO Securities Corporation ("CRICO"), an affiliate of CRI, and Shearson/American Express, Inc. ("Shearson") will act as selling agents for the offering of Units; (ii) in the case of CLXIII, Dean Witter Reynolds, Inc. will act as selling agent for the offering of Units; (iii) in the case of CXLVI, Merrill Lynch, Pierce, Fenner & Smith Incorporated and CRICO will act as selling agents for the offering of Units; and (iv) in the case of CXLVII, Shearson and CRICO will act as selling agents for the offering of Units. Applicants also state that purchasers of Units will become limited partners ("Limited Partners") of the particular Partnership in which they invest.

Applicants state, in addition, that each Partnership will be controlled by its General Partners, and that the Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnerships. It is further stated that a majority in interest of the Limited Partners of each Partnership will, however, have the right to amend the partnership agreement for such Partnership, dissolve such Partnership, and remove any General Partners and elect replacements therefore, provided that such rights will not adversely affect the tax or limited partner status of the Limited Partners, and that each Partnership must receive a favorable opinion of counsel on this issue prior to exercise of any such rights. Applicants represent, in addition, that under the partnership agreement for each Partnership, each Limited Partner is entitled to review all books and records of the Partnership in which he has invested at any and all reasonable times.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Without conceding that the Partnerships are investment companies as defined in the Act, Applicants request that the Partnerships be exempted from all the provisions of the Act pursuant to Section 6(c) of the Act. In support of this request, Applicants assert that such exemption is both necessary and appropriate in the public interest and consistent with the protection of investors and the purposes and policies underlying the Act.

Applicants assert that the Partnerships are not "investment companies" under the Act; that they will be in the business of investing in and being the beneficial owners of apartment complexes which are not securities, and that the limited partnership interests they will own should not constitute "investment securities" within the meaning of Section 3(a)(3) of the Act. They state that the interests in Local Limited Partnerships, by their nature are not readily marketable, and will have no value apart from the value of the apartment complexes owned by the Local Limited Partnerships. No separate market is alleged to exist for such interests and their sale could involve severe adverse tax consequences. To treat such interests as "investment securities" within the ambit of the Act, Applicants state, would be to ignore the economic realities of the two-tier partnership structure as utilized by the Partnerships and the Partnerships' participation in the development, ownership, and operation of government-assisted housing.

Applicants assert further that investment in low and moderate income housing in accordance with the national policy expressed in Title IX is not economically suitable for private investors without the tax and organizational advantages of the limited partnership structure. That form of organization provides the only means of bringing private equity capital into government-assisted housing, particularly because public investors typically consider investment in low and modrate income housing programs as involving greater risk than real estate investment generally. Applicants state that the limited partnership form insulates each limited partner from personal liability and limits financial risk incurred by the limited partner to the amount he has invested in the program, while also allowing the limited partner to claim on his individual tax return his proportionate share of the income and losses from the investment.

Applicants state that despite the advantages it affords investors in government-assisted housing, the limited partnership form of organization is incompatible with fundamental provisions of the Act, such as the requirement of Section 15(a)(2) of the Act that investors annually approve a management contract. In addition, Applicants assert that the asset coverage limitations contained in Section 18 of the Act were designed to protect investors in securities from wide fluctuations in market prices. It is asserted that such concerns are not justified in real estate investments and are inapposite to the mortgage financing and other federal, state and local government-assisted programs developed for low and moderate income housing. Thus, an exemption from these basic provisions is necessary and, Applicants contend, it is appropriate that such exemption be granted so as not to discourage use of the two-tier limited partnership entity. To do so, Applicants assert, would frustrate the public policy established by the housing laws.

Applicants state that the substantial fees and other forms of compensation that will be paid to the General Partners and their affiliates will not have been

determined through arm's length negotiations. They represent, however, that the terms of all such compensation will be fair and not less favorable to the Partnerships than would be the case if such terms had been negotiated with independent third parties. Further, the Partnerships believe that such compensation meets all applicable guidelines necessary to permit the Units to be be offered and sold in the various states which prescribe such guidelines, including, without limitation, the statement of policy adopted by the North American Securities Administrators Association, Inc., with respect to real estate programs.

Applicants also note that interests in the Partnerships will be sold only to relatively sophisticated investors who must meet specified suitability standards as well as the suitability standards, if any, prescribed by the securities laws of any state where Units will be sold, and the Limited Partners will receive comprehensive reports concerning the Partnerships' business and operations. Although the interests of the General Partners and their affiliates may conflict in various ways with the interests of Limited Partners, Applicants claim that the prospectus for each Partnership contains various provisions designed to eliminate or significantly reduce such conflicts of interest. Further protection for the interests of Limited Partners is provided, Applicants state, by the numerous provisions of the partnership agreement of each Partnership designed to prevent overreaching by the General Partners and to assure fair dealing by the General Partners vis-a-vis the Limited Partners.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 24, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-108 Filed 1-3-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12891B; 812-5386]

Chicago Partners I; Chicago Partners II; Winthrop Financial Co., Inc.; and Linnaeus-Hawthorne Associates; Correction

December 28, 1982.

This is to correct an error made in Investment Company Release No. 12891A, issued December 21, 1982, In the Matter of Chicago Partners I, Chicago Partners II, Winthrop Financial Co., Inc. and Linnaeus-Hawthorne Associates, 225 Franklin Street, Boston, Massachusetts 02110. In that Release it was stated that the correct file number was 812-5368. The correct file number is 812-5386.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-110 Filed 1-3-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19378; File No. SR-NSCC-82-29]

Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corporation

December 27, 1982.

Pursuant to Section to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1982, the National Securities Clearing Corporation ("NSCC") filed with the Securities Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change ensures that a number of language changes, separately effective in either File No. SR-NSCC-81-7 (Securities Exchange Act Release No. 19230 (November 10, 1982), 47 FR 51969 (November 18, 1982)) or File No. SR-NSCC-82-18 (Securities Exchange Act Release No. 18995 (August 23, 1982), 47 FR 37990 (August 27, 1982)), are incorporated into NSCC Rules 4, 18 and 20. The proposed rule change is needed because File No. SR-NSCC-81-7 was filed before, but was approved after, the effective date of File No. SR-NSCC-82-18.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act because it clarifies and conforms NSCC's rules in accordance with previously approved policies and rules. In addition, because the proposed rule change merely clarifies and conforms NSCC's rules, NSCC states that the proposed rule change does not affect the safeguarding of securities and funds in NSCC's custody or control or for which it is responsible.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-82-29.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-109 Filed 1-3-83; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-3389]

General Builders Corp.; Application To Withdraw From Listing and Registration

December 28, 1982.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of General Builders Corporation ("Company") is listed and registered on the Amex, but trading in the Company's common stock has been halted since May 1976. The Company has therefore determined to include its common stock in the NASDAQ System.

Any interested person may, on or before January 19, 1983, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-74 Filed 1-3-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 10/10-0180]

Alaska Business Investment Corp.; Issuance of License To Operate as a Small Business Investment Company

On September 28, 1982, a notice was published in the **Federal Register** (FR 42665), stating that Alaska Business Investment Corporation, 301 West Northern Lights Boulevard, Anchorage, Alaska 99511 has filed an application with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1982), for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended.

The period for comment expired on October 13, 1982, and no significant comments were received.

Notice is hereby given that having considered the application and all other pertinent information, SBA issued License No. 10/10-0180 to Alaska Business Investment Corporation.

(Catelog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 27, 1982.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-61 Filed 1-3-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-5218]

West Tennessee Venture Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On October 4, 1982, a notice was published in the **Federal Register** (FR 43823), stating that West Tennessee Venture Capital Corporation, located at 8 North Third Street, Memphis, Tennessee 38103, had filed an application with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1982), for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business October 19, 1982, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and all other pertinent information, SBA issued License No. 04/04-5218 to West Tennessee Venture Capital Corporation on December 16, 1982, to operate as a small business investment company, pursuant to Section 301(d) of the Act.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 27, 1982.

Robert G., Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-60 Filed 1-3-83; 8:45 am]

BILLING CODE 8025-1-M

DEPARTMENT OF THE TREASURY

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Cigarette Leaf Tobacco

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Receipt of domestic interested party petition.

SUMMARY: Customs have received a petition from a domestic interested party requesting that certain imported leaf tobacco which has been processed by threshing, shredding, and other acts of manipulation, be classified for tariff purposes, at a higher rate of duty, under the provision for stemmed cigarette leaf filler tobacco rather than under the general provision for tobacco, manufactured or not manufactured, not specially provided for. This document invites comments with regard to the correctness of the current classification.

DATES: Comments (preferably in triplicate) must be received on or before March 7, 1983.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John G. Hurley, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by an American manufacturer of flue-cured tobacco, requesting that certain imported tobacco, which has been machine-threshed for use in the manufacture of cigarettes, be classified for tariff purposes by Customs as stemmed cigarette leaf filler tobacco under item 170.35, Tariff Schedules of the United States (TSUS) (19U.S.C. 1202). The merchandise in question is currently classified by Customs under item 170.80, TSUS, as tobacco, manufactured or not manufactured, not specially provided for. The rate of duty for tobacco classified under item 170.35, TSUS, is higher than the rate of duty for tobacco classified under item 170.80, TSUS.

The petitioner contends that item 170.80, TSUS, is a catchall classification provision, which is intended to include only tobacco which is not clearly identifiable under a more specific

provision. The petitioner claims that the merchandise at issue is identifiable as stemmed cigarette leaf filler tobacco, and thus is properly classifiable under item 170.35, TSUS.

After review of numerous comments received in response to a domestic interested party petition concerning the classification of certain machine-threshed cigarette tobacco, in T.D. 80-132, published in the Federal Register on May 20, 1980 (45 FR 33761), Customs determined that the subject tobacco was neither scrap tobacco nor was it in leaf form, but that it had been processed to the extent that it was considered a partially manufactured product, classifiable under item 170.80, TSUS.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the correctness of Customs classification.

The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. and 4:00 p.m. on normal business days, at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

Authority

This notice is published in accordance with section 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: December 21, 1982.

John P. Simpson,

Director, Office of Regulations & Rulings.

[FR Doc. 83-45 Filed 1-3-83; 8:45 am]

BILLING CODE 4820-02-M

Office of the Secretary

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to Section 10 of Public Law 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, D.C. on January 25 and 26, 1983, of the following debt management advisory committee:

Public Securities Association, U.S. Government and Federal Agencies Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on January 25 and the preparation of a written report to the Secretary of the Treasury on January 26, 1983.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by secton 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may or may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: December 27, 1982.

Roger W. Mehle,

Assistant Secretary (Domestic Finance).

[FR Doc. 83-65 Filed 1-3-83; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

During the period December 17 through December 23, 1982, the Department of Treasury submitted the following public information collection requirements to OMB, for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the Treasury Reports Management Officer, Information Resources Management Division, Room 309, 1625 I St. N.W., Washington, D.C. 20220; *and* to the OMB reviewer listed at the end of entry.

Date Submitted: December 20, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: N/A (new Submission).

Form Number: SWR E-2580.

Type of Submission: New.

Title: Savings Plan Distribution Job Aid.

Purpose: This form is used in determining unreported income from savings plan distributions. This form will materially increase consistency and expediency in determining the taxable portion of distribution made from savings plans. Pursuant to Internal Revenue Code, Section 402, the amount actually distributed or made available to any distributee shall be taxable to him in the year in which distributed or made available. The form can be adopted to numerous plans.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: December 20, 1982.

Submitting Bureau: Bureau of the Public Debt.

OMB Number: 1535-0021.

Form Number: PD 4632-1, 4632-2 and 4632-3.

Type of Submission: Extension.

Title: Tenders for Treasury Bills.

Purpose: Form used to submit an offer to purchase U.S. Treasury Bills. If tender is accepted per auction results, then information is used to establish and maintain a book entry account for Treasury bills.

OMB Reviewer: Arnold Strasser (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: December 20, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: 1545–0279.
Form Number: Letter 124C.
Type of Submission: Revision.
Title: Employer Requested to Clarify Discrepency Between Employee's Record and W–2.
Purpose: Sections 6051 and 6053 of the Code require an employer/payer to furnish a Form W–2/W–2P to an employee/payee with information regarding wages/payments and tax withholding for filing of an income tax return. If this information is not correct, Letter 124C is sent to the employer/payer, advising them to provide the recipient a correct statement.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: December 21, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: 1545–0534.
Form Number: 5303.
Type of Submission: Revision.
Title: Application for Determination for Collectively-Bargained Plan.
Purpose: IRS needs certain information on the finances and operation of employee benefit plans set up by employers. The IRS uses Form 5303 to get needed information to determine whether the plans qualify under section 401(a) of the Code and the applicable part of ERISA as approved employee benefit plans. It also used the information to determine the tax exempt status of the related trust under section 501(a) of the Code.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Date Submitted: December 21, 1982.
Submitting Bureau: Alcohol, Tobacco and Firearms.
OMB Number: 1512–0008.
Form Number: ATF F 1600.8
Type of Submission: Extension.
Title: Requisition for Firearms and Explosives Forms.
Purpose: Information is requested to fulfill requests from the public for various forms and publications concerning firearms and explosives.
OMB Reviewer: Arnold Strasser (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: December 21, 1982
Submitting Bureau: Alcohol, Tobacco and Firearms
OMB Number: 1512–0002
Form Number: ATF F 1600.7
Type of Submission: Extension
Title: ATF Distribution Center Survey
Purpose: Information required to evaluate distribution system freight mail companies and shipping time. Data used for program evaluation, shipping services and other statistical information.
OMB Reviewer: Arnold Strasser, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: December 21, 1982
Submitting Bureau: Alcohol, Tobacco and Firearms
OMB Number: 1512–0001
Form Number: ATF F 1600.1
Type of Submission: Extension
Title: Request for Forms and/or Publications.
Purpose: Form is used to enable the general public to request or order forms and publications from the Bureau's Distribution Center. The form notifies the Bureau of the quantity required by the respondent and also provides a guide as to the annual usage of the forms and publications by the general public.
OMB Reviewer: Arnold Strasser, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: December 21, 1982
Submitting Bureau: Alcohol, Tobacco and Firearms
OMB Number: 1512–0042
Form Number: ATF F 7 (5130.12)
Type of Submission: Extension
Title: Application for License
Purpose: Form is used by the public when applying for a Federal Firearms License. The information requested on the form establishes eligibility for a license. The form is signed under the penalty of 18 USC 924. The form is used in applying for various types of firearms, e.g., dealer, importer, and manufacturer.
OMB Reviewer: Arnold Strasser, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: December 21, 1982
Submitting Bureau: Alcohol, Tobacco and Firearms
OMB Number: 1512–0178
Form Number: ATF F 4483
Type of Submission: Extension
Title: Report of Firearms Transactions
Purpose: Form is used to determine transactions of firearms by a Federal firearms licensee. Form requires the Federal firearms licensee to respond to certain firearm transaction specified by the form. The Federal firearms licensee must examine his/her records and prepare an appropriate response.
OMB Reviewer: Arnold Strasser, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: December 22, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: N/A (new submission)
Form Number: 8038
Type of Submission: New
Title: Information Return for Private Activity Bond Issues
Purpose: form 8038 collects the information that IRS is required to collect by section 215 of TEFRA. IRS will use the information to complete the required study of tax exempt bonds (requested by Congress). IRS also needs the information to assure that tax exempt bonds are issued consistent with the rules of IRC section 103.
OMB Reviewer: Arnold Strasser, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joy Tucker,
Departmental Reports, Management Officer.
[FR Doc. 83–64 Filed 1–3–83; 8:45 am]
BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held in Hall of Cities Conference Room, Miami Marriott Hotel, 1201 N.W. Le Jeune Rd. (N.W. 42nd Avenue) Miami, Florida 33126, on February 14, and 15, 1983. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee advises the Director, Medical Research Service, throught the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 8 to 8:30 a.m., on February 14 and 15, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. James A. Hagans, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202–389–3702), prior to January 14.

The meeting will be closed from 8:30 a.m. to 4:30 p.m. on February 14, and from 8:30 a.m. to 3:30 p.m. on February 15, for consideration of specific proposals in accordance with provisions set forth in subsection 10(d) of Pub. L. 92–463, as amended by section 5(c) of Pub. L. 94–409, and subsection (c)(6) and (c)(9)(B) of section 552b, title 5, United States Code. During this portion of the meeting, discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: December 22, 1982.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 83-43 Filed 1-3-83; 8:45 am]

BILLING CODE 8320-01-M

Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice pursuant to Pub. L. 92–463 of the meetings of the following Merit Review Boards.

Merit Review Board	Date	Time	Location
Gastroenterology	Jan. 18, 1983	8 a.m. to 5 p.m.	Room 755, VA Central Office.[1]
Surgery	Jan. 31, 1983	do	Room 119, VA Central Office.
Oncology	Feb. 1, 1983	do	Room 304, VA Central Office.
Nephrology	Feb. 4, 1983	do	Room 817, VA Central Office.
Alcoholism and drug dependence	Feb. 8, 1983	do	Room 815A, VA Central Office.
Mental health and behavioral sciences	Feb. 10, 1983	do	Room 119, VA Central Office.
Do	Feb. 11, 1983	do	Do.
Immunology	Feb. 16, 1983	do	Room 304, VA Central Office.
Cardiovascular studies	Feb. 18, 1983	do	Room 139, VA Central Office.
Respiration	Feb. 18, 1983	do	Room 817, VA Central Office.
Neurobiology	Feb. 24, 1983	do	Room 817, VA Central Office.
Do	Feb. 25, 1983	do	Do.
Hematology	Feb. 28, 1983	do	Room 119, VA Central Office.
Infectious diseases	Mar. 1, 1983	do	Room 119, VA Central Office.
Endocrinology	Mar. 1, 1983	do	Room 755, VA Central Office.
Basic sciences	Mar. 8, 1983	do	Room 755, VA Central Office.
Do	Mar. 9, 1983	do	Do.

[1] Veterans Administration Central Office, 810 Vermont Avenue NW, Washington, DC 20420.

These meetings will be for the purpose of evaluating scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration Medical Centers and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meeting will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meetings involve: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementaion of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings are in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Because of the limited seating capacity of the rooms, those who plan to attend should contact Mr. Howard M. Berman, Chief, Merit Review Board Staff Division, Medical Research Service, Veterans Administration, Washington, DC, (202) 389–5065 at least five days prior to each meeting. Minutes of the meeting and rosters of the members of the Boards may be obtained from this source.

Dated: December 22, 1982.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 83-42 Filed 1-3-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 2
Tuesday, January 4, 1983

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

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, January 7, 1983.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: CLOSED.

MATTERS TO BE CONSIDERED:
Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1874-82 Filed 12-30-82; 9:26 am]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10:00 a.m., Thursday, January 6, 1983.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

NYSE—New York Stock Exchange Composite Index Options.

CME—Standard and Poor's 500 Stock Price Index Options.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6334.

[S-1875-82 Filed 12-30-82; 9:26 am]

BILLING CODE 6351-01-M

3

FEDERAL RESERVE SYSTEM.

(Board of Governors)

TIME AND DATE: 10:00 a.m., Monday, January 10, 1983.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

Dated: December 30, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1877-82 Filed 12-30-82; 1:51 pm]

BILLING CODE 6210-01-M

4

[USITC SE-83-01]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10:00 a.m., Wednesday, January 19, 1983.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigations TA-201-47 (Motorcycles and Motorcycle Power Train Assemblies)—briefing and vote on injury.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[S-1876-82 Filed 12-30-82; 1:51 pm]

BILLING CODE 7020-02-M

5

[NM-83-1]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Tuesday, January 11, 1983.

PLACE: NTSB Board Room, 800 Independence Ave., S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Highway Accident Report:* Multiple-Vehicle Collision and Fire, Caldecott Tunnel, near Oakland, California, April 7, 1982, and Recommendations to California Department of Transportation; U.S. Department of Transportation; Alameda/Contra Costa (California) Transit District; American Trucking Associations, Inc.; American Public Transit Association; and Armour Oil Company.

2. *Highway Accident Report:* Automobile/Missouri Pacific Railroad Freight Train Collision, Woodland Drive, Lake View, Arkansas, July 9, 1982, and Recommendations to State of Arkansas and Missouri Pacific Railroad.

3. *Letter* to Union Pacific Railroad Company regarding its petition for reconsideration of probable cause of railroad accident involving the rear-end collision of trains Extra 3119 and Extra 8044 West, near Kelso, California, November 17, 1980, and its response to the Safety Board's recommendations.

4. *Board Position* on Ultralight vehicle Accidents.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

December 30, 1982.

[S-1878-82 Filed 12-30-82; 10:53 am]

BILLING CODE 4910-58-M

6

NUCLEAR REGULATORY COMMISSION.

DATE: Week of January 3, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Tuesday, January 4:

2:00 p.m.:
Discussion of Regulatory Reform Task Force—Legislative Proposals (public meeting)

Wednesday, January 5:

10:00 a.m.:
Discussion of Safety Goals and Staff Evaluation Plan (public meeting) (Postponed from December 22)

2:00 p.m.:
Discussion/Possible Vote on Order in Clinch River Breeder Reactor Proceeding (closed—Ex. 10)

Thursday, January 6:

10:00 a.m.:
Discussion of Order in Waste Confidence Proceeding (closed—Ex. 10)

2:00 p.m.:
Discussion of Severe Accident Policy Statement (public meeting)

3:30 p.m.:
Affirmation/Discussion and Vote (public meeting)
Environmental Qualification of Electrical Equipment in Nuclear Power Plants

Friday, January 7:
10:00 a.m.:
Discussion/Possible Vote on Order in Clinch River Breeder Reactor Proceeding (closed—Ex. 10) (If needed)
2:00 p.m.:
Discussion and Possible Vote on Regulatory Reform Task Force—Legislative Proposals (public meeting)

ADDITONAL INFORMATION:

On December 21 the Commission voted 4–0 (Commissioner Gilinsky abstaining) to hold Discussion/Possible Vote on Actions in Regard to Indian Point, held on December 22. Discussion of Immediate Effectiveness Issues in TMI–1 Restart Proceeding scheduled for December 21 *postponed.* Affirmation of Review of ALAB–691 (Consumers Power Company) and San Onofre Memorandum and Order Re Medical Services scheduled for December 22 *postponed.*

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.

December 28, 1982.

Walter Magee,
Office of the Secretary.

[S-1879-82 Filed 12-30-82; 4:00 pm]
BILLING CODE 7590-01-M

federal register

Tuesday
January 4, 1983

Part II

Department of Agriculture

Food and Nutrition Service

Summer Food Service Program for Children

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program For Children

Note.—This document originally appeared in the Federal Register of Thursday, December 30, 1982. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Food and Nutrition Service, USDA.

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is amending the Summer Food Service Program (SFSP) regulations by adding the required notice concerning collection of social security account numbers on applications for free and reduced price meal benefits. This change is being made in order to clarify the notification requirements. Several minor changes have been made in response to public comment. The current regulations for the Summer Food Service Program remain unchanged in all other respects.

EFFECTIVE DATE: This final rule is effective January 1, 1983.

ADDRESS: Copies of all written comments are available for public review at the office of the Child Care and Summer Programs Division, Food and Nutrition Service, in Room 416, 3101 Park Center Drive, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Jordan Benderly or Ms. Beverly Walstrom at the address listed above, or call (703) 756–3888.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million, will not cause a major increase in cost or prices for Program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This final rule has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Pursuant to the review, Samuel J. Cornelius, 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.

In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Background

The Summer Food Service Program (SFSP) is authorized by Section 13 of the National School Lunch Act. Comprehensive regulations for the SFSP were last published on February 16, 1982 (47 FR 6790).

On November 5, 1982, (47 FR 50268), a proposed amendment to the SFSP regulations was published. Interested parties were given 30 days in which to submit their comments on the amendment.

At the close of the comment period, a total of thirty (30) comments were received on the proposal from Food and Nutrition Service (FNS) Regional Offices, State administering agencies, sponsors, advocacy groups and private citizens. All comments were studied and summarized so that they could be systematically considered during the development of this final rule.

Section 13(g) of the National School Lunch Act requires the Secretary of Agriculture to publish regulations necessary to implement the SFSP in proposed form by November 1 and final form by January 1. On November 5, 1982, (47 FR 50268) the Department proposed not to alter the regulations published on February 16, 1982, (47 FR 6790), with one exception. The one proposed change added to the regulations the requirement that the social security account number disclosure notice be placed on applications for free and reduced price meal benefits distributed by camps and other programs which document site eligibility through collection of family size and income information.

Section 803 of Pub. L. 97–35 requires that parents or guardians who apply for free and reduced price meals must disclose the social security numbers of all adult household members as a condition of eligibility. The Department proposed to amend § 225.21(d) to include a requirement that the application form contain a notice which informs people of the authority under which the social security numbers are collected, whether disclosure of the numbers is mandatory, and what uses will be made of the numbers. The notice is similar to that used in the SFSP last summer but is more detailed. It was the Department's intent that the proposed change also serve to conform the SFSP notice with the notice required in Part 245 of the regulations governing the delivery of free and reduced price meal benefits in the National School Lunch Program (NSLP).

The Department determined that no other changes were necessary for successful implementation of the 1983 SFSP. Therefore, in all other respects, it was proposed that the final SFSP regulations, published on February 16, 1982, (47 FR 6790), remain unchanged for the 1983 SFSP.

Notification Statement

Five (5) commenters supported the addition, in the regulations, of the language required on the application regarding the disclosure of social security numbers.

One commenter requested clarification regarding the slight difference in the language of the SFSP proposed notification statement from the statement required in the National School Lunch Program (NSLP). The Department regrets any confusion that this discrepancy may have caused, and has revised the statement included in this rule to reflect the current NSLP statement.

Collection of Social Security Numbers

Fourteen (14) commenters suggested that the requirement to collect the social security numbers of all adult household members be deleted from the SFSP regulation. The public is reminded that the proposed rule did not solicit comment on the requirement to collect social security numbers as a condition of eligibility because this requirement is imposed by Section 803 of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981. Moreover, this legislative requirement was included in the proposed and final SFSP regulations, published on December 11, 1981, (46 FR 60592) and February 16, 1982, (47 FR 6790), respectively, and was implemented during the 1982 SFSP.

One commenter pointed out that the proposed rule made no allowance for adult household members who do not possess social security numbers to indicate this on the application for Program meals. In order to address this concern, the final rule has been amended by including a statement that if an adult household member does not possess a social security number, the application must indicate that such is the case.

Finally, in response to inquiries, the Department wishes to point out that eligibility for free or reduced-price meals in the SFSP is based on the income and family size guidelines for free and reduced-price meals established for the National School Lunch Program.

List of Subjects in 7 CFR Part 225

Food assistance program, Grant programs-health, Infants and children, Reporting requirements.

Accordingly, Part 225 is to be amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

Section 225.21 is amended as follows: by revising the last sentence of current § 225.21(d) and by adding paragraphs (d)(1) and (2) to read as follows:

§ 225.21 Free meal policy.

* * * * *

(d) * * * The application shall include the social security numbers of all adult members of the household or an indication that an adult household member does not possess one.

(1) The application shall also contain the following statement, "Sections 9 and 13 of the National School Lunch Act require that in order for your child to be eligible for Program meals, you must provide the social security numbers of all adult members of your household. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for Program meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. The verification efforts may be carried out through Program reviews, audits, and investigations, and may include contacting employers to determine income, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss of benefits, administrative claims, or legal action if incorrect information is reported." State agencies and sponsors shall ensure that the notice complies with Section 7 of Pub. L. 93-579 (Privacy Act of 1974). If a State or local agency plans to use the social security numbers in a manner not described by this notice, the notice shall be altered to include a description of these uses; and (2) the signature of the parent or guardian who has completed the application.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

Dated: December 27, 1982.

Robert E. Leard,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 82-35489 Filed 12-29-82; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement Rates for 1983

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of adjustments in the Program reimbursement rates to reflect changes in the Consumer Price Index. These adjustments are required by the statutes and regulations governing the Program.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Jordan Benderly, Director, or Beverly Walstrom, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3888.

SUPPLEMENTARY INFORMATION:

Classification: This notice has been reviewed under Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or on the ability of U.S. enterprises to compete. This notice has also been reviewed with regard to the requirements of Pub. L. 96–354. Samuel C. Cornelius, Administrator of the Food and Nutrition Service, has certified that this notice does not have a significant economic impact on a substantial number of small entities.

Background: Pursuant to Section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the Summer Food Service Program for Children (7 CFR Part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the Summer Food Service for Children during the 1983 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1981 through November 1982. The new reimbursement rates are as follows:

Maximum Per Meal Reimbursement Rates for Operating Costs in cents:

Breakfast	78.25
Lunch or Supper	140.50
Supplement	37.00

Maximum Per Meal Reimbursement Rates for Administrative Costs in cents:

a. For meals served at rural or self-preparation sites:

Breakfast	7.25
Lunch or Supper	13.25
Supplement	3.75

b. For meals served at other types of sites:

Breakfast	5.75
Lunch or Supper	11.00
Supplement	2.75

The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represent a 4.78 per cent increase in the payment rates for 1982. This represents the percentage of increase during 1982 (from 297.2 in November 1981 to 311.4 in November 1982) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments to State agencies for distribution to Program sponsors shall be based upon these Program reimbursement rates and the number of meals of each type served.

Definitions. The terms used in this Notice shall have the meanings ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 225).

(Catalog of Federal Domestic Assistance Programs No. 10.559)

(Section 2, Pub. L. 95–166, 91 Stat. 1325, (42 U.S.C. 1761); Section 5, Pub. L. 95–627, 92 Stat. 3620, (42 U.S.C. 1761); Section 809, Pub. L. 97–35, 95 Stat. 527 (42 U.S.C. 1761))

Robert E. Leard,

Acting Administrator, Food and Nutrition Service.

Dated: December 29, 1982.

[FR Doc. 83-129 Filed 1-3-83; 8:45 am]

BILLING CODE 3410-30-M

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Vol. 48, No. 2

Tuesday, January 4, 1983

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

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List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing December 28, 1982



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Code of Federal Regulations

Revised as of July 1, 1982

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_____	Title 34—Education (Part 400 to End)	8.50	_____
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