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Federal Register

Monday
July 23, 1984

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Credit Unions
National Credit Union Administration

Dairy Products
Agricultural Stabilization and Conservation Service

Educational Research
Education Department

Electric Utilities
Rural Electrification Administration

Endangered and Threatened Species
Fish and Wildlife Service

Fisheries
National Oceanic and Atmospheric Administration

Food Additives
Food and Drug Administration

Grains
Commodity Credit Corporation

Hazardous Materials Transportation
Coast Guard

Immigration
Immigration and Naturalization Service

Marketing Quotas
Agricultural Stabilization and Conservation Service

CONTINUED INSIDE

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Selected Subjects

Meat Inspection
Food Safety and Inspection Service

Milk Marketing Orders
Agricultural Marketing Service

Mortgage Insurance
Housing and Urban Development Department

Passports and Visas
Immigration and Naturalization Service

Polychlorinated Biphenyls
Environmental Protection Agency

Privacy
Justice Department

Quarantine
Animal and Plant Health Inspection Service

Radio and Television Broadcasting
Federal Communications Commission

Raisins
Federal Crop Insurance Corporation

Reporting and Recordkeeping Requirements
National Oceanic and Atmospheric Administration

Trade Practices
Federal Trade Commission

Water Pollution Control
Environmental Protection Agency

Contents

Federal Register
Vol. 49, No. 142
Monday, July 23, 1984

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 49, No. 142
Monday, July 23, 1984

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 84-327]

Imported Fire Ant Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the list of regulated areas under the imported fire ant quarantine and regulations by designating previously nonregulated areas in Georgia, Mississippi, North Carolina, and South Carolina as generally infested areas and by expanding previously designated generally infested areas in Georgia, North Carolina, and Texas. The quarantine and regulations, among other things, impose restrictions on the interstate movement of regulated articles from generally infested areas. This action is necessary as an emergency measure to prevent the artificial spread of the imported fire ant through the interstate movement of regulated articles.

DATES: Effective date of the interim rule: July 23, 1984. Written comments concerning this interim rule must be received on or before September 21, 1984.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Edward J. Stubbs, Senior Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this interim rule. Because of the possibility that the imported fire ant could be spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments are being solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

The imported fire ant (*Solenopsis* spp.) is an insect that interferes with farming operations, can cause damage to certain crops, and is a pest of livestock and pets, as well as of people, in rural and urban areas.

Prior to the effective date of this document, the Imported Fire Ant Quarantine and Regulations (7 CFR 301.81 through 301.81-10) quarantined the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas because of the imported fire ant. The quarantine and regulations restrict the interstate movement of regulated articles from regulated areas in quarantined States in order to prevent the artificial spread of the imported fire ant.

Under the quarantine and regulations, an area may be designated as a regulated area if it is an area in which the imported fire ant has been found, or in which there is reason to believe that the imported fire ant is present, or which it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Regulated areas are classified as either "suppressive areas" or "generally infested areas". Suppressive areas are regulated areas in which eradication of the imported fire ant is undertaken as an objective. Generally infested areas are regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from both generally infested areas and suppressive areas in order to prevent the artificial movement of the imported fire ant into noninfested areas, and to prevent the reinfestation of suppressive areas of the imported fire ant.

Designation of Areas as Generally Infested Areas

As an emergency measure, and as described in the text of the final rule, portions of Bartow, Chattooga, and Oglethorpe Counties in Georgia; a portion of Tallahatchie County in Mississippi; portions of Anson and Sampson Counties in North Carolina; the entire area in Lancaster County in South Carolina; and the entire area in Johnson and Kleberg Counties in Texas are designated as imported fire ant generally infested areas. Prior to the effective date of this rule, none of the counties mentioned above had been regulated.

Also, as an emergency measure, certain designated imported fire ant generally infested areas in Georgia, North Carolina, and Texas are expanded as set forth below.

The imported fire ant generally infested area in Floyd County, Georgia, previously described as "That portion of the county lying within Georgia Militia Districts 829, 855, 1059, and 1453.", is expanded and redescribed as "That portion of the county lying within Georgia Militia Districts 829, 855, 859, 919, 923, 924, 962, 1048, 1059, 1120, 1453, 1478, 1504, 1562, 1688, 1719, and 1822."

The imported fire ant generally infested area in Greene County, Georgia, previously described as "That portion of the county lying within Georgia Militia Districts 142, 143, 145, 160, 161, and 163.", is expanded and redescribed as "The entire county."

The imported fire ant generally infested area in Lincoln County, Georgia, previously described as "That portion of the county lying within Georgia Militia District 184.", is expanded and redescribed as "That portion of the county lying within Georgia Militia Districts 182, 183, 184, 185, 186, and 269."

The imported fire ant generally infested area in Paulding County, Georgia, previously described as "That portion of the county lying within Georgia Militia Districts 942, 951, 839, and 1553.", is expanded and redescribed as "The entire county."

The imported fire ant generally infested area in Polk County, Georgia, previously described as "That portion of the county lying within Georgia Militia Districts 1075, 1079, 1223, 1469, and 1570.", is expanded and redescribed as "The entire county."

The imported fire ant generally infested area in Wilkes County, Georgia, previously described as "That portion of the county lying within Georgia Militia Districts 174, 176, and 177.", is expanded and redescribed as "That portion of the county lying within Georgia Militia Districts 164, 168, 169, 171, 174, 175, 176, and 177."

The imported fire ant generally infested area Beaufort County, North Carolina, previously described as "That portion of the county bounded by a line beginning where State Secondary Road 1129 intersects the Beaufort-Craven County line, thence north along said road to its junction with State Secondary Road 1127, thence east along said road to its junction with Highway 33, thence southeast along said highway to its intersection with State Secondary Road 1100, thence northeast along said road to its junction with the Pamlico River, thence southeast along said river to its junction with the Beaufort-Pamlico County line, thence south, southwest, and northwest along said county line to its junction with the Beaufort-Craven County line, thence northwest along said county line to the point of beginning.", is expanded and redescribed as "That portion of the county bounded by a line beginning where U.S. Highway 17 intersects the Beaufort-Craven County line; then north along said highway to its intersection with State Secondary Road 1127; thence easterly along said road to its intersection with State Highway 33; thence northwesterly along said highway to its intersection with State Secondary Road 1124; then easterly along said road to its intersection with State Secondary Road 1123; then northwesterly along said road to its intersection with State Secondary Road 1177; then northeasterly along said road to the Pamlico River; then southeasterly along said river to Upper Goose Creek; then north along said creek to its intersection with State Secondary Road 1365; then north along said road to its intersection with State Secondary Road 1332; then north along said road to its intersection with State Secondary Road 1331; then easterly along said road to its intersection with U.S. Highway 264; then easterly along said highway to its intersection with Pungo Creek; then southeasterly along said creek to the Pungo River and the Beaufort-Hyde County line; then southeasterly along said county line to its intersection with the Beaufort-Pamlico County line, then westerly, southerly, and northwesterly along said county line to the Beaufort-Craven County line; then northwesterly along said county line to the point of beginning.

The imported fire ant generally infested area in Bladen County, North Carolina, previously described as "That portion of the county bounded by a line beginning at a point where U.S. Highway 701 Business intersects the Bladen-Columbus County line, thence north along said highway to its junction with State Secondary Road 1700, thence north along said road to its junction with State Secondary Road 1712, thence east along said road to its junction with State Highway 87, thence southeast along said highway to its intersection with Carver's Creek, thence east along said creek to its junction with the Cape Fear River, thence northwest along said river to its intersection with State Secondary Road 1730, thence northeast along said road to its junction with State Highway 53, thence southeast along said highway to its junction with State Highway 210, thence north along said highway to its junction with State Secondary Road 1550, thence east along said road to its intersection with the Bladen-Pender County line, thence southeast and southwest along said county line to its junction with the Bladen-Columbus County line, thence southwest, west, and northwest along said county line to the point of beginning.", is expanded and redescribed as "That portion of the county bounded by a line beginning at a point where Bladen, Columbus, and Robeson County lines intersect; then northerly along the Bladen-Robeson County line to its intersection with Black Reedy Meadow Creek; then east along said creek to its intersection with State Highway 131; then southeast along said highway to its intersection with State Highway 41; then easterly along said highway to its intersection with U.S. Highway 701; then northeast along said highway to its intersection with the Cape Fear River; then east along said river to its intersection with Turnbull Creek; then northerly along said creek to its intersection with U.S. Highway 701; then easterly and northeasterly along said highway to its intersection with the Bladen-Sampson County line; then southeasterly along said county line to its intersection with the Bladen-Pender County line; then southerly and southwesterly along said county line to its intersection with the Bladen-Columbus County line; then southwest, northwest, and west along said county line to the point of beginning.

The imported fire ant generally infested area in Craven County, North Carolina, previously described as "That portion of the county south and east of a line beginning where State Secondary Road 1001 intersects the Craven-Jones County line, thence north along said road to its junction with State Secondary Road 1232, thence east and northeast along said road to its intersection with U.S. Highway 70, thence easterly along said highway to its intersection with State Secondary Road 1224, thence northerly along said road to its junction with State Highway 55, thence southeast along said highway to its junction with State Secondary Road 1423, thence northeasterly along said road to its intersection with State Secondary Road 1401, thence easterly along said road to its junction with State Secondary Road 1400, thence northeasterly along said road to its junction with State Secondary Road 1482, thence northeast along said road to its junction with U.S. Highway 17, thence northwest along said highway to its junction with U.S. Highway 17 Bypass, thence northwest along said highway to its intersection with State Secondary Road 1638, thence northeasterly along said road to its intersection with the Craven-Beaufort County line, where the line ends.", is expanded and redescribed as "That portion of the county bounded by a line beginning at a point where State Secondary Road 1266 intersects the Craven-Jones County line; then east along said road to its intersection with State Secondary Road 1262; then northeasterly along said road to its intersection with State Secondary Road 1258; then southeasterly along said road to its intersection with State Secondary Road 1256; then southeasterly along said

road to its intersection with State Secondary Road 1251; then northeast along said road to its intersection with State Highway 55; then southeast along said highway to its intersection with Cove Creek; then northerly along said creek to its intersection with the Nuese River; then southeasterly along said river to its intersection with State Secondary Road 1449; then northeast along said road to its intersection with State Secondary Road 1400; then north along said road to its intersection with State Secondary Road 1448; then northeasterly along said road to its intersection with State Secondary Road 1444; then northerly along said road to its intersection with State Highway 118; then easterly along said road to its intersection with State Secondary Road to its intersection with Business U.S. Highway 17; then north along said highway to its intersection with State Secondary 1638; then easterly along said road to its intersection with the Craven-Beaufort County line; then southeast along said county line to its intersection with the Craven-Pamlico County line; then southerly and easterly along said county line to its intersection with the Craven-Carteret County line; then southeasterly and southwesterly along said county line to its intersection with the Craven-Jones County line; then north and west along said county line to the point of beginning.

The imported fire ant generally infested area in Duplin County, North Carolina, previously described as "That portion of the county bounded by a line beginning at the intersection of State Secondary Road 1704 and State Secondary Road 1705, thence northeast along State Secondary Road 1705 to its junction with the Duplin-Lenoir County line, thence southeast along said county line to its junction with the Duplin-Jones County line, thence southeast along said county line to its intersection with the Duplin-Onslow County line, thence south along said county line to its intersection with North Carolina Highway 24, thence west along said highway to its intersection with Cabin Creek, thence westerly along said creek to its intersection with North Carolina Highway 111, thence northwest along said highway to its junction with State Secondary Road 1704, thence northeast along said road to the point of beginning.", is expanded and redescribed as "That portion of the county bounded by a line beginning at the intersection of the Duplin-Sampson County line with State Secondary Road 1130; then east along said road to its intersection with State Secondary Road 1129; then northeast along said road to its intersection with State Highway 41; then southeast along said highway to its intersection with State Highway 11; then northerly along said highway to its intersection with State Secondary Road 1555; then northeast along said road to its intersection with State Secondary Road 1553; then southeasterly along said road to its intersection with State Secondary Road 1551; then east along said road to its intersection with State Secondary Road 1549; then southerly along said road to its intersection with State Highway 11; then east along said highway to its intersection with the Duplin-Lenoir County line; then southerly along said county line to its intersection with the Duplin-Jones County line; then southeast along said county line to its intersection with Duplin-Onslow County line; then southerly along said county line to its intersection with the Duplin-Pender County line; then west along said county line to its intersection with the Duplin-Sampson County line; then westerly along said county line to the point of beginning."

The imported fire ant generally infested area in Lenoir County, North Carolina, previously described as "That portion of the county bounded by a line beginning at a point where State Secondary Road 1165 intersects the Lenoir-Duplin County line, thence east along said road to its intersection with State Secondary Road 1111, thence south along said road to its junction with State Secondary Road 1112, thence east along said road to its junction with North Carolina Highway 11, thence north along said highway to its junction with State Secondary Road 1116, thence east along said road to its junction with U.S. Highway 258, thence south along said highway to its intersection with State Secondary Road 1105, thence east along said road to its intersection with the Jones-Lenoir County line, thence southwest along said county line to its junction with the Lenoir-Duplin County line, thence northwest and north along said county line to the point of beginning.", is expanded and redescirbed as "That portion of the county bounded by a line beginning at a point where State Secondary Road 1165 intersects the Lenoir-Duplin County line; then east along said road to its intersection with State Secondary Road 1111; then south along said road to its intersection with State Secondary Road 1112; then east along said road to its intersection with State Highway 11; then north along said highway to its intersection with State Secondary Road 1116; then east along said road to its intersection with State Secondary Road 1130; then northeasterly along said road to its intersection with State Secondary Road 1136; then east along said road to its intersection with State Secondary Road 1137; then northeasterly along said road to its intersection with State Secondary Road 1925; then east along said road to its intersection with State Secondary Road 1912; then north along said road to its intersection with State Secondary Road 1913; then easterly along said road to its intersection with State Secondary Road 1903; then south along said road to its intersection with State Secondary Road 1915; then southeasterly along said road to the Lenoir-Jones County line; then southerly along said county line to the Lenoir-Duplin County line; then northerly along said county line to the point of beginning."

The imported fire ant generally infested area in Pamlico County, North Carolina, previously described as "That portion of the county lying west and southwest of the Intra-Coastal Waterway.", is expanded and redescribed as "The entire county."

The imported fire ant generally infested area in Pender County, North Carolina, previously described as "That portion of the county bounded by a line beginning at a point where State Secondary Road 1209 intersects the Pender-Sampson County line, thence easterly along said road to its junction with State Secondary Road 1336, thence northeast along said road to its junction with State Secondary Road 1319, thence east along said road to its junction with State Secondary Road 1318, thence southeast along said road to its junction with State Highway 53, thence northeast along said highway to its intersection with the Pender-Onslow County line, thence southeast along said county line to its junction with the Atlantic Ocean, thence southwest along the coastline to its juction with the Pender-New Hanover County line, thence northwesterly along said county line to its junction with the Pender-Brunswick County line, thence west along said county line to its junction with the Pender-Columbus County line, thence northwest along said county line to its junction with the Pender-Blanden County line, thence northeast, northwest, and north along said County line to the point of beginning.", is expanded and redescribed as "The entire county."

The imported fire ant generally infested area in Anderson County, Texas, previously described as "That portion of the county bounded by a line beginning at the point where U.S. Highway 287 intersects U.S. Highway 84,

thence easterly along said highway to the Anderson-Cherokee County line, thence southeasterly along said county line to its junction with the Anderson-Houston County line, thence westerly along said county line to its intersection with U.S. Highway 287, thence northwesterly along said highway to the point of beginning, including all of the city of Palestine and all of the town of Elkhart.", is expanded and redescribed as "The entire county."

The imported fire ant generally infested area in Freestone County, Texas, previously described as "That area within a circle having a radius of 3 miles with the center at the intersection of Farm to Market Road 80 and Main Street in the city of Teague.", is expanded and redescribed as "The entire county."

The imported fire ant generally infested area in McLennan County, Texas, previously described as "That area within a semi-circle having a radius of 4 miles with the focal point at the intersection of State Highway 6 and the McLennan-Falls County line.", is expanded and redescribed as "The entire county."

The imported fire ant generally infested area in Rockwall County, Texas, previously described as "That portion of the county lying west of State Highway 205, including the city of Rockwall.", is expanded and redescribed as "The entire county."

The imported fire ant generally infested area in Tarrant County, Texas, previously described as "That portion of the county lying east of a line beginning at a point where Farm to Market Road 718 intersects the Tarrant-Wise County line, thence southeasterly along said road to its junction with State Highway 496, thence southerly along said highway to its intersection with Interstate Highway 35–W, thence southerly along said highway to its intersection with the Tarrant-Johnson County line, including that portion of the city of Ft. Worth lying east of the above described line.", is expanded and redescribed as "The entire county."

Based on recent surveys, inspectors have determined with respect to all of the areas added to the list of imported fire ant generally infested areas, that the imported fire ant has spread, or is likely to spread, to such areas. Therefore, as an emergency measure, it is necessary to designate such areas as imported fire ant generally infested areas and impose restrictions on the interstate movement of regulated articles from these areas in order to prevent the artificial spread of the imported fire ant.

Executive Order 12291 and Regulatory Flexibility Act

This interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an estimated annual effect on the economy of less than $10,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause 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.

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

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from specified areas in the States of Georgia, Mississippi, North Carolina, South Carolina, and Texas. There are thousands of small entities that move such articles interstate from those States and many more thousands of small entities that move such articles interstate from other States. However, based on information complied by the Department, it has been determined that approximately 150 small entities move such article interstate from the specified areas in those States. Further, the overall economic impact from this action is estimated to be less than $10,000.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (agriculture), Quarantines, Transportation, Imported fire ant.

According, § 301.81–2a of the imported fire ant quarantine and regulations (7 CFR 301.81–2a) revises the list of regulated areas in the States of Georgia, Mississippi, North Carolina, South Carolina, and Texas to read as follows:

§ 301.81–2a Regulated areas; suppressive and generally infested areas.

* * * * *

Georgia

(1) *Generally infested areas.*

Appling County. The entire county.

Atkinson County. The entire county.

Bacon County. The entire county.

Baker County. The entire county.

Baldwin County. The entire county.

Barrow County. That portion of the county in Georgia Militia District 316 south of U.S. Highway 29, excluding the corporate city limits of Auburn and Carl.

Bartow County. That portion of the county lying with Georgia Militia Districts 851, 856, 952, 1471, and 1472.

Ben Hill County. The entire county.

Berrien County. The entire county.

Bibb County. The entire county.

Bleckley County. The entire county.

Brantley County. The entire county.

Brooks County. The entire county.

Bryan County. The entire county.

Bulloch County. The entire county.

Burke County. The entire county.

Butts County. The entire county.

Calhoun County. The entire county.

Camden County. The entire county.

Candler County. The entire county.

Carroll County. The entire county.

Charlton County. The entire county.

Chatham County. The entire county.

Chattachoochee County. The entire county.

Chattooga County. That portion of the county lying within Georgia Militia Districts 961, 1083, 1216, and 1484.

Cherokee County. That portion of the county lying within Georgia Militia District 817.

Clarke County. That portion of the county in Georgia Militia District 1467 outside the corporate limits of Athens.

Clay County. The entire county.

Clayton County. The entire county.

Clinch County. The entire county.

Cobb County. The entire county.

Coffee County. The entire county.

Colquitt County. The entire county.

Columbia County. The entire county.

Cook County. The entire county.

Coweta County. The entire county.

Crawford County. The entire county.

Crisp County. The entire county.

Decatur County. The entire county.

De Kalb County. The entire county.

Dodge County. The entire county.

Dooly County. The entire county.

Dougherty County. The entire county.

Douglas County. The entire county.

Early County. The entire county.

Echols County. The entire county.

Effingham County. The entire county.

Emanuel County. The entire county.

Evans County. The entire county.

Fayette County. The entire county.

Floyd County. That portion of the county lying within Georgia Militia Districts 829, 855, 859, 919, 923, 924, 962, 1048, 1059, 1120, 1453, 1478, 1504, 1562, 1688, 1719, and 1822.

Forsyth County. That portion of the county lying within Georgia Militia Districts 879, 1276, and 795.

Fulton County. The entire county.
Glascock County. The entire county.
Glynn County. The entire county.
Grady County. The entire county.
Greene County. The entire county.
Gwinnett County. The entire county.
Hall County. That portion of the county lying within Georgia Militia Districts 413, 1270, and 1419.
Hancock County. The entire county.
Haralson County. The entire county.
Harris County. The entire county.
Heard County. The entire county.
Henry County. The entire county.
Houston County. The entire county.
Irwin County. The entire county.
Jasper County. The entire county.
Jeff Davis County. The entire county.
Jefferson County. The entire county.
Jenkins County. The entire county.
Johnson County. The entire county.
Jones County. The entire county.
Lamar County. The entire county.
Lanier County. The entire county.
Laurens County. The entire county.
Lee County. The entire county.
Liberty County. The entire county.
Lincoln County. That portion of the county lying within Georgia Militia Districts 182, 183, 184, 185, 186, and 269.
Long County. The entire county.
Lowndes County. The entire county.
Macon County. The entire county.
Marion County. The entire county.
McDuffie County. The entire county.
McIntosh County. The entire county.
Meriwether County. The entire county.
Miller County. The entire county.
Mitchell County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Morgan County. The entire county.
Muscogee County. The entire county.
Newton County. The entire county.
Oconee County. The entire county.
Oglethorpe County. That portion of the county lying within Georgia Militia Districts 227, 228, 229, 230, 232, and 234.
Paulding County. The entire county.
Peach County. The entire county.
Pierce County. The entire county.
Pike County. The entire county.
Polk County. The entire county.
Pulaski County. The entire county.
Putnam County. The entire county.
Quitman County. The entire county.
Randolph County. The entire county.
Richmond County. The entire county.
Rockdale County. The entire county.
Schley County. The entire county.
Screven County. The entire county.
Seminole County. The entire county.
Spalding County. The entire county.
Stewart County. The entire county.
Sumter County. The entire county.
Talbot County. The entire county.
Taliaferro County. The entire county.
Tattnall County. The entire county.
Taylor County. The entire county.
Telfair County. The entire county.
Terrell County. The entire county.
Thomas County. The entire county.
Tift County. The entire county.
Toombs County. The entire county.
Treutlen County. The entire county.
Troup County. The entire county.
Turner County. The entire county.
Twiggs County. The entire county.
Upson County. The entire county.
Walton County. The entire county.
Ware County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Wayne County. The entire county.
Webster County. The entire county.
Wheeler County. The entire county.
Wilcox County. The entire county.
Wilkes County. That portion of the county lying within Georgia Militia Districts 164, 168, 169, 171, 174, 175, 176, and 177.
Wilkinson County. The entire county.
Worth County. The entire county.
(2) *Suppressive areas.* None.

* * * * *

Mississippi

(1) *Generally infested areas.*
Adams County. The entire county.
Alcorn County. The entire county.
Amite County. The entire county.
Attala County. The entire county.
Benton County. That portion of the county lying south of the north line of T. 4 S.
Bolivar County. T. 20 N., R. 6, 7, and 8 W.; T. 21 N., R. 5, 6, and 7 W., and S. ½ T. 22 N., R. 6 W.
Carroll County. The entire county.
Calhoun County. The entire county.
Chickasaw County. The entire county.
Choctaw County. The entire county.
Claiborne County. The entire county.
Clarke County. The entire county.
Clay County. The entire county.
Copiah County. The entire county.
Covington County. The entire county.
Forrest County. The entire county.
Franklin County. The entire county.
George County. The entire county.
Greene County. The entire county.
Grenada County. The entire county.
Hancock County. The entire county.
Harrison County. The entire county.
Hinds County. The entire county.
Holmes County. The entire county.
Humphreys County. The entire county.
Issaquena County. The entire county.
Itawamba County. The entire county.
Jackson County. The entire county.
Jasper County. The entire county.
Jefferson County. The entire county.
Jefferson Davis County. The entire county.
Jones County. The entire county.
Kemper County. The entire county.
Lafayette County. That portion of the county lying south of the north line of T. 10 S., T. 9 S., R. 1, 2, and 3 W.; T. 8 S., R. 1 W.; T. 7 S., R. 1 W., and S.E. ¼, T. 6 S., R. 3 W.
Lamar County. The entire county.
Lauderdale County. The entire county.
Lawrence County. The entire county.
Leake County. The entire county.
Lee County. The entire county.
Leflore County. That portion of the county lying south of the north line of T. 19 N.; S. ½ of T. 20 N., R. 1 E.; and that portion of T. 20 and 21 N., R. 2 E. lying in the county.
Lincoln County. The entire county.
Lowndes County. The entire county.
Madison County. The entire county.
Marion County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Neshoba County. The entire county.
Newton County. The entire county.
Noxubee County. The entire county.
Oktibbeha County. The entire county.
Panola County. That portion of T. 10 S., R. 5 W. lying in the county and T. 10 S., R. 6 W.
Pearl River County. The entire county.
Perry County. The entire county.
Pike County. The entire county.
Pontotoc County. The entire county.
Prentiss County. The entire county.
Rankin County. The entire county.
Scott County. The entire county.
Sharkey County. The entire county.
Simpson County. The entire county.
Smith County. The entire county.
Stone County. The entire county.
Sunflower County. That portion of the county lying south of the north line of T. 19 N. and T. 20 N., R. 5 W.
Tallahatchie County. That portion of the county lying south of the north line of T. 24 N. and east of the west line of R. 2 E.
Tippah County. That portion of the county lying south of the north line of T. 3 S.
Tishomingo County. The entire county.
Union County. The entire county.
Walthall County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Wayne County. The entire county.
Webster County. The entire county.
Wilkinson County. The entire county.
Winston County. The entire county.
Yalobusha County. The entire county.
Yazoo County. The entire county.
(2) *Suppressive areas.* None.

* * * * *

North Carolina

(1) *Generally infested areas.*

Anson County. That portion of the county bounded by a line beginning at the intersection of State Secondary Road 1756 and the Pee Dee River; then southwesterly along said road to its intersection with State Secondary Road 1744; then southerly along said road to its intersection with State Secondary Road 1730; then west along said road to its intersection with State Secondary Road 1801; then southeasterly along said road to its intersection with State Highway 145; then northeasterly along said highway to its intersection with U.S. Highway 74; then east along said highway to its intersection with State Secondary Road 1748; then north along said road to its intersection with the Pee Dee River; then northwesterly along said river to the point of beginning.

Beaufort County. That portion of the county bounded by a line beginning where U.S. Highway 17 intersects the Beaufort-Craven County line; then north along said highway to its intersection with State Secondary Road 1127; then easterly along said road to its intersection with State Highway 33; then northwesterly along said highway to its intersection with State Secondary Road 1124; then easterly along said road to its intersection with State Secondary Road 1123; then northwesterly along said road to its intersection with State Secondary Road 1177; then northeasterly along said road to the Pamlico River; then southeasterly along said river to Upper Goose Creek; then north along said creek to its intersection with State Secondary Road 1365; then north along said road to its intersection with State Secondary Road 1332; then north along said road to its intersection with State Secondary Road 1331; then easterly along said road to its intersection with U.S. Highway 264; then easterly along said highway to its intersection with Pungo Creek; then southeasterly along said creek to the Pungo River and the Beaufort-Hyde County line; then southeasterly along said county line to its intersection with the Beaufort-Pamlico County line; then westerly, southerly, and northwesterly along said county line to the Beaufort-Craven County line; then northwesterly along said county line to the point of beginning.

Bladen County. That portion of the county bounded by a line beginning at a point where Bladen, Columbus, and Robeson County lines intersect; then northerly along the Bladen-Robeson County line to its intersection with Black Reedy Meadow Creek; then east along said creek to its intersection with State Highway 131; then southeast along said highway to its intersection with State Highway 41; then easterly along said highway to its intersection with U.S. Highway 701; then northeast along said highway to its intersection with the Cape Fear River; then east along said river to its intersection with Turnbull Creek; then northerly along said creek to its intersection with U.S. Highway 701; then easterly and northeasterly along said highway to its intersection with the Bladen-Sampson County line; then southeasterly along said county line to its intersection with the Bladen-Pender County line; then southerly and southwesterly along said county line to its intersection with the Bladen-Columbus County line; then southwest, northwest, and west along said county line to the point of beginning.

Burnswick County. The entire county.

Carteret County. The entire county.

Columbus County. The entire county.

Craven County. That portion of the county bounded by a line beginning at a point where State Secondary Road 1266 intersects the Craven-Jones County line; then east along said road to its intersection with State Secondary Road 1262; then northeasterly along said road to its intersection with State Secondary Road 1258; then southeasterly along said road to its intersection with State Secondary Road 1256; then southeasterly along said road to its intersection with State Secondary Road 1251; then northeast along said road to its intersection with State Highway 55; then southeast along said highway to its intersection with Cove Creek; then northerly along said creek to its intersection with the Nuese River; then southeasterly along said river to its intersection with State Secondary Road 1449; then northeast along said road to its intersection with State Secondary Road 1400; then north along said road to its intersection with State Secondary Road 1448; then northeasterly along said road to its intersection with State Secondary Road 1444; then northerly along said road to its intersection with State Highway 118; then easterly along said road to its intersection with State Secondary Road 1654; then easterly along said road to its intersection with Business U.S. Highway 17; then north along said highway to its intersection with State Secondary Road 1638; then easterly along said road to its intersection with the Craven-Beaufort County line; then southeast along said county line to its intersection with the Craven-Pamlico County line; then southerly and easterly along said county line to its intersection with the Craven-Carteret County line; then southeasterly and southwesterly along said county line to its intersection with the Craven-Jones County line; then north and west along said county line to the point of beginning.

Duplin County. That area bounded by a line beginning at the intersection of the Duplin-Sampson County line with State Secondary Road 1130; then east along said road to its intersection with State Secondary Road 1129; then northeast along said road to its intersection with State Highway 41; then southeast along said highway to its intersection with State Highway 11; then northerly along said highway to its intersection with State Secondary Road 1555; then northeast along said road to its intersection with State Secondary Road 1553; then southeasterly along said road to its intersection with State Secondary Road 1551; then east along said road to its intersection with State Secondary Road 1549; then southerly along said road to its intersection with State Highway 11; then east along said highway to its intersection with the Duplin-Lenoir County line; then southerly along said county line to its intersection with the Duplin-Jones County line; then southeast along said county line to its intersection with Duplin-Onslow County line; then southerly along said county line to its intersection with the Duplin-Pender County line; then west along said county line to its intersection with the Duplin-Sampson County line; then westerly along said county line to the point of beginning.

Jones County. The entire county.

Lenoir County. That portion of the county bounded by a line beginning at a point where State Secondary Road 1165 intersects the Lenoir-Duplin County line; then east along said road to its intersection with State Secondary Road 1111; then south along said road to its intersection with State Secondary Road 1112; then east along said road to its intersection with State Highway 11; then north along said highway to its intersection with State Secondary Road 1116; then east along said road to its intersection with State Secondary Road 1130; then northeasterly along said road to its intersection with State Secondary Road 1136; then east along said road to its intersection with State Secondary Road 1137; then northeasterly along said road to its intersection with State Secondary Road 1925; then east along said road to its intersection with State Secondary Road 1912; then north along said road to its intersection with State Secondary Road 1913; then easterly along said road to its intersection with State Secondary Road 1903; then south

along said road to its intersection with State Secondary Road 1915; then southeasterly along said road to the Lenoir-Jones County line; then southerly along said county line to the Lenoir-Duplin County line; then northerly along said county line to the point of beginning.

New Hanover County. The entire county.

Onslow County. The entire county.

Pamlico County. The entire county.

Pender County. The entire county.

Robeson County. That portion of the county bounded by a line beginning at a point where the Seaboard Coastline Railroad intersects the North Carolina-South Carolina State line, thence northeast along said railroad to its intersection with the Lumber River, thence southeast and east along said river to its intersection with State Secondary Road 1003, thence northeast along said road to its intersection with State Highway 211, thence east along said highway to its intersection with State Highway 41, thence east along said highway to its intersection with the Robeson-Bladen County line, thence southeast along the Robeson County line to its junction with the North Carolina-South Carolina State line, thence northwest along said State line to the point of beginning.

Sampson County. That portion of the county bounded by a line beginning at a point where U.S. Highway 701 intersects the Sampson-Bladen County line; then east along an imaginary line to the intersection of State Secondary Road 1132 and State Secondary Road 1133; then easterly along State Secondary Road 1133 to its intersection with State Highway 411; then east and south along said highway to its intersection with State Secondary Road 1125; then south along said road to its intersection with State Highway 41; then east along said highway to its intersection with U.S. Highway 421; then north along said highway to the Sampson-Duplin County line; then easterly along said county line to the Sampson-Pender County line; then southwesterly along said county line to the Sampson-Bladen County line; then northwesterly along said county line to the point of beginning.

(2) *Suppressive areas.* None.

* * * * *

South Carolina

(1) *Generally infested areas.*

Aiken County. The entire county.

Allendale County. The entire county.

Bamberg County. The entire county.

Barnwell County. The entire county.

Beaufort County. The entire county.

Berkeley County. The entire county.

Calhoun County. The entire county.

Charleston County. The entire county.

Clarendon County. The entire county.

Colleton County. The entire county.

Darlington County. The entire county.

Dillon County. The entire county.

Dorchester County. The entire county.

Edgefield County. That portion of the county bounded by a line beginning at a point where State Primary Highway 23 intersects the Edgefield-McCormick County line, thence east along said highway to its intersection with State Secondary Highway 10, thence southeast along said highway to its junction with U.S. Highway 25, thence southeast along said highway to its junction with State Primary Highway 19, thence southeast along said highway to its intersection with Edgefield-Aiken County line, thence southwest along said county line to its junction with the Savannah River, thence northwest along said river to its junction with the Edgefield-McCormick County line, thence north along said county line to the point of beginning.

Fairfield County. The entire county.

Florence County. The entire county.

Georgetown County. The entire county.

Hampton County. The entire county.

Horry County. The entire county.

Jasper County. The entire county.

Kershaw County. The entire county.

Lancaster County. The entire county.

Lee County. The entire county.

Lexington County. The entire county.

Marion County. The entire county.

Marlboro County. That portion of the county bounded by a line beginning at the intersection of U.S. Highway 15 and 401 with the South Carolina-North Carolina State line, then southeast along said State line to its junction with the Marlboro-Dillon County line, then southwest along said county line to its junction with the Great Pee Dee River, then northwesterly along said river to a point due west from the junction of State Secondary Highway 209 and State Primary Highway 912, then due east along an imaginary line from said point to said junction, then northeast from said junction along State Primary Highway 912 to its junction with State Secondary Highway 33, then east along said highway to its intersection with State Primary Highway 9, then southeast along said highway to its intersection with the corporate limits of the city of Bennettsville, then southerly, westerly, and easterly along said city limits to its intersection with State Primary Highway 9, then southeast along said highway to its intersection with U.S. Highway 15 and 401, then northeasterly along said highway to the point of beginning, excluding the cities of Bennettsville, McColl, and Tatum.

McCormick County. That portion of the county bounded by a line beginning at the junction of State Secondary Highway 179 and the Clark Hill Reservoir, thence northeast along said highway to its junction with State Primary Highway 283 at Plum Branch, thence east along said highway to its intersection with the McCormick-Edgefield County line, thence southerly along said county line to its junction with the Savannah River, thence northwesterly along said river and Clark Hill Reservoir to the point of beginning.

Newberry County. That portion of the county bounded by a line beginning at a point where U.S. Highway 76 intersects the Newberry-Laurens County line, then northeasterly, easterly, southerly, and westerly along the Newberry County line to its intersection with State Primary Highway 395, then northerly along said highway to its junction with State Secondary Highway 41, then northeasterly along said highway to its junction with U.S. Highway 76, then northwesterly along said highway to the point of beginning.

Orangeburg County. The entire county.

Richland County. The entire county.

Sumter County. The entire county.

Williamsburg County. The entire county.

(2) *Suppressive areas.* None.

* * * * *

Texas

(1) *Generally infested areas.*

Anderson County. The entire county.

Angelina County. The entire county.

Aransas County. The entire county.

Atascosa County. The entire county.

Austin County. The entire county.

Bandera County. That portion of the county bounded by a line beginning at a point where Texas Highway 16 intersects the Bandera-Kerr County line, thence southeasterly along said county line to its junction with the Bandera-Kendall County line, thence southeasterly along said county line to its junction with the Bandera-Bexar County line, thence southwesterly along said county line to its junction with the Bandera-Medina County line, thence southwesterly, westerly, northerly, and westerly along said county line to its intersection with Farm to Market Road 689, thence northerly along said road to its intersection with Texas Highway 16, thence northwesterly along said highway to the point of beginning, including the towns of Bandera and Medina.

Bastrop County. The entire county.

Bee County. That portion of the county bounded by a line beginning at a

point where U.S. Highway 59 intersects with the Bee-Live Oak County line, thence easterly along said highway to its intersection with Farm to Market Road 351, thence southeasterly along said road to its junction with State Highway 202, thence easterly along said highway to its intersection with the Bee-Refugio County line, thence southwesterly along said county line to its junction with the Bee-San Patricio County line, thence southwesterly and northwesterly along said county line to its junction with the Bee-Live Oak County line, thence northeasterly and northwesterly along said county line to the point of beginning, but excluding the city of Beeville.

Bell County. The entire county.

Bexar County. The entire county.

Blanco County. The entire county.

Bowie County. That portion of the county bounded by a line beginning at a point where Farm to Market Road 2148 intersects Interstate Highway 30, thence easterly along said highway to its intersection with the Texas-Arkansas State line, thence southerly along said State line to its intersection with Sulphur River, thence northwesterly and westerly along said river to its intersection with U.S. Highway 59, thence northerly along said highway to its junction with Farm to Market Road 2148, thence northerly along said road to the point of beginning.

Brazoria County. The entire county.

Brazos County. The entire county.

Burleson County. The entire county.

Caldwell County. The entire county.

Calhoun County. The entire county.

Camp County. That area within a circle having a radius of 3 miles with the center at the intersection of loop 238 and State Highway 11.

Cass County. That portion of the county lying east of U.S. Highway 59 including the cities of Atlanta and Queen City, but excluding the city of Linden.

Chambers County. The entire county.

Cherokee County. The entire county.

Collin County. The entire county.

Colorado County. The entire county.

Comal County. The entire county.

Dallas County. The entire county.

Denton County. The entire county.

De Witt County. The entire county.

Ellis County. That portion of the county lying north of U.S. Highway 287 including the cities of Midlothian and Ennis, but excluding the city of Waxahachie.

Falls County. The entire county.

Fayette County. The entire county.

Fort Bend County. The entire county.

Freestone County. The entire county.

Frio County. That portion of the county bounded by a line beginning at a point where Farm to Market Road 462 intersects the Frio-Median County line, thence east along said county line to its junction with the Frio-Atascosa County line, thence south along said county line to its junction with the Frio-LaSalle County line, thence west along said county line to its intersection with Farm to Market Road 1582, thence northwest along said road to its junction with U.S. Highway 81, thence northeast along said highway to its intersection with Farm to Market Road 140, thence northwesterly along said road to its intersection with Interstate Highway 35, thence northerly along said highway to its intersection with Farm to Market Road 462, thence northwest along said road to the point of beginning, including the city of Pearsall and the town of Moore.

Galveston County. The entire county.

Gillespie County. The entire county.

Goliad County. The entire county.

Gonzales County. The entire county.

Grayson County. That portion of the county lying south of a line beginning at a point where State Highway 56 intersects the Cooke-Grayson County line, thence east along said highway to its junction with U.S. Highway 82, thence east along said highway to its intersection with the Grayson-Fannin County line, but excluding the city of Sherman and the towns of Whitesboro, Southmayd, and Bells.

Gregg County. The entire county.

Grimes County. The entire county.

Guadalupe County. The entire county.

Hardin County. The entire county.

Harris County. The entire county.

Harrison County. The entire county.

Hays County. The entire county.

Henderson County. That portion of the county lying east of a line beginning at a point where Farm to Market Road 314 intersects the Van Zandt-Henderson County line, thence south along said road to its junction with Farm to Market Road 315, thence southwesterly along said road to its junction with the Henderson-Anderson County line, but excluding the cities of Brownsboro, Moor Station and Poynor.

Hill County. That area within a circle having a radius of 4 miles with the center where State Highway 22 intersects U.S. Highway 77 at the most northern point.

Houston County. The entire county.

Jackson County. The entire county.

Jasper County. The entire county.

Jefferson County. The entire county.

Jim Wells County. That portion of the county lying north of a line beginning at a point where Farm to Market Road 2295 intersects the Jim Wells-Duval County line, thence southeast and east along said road to its junction with State Highway 141, thence east along said highway to its intersection with the Jim Wells-Kleberg County line, but excluding the city of San Diego.

Johnson County. The entire county.

Kendall County. The entire county.

Kerr County. The entire county.

Kleberg County. The entire county.

Lavaca County. The entire county.

Lee County. The entire county.

Leon County. The entire county.

Liberty County. The entire county.

Limestone County. The entire county.

Madison County. The entire county.

Marion County. The entire county.

Matagorda County. The entire county.

McLennan County. The entire county.

Medina County. That portion of the county bounded by a line beginning at a point where Texas Farm to Market Road 689 intersects the Medina-Bandera County line, thence easterly, southerly, and northeasterly along said county line to its junction with the Medina-Bexar County line, thence south along said county line to its junction with the Medina-Frio County line, thence west along said county line to its intersection with Texas Farm to Market Road 462, thence northwest and north along said road to its intersection with U.S. Highway 90, thence east along said highway to its junction with Texas Farm to Market Road 689, thence northerly along said highway to the point of beginning, excluding the towns of Yancey and Hondo.

Milan County. The entire county.

Montgomery County. The entire county.

Nacogdoches County. The entire county.

Navarro County. That area within a circle having a radius of 3 miles with the focal point at the intersection of Texas Highway 31 and Farm to Market Road 1129.

Newton County. The entire county.

Nueces County. The entire county.

Orange County. The entire county.

Panola County. The entire county.

Polk County. The entire county.

Rains County. That portion of the county bounded by a line beginning at a point where U.S. Highway 69 intersects the Rains-Hunt County line, thence southeasterly along said highway to its junction with Farm to Market Road 47, thence southerly and southwesterly along said road to its intersection with the Rains-Van Zandt County line, thence northwesterly along said county line to its junction with the Rains-Hunt County line, thence northerly and easterly along said county line to the point of beginning, but excluding the city of Point.

Refugio County. The entire county.

Robertson County. The entire county.

Rockwall County. The entire county.
Rusk County. The entire county.
Sabine County. The entire county.
San Augustine County. The entire county.
San Jacinto County. The entire county.
San Patricio County. The entire county.
Shelby County. The entire county.
Smith County. The entire county.
Tarrant County. The entire county.
Travis County. The entire county.
Trinity County. The entire county.
Tyler County. The entire county.
Upshur County. That portion of the county lying south of a line beginning where State Highway 154 intersects the Wood-Upshur County line, thence easterly along said highway to its intersection with State Highway 155, thence northeasterly along said highway to its intersection with the Upshur-Marion County line where the line ends, including the city of Gilmer.
Victoria County. The entire county.
Walker County. The entire county.
Waller County. The entire county.
Washington County. The entire county.
Wharton County. The entire county.
Williamson County. The entire county.
Wilson County. The entire county.
Wood County. That portion of the county lying south of the city limits of Alba, State Highway 182 and State Highway 154, but excluding the cities of Alba and Quitman.

(2) *Suppressive areas*. None.

* * * * *

(Secs. 8, 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33 (7 U.S.C. 161, 162, 150ee); 7 CFR 2.17, 2.51, 371.2(c); 7 CFR 301.81–2)

Done at Washington, D.C., this 19th day of July 1984.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84–19494 Filed 7–20–84; 9:56 am]

BILLING CODE 3410–34–M

Federal Crop Insurance Corporation

7 CFR Part 402

[Docket No. 0804S; Amdt. No. 2]

Raisin Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1984 and succeeding crop years, by: (1) Changing the policy to make it easier to read; (2) adding a provision which permits determination of indemnities based on the tonnage report rather than at loss adjustment time; (3) providing for a coverage level if the insured does not select one; (4) adding a 60-day claim for indemnity provision; (5) changing the cancellation/termination dates to conform with farming practices; (6) providing that any change in the policy will be available in the service office by a certain date; (7) adding a definition for "service office;" (8) providing for unit determination when the tonnage report is filed; (9) adding sections concerning "descriptive headings," "determinations," and "notices"; (10) amending the interest rate due on premium payment after a certain date; (11) redesignating Appendix B to Part 402 as Appendix A, listing the counties where raisin crop insurance is authorized to be offered; (12) providing an extension of time for filing a claim for indemnity; and (13) providing that raisins damaged by rain, and reconditioned, must meet Raisin Administrative Committee (RAC) standards for marketable raisins.

FCIC also issues a new subsection in the raisin crop insurance regulations to contain the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations.

In reviewing these regulations, FCIC determined that the current minimum value of $75.00 per ton, established as the minimum value to count of raisins not removed from the vineyard, did not accurately reflect the market value of such raisins. Indications are that processors many times offer less than this amount for such raisins as salvage. Therefore, FCIC determined that the value to count for raisins produced on the unit and not removed from the vineyard shall be the larger of the salvage value or $35.00 per ton. This change will be of benefit to the insured producer and will more accurately reflect the market value of salvaged raisins to be considered as production to count.

The intended effect of this rule is to update the policy for insuring raisins in accordance with Departmental Regulation 1512–1, requiring a review of the regulations as to need, currency, clarity, and effectiveness, and to codify OMB control numbers assigned under the Paperwork Reduction Act to information collection requirements in these regulations.

EFFECTIVE DATE: August 7, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed uder USDA procedures established in Departmental Regulation 1512–1 (Dec. 15, 1983). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

As set forth in the final rule related notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, requiring intergovernmental consultation with State and local officials, are excluded from the provisions of Executive Order No. 12372.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

On Tuesday, October 11, 1983, FCIC published a notice of proposed rulemaking amending the Raisin Crop Insurance Regulations under the provisions of Departmental Regulation 1512–1, and to issue a new subsection to contain the Office of Management and Budget (OMB) control numbers assigned to information collection requirements of these regulations. The notice of proposed rulemaking published in the **Federal Register** at 48 FR 46062 was incorrectly listed as Amendment No. 3. That error is corrected herein. The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. On Thursday, May 31, 1984, FCIC published a Supplemental Notice of Proposed Policy Rulemaking and Extension of Comment Period in the **Federal Register** at 49 FR 22660. The

supplemental notice was for the purpose of soliciting comments on proposed additional changes to (1) provide an extension of the time for filing a claim for idemnity, and (2) providing that raisins damaged by rain and reconditioned must meet the Raisin Administrative Committee (RAC) standards for marketable raisins. The public was given an additional 30 days in which to submit written comments, data, and opinions on the supplemental notice, but none were received. Therefore, the proposed rule published at 48 FR 46062, and the supplemental notice of proposed policy rulemaking, published at 49 FR 22660, are adopted as a final rule, incorporated herein, effective for the 1984 and succeeding crop years.

List of Subjects in 7 CFR Part 402

Crop insurance, Raisin.

Final rule

PART 402—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Raisin Crop Insurance Regulations, effective for the 1984 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 402 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 402.3 is added to read as follows:

§ 402.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 402) 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 Nos. 0563–0003 and 0563–0007.

3. 7 CFR 402.7(d) is revised to read as set forth below:

§ 402.7 The application and policy.

* * * * *

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38; first published at 48 FR 1023, January 10, 1983) and may be amended from time to time for subsequent crop years. The provisions of the Raisin Insurance Policy for the 1984 and succeeding crop years, are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Raisin—Crop Insurance Policy

(This is a continuous contract. Refer to Section 16.)

AGREEMENT TO INSURE: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against the unavoidable loss resulting from rain occurring within the insurance period, on raisins while in the vineyard, on trays or in rolls for drying unless excepted, excluded, or limited by the actuarial table.

b. We shall not insure against any loss of production due to:

(1) the neglect, mismanagement or wrong doing of you, any member of your household, your tenants or employees;

(2) the failure to follow recognized good raisin management practices;

(3) the impoundment of water by any governmental, public or private dam or reservoir project; or

(4) any cause other than rain.

2. Tonnage and share insured.

a. The crop insured for each crop year shall be raisins of the grape varieties for which an amount of insurance and premium rate are provided by the actuarial table.

b. The tonnage insured for each crop year shall be the tonnage in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. the insured share shall be your share as landlord, owner-operator, or tenant in the insured raisins at the earlier of the time insurance attaches or at the time damage becomes apparent, as determined by us.

d. We do not insure any raisins which are first placed on trays after:

(1) September 20; or

(2) an earlier date if specified by the actuarial table.

3. Report of tray count, tonnage and share.

You shall report on our form:

a. for the insured raisins which are not damaged, the net tons of all raisins produced in the county in which you have a share and your share as soon as delivery records are available.

b. for the insured raisins which are damaged:

(1) The name of the variety;

(2) The location(s) of vineyard(s);

(3) The number of trays upon which the raisins have been placed for drying; and

(4) Your share.

We are authorized by you to determine or verify the insured tonnage from records maintained by the Raisin Administrative Committee of the United States Department of Agriculture.

You shall report separately any tonnage that is not insurable. You shall report if you do not have a share in any insurable tonnage in the county. This report shall be submitted annually on or before March 31. Indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we determine by unit the insured tonnage and share or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of insurance and coverage levels.

a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. Coverage level 2 will apply, if you do not elect a coverage level.

c. You may change the amount of insurance and coverage level on or before the closing date for submitting applications for the crop year established by the actuarial table.

d. If the raisins are not damaged by rain the amount of insurance will be determined by multiplying the insured tonnage times the amount of insurance per ton, times your share.

e. If the raisins are damaged by rain, the number of trays upon which the raisins have been placed for drying shall be multiplied by the average tray weight, and such product or actual marketing records or both shall be the basis for determining the insured tonnage. The amount of insurance for any unit will then be determined by multiplying the insured tonnage times the amount of insurance per ton, times your share.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70

PREMIUM ADJUSTMENT TABLE [1]—Continued

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance times the premium rate, times the insured tonnage, times your share on the date insurance attaches, times the applicable premium adjustment percentage contained in the following table:

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the vineyard operation; or

(3) Your contract if you stop vineyard operations in one county and start vineyard operations in another county.

d. If participation is not continuous, any premium shall be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a shall be applicable.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches at the time the raisins are placed on the trays for drying and ends the earliest of:

a. October 25;

b. The date the raisins are boxed; or

c. The date the raisins are removed from the vineyard.

8. Notice of damage or loss.

a. If you are going to claim an indemnity on any unit, we must be given notice within seven days of the date when damage from rain becomes apparent, giving the date(s) of such damage.

b. We may reject any claim for indemnity if such damage is not reported within seven days or if any of the requirements of section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity must be submitted to us on our form not later than March 31 after the calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of raisins on the unit and that any loss of production was directly caused by rain during the insurance period;

(2) Authorize us in writing to examine and obtain any records pertaining to the production and/or marketing of the insured raisins under this contract from the raisin packer, raisin reconditioner and/or the Raisin Administrative Committee established under order of the United States Department of Agriculture; and

(3) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured tonnage of raisins by the amount of insurance per ton;

(2) Subtracting therefrom the total value of production to count; and

(3) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity shall be reduced proportionately.

e. Undamaged raisins or raisins damaged solely by uninsured causes shall be valued at the current market value or the amount of insurance, whichever is higher.

f. Raisins damaged partially by rain and partially by uninsured causes shall be valued at the highest prices obtainable, subject to an adjustment for any reduction in value due to uninsured causes.

g. Raisins damaged by rain, but which are reconditioned and meet Raisin Administrative Committee (RAC) standards for marketable raisins, shall be valued at the current market price or the amount of insurance, whichever is higher. An allowance for reconditioning will be deducted from that value. The allowance for reconditioning will be made only when the raisins have been inspected and found to contain mold, imbedded sand, or micro-organisms in excess of tolerances for marketable raisins.

The maximum allowance for any one reconditioning as a result of rain is contained in the actuarial table, but the total reconditioning allowance must not exceed the value of the raisins after reconditioning.

h. We may require you to recondition a representative sample(s) of not more than 10 tons of raisins damaged by rain to determine if they meet RAC standards for marketable raisins. On the basis of determinations made after such sampling, we may require you to recondition all raisins, or we may value raisins at the current market price or the amount of insurance, whichever is higher. If the representative sample(s) do not meet RAC standards for marketable raisins, the cost of reconditioning such sample(s) must be deducted from the total value of the raisins for the unit can be marketed as undamaged raisins, shall be valued at the current market price or the amount of insurance, whichever is higher, except that an allowance for

reconditioning shall be deducted from such value. The allowance for reconditioning shall be made only when the raisins have been inspected and found to contain mold, imbedded sand, or microorganisms. The maximum allowance for any one reconditioning as a result of rain is contained in the actuarial table, but the total reconditioning allowance shall not exceed the value of the raisins after reconditioning.

i. The value of count for any raisins produced on the unit and not removed from the vineyard, shall be the larger of the appraised salvage value or $35.00 per ton. You shall be responsible for boxing and delivering any raisins that can be removed from the vineyard.

j. We may acquire all of the right and title to your share of any raisins damage by rain. In such event, the raisins shall be valued at "zero" in determining the amount of loss and we have the right of ingress or egress to the extent necessary to take possession of, care for, and remove such raisins.

k. Raisins destroyed without inspection shall be valued at the amount of insurance.

l. You shall not abandon any tonnage to us unless by agreement under subsection j.

m. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

n. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

o. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date insurance attaches for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the corp year only on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. Records and access to farm.

You shall keep for two years after the time of loss, records of the insured, uninsured and planted acreage in your vinyard operation. Any person designated by us shall have access to such records and the vinyard for purposes related to the contract.

15. Other insurance.

If in any crop year, you obtain any other insurance on any unit(s) against rain damage or loss while the raisins are on the trays for drying, this contract shall be voided for that crop year on such unit(s) if such other insurance is obtained before insurance attaches under this contract.

16. Life of contract: Cancellation and termination.

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are July 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. *However*, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

17. Contract changes.

We may change any terms and provisions of the contract from year to year. If the amount of insurance you selected is no longer offered, the actuarial table will provide the amount of insurance which you shall be deemed to have elected. All contract changes shall be available at your service office by April 30 preceding the cancellation date. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

18. Meaning of terms.

For the purposes of raisin crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance, coverage levels, premium rates, varieties, reconditioning allowances, and related information regarding raisin insurance in the county.

b. "Contiguous land" means land which is touching at any point except that land which is separated by only a public or private right-of-way shall be considered contiguous.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the calendar year in which the raisins are placed on trays for drying.

e. "Insured" means the person who submitted the application accepted by us.

f. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

g. "Raisin tonnage report" means a form prescribed by us for annually reporting all your share of and tonnage of raisins in the county.

h. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

i. "Tenant" means a person who rents land from another person for a share of the raisins or a share of the proceeds therefrom.

j. "Ton" means 2,000 pounds When deemed appropriate, we may determine raisin tonnage computed on the basis of one ton of raisins insured for every four and a half tons of fresh grapes when first placed on trays for drying.

k. "Unit" means all insurable acreage of the same grape variety, located on contiguous land, on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the raisins on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between you and us. Units as herein defined will be determined when the tonnage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any tonnage and share thereof reported by or for your spouse or child or any member of your household to be

your bona fide share or the bona fide share of any other person having an interest therein.

19. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

20. Determinations.

All determination requred by the policy shall be made by us. If you disagree with our determinations you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

21. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

4. 7 CFR Part 402 is further amended by redesignating Appendix B as Appendix A and revising Appendix A to read as follows:

Appendix A—Counties Designated for Raisin Crop Insurance

The following counties are designated for Raisin Crop Insurance under the provisions of 7 CFR 402.1.

California

Fresno	Merced
Kern	Stanislaus
Kings	Tulare
Madera	

Done in Washington, D.C. on July 3, 1984.

Diana Moslak,

Acting Secretary, Federal Crop Insurance Corporation.

Dated: July 16, 1984.

Approved by:

Thomas D. Lynn,

Acting Manager.

[FR Doc. 84-19352 Filed 7-20-84; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Stabilization and Conservation Service

7 CFR Parts 724, 725, and 726

Tobacco Allotment and Marketing Quota Regulations; All Kinds of Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations at 7 CFR Parts 724, 725, and 726 to provide that the average market prices received in the immediately preceding marketing year by producers for all kinds of tobacco subject to marketing quotas and the rates of penalty for all kinds of tobacco subject to marketing quotas will no longer be codified. The rates of penalty will be published annually as a notice in the **Federal Register.**

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: C. Douglas Richardson, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013. (202) 447–4281.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." It has been determined that this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service (ASCS) in not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

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

Section 314 of the Agricultural Adjustment Act of 1983, as amended, (the "1983 Act") provides that marketing quota penalties shall be assessed whenever a kind of tobacco is marketed in excess of the marketing quota established for the farm on which such tobacco is produced. Section 314 of the 1983 Act provides that the rates of penalty per pound for all kinds of tobacco shall be seventy-five (75) percent of the average market prices for such kinds of tobacco for the immediately preceding marketing year. The average market prices received by producers for the immediately preceding marketing year for all kinds of tobacco are determined and announced annually by the Crop Reporting Board, Statistical Reporting Service, USDA.

Currently, the regulations found at 7 CFR 724.88, 725.92, and 726.86 are amended annually to set forth the average marketing prices for specified tobaccos for previous marketing years and the rates of penalty for these tobaccos. The annual publication of these average market prices and rates of penalty are determined as the result of mathematical calculations which are merely ministerial in nature.

In order to simplify the announcement of rates of penalty applicable to all kinds of tobacco for which marketing quotas are in effect for a marketing year, it has been determined that the rates of penalty will be determined and announced annually in a notice published in the **Federal Register.**

Since the only purpose of this final rule is to delete certain regulations the subject of which will be published annually in a notice in the **Federal Register,** it has been determined that no further public rulemaking is required.

List of Subjects in 7 CFR Parts 724, 725, and 726

Acreage allotment, Marketing quota, Tobacco.

Final Rule

PARTS 724, 725, and 726—[AMENDED]

Accordingly, 7 CFR Parts 724, 725, and 726 are amended by revising §§ 724.88, 725.92, and 726.86 to read as shown below. The text of each section is identical except for the section number. The text of the section is set out only once.

§ ——.—— Rate of penalty.

The rate of penalty for a marketing year shall be equal to seventy-five (75) percent of the average market price for the kind of tobacco for the immediately preceding marketing year as determined by the Crop Reporting Board, Statistical Reporting Service, U.S. Department of Agriculture. The rate of penalty will be determined and announced annually for each marketing year in a notice published in the **Federal Register.**

(Sec. 314, 52 Stat. 48, as amended, (7 U.S.C. 1314))

Signed at Washington, D.C. on July 18, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-19335 Filed 7-20-84; 8:45 am]

BILLING CODE 3410-05-M

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7 CFR Part 760

Dairy Indemnity Payment Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Dairy Indemnity Payment Program Regulations to extend without change the operation of the program through September 30, 1984.

EFFECTIVE DATE: This regulation shall become effective July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Clarence Domire, Agricultural Program Specialist, Emergency Operations and Livestock Programs Division, ASCS, USDA, South Building, Room 4095, Washington, D.C. 20013; (202) 447-7673.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 760) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control No. 0560-0045.

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "not major." This rule has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this rule applies are: Title-Dairy Indeminity Payments, Number 10.53, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The Dairy Indemnity Payment Program was originally authorized by Section 331 of the Economic Opportunity Act of 1964 (75 Stat. 525). The statutory authority for the program has been extended several times, most recently by the Agriculture and Food Act of 1981 (95 Stat. 1220) which authorized the program to be carried out through September 30, 1985. The objective of the program is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses on milk or milk products removed from commercial markets because such products contain certain harmfull residues. In addition, dairy farmers can also be indemnified for income losses due to residues of toxic substances and contamination by nuclear radiation or fallout.

The Agriculture and Food Act of 1981 made no substantive changes with respect to the Dairy Indemnity Payment Program but merely extended the time period for conducting the program. The sum of $1.8 million was appropriated to cover fiscal year 1983 and 1984 claims under the program. Of this amount, $1,467,983.59 was used to pay fiscal year 1983 claims. This leaves $392,016.41 remaining for the payment of fiscal year 1984 claims. The regulations currently authorize the operation of the program through September 30, 1983. Accordingly, it is necessary to amend these regulations to provide that the program will be carried out through the end of the fiscal year (i.e., September 30, 1984). In addition, the regulations have been amended to add certain control numbers assigned by OMB to comply with the information collection requirements of the Paperwork Reduction Act.

Since the only purpose of this final rule is to extend the operation of the Dairy Indemnity Payment Program, it has been determined that no further public rulemaking is required. Therefore, this regulation shall become effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 760

Bees, Dairy products, Honey indemnity payments, Pesticides and pests.

Final Rule

PART 760—[AMENDED]

Accordingly, the regulations at 7 CFR Part 760 are amended as follows:

1. The Table of Contents to Part 760 Dairy Indeminity Payment Programs is amended by adding § 760.34 as follows:

Sec.

* * * * *

760.34 Paperwork Reduction Act assigned numbers.

§ 760.2 [Amended]

* * * * *

2. In § 760.2, paragraphs (k) (1) and (2), (l), and (o) are amended by striking out "1983" and inserting in lieu thereof "1984".

§ 760.8 [Amended]

3. Section 760.8 is amended by striking out "1983" inserting in lieu thereof "1984".

4. A new section 760.34 is added to read as follows:

§ 760.34 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 760) 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 Control Number 0560-0045.

(Secs. 1, 2 and 3, Pub. L. 90-484, 82 Stat. 750, as amended (7 U.S.C. 450j, k, and l)

Signed at Washington, D.C., on July 18, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-19407 Filed 7-20-84; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

7 CFR Part 1421

CCC Grain Price Support Regulations Governing Loan Purchase Program for 1984 and Subsequent Crops of Rice

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations governing the Loan and Purchase Program for 1984 and Subsequent Crops of Rice, 7 CFR 1421.300 *et seq.*, to delete any references to rice stored identity preserved in an approved warehouse. It has been

determined that identity preserved warehouse storage for rice will no longer be authorized by the Commodity Credit Corporation for the 1984 and subsequent crops of rice.

DATE: This final rule shall become effective July 1,1984.

ADDRESS: Director, Cotton, Grain and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Chris Niedermayer, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447-4229. A separate regulatory impact analysis was not prepared because the effects of this final rule are primarily administrative.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that the provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loans and Purchases, Number 10.051 as filed in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

On November 2, 1983, the Department of Agriculture published in the **Federal Register** a notice of proposed determinations with respect to the 1984 crop of rice (48 FR 50589). Interested parties were encouraged to comment on several proposals including the elimination of IP storage as an option under Uniform Rice Storage Agreements between CCC and rice warehousemen.

Four sets of comments were received which addressed the issue of elimination of IP storage. Two comments opposed the elimination of IP storage and two favored it. One of the two comments opposing the proposal felt that it was unfair for the warehouseman to have to assume all the obligations of shrinkage of the rice, and that, if IP storage was discontinued, CCC should allow some shrinkage tolerance on commingled storage. The other comment opposing the proposal stated that, since rice warehouses do not normally trade in rice and have no opportunity to update CCC inventories, eliminating IP storage would place rice warehousemen under hardship, reduce storage availability, and increase costs to warehouses and CCC.

After review of the comments and other information available to CCC, it has been determined that IP storage should be eliminated. An analysis of rice storage rates offered to CCC by rice warehousemen indicated that the IP and commingled storage rates were nearly the same even though the warehouseman's liability in delivery and settlement of IP-stored rice is considerable less. Discontinuing IP storage will equalize the liability of all rice warehousemen who store rice for CCC and will eliminate many of the numerous problems and delays in settling loans with producers who pledged IP-stored rice as collateral for a price support loan.

The elimination of IP storage was partially implemented by an amendment to the Uniform Rice Storage Agreements currenty in effect, which was sent to warehousemen for their approval on March 13, 1984. The use of IP storage will be totally discontinued when all Uniform Rice Storage Agreements are renewed on July 1, 1984.

Since the only purpose of this rule is to amend the regulations at 7 CFR §§ 1421.300 through 1421.312 to delete obsolete references to identity preserved (IP) warehouse storage which will no longer be authorized under the Uniform Rice Storage Agreements which go into effect on July 1, 1984, and to make certain other limited technical changes, it has been determined that no further public rulemaking is required. This rule shall become effective on July 1, 1984.

Accordingly, the regulations governing price support for 1982 and subsequent crops of rice set forth at 7 CFR 1421.300 through 1421.312 are amended as stated herein for the 1984 and subsequent crops of rice. The material previously appearing in this subpart remains in full force and effect as to the crops to which it was applicable.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs—Rice Price Support Programs.

Final Rule

Accordingly, 7 CFR Part 1421 is amended as follows:

PART 1421—[AMENDED]

1. The title of the Subpart—Loan and Purchase Program for 1982 and Subsequent Crops Rice is revised to read as follows:

Subpart—Loan and Purchase Program for 1984 and Subsequent Crops Rice

2. The authority citation for §§ 1421.300–1421.312 reads as follows:

Authority: Secs. 4, 5, 62 Stat. 1070, 1072, as amended (15 U.S.C. 714 b and c); secs. 101(i), 401, 95 Stat. 1242, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1421).

3. Section 1421.300 is revised to read as follows:

§ 1421.300 Purpose.

This subpart contains provisions which, together with: (a) The General Regulations Governing Price Support for the 1978 and Subsequent Crops: (b) the Cooperative Marketing Associations eligibility requirements for price support as set forth in Part 1425 of this title; and (c) any amendments or revisions of such regulations, set forth in requirements with respect to price support for the 1984 and subsequent crops of rice.

4. In § 1421.304, paragraph (b) is revised to read as follows:

§ 1421.304 Determination of quality.

* * * * *

(b) *Loans and purchases.* In the case of rice stored commingled in an approved warehouse, loans and purchases will be made on the basis of the quality shown on the warehouse receipt or supplemental certificate, if applicable. Loans and purchases on farm-stored rice will be based on the rate published in a notice in the **Federal Register** for the applicable crop year.

5. In § 1421.305, paragraph (a) is revised to read as follows:

§ 1421.305 Determination of quantity.

(a) *In warehouse.* The amount of a loan on the quantity of eligible rice stored commingled in an approved warehouse shall be based on the weight specified on the warehouse receipts representing such rice which is pledged

as security for the loan, or on the supplemental certificate, if applicable.

* * * * *

6. In § 1421.306, paragraphs (b) and (c) are revised to read as follows:

§ 1421.306 Warehouse receipts.

* * * * *

(b) *Entries.* Each warehouse receipt or supplemental certificate properly identified with the warehouse receipt must be issued in accordance with the Uniform Rice Storage Agreement. The following items must be shown on the warehouse receipt and/or supplemental certificate:

(1) Net weight;
(2) Class;
(3) Grade;
(4) Grading factors;
(5) Milling yield;
(6) Moisture;
(7) That the rice is stored commingled;
(8) The manner by which rice was received (truck or rail).

(c) *Supplemental certificate.* When required, the supplemental certificate shall be executed by the warehouse operator for commingled rice.

§ 1421.307 [Amended]

7. In § 1421.307, paragraph (a) is corrected by deleting the words "farm storage loan" and inserting in lieu thereof the words "farm-stored loan".

8. Section 1421.308 is revised to read as follows:

§ 1421.308 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11.

§ 1421.309 [Removed]

9. Part 1421 is amended by removing § 1421.309.

§ 1421.310 [Amended]

10. In § 1421.310, paragraphs (a) and (b) are redesignated as paragraphs (b) and (c); the first paragraph is redesignated as paragraph (a); and redesignated paragraphs (b) and (c) are revised to read as follows:

* * * * *

(b) *Commingled warehouse storage.* Settlement for eligible rice stored commingled in an approved warehouse and acquired by CCC under loan or by purchase shall be made on the basis of the class and the grade, quality, and quantity as shown on the warehouse receipt or supplemental certificate, if applicable.

(c) *Farm Storage.* Settlement for eligible rice acquired under loan or purchase delivered into an approved warehouse from farm storage pursuant to instructions of the county ASCS office, where the warehouse issues a commingled warehouse receipt, shall be made on the basis of the class and the grade, quality and quantity as shown on the warehouse receipt or supplemental certificate, if applicable. Settlement for eligible rice acquired under loan or purchase delivered to CCC at other than an approved warehouse shall be made on the basis of the class and the grade and quality shown on the Federal or Federal-State sample inspection certificate and on the basis of the quantity shown on the weight certificates.

Signed at Washington, D.C., on July 18, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-19408 Filed 7-20-84; 8:45 am]
BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 205

Revocation of Approval of Petitions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations by adding a new situation to the list of circumstances where automatic revocation of an immigrant visa petition occurs. The situation added is where an alien admitted for lawful permanent residence terminates or loses that status. The petitioner's loss of status causes the termination of both the validity of the second preference visa petition and the alien beneficiary's eligibility to receive an immigrant visa. This circumstance is not contained in the present automatic revocation list although it is provided for in 8 CFR 204.4(a). By implementing this change, the Service formalizes current procedures and provides a clearer understanding of the process to the public. The rule also amends the regulations to allow any Service officer who is authorized to make decisions on petitions to accept a request to withdraw a visa petition instead of only the officer who originally approved the petition. This will allow the Service to act more efficiently since at present the withdrawal request must be sent to the approving office.

EFFECTIVE DATE: August 22, 1984.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048.

For Specific Information: Bert C. Rizzo, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, (202) 633-3946.

SUPPLEMENTARY INFORMATION: Section 204.4(a) of 8 CFR provides that an approved visa petition remains valid only as long as the relationship established in the petition is valid and the status established in the petition remains the same. The term "and status" of that regulation refers to the status of the petitioner. For example, a lawful permanent resident petitioner must continue to be a lawful permanent resident in order for a beneficiary to maintain entitlement to receive a second preference immigrant visa. At the present time the regulation does not provide a specific mechanism or procedure for terminating petition validity when a petitioner loses his or her status other than through death.

A lawful permanent resident may lose that status through a variety of methods, including deportation under section 242 of the Act, exclusion under section 236 of the Act, or by voluntarily relinquishing residence. Any of these occurrences would trigger revocation of an approved visa petition.

One of the purposes of the Immigration and Nationality Act of 1952 is the reunification of families. If the petitioner in a visa petition proceeding is no longer entitled to live permanently in the United States, continuation of the validity of the petition would not serve that purpose. Therefore, automatic revocation of the approval would be the best method to accomplish that purpose.

8 CFR Part 205 lists a number of circumstances under which the approval of an immigrant visa petition is terminated. These generally concern the loss of status of the petitioner or withdrawal of the petition by the petitioner. This rule adds to these circumstances the situation in which the petitioner loses the status held at the time the petition was filed. Accordingly, when a lawful permanent resident terminates or otherwise loses that status, the petition is automatically revoked, unless it is automatically converted to a new classification as a result of the naturalization of the petitioner. By implementing this change, the Service formalizes the current procedure and provides a clearer

understanding of the process to the public. Also, the addition of this situation to the automatic revocation list will provide for official notification to the petitioner, the American consul, and the alien beneficiary (through the consul) when the situation occurs.

The current regulation also states that an approved visa petition is automatically revoked when the petitioner files a formal notice of withdrawal with the officer who approved the petition. Approval of petitions is delegated to the district directors of the Service. Accordingly, under the current regulation, only the district director who approved the petition can accept the petitioner's notice of withdrawal. This causes needless delay in administrative processing since some requests for withdrawal of visa petition approval must be transferred from the office of receipt to the office which originally processed the petition. After acceptance of the withdrawal and completion of the revocation, the file must then be returned to the district office presently maintaining the record on the alien beneficiary. This amendment would allow any district director to accept a notice of withdrawal and to send the required notice of revocation to the American consul and to the petitioner, thus easing administrative procedure and speeding response to the petitioner.

This is not a major rule within the meaning of section 1(b) of E.O. 12291.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking is unnecessary because the rule merely implements existing Service procedure found elsewhere in this title.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 8 CFR Part 205

Administrative practice and procedure, Immigration, Revocation, Petitions.

Accordingly, Title 8 of the Code of Federal Regulations is amended as follows:

PART 205—REVOCATION OF APPROVAL OF PETITIONS

In § 205.1, paragraph (a)(1) is revised; a new paragraph (a)(9) is added; and paragraphs (c) (3) and (4) are revised to read as follows:

§ 205.1 Automatic revocation.

(a) *Relative petitions.*

(1) Upon written notice of withdrawal filed by the petitioner with any officer of the Service who is authorized to grant or deny petitions.

* * * * *

(9) Upon the legal termination of the petitioner's status as an alien admitted for lawful permanent residence in the United States; unless the petitioner became a United States citizen, then § 204.5(c) of this title applies.

* * * * *

(c) *Petitions under section 203(a) (3) or (6).*

* * * * *

(3) Upon written notice of withdrawal filed by the petitioner, in third preference cases, with any office of the Service who is authorized to grant or deny petitions.

(4) Upon written notice of withdrawal filed by the petitioner, in sixth preference cases, with any officer of the Service who is authorized to grant or deny petitions.

* * * * *

(Secs. 103 and 205, Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1155))

Dated: June 27, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-19387 Filed 7-20-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 83-040I]

Importation of Meat and Poultry Products; Refused Entry Product

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) regulations concerning imported product require, among other things, strict controls over the movement and sale of "refused entry" product. One requirement is that "refused entry" product must be exported within 45 days after notice is given to the Director of Customs unless the owner or consignee disposes of it by destroying it or by converting it to animal food within the 45-day period. FSIS has recently learned, however, that some "refused entry" product, after being exported to other countries, is being reshipped to the United States for export. To ensure that "refused entry" product does not enter into United States' commerce, FSIS is undertaking this emergency rulemaking prohibiting the return to the United States of any product "refused entry" into commerce within the United States.

DATE: Interim rule effective July 23, 1984; comments must be received on or before September 21, 1984.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided under the Poultry Products Inspection Act to: Dr. Grace Clark (202) 447-7610. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Dr. Grace Clark, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-7610.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made a determination that this interim rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator, FSIS, has determined that this interim rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). This interim rule strengthens the current regulations by prohibiting the return to the United States of any previously designated "refused entry" product which was required to permanently leave the United States in the initial regulation.

Comments

Interested persons are invited to submit comments concerning this action. Written comments must be sent in duplicate to the Regulations Office and should bear reference to the docket

number located in the heading of this document. Any person desiring opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Dr. Grace Clark so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this action will be made available for public inspection in the Regulations Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

On August 19, 1982, FSIS published in the **Federal Register** (47 FR 36109) an interim rule, effective immediately, establishing new procedures for handling imported product to decrease the likelihood that "refused entry" meat and poultry product will enter into United States' commerce. FSIS had received information from the Department of Agriculture's Office of the Inspector General revealing that some product that had been refused entry at United States' ports because it was adulterated or misbranded had entered into the United States for use as human food.

The interim rule was made a final rule on April 13, 1983, with an effective date of May 13, 1983 (48 FR 15887). The rule provides, among other things, stricter controls on the movement and sale of "refused entry" product, one of which requires that such product be exported to another country within a 45-day period unless the owner or consignee, within 45 days, causes it to be destroyed as human food or converts it to animal food.

As a result of information received and follow-up investigations, FSIS has learned that some "refused entry" product has been exported to another country within the 45-day limitation but then returned to the United States through another port and/or under license provided for the transshipment of product not intended for sale in the United States. This practice defeats the intent of the April 13, 1983, final rule, which is to decrease the likelihood that adulterated product will enter into United States' commerce. Based on these recent events, and the minimal inspection resources that can be devoted to controlling such product, FSIS has determined it necessary to modify its regulations to protect the consuming public from "refused entry" product. Therefore, FSIS is immediately revising, on an interim basis, the Federal meat and poultry products inspection regulations by clearly prohibiting the reentry into the United States of any meat or poultry product that had been refused entry into United States' commerce. The transportation of adulterated meat and poultry product across the United States would be prohibited under both the Federal Meat Inspection Act and the Poultry Products Inspection Act.

List of Subjects

9 CFR Part 327

Meat inspection, Imported products.

9 CFR Part 381

Poultry products inspection, Imported products.

Part 327 of the Federal meat inspection regulations (9 CFR Part 327) and Part 381 of the poultry products inspection regulations (9 CFR 381) are revised as follows:

PART 327—[AMENDED]

1. The authority citation for Part 327 is revised to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 327.13 is amended by adding a new paragraph (a)(7) to read as follows:

§ 327.13 Samples; inspection of consignments; refusal of entry; marking.

(a) * * *

(7) No product which has been refused entry and exported to another country pursuant to paragraph (a)(2) of this section may be returned to the United States under any circumstance.

* * * * *

PART 381—[AMENDED]

3. The authority citation for Part 381 is revised to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

4. Section 381.202 is amended by adding a new paragraph (a)(6) to read as follows:

§ 381.202 Poultry products offered for entry; reporting of findings to customs; handling of articles refused entry.

(a) * * *

(6) No product which has been refused entry and exported to another country pursuant to paragraph (a)(2) of this section may be returned to the United States under any circumstance.

* * * * *

Pursuant to the authority in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this amendment at this time are impracticable and contrary to public interest, and good cause is found for making this amendment effective less than 30 days after publication in the **Federal Register.** Comments have been solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments will be published in the **Federal Register** as soon as possible.

Done at Washington, DC, on: July 10, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-19337 Filed 7-20-84; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9158]

American Medical International, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This final order requires a Beverly Hills operator of the nation's third largest chain of proprietary hospitals, among other things, to divest French Hospital in San Luis Obispo, California, to a Commission-approved buyer within twelve months from the effective date of the order. The purpose of the divestiture is to reestablish the facility as a viable competitor in San Luis Obispo County and the firm is required to take all measures necessary to prevent any deterioration of the hospital's present operating abilities or market value, pending divestiture. The order further requires the company to provide the Commission, for a period of ten years, with advance notification of its intention to acquire any hospital located in states specified in the order.

DATES: Complaint issued on July 30, 1981. Final Order issued on July 2, 1984.*

FOR FURTHER INFORMATION CONTACT: FTC/P-852, L. Barry Costilo, Washington, D.C. 20580 (202) 724-1208.

SUPPLEMENTARY INFORMATION: In the Matter of American Medical International, Inc., a corporation, and AMISUB (French Hospital), a corporation. The prohibited trade

*Copies of the Complaint, Initial Decision and Opinion of the Commission are filed with the original document.

practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5–20 Federal Trade Commission Act.

List of Subjects in 16 CFR Part 13

Hospitals, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Before Federal Trade Commission

[Docket No. 9158]

Final Order

I

In the Matter of American Medical International, Inc., a corporation, and AMISUB (French Hospital), a corporation.

This matter has been heard by the Commission upon the appeal of Respondents from the Initial Decision, and upon briefs and oral argument in support of and in opposition to the appeal. For the reasons stated in the accompanying opinion, the Commission has determined to affirm in part and reverse in part the Initial Decision. Accordingly, the Commission enters the following Order.

Definitions

It is ordered that for purposes of this Order the following definitions shall apply:

A. "Acquire any hospital" means to directly or indirectly acquire all or any part of the stock or assets of any hospital, or enter into any arrangement by which AMI obtains ownership, management, or control of any hospital, including the right to lease or manage any hospital.

B. "AMI" means American Medical International, Inc., a corporation organized under the laws of Delaware with its principal executive offices at 414 North Camden Drive, Beverly Hills, California 90210, and its directors, officers, agents, and employees, and its subsidiaries, divisions, affiliates, successors, and assigns.

C. "AMISUB (French Hospital)" means the wholly-owned subsidiary corporation of AMI that was established for the purpose of acquiring and operating French Hospital located in San Luis Obispo, California.

D. "County" also means a county equivalent such as a parish in Louisiana.

E. "General acute care hospital," herein referred to as "hospital(s)," means a health facility, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, and whose primary function is to provide inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

F. "Operate a hospital" also means to own, manage or lease a general acute care hospital.

G. "MSA" and "PMSA" mean, respectively, a Metropolitan Statistical Area and a Primary Metropolitan Statistical Area, as defined as of July 1, 1983 by the Office of Management and Budget, Office of Information and Regulatory Affairs.

II

It is ordered that within twelve (12) months from the date this Order becomes final, AMI shall divest, absolutely and in good faith, all stock, assets, properties, licenses, leases, and other rights and privileges, tangible and intangible, that AMI acquired from Central Coast Hospital Company, French Hospital Corporation and French Medical Clinic, Inc., together with any subsequent improvements. The purpose of the divestiture is to reestablish French Hospital as a viable competitor in San Luis Obispo County. The divestiture shall be subject to the prior approval of the Federal Trade Commission.

Pending divestiture, AMI shall take all measures necessary to maintain French Hospital in its present condition and to prevent any deterioration, except for normal wear and tear, of any of the assets to be divested so as not to impair French Hospital's present operating abilities or market value.

III

It is further ordered that for a period of ten (10) years from the date this Order becomes final, AMI shall not, without providing advance notification to the Federal Trade Commission, directly or indirectly acquire any hospital located in the states of Oregon, California, Texas, Oklahoma, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, or North Carolina, if:

A. The hospital to be acquired is within an MSA or a PMSA in which AMI already operates a hospital and in which AMI, immediately after the acquisition, would operate hospitals that combined have a twenty (20) percent or more share of the licensed general acute care hospital beds within the MSA or PMSA; or

B. The hospital to be acquired is not within an MSA or a PMSA but is within a county in which AMI already operates a hospital in which AMI, immediately after the acquisition, would operate hospitals that combined have a twenty (20) percent or more share of the licensed hospital beds within that county; or

C. The hospital to be acquired is (1) not within an MSA or a PMSA or a county in which AMI already operates a hospital, but is within thirty (30) miles of a hospital which AMI already operates in another MSA or PMSA or county, and (2) the hospital to be acquired and any hospital(s) that AMI operates combined have a twenty (20) percent or more share of the licensed hospital beds in the area within thirty (30) miles of the midpoint between the hospital to be acquired and any hospital operated by AMI.

Provided, however, that no acquisition shall be subject to this Section III if the consideration to be paid for the purchase of the hospital, including assumption by AMI of liabilities of its present owners, does not exceed one million dollars ($1,000,000).

Such advance notification shall be provided when AMI's Board of Directors or Executive Committee authorizes issuance of a letter of intent or enters into a purchase agreement to make such an acquisition, whichever is earlier.

IV

It is further ordered that AMI shall, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until it has fully complied with the provisions of Section II of this Order, submit a report in writing to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with these provisions.

Such compliance reports shall include a summary of all contacts and negotiations with potential purchasers of the stock and assets to be divested under this Order, the identity and address of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

AMI also shall submit such further written reports as the staff of the Federal Trade Commission may from time to time request in writing to assure compliance with this Order.

V

It is further ordered that AMI shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed corporate change, such as dissolution, assignment or sale resulting

in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance with the obligations arising out of this Order.

By the Commission, Commissioners Pertschuk and Bailey concurring in part and dissenting in part.

Issued July 2, 1984.

Emily H. Rock,

Secretary.

Opinion of Commissioner Pertschuk Concurring in Part and Dissenting in Part in American Medical International, Inc., Docket No. 9158

July 2, 1984.

I concur in the majority's decision to require AMI to divest the acquired assets that are the subject of this case. However, I dissent from the majority's unwillingness to require AMI, for a period of ten years, to obtain Commission approval prior to making further acquisitions under the limited circumstances ordered by the ALJ. Instead of the customary prior approval order the majority simply requires AMI to notify the FTC before it makes certain future acquisitions.

The FTC has consistently ordered a ten year prior approval requirement as a standard remedy in cases under § 7 of the Clayton Act.[1] As a "fencing in" provision, a prior approval order is prophylactic in nature and may be ordered to "simply insure that any future market acquisition is not anticompetitive. This supervisory provision puts a tolerable burden on [a company's] future conduct and is clearly within bounds of reasonableness."[2] In *Beatrice Foods Co.*, 68 F.T.C. 1003, 1006 (1956), the Commission found a violation of Section 7, ordered divestiture and included a prior approval clause in the order:

> If competition in this industry is to be restored and maintained, it is essential that this continuing elimination of viable local or regional competitors through acquisition be halted now and that respondent be restored as a potential competitor by precluding it from entering local markets by acquisition [without the Commission's approval] . . . . Prophylactic relief, not merely the after-the-fact remedy of divestiture, is essential if the congressional policy expressed in § 7 of the Clayton Act is to be effectively carried out.

A prior approval provision also serves to deter other firms from violating the Clayton Act as well as to prevent the firm under order from repeatedly violating the law in the future.[3]

The majority articulates no reason for departing from the usual rule in this case. Instead, the majority states that "we cannot assume on the basis of this record that market conditions and market structure in this industry are such that all such acquisitions, even under the conditions adopted by the prior approval remedy, are necessarily anticompetitive." (Maj. Op. at 60)

This statement misconstrues the purpose of a prior approval order. A prior approval remedy does not operate as a ban on future acquisitions. If the Commission could now determine that subsequent acquisitions would be anticompetitive, it could presumably ban those acquisitions now. By contrast, a prior approval order merely requires a company that has been found to violate the law to seek Commission permission before making certain future acquisitions.

The majority also argues that a prior approval remedy will "uniquely disable" AMI, in that "time is of the essence" in negotiations for hospital acquisitions, and that prior approval is time consuming and would cause significant delays preventing AMI from effectively participating in this negotiation process. (Maj. Op. at 60) The majority's argument, which was rejected by the ALJ (Maj. Op. at 57) is unsupported by any record evidence, and the opinion cites none. There is no explanation of how a prior approval requirement would adversely affect AMI's lawful, subsequent hospital acquisition activity. Contrary to AMI's assertions that bidding and negotiations for hospitals proceed at a rapid pace, Judge Barnes found that hospital negotiations are typically "lengthy", and concluded "that because of possible certificate-of-need and Hart-Scott-Rodino requirements, time is not as significant in the acquisition process as AMI posits." (ID 188–89) The majority simply disagrees with this conclusion without citation, presumably basing its decision on its own unspecified general expertise. Even though an order for prior approval may involve time delays, there is no reason why the FTC could not in a proper case expedite AMI's request for approval.

Finally, the Commission majority states that in order to determine if a ten year prior approval remedy is appropriate "we must look at the record evidence of market conditions present in the general acute health care services industry." (Maj. Op. at 59) An examination of that record reveals that AMI has acquired 19 general acute care hospitals since 1980 and in the future intends to acquire 4–6 hospitals per year. (*Id.*) AMI also currently owns, operates or has under construction 75 hospitals in the U.S. nearly all of which were obtained through acquisition. (*Id.*) Judge Barnes concluded from this evidence that the "prior approval requirement was warranted because of the merger trend in the hospital industry and AMI's history of growth through acquisition." (Maj. Op. at 57) Specifically with respect to the latter reason, Judge Barnes found that "because of health planning laws which limit opportunities for the development of new hospitals, AMI will continue to seek to grow through acquisitions in the future. Thus, a prior approval clause is a necessary remedial provision." (ID 187)

The ten year prior approval remedy ordered by Judge Barnes is limited in scope to 13 states where AMI currently owns hospitals and applies only if AMI would have at least a twenty percent share of the market after the acquisition. Furthermore, AMI will not be subject to the order unless an acquisition by AMI exceeds $1,000,000. Judge Barnes' ten year prior approval order is, in his own words, more narrow than "past Commission precedent" (ID 189).

A prior notification requirement is an inadequate substitute for a prior approval clause. After a law violation has been found by the Commission it is perfectly appropriate, for a limited period, to shift the presumption of legality of respondent's future acquisitions from the Commission to the respondent.

It is not clear what kind of evidence the majority would require in future cases before it ordered the kind of carefully limited prior approval requirement that Judge Barnes ordered in this case or that the Commission ordered regularly in past cases and consents. Respondents will doubtless resist prior approval clauses, both in litigated orders and consents, on the ground that some as yet unspecified standard was not met. While I concede

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[1] As a matter of course the Commission has required a prior approval clause in recent section 7 consent orders. *Great Lakes Chemical Corp.*, D. 9155 (May 23, 1984); *Flowers Industries, Inc.*, D. 9148 (Nov. 3, 1983); *Dairymen Inc.*, D. 9143 (Sept. 20, 1983); *Coca-Cola Co.*, C–3113 (Aug. 3. 1983); *Grand Union Co.*, D. 1921 (July 18, 1983); *Xidex Corp.*, D. 9146 (May 1, 1983); *Allied Foods Co.*, 101 F.T.C. 721 (1983); *Gulf & Western Industries, Inc.*, 101 F.T.C. 707 (1983); *Con Agra Inc.*, 101 F.T.C. 50 (1983); *Canada Cement Laforge Ltd.*, 100 F.T.C. 563 (1982); *Batus Inc.*, 100 F.T.C. 553 (1982); *General Electric Co.*, 99 F.T.C. 422 (1982); *Gifford-Hill-American Inc.*, 99 F.T.C. 372 (1982); *Leigh Portland Cement Co.*, 98 F.T.C. 856 (1981); *Godfrey Co.*, 97 F.T.C. 456 (1981); *National Tea Co.*, 96 F.T.C 42 (1980). See also *Ekco Products Co.*, 65 F.T.C. 1163 (1969); *Jim Walter Corp.*, 90 F.T.C. 871 (1977); *Marquette Cement Manufacturing Co.*, 75 F.T.C. 32 (1969); *Beatrice Foods*, 68 F.T.C. 1003 (1956); *Warner Communications, Inc.*, D. 9174 (March 19, 1984) (complaint).

[2] *Yamaha Motor Co.* v. *FTC*, 657 F. 2d 971 (8th Cir. 1981), *cert. denied*, 456 U.S. 915 (1982).

[3] See my dissenting statement in *Damon Corp.*, 101 F.T.C. 689, 693 (1983).

there might be some exceptional case when a prior approval requirement is unwarranted, this is not such a case. Only by ignoring the record and the ALJ's findings and conclusions in this case can the majority reach a different result.

American Medical International, Inc., et al., Docket No. 9158; Statement of Commissioner Bailey Concurring in Part and Dissenting in Part

July 2, 1984.

I agree completely with the opinion of the Commission that American Medical International's (AMI) acquisition of French Hospital in San Luis Obispo, California, violated Section 7 of the Clayton Act, and that the hospital should be ordered divested. I dissent only because the Commission has declined to require respondent to obtain FTC approval for a limited class of future acquisitions of acute care hospitals likely to raise antitrust concerns. Prior approval relief was a primary purpose of this litigation; failure to order such relief here means the Commission has won a lawsuit but lost a cause.[1]

My dissent on the prior approval issue is grounded on three points. First, this case originated out of concern with respondent AMI's rapid growth by repeated horizontal acquisitions of hospital facilities, part of a merger trend among proprietary hospital chains. The French Hospital acquisition is merely illustrative of the larger antitrust concern. Second, contrary to the implication of the Commission that prior approval clauses should be imposed only upon completion of some form of detailed market-by-market analysis, use of such fencing-in clauses has been virtually universal in FTC Section 7 cases over at least the past twenty years. Third, there are substantial practical and policy reasons supporting such relief, which serves as a prophylactic guarantee against future anticompetitive acquisitions by respondent AMI. Such prospective acquisitions will now have to be dealt with by costly and time consuming case-by-case litigation.

I

The evidence in this record shows that the nation's five largest proprietary hospital chains, including Respondent, have acquired 192 hospitals in the period 1975–1981. In 1981 alone, these firms acquired 80 hospitals. CX 608. The Commission observes in its opinion that in 1972, the five largest proprietary hospital chains had 6.5% of community hospital beds, and that this market share had risen to 8.8% by 1980. A recent study of the Federation of American Hospitals, shows that in 1982, about 10% of U.S. acute care hospital facilities were owned by for-profit chains,[2] and that the number of such hospitals had doubled between 1976 and 1982. Other analysts have predicted that for-profit chains will have up to 20% of the market by 1990.[3]

AMI's President has predicted that in the next five years, acquisitions by the five largest companies will range between a combined total of 50 and 100 hospitals a year.[4] Another observer, testifying in this proceeding, said: "Within the next ten years, hospitals will be merging all over the place. It will be like a waterfall." CX 1048C, W; Schramm, 2365–66. This rapidly increasing pace of hospital acquisitions is of special significance in the "Sunbelt," the region of the U.S. where the large proprietary hospital chains have made most of their acquisitions because of that region's rapid population growth and relatively unrestrictive regulation of hospitals. Derzon, 2184–86; CX 430J–K; CX 613A–D.

AMI's holdings are concentrated in the Sunbelt states, and AMI tends to acquire hospitals near those it already owns. CX 613A–B. Almost all of AMI's hospitals have been obtained through acquisition, nineteen of them since 1980. IDF 236. By the end of 1983, AMI had grown to 77 owned or leased acute care hospitals, up from 70 in 1982. AMI plans to acquire four to six hospitals per year, and has estimated conservatively that 1000 hospitals meet its acquisition criteria. CX 430L–W. AMI's Executive Vice-President has stated:

> We emphatically reject the contention that the acquisition market is nearing saturation or that prices have reached levels where there is a substantial degree of risk in most situations. In our view, there are more than enough properties available at attractive prices to keep the whole industry gainfully employed for years to come. CX 430O.

By the end of the decade of the 1980s, AMI estimates that the investor owned sector of this industry has the potential to double its share of the community hospital market. CX 430L. AMI's President declared in 1981:

> I can assure you that the opportunities (for acquisitions) are plentiful and that they range over the entire spectrum of acute care hospitals regardless of size or pattern of ownership. There is no doubt that AMI will continue to experience significant growth in the external area for some time to come. CX 430X.

On October 23, 1983, for example, AMI announced the acquisition of Lifemark Corporation for approximately one billion dollars.[5] Lifemark is a 25-hospital, 4629 bed chain, itself the sixth largest proprietary hospital chain in the United States. It is obvious, and the record of this proceeding clearly shows, that the Commission correctly observed that "the hospital industry is undergoing a move towards increased consolidation. . . ." (Slip Op. at 60).

I disagree with the Commission's interpretation of the evidence, because I do not believe that complaint counsel must prove the existence of actual additional antitrust violations (beyond those being litigated) in order to obtain ancillary prior approval relief. I agree with Justice Brennan when he wrote "the amended Section 7 was intended to arrest anticompetitive tendencies in their 'incipiency'." *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 362 (1963). I believe that such a reading of the statute is consistent with its legislative history. The Senate Report on the 1950 amendments to the Clayton Act stated, "The intent here . . . is to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding. . . ." [6] The conclusion of the Commission, however, is that neither AMI's policy of expansion by acquisitions, nor the levels and rates of rising national hospital concentration, justify the imposition of the narrowly focused prior approval relief proposed by the ALJ and supported by complaint counsel.

II

The whole context of the opinion's discussion of the standards applicable to prior approval relief implies that complaint counsel bears a considerable burden establishing the need for such an order provision.

Yet the simple fact is that 143 of the 157 litigated or settled section 7 orders issued by the Commission in the past 20

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[1] *U.S.* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 323, 324 (1961) (quoting *International Salt Co.*, v. *United States*, 332 U.S. 392, 401 (1947)).

[2] Gray, ed., The New Health Care for Profit: Doctors and Hospitals in a Competitive Environment. 2,15 (1983).

[3] Perspectives: McGraw-Hill Washington Report of Medicine and Health, June 6, 1983, 2.

[4] "Multi-Units Are Ready to Boost their Market Share." *Modern Healthcare*, May, 1983, 89.

[5] "AMI, Lifemark Agree to Merge," *Hospitals*, November 16, 1983, 17. I have no knowledge or opinion as to whether any AMI acquisitions, present or future, raise antitrust concerns on their specific merits, beyond the acquisition litigated in this case. I am referencing the Lifemark acquisition only to illustrate that AMI is continuing to fulfill its announced policy of expansion through acquisition.

[6] S. Rep. No. 1775, 81st Cong., 2d Sess., 4–5 (1950).

years contain prior approval relief.[7] The almost routine entry of this relief (91% of the orders entered, 1964–84) has occurred because an antitrust case both aims to restore competition where it already has been lost *and* seeks to insure against its loss through similar means in the future. Such ancillary "fencing-in" relief, prospective in nature, is typically broader in coverage than the specific violation and relief involved in a particular case. Further, "it is well settled that once the Government has successfully borne the considerable burden of establishing a violation of law, all doubts as to the remedy are to be resolved in its favor." *United States* v. *E.I. du Pont de Nemours & Co., supra,* at 334.

I have pointed out already that prior approval relief was a primary rather than a secondary focus of relief in this case—even Respondent limits its appeal of the divestiture portion of this order to a single footnote in one of its briefs; its arguments against prior approval relief go on for eight pages. Both parties' unusual emphasis on a routine issue may have prompted the Commission to place an extra burden on complaint counsel—but that burden cannot be justified, either by precedent or the situation before us.

The majority concedes the Commission's power to order prior approval relief in appropriate cases. The Commission also acknowledges both that a trend is occurring towards consolidation of hospitals through merger, and that respondent AMI has participated actively in this merger wave and intends to continue to do so. Nevertheless, the Commission rejects prior approval relief here. First, it distinguishes a line of cases where the main impetus to prospective relief was evidence of respondents' repeated willfull or knowing violation of the law, or a history of past conduct that created a "cognizable danger of recurrence" of illegal activity.[8] The Commission foreswears this line of cases, because, it claims, they do not grow out of Section 7 caselaw, and therefore are not directly applicable. The result, of course, is to trivialize strong record evidence of respondent's past and intended future course of acquisitions. On the contrary, there is Section 7 authority acknowledging "respondent's demonstrated proclivity to expansion through acquisition" as an important consideration in formulating prior approval relief. *Beatrice Foods Co.,* 68 FTC 1003, 1006 (1965); *Marquette Cement Manufacturing Co.,* 76 FTC 361, 371 (1969).

The second line of authority relied on by the Commission is a series of section 7 proceedings where prior approval relief was asserted to have been warranted on the basis of the competitive threat to specific antitrust markets by respondent's past or likely future merger conduct.[9] According to the Commission's reading of these few cases, prior approval relief must only be ordered when complaint counsel can prove such vulnerable "industry market structure and market conditions" in specific "local and regional geographic markets." (Slip Op. at 60) Of particular concern here, for instance, would be markets where AMI or its competitors are likely to become entrenched as monopolists, or where effects on competition can be actually assessed. Unfortunately, all the Commission has in the record before it in regard to markets other than San Luis Obispo, California, is the fact that the *national* percentage of hospital beds controlled by proprietary hospitals rose from 6.5% in 1972 to 8.8% in 1980. Such national concentration data is not numerically impressive, and is even perhaps irrelevant in an industry characterized by local and or regional markets, such as this one.[10] I do not envy the role of government staff in future cases who must heed the Commission's analysis in this regard. The Commission provides no guidance on what kind and how much evidence is necessary to obtain prior approval relief.[11] As a generic matter, the prior approval provision personifies the prophylactic character of Section 7 of the Clayton Act [12] in curbing potentially anticompetitive increases in concentration in their incipiency. The implication of the Commission's analysis is that staff should identify markets where already there are dangerous problems of monopoly power.[13] Complaint counsel has no crystal ball, however, to aid them in predicting with any certainty the specific markets where, over the next ten years, competitive concerns *might* arise on account of possible future acquisitions by AMI.

I do not read the Commission majority as stating that prior approval relief is necessarily limited to the markets pled and proved in a specific section 7 case—in this case, one county in one state. If this were what the Commission were saying, it would go against scores of cases where prior relief provisions sweep geographically broader than those markets where divestiture relief was proved to be justified.[14]

The Commission *seems* to be saying that there must be some reasonable relationship between the competitive concerns identified in a specific case, and the ancillary relief ordered in that case. Such an interpretation would be consistent with the view taken both in cases and in the legal literature.[15] The Commission and I, perhaps, then disagree only on whether complaint counsel's proof and the ALJ's order together meet a standard of reasonableness.

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[7] These numbers actually *understate* the degree to which prior approval relief is routine in section 7 cases. Six of the 14 orders without such relief were vertical acquisitions in the cement industry. Because acquisitions in this industry were subject to a special FTC premerger reporting program from 1967 on, there was no necessity to order prior approval relief in specific cases.

[8] *United States* v. *W.T. Grant Co.,* 345 U.S. 629 (1953); *Litton Industries, Inc.* v. *FTC,* 676 F.2d 364 (9th Cir. 1982); and *Sears Roebuck & Co.* v. *FTC,* 676 F.2d 385 (9th Cir. 1982).

[9] Jim Walter Corp., 90 FTC, 671 764 (1977); Marquette Cement Manufacturing Co., 75 FTC 32, 104 (1969); Liggett & Myers, Inc., 87 FTC 1074, 1140 (176); Beatrice Foods Co., 68 FTC 1003, 1006 (1956); and Ekco Products Co., 65 FTC 1163, 1223 (1964).

[10] Oddly, the Commission does not cite to the strongest case for its own proposition, ITT Continental Baking Company, 84 FTC 1349 (1974). There, complaint counsel failed to achieve a five year extension of a prior approval clause because its evidence of increasing industry wide concentration through acquisitions in the bread industry was found irrelevant to the question of whether concentration was threatening in appropriate and relevant local markets. And, in his dissent in National Tea Co., 69 FTC 226, 278 (1966), Commission Elman leveled criticism at a prior approval order, specifically because it was based on national concentration statistics for food retailing, rather than on an assessment of local market conditions.

[11] In ITT, *supra,* however, there is a suggestion of how to proceed: "[W]hile we agree that it can be difficult to establish the facts as to what has been happening in even a sample of three or four relevant local bread markets, we know of no principle of law that permits difficulties of proof to justify the inferring of a fact to be proved from another fact that has no *necessary* causal relation to it. Economic facts do not have to be proven with engineering precision." 84 FTC at 1399.

[12] Beatrice Foods Co., 68 FTC 1003, 1006 (1965); The Seeburg Corp., 75 FTC 661, 675 (1969).

[13] In her concurring statement in National Tea, *supra,* at 299, 309, Commission Jones observed the legal futility in permitting the continuation of a series of unsupervised acquisitions in "localized markets totalling hundreds of thousands" to the point where local "direct evidence of anticompetitive impact" can be measured.

[14] It is clear that prior approval merger relief may extend to conduct beyond the scope of a complaint and record confined to specific allegedly illegal acquisitions. Marquette Cement Manufacturing Co., 76 FTC 361, 370, 371 (1969). The Commission has often entered relief in merger cases, extending beyond the geographic parameters of a specific complaint. ID at 188, CAB at 69, 71, 72.

[15] "Future relief (beyond divestiture), however, must be molded in light of the particular facts; the criteria of 'necessary and appropriate' and 'reasonably related' to the section 7 offense may well be the most precise guidelines feasible in the circumstances." Duke, Scope of Relief Under Section 7 of the Clayton Act, 63 Colum. L. Rev., 1192, 1208 (1963). (citations to decision on remand in *U.S.* v. *E.I. du Pont de Nemours,* 1962 Trade Cas. (CCH) ¶70,245 at 75, 942).

The prior approval relief proposed by the ALJ and rejected by the Commission majority was expressly tailored to AMI's all-to-obvious acquisition strategy. It imposed the prior approval relief only with regard to the 13 states where AMI is now present in force, based on the record evidence that AMI generally acquires hospitals near those it already owns. The prior approval relief only applied to hospital acquisitions in local geographic areas, near where AMI already owned a facility, *and* where any proposed acquisition would result in an AMI market share or 20% or more of the market, *and* the acquisition proposed exceeded one million dollars. To my mind, there is reasonably specific and narrow relief.

If complaint counsel had put into the record of this proceeding figures on ownership and concentration of hospital beds for a selection of major cities and regions throughout the Sunbelt, would it had won from this Commission the prior approval relief that it sought?[16] The Commission gives no answer to this question, and the arguments that it embraces later about how respondent's unfettered role as a prospective hospital purchaser "has a substantial potential procompetitive impact," leave me somewhat puzzled about the true motives of the Commission in declining to order modest prophylactic relief.

III

The practical and policy reasons for prior approval relief are simple. As a practical matter, once the Commission has gone through the prolonged and costly process of proving an antitrust violation, it should exercise, as it usually has in the past, some prospective authority over respondent's related conduct for a period of time to prevent likely or possible recurrences. As a policy matter, preventing violations of the antitrust laws is preferable to unraveling them after the fact. It avoids the cost and expenses of litigation, and, in the broader sense, upholds the Clayton Act's policy of preventing, in their incipiency, the anticompetitive effects that might flow from certain acquisitions. The best example of this concern is the Hart-Scott-Rodino premerger notification process, which requires advance reporting of all corporate mergers above a certain dollar size, with waiting periods to allow antitrust analysis of such reports, and thus possible injunctive action against suspect mergers prior to consummation. Although some of the future AMI acquisitions of hospitals may be subject to Hart-Scott-Rodino reporting, many would fall below the dollar reporting levels set in that program. CX 1034; RX 5825 at 7, 27; RX 5850. Moreover, prior approval relief flowing specifically from a litigated case record such as here, amounts to a veto leverage potential which is more efficient than the injunctive litigation route associated with premerger notification.

The Commission takes the view that the prior approval provision urged by complaint counsel and recommended by the ALJ "asks us in essence to assume that acquisitions in this industry, *per se* are anticompetitive."[17] The majority misperceives the issue. The relief in question is not a ban on all future acquisitions of acute care hospitals. On the contrary, the remedy in question simply requires respondent to petition for approval of an acquisition that qualifies for reporting under the narrow order entered by the ALJ. Past experience has simply been that most such petitions have been granted. Such petitions for acquisitions have been judged by the competitive standards applicable to any merger situation. The Commission is not free to deny prior approval where it has no reason to believe that the acquisition in question would be illegal. *Beatrice Foods Co.*, 67 FTC 473, 731 n. 48 (1965). "Since these orders do not contain outright bans on future acquisitions, the approval requirement must of necessity contemplate some circumstances under which some * * * acquisitions would be approved by the Commission." *Broadway-Hale Stores Inc.*, 75 FTC 374, 377 (1969) (Statement of the Commission approving acquisition subject to prior approval).

Respondent's practical arguments against our imposition of this relief are that hospital merger negotiations are alleged to occur within tight time frames, and delays and uncertainty occasioned by FTC approval review procedures might unfairly hamper AMI in the "competition" to "beat" hospital chains not under FTC order in the ongoing game of making hospital acquisitions. The Commission explicitly embraces these arguments in concluding that AMI's presence in the market as a potential purchaser of local hospitals has a substantial potential procompetitive impact. This is a conclusion for which the Commission offers no record evidence. I might be more sympathetic with those arguments, but for our principle decision today that AMI violated the law by one of its typical acquisitions and our various findings regarding AMI's pattern of acquisitions and intentions for the future. The Commission, however, gives weight to the concern over impairment of AMI's private interests in making hospital acquisitions, stating that "The prior approval requirement would uniquely disable AMI in these negotiations." (Slip Op. at 60).[18] The practical validity of this statement turns, it seems to me, on the assumption that the Commission is unable to conduct its review of prior approval requests expeditiously. However, actual experience again shows that when expedited treatment is requested in petitions for prior approval, the staff and the Commission usually accomodate such requests. *See, e.g. Foremost Dairies, Inc.*, Docket No. C–1161 (approval granted one day after close of public comment period). The only inevitable delay in regard to such petitions is the requisite 30 day public comment period set out in the Commission's rules. Given regulatory considerations possibly requiring the issuance of Certificates of Need in regard to hospital acquisitions, the "competitive" need for FTC action prior to 30 days or so is not at all clear. Moreover, the limited notice relief ordered here by the Commission in lieu of prior approval does not give AMI absolute confidence that its negotiations can proceed apace, uninterrupted. The limited notice filing also has some potential to leave AMI uncertain about the FTC's intentions, particularly if such notices are withheld from the public record, and therefore are beyond respondent's ability to monitor the

[16] Presumably if complaint counsel had presented some facts as to the present competitive picture in various areas in the Sunbelt, the Commission could not have so likely dismissed their request for relief on the grounds that specific market facts implying antitrust concerns had not been shown. It is always possible, however, that had staff proved the conditions existing in a dozen markets, the Commission would have limited prior approval relief to those areas. However, one commentator has observed of the cases on this point that, "Future merger bans are usually limited to the particular industry involved, but only in exceptional circumstances are they limited to specified geographical areas." Rockefeller, "What Remedies are available to restore competition if a merger is declared unlawful?", *Antitrust Questions and Answers*, 248, 249 (1974).

[17] "* * * [W]e cannot assume on the basis of this record that market conditions and market structure are such that all such acquisitions, even under the conditions adopted by the prior approval remedy, are necessarily anticompetitive." (Slip Op. at 60)

[18] It is an old and familiar refrain in antitrust cases that an order against just one firm in an industry hampers its competitive struggle against other firms in the same industry that are not under order. This argument has been rejected both as a defense to wrongdoing, and to the entry of specific relief. *FTC* v. *Universal Rundle Corp.*, 387 U.S. 244 (1967) (citing *Moog Industries, Inc.* v. *FTC*, 388 U.S. 411 (1958)). See also *Cer-Ro-Mar* v. *FTC*, 518 F.2d 33 (1975).

staff's handling of any antiapproval arguments filed by various public and private parties troubled by AMI's acquisition appetite.

Moreover, a certain amount of delay is always necessary in effective premerger notification. The great majority of reported mergers prove to be of no concern to the antitrust laws, yet firms must report nonetheless, and at some cost in time and money. Particularly burdened are those firms that fall subject to premerger "second requests", where additional cost, delay and uncertainty are injected into a reported transaction, even though in most such cases no enforcement action results. Still, Congress has listened to these "danger of delay" arguments[19] and nevertheless determined that such burdens must be borne, in order that the government get timely information on the other mergers which may be anticompetitive.

Prior approval, in a case of this nature, is precisely the sort of relief that is needed to accomplish the prophylactic aims of section 7 of the Clayton Act. Neither the Department of Justice nor the Federal Trade Commission has resources or time enough to proceed case-by-case in dealing with a merger wave, unless one fruit of such litigation is some legally established curb over potentially anticompetitive future merger activity.[20] The Commission's failure to enter prior approval relief here lends unnecessary strength to those who criticize existing law and existing law enforcers for insufficient efforts to deal with anticompetitive merger-related increases in market power. It strains credulity, when, in the past 20 years prior approval relief has been directed in over 90% of final Section 7 orders, to believe that this case falls somewhere short of the mark.

[FR Doc. 84-19358 Filed 7-20-84; 8:45 am]
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[19] Several of AMI's arguments against government supervision of merger activity are virtually identical to those made in the 1950s and 1960s by witnesses testifying against the earliest forms of legislation that eventually resulted in the present Hart-Scott-Rodino premerger reporting program. In particular, an officer of the American Bar Association predicted that delays in complying with premerger notification requirements would "kill" procompetitive and lawful acquisitions. See, testimony of James A. Sprunk, Hearings on H.R. 2882, H.R. 3563, H.R. 6058 and H.R. 6698 before the Antitrust Subcomm. of the House Comm. on the Judiciary, 87th Cong., 1st Sess., 219, 230-237 (1961).

[20] "The proper disposition of antitrust cases is obviously of great public importance, and their remedial phase, more often than not, is crucial. For the suit has been a futile exercise if the Government proves a violation but fails to secure a remedy adequate to redress it." *U.S.* v. *E.I. du Pont de Nemours*, 366 U.S. 316, 323 (1961).

16 CFR Part 13

[Docket C-3136]

Pilkington Brothers P.L.C.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a British corporation, among other things, to divest within five years, its shares in Ford Glass Limited (FGL) to either Ford Motor Company or another Commission-approved buyer. The company must remove any director, alternate director or representative also serving on the board of FGL or Vitro Plan S.A., its Canadian and Mexican joint venture partners engaged in the manufacture of float glass. Although the order permits the company to discuss the technical aspects of float glass production with its partners, discussions concerning competitive issues are prohibited. The company is further required to waive most of its rights under the Pilkington-Ford Motor Co. Unanimous Shareholder Agreement; vote its Vitro Plan shares in favor of any proposal to increase the Mexican firm's production of float glass; and refrain from invoking a provision of a 1965 agreement barring Mexican investors from producing float glass independently of the joint venture. Additionally, the company is prohibited from acquiring any concern engaged in the production of float glass in North America without prior Commission approval, for a period of ten years.

DATE: Complaint and Order issued June 22, 1984.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CS-2, Robert W. Doyle, Jr., Washington, D.C. 20580 (202) 254-8577.

SUPPLEMENTARY INFORMATION: On Wednesday, February 15, 1984, there was published in the **Federal Register**, 49 FR 5765, a proposed consent agreement with analysis In the Matter of Pilkington Brothers P.L.C., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been filed, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5-20 Federal Trade Commission Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records; § 13.533-60 Release of general, specific, or contractual constrictions, requirements, or restraints.

List of Subjects in 16 CFR Part 13

Glass products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45,18)

Emily H. Rock,

Secretary.

[FR Doc. 84-19357 Filed 7-20-84; 10:55 am]
BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-57]

Staff Accounting Bulletin No. 57

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views concerning the accounting for contingent warrants issued by a company to certain of its major customers in connection with sales agreements.

DATE: July 18, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Albert or Robert Lavery, Office of the Chief Accountant (202-272-2130), or Howard P. Hodges, Jr., Division of Corporation Finance (202-272-2553), Securities and Exchange Commission 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering

the disclosure requirements of the Federal securities laws.

Shirley E. Hollis,

Assistant Secretary.

July 18, 1984.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 57 to the table found in Subpart B.

Subpart B—[Amended]

Staff Accounting Bulletin No. 57

The staff hereby adds Section K to Topic 5 of the staff accounting bulletin series. Section K discusses the staff's views concerning the accounting for contingent stock purchase warrants issued by a company to certain customers in connection with sales agreements.

Topic 5: Miscellaneous Accounting

* * * * *

K. Contingent Stock Purchase Warrants

Facts: In connection with sales agreements with certain major customers, Company A issued "contingent warrants" to purchase shares of its common stock at prices 12 to 15% in excess of the current trading price of the stock. They are known as "contingent warrants" because the agreements provide that they become exercisable only if specified amounts of Company A's products are purchased by the customers within a three year period. The warrants expire five years from the date of the agreements. Company A believes that these contingent warrants provide it with the opportunity to sell products at a higher price than might otherwise be possible or to enter into sales agreements which might not otherwise be available because they afford the customers a chance to benefit from any price appreciation of Company A's stock. Thus, the warrants represent a contingent cost associated with these sales agreements.

The accounting for these transactions is not specifically addressed in the authoritative accounting literature. Company A believes it appropriate to account for that cost based on the provisions of APB Opinion No. 14 related to debt issued with detachable stock purchase warrants. It valued the shares represented by the contingent warrants, with the assistance of an investment banker, at the date the sales agreements were executed.[1] The value thus determined was credited to capital stock along with a deferred charge classified as an offset to equity. The deferred charge is being amortized against revenues as products are sold.

Question: Will the staff accept Company A's method of accounting for contingent warrants?

Interpretive Response: The staff believes that measurement of value at the date the agreements are executed is inappropriate because such warrants do not convey to the customers the unconditional ability to acquire stock. A customer's right to acquire shares pursuant to a contingent warrant does not occur merely upon the passage of time, but is conditioned on the occurrence of a future event—purchase of the amount of products specified in the sales agreement. Whether such purchases occur is dependent on various factors, such as Company A's ability to deliver products under the sales agreements, the customer's need for the products, and, possibly, the market price of Company A's common stock during the term of the sales agreement. Valuation of the contingent warrant shares prior to resolution of these uncertainties would not provide an appropriate measurement of the cost to Company A of the inducement to the customers to enter into the sales agreement. At that time it is not even determinable whether there is such a cost.

Once the warrants become exercisable because the requisite purchases have been made, the warrants represent a cost and that cost can be measured. This cost is the difference between the quoted market price of Company A's stock at the date that the customer earns the warrants and the amount the customer is required to pay.[2] Prior to that date, however, Company A must periodically determine whether it is "probable" (as that word is used in FASB Statement No. 5, "Accounting for Contingencies") that the customers will make purchases sufficient to earn the warrants. Sales made subsequent to a determination that a probable cost will occur should be charged with a pro rata allocation of the estimated ultimate cost of the warrants based on the quoted market price of the stock at the end of each reporting period.

Although the staff disagrees with Company A's accounting for contingent warrants, it advised Company A that it would not object if Company A did not change its accounting treatment for warrants issued pursuant to agreements which existed on or before July 17, 1984 provided that footnote disclosure is made of the effect on results of operations of not complying with the accounting deemed appropriate by the staff.[3] However, the staff expects use of the accounting set forth in this staff accounting bulletin for future agreements.[4]

[FR Doc. 84-19419 Filed 7-20-84; 8:45 am]

BILLING CODE 8010-01-M

[1] Valuation involved making certain assumptions as to: (1) The price of the Company's stock five years hence based on estimates of revenue and earnings growth rates over the next five years and a price/earnings multiple; (2) a computation of the present value of the customers' estimated profits on exercise of the warrants five years after date of issuance; and (3) a factor representing the estimated probability (expressed as a percentage) that the specified sales levels would be achieved.

[2] This approach is consistent with the accounting treatment for stock options, awards, and similar securities issued to employees pursuant to plans with variable terms specified in Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25"). Paragraph 10b to APB 25 provides that the compensation cost associated with stock option, award, and purchase plans should be measured when the number of shares the employee is entitled to receive and the option or purchase price are known. With respect to plans with variable terms, that date is after the date of grant or award. Paragraph 10 of APB 25 provides that the compensation "should be measured by the quoted market price of the stock at the measurement date less the amount, if any, that the employee is required to pay."

In March 1984, the Financial Accounting Standards Board added a project to its agenda to reconsider APB 25. When the project is completed the staff will consider whether the accounting articulated in this staff accounting bulletin is still appropriate.

[3] A discussion of the effects of all such agreements on trends in a registrant's results of operations should be considered for inclusion in Management's Discussion and Analysis of Financial Condition and Results of Operations.

[4] The authoritative accounting literature can not specifically address all the novel and complex business transactions into which registrants might enter. Accordingly, registrants and their independent accountants must determine the appropriate accounting for such transactions based on some pervasive, fundamental principle or on an analogy to transactions with similar economic substance for which the accounting literature does provide specific guidance. The staff follows similar procedures when it reviews and evaluates the accounting for new types of transactions.

As evidenced by the conclusions expressed in this staff accounting bulletin, the staff may not always be persuaded that a registrant's analogies result in preferable accounting. When these disagreements occur after a transaction has been entered into, their consequences may be severe for registrants, their independent accountants, and, most importantly, the users of financial information who have a right to expect consistent accounting and reporting for transactions with similar facts and circumstances. In recognition of this, the staff encourages registrants and their accountants to discuss with it proposed accounting treatments for transactions and events which are not specifically covered by existing accounting literature.

Further, the FASB has recently approved the implementation of suggestions made by its Task Force on Timely Financial Reporting Guidance. One of these suggestions involves the creation of an advisory group comprised of persons knowledgeable about financial accounting matters. It is intended that this group assist the FASB staff in identifying, and in some cases resolving, emerging issues for which specific accounting guidance does not exist. The staff intends to participate in the activities of this group and believes that the group's efforts will be most effective if preparers of financial statements and/or their independent accountants apprise the group of intended accounting for new business transactions.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 83F-0254]

Indirect Food Additives; Adhesives and Components of Coatings

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 2,6-bis(1,1-dimethylethyl)-4-(1-methylpropyl)phenol, as an antioxidant and/or stabilizer in adhesives used in food-contact articles. This action responds to a petition filed by Schenectady Chemicals, Inc.

DATES: Effective July 23, 1984; objections by August 22, 1984.

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

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Center for Food Safety and Applied Nutrition (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 September 1, 1983 (48 FR 39700), FDA announced that a petition (FAP 3B3734) had been filed by Schenectady Chemicals, Inc., 2750 Balltown Rd., Schenectady, NY 12309, proposing that § 175.105 (21 CFR 175.105) be amended to provide for the safe use of 2,6-bis(1,1-dimethylethyl)-4-(1-methylpropyl)phenol, as an antioxidant and/or stabilizer in adhesives used in food-contact articles.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulation 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 Center for Food Safety and Applied Nutrition (**ADDRESS** above) by appointment with the information contact person listed above. As provided in 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 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 (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.

List of Subjects in 21 CFR Part 175

Adhesives; Food additives; 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) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 175 is amended in § 175.105 by alphabetically inserting a new item in the list of substances in paragraph (c)(5), to read as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * *	* *
2,6-Bis(1,1-dimethylethyl)-4-(1-methylpropyl)phenol (CAS Reg. No. 17540–75–9).	For use as an antioxidant and/or stabilizer only.
* * *	* *

Any person who will be adversely affected by the foregoing regulation may at any time on on before August 22, 1984, 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 consitute a waiver of the right to a hearing on that objection. Each numberd objection for which a hearing is requested shall include a detailed description and anaylsis 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 his 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 is effective July 23, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: July 12, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84–19307 Filed 7–20–84; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 177

[Docket No. 83F–0088]

Indirect Food Additives; 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 certain ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer formulations in contact with foods and beverages containing up to 50 percent alcohol. This action responds to a petition filed by Eastman Kodak Co.

DATES: Effective July 23, 1984; objections by August 22, 1984.

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: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (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 April 29, 1983 (48 FR 19473), FDA announced that a food additive petition (FAP 3B3693) had been filed by Eastman Kodak Co., Eastman Chemicals Division, Kingsport, TN 37662, proposing that § 177.1315 *Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer* (21 CFR 177.1315) be amended to provide for the safe use of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer in contact with alcoholic foods and beverages. The petitioner proposed this amendment to allow for the use of certain copolymers of this type (oriented) in contact with foods and beverages containing up to 50 percent alcohol, whereas use of the subject additive is currently limited to contact with nonalcoholic foods.

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 Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 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 this 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 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) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 177 is amended in § 177.1315(b) by inserting two new items in the table to read as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

§ 177.1315 Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer.

* * * * *

(b) * * *

Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers	Inherent viscosity	Maximum extractable fractions of the copolymer in the finished form at specified temperatures and times (expressed in micrograms of the terephthaloyl moieties/square centimeter of food-contact surface)	Test for orient-ability	Conditions of use
*	*	*	*	*
4. *Oriented* ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer is the reaction product of dimethyl terephthalate with a mixture containing 99 to 85 mole percent ethylene glycol and 1 to 15 mole percent of 1,4-cyclohexane-dimethanol (70 percent *trans* isomer, 30 percent *cis* isomer).	Inherent viscosity of a 0.50 percent solution of the copolymer in phenol-tetrachloro-ethane (60:40 ratio wt/wt) solvent is not less than 0.669 as determined by using a Wagner viscometer (or equivalent) and calculated from the following equation: Inherent viscosity=(Natural logarithm of (N_r)/(c) where: N_r=Ratio of flow time of the polymer solution to that of the solvent, and c=concentration of the test solution expressed in grams per 100 milliliters.	(1) 0.23 microgram per square centimeter (1.5 micrograms per square inch) of food-contact surface of oriented copolymer when extracted with 20 percent (by volume) aqueous ethanol heated to 65.6 °C (150 °F) for 20 minutes and allowed to cool to 48.9 °C (120 °F) in contact with the food-contact article.	When extracted with heptane at 65.6 °C (150 °F) for 2 hours: terephthaloyl moieties do not exceed 0.09 microgram per square centimeter (0.60 microgram per square inch) of food-contact surface.	In contact with foods and beverages containing up to 20 percent by volume alcohol. Conditions of thermal treatment in the container not exceeding 65.6 °C (150 °F) for 20 minutes. Storage at temperatures not in excess of 48.9 °C (120 °F).
5. *Oriented* ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer is the reaction product of dimethyl terephthalate with a mixture containing 99 to 85 mole percent ethylene glycol and 1 to 15 mole percent of 1,4-cyclohexane-dimethanol (70 percent *trans* isomer, 30 percent *cis* isomer).	Inherent viscosity of a 0.50 percent solution of the copolymer in phenol-tetrachloro-ethane (60:40 ratio wt/wt) solvent is not less than 0.669 as determined by using a Wagner viscometer (or equivalent) and calculated from the following equation: Inherent viscosity=(Natural logarithm of (N_r)/(c) where: N_r=Ratio of flow time of the polymer solution to that of the solvent, and c=concentration of the test solution expressed in grams per 100 milliliters.	(1) 0.23 microgram per square centimeter (1.5 micrograms per square inch) of food-contact surface of oriented copolymer when extracted with 50 percent (by volume) aqueous ethanol at 48.9 °C (120 °F) for 24 hours.	When extracted with heptane at 65.6 °C (150 °F) for 2 hours: terephthaloyl moieties do not exceed 0.09 microgram per square centimeter (0.60 microgram per square inch) of food-contact surface.	In contact with foods and beverages containing up to 50 percent by volume alcohol. Conditions of fill and storage not exceeding 48.9 °C (120 °F). No thermal treatment in the container.
*	*	*	*	*

Any person who will be adversely affected by the foregoing regulation may at any time on or before August 22, 1984, 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 is effective July 23, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: July 12, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-19308 Filed 7-20-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 82F-0385]

Indirect Food Additives; 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 vinylidene chloride/methyl acrylate/methyl methacrylate polymers as articles or components of articles intended for use in contact with food. This action responds to a petition filed by Dow Chemical Co.

DATES: Effective July 23, 1984; objections by August 22, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 177.2000, effective on July 23, 1984.

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: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (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 January 11, 1983 (48 FR 1230), FDA announced that a petition (FAP 3B3685) had been filed by Dow Chemical Co., 2040 Dow Center, Midland, MI 48640, proposing that Part 177 (21 CFR Part 177) be amended to provide for the safe use of vinylidene chloride/methyl acrylate/methyl methacrylate polymers as articles or components of articles intended for use in contact with 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 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 Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 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 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 177

Food additives; Incorporation by reference; 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) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 177 is amended in Subpart B by adding new § 177.2000 to read as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

§ 177.2000 Vinylidene chloride/methyl acrylate/methyl methacrylate polymers.

The vinylidene chloride/methyl acrylate/methyl methacrylate polymers (CAS Reg. No. 34364-83-5) identified in paragraph (a) of this section may be safely used as articles or as a component of articles intended for use in contact with food subject to the provisions of this section.

(a) *Identity.* For the purpose of this section, vinylidene chloride/methyl acrylate/methyl methacrylate polymers consist of basic polymers produced by the copolymerization of vinylidene chloride/methyl acrylate/methyl methacrylate such that the basic polymers or the finished food-contact articles meet the specifications prescribed in paragraph (d) of this section.

(b) *Optional adjuvant substances.* The basic vinylidene chloride/methyl acrylate/methyl methacrylate polymers identified in paragraph (a) of this section may contain optional adjuvant substances required in the production of such basic polymers. These optional adjuvant substances may include substances permitted for such use by regulations in Parts 170 through 179 of this chapter, substances generally recognized as safe in food, and substances used in accordance with a prior sanction of approval.

(c) *Conditions of use.* The polymers may be safely used as articles or as components of articles intended for use in producing, manufacturing, processing, preparing, treating, packaging, transporting, or holding food, including processing of packaged food at temperatures up to 121° C (250° F).

(d) *Specifications and limitations.* The vinylidene chloride/methyl acrylate/methyl methacrylate basic polymers and/or finished food-contact articles meet the following specifications and limitations:

(1)(i) The basic vinylidene chloride/methyl acrylate/methyl methacrylate polymers contain not more than 2 weight percent of polymer units derived from methyl acrylate monomer and not more than 6 weight percent of polymer units derived from methyl methacrylate monomer.

(ii) The basic polymers are limited to a thickness of not more than 0.005 centimeter (0.002 inch).

(2) The weight average molecular weight of the basic polymer is not less than 100,000 when determined by gel permeation chromatography using tetrahydrofuran as the solvent. The gel permeation chromatography is calibrated with polystyrene standards. The basic gel permeation chromatographic method is described in ANSI/ASTM D3536-76, which is incorporated by reference. Copies are available from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(3) The basic polymer or food-contact article described in paragraph (a) of this section, when extracted with the solvent or solvents characterizing the type of food and under the conditions of time and temperature characterizing the conditions of its intended use as determined from tables 1 and 2 of § 176.170(c) of this chapter, yields net chloroform-soluble extractives in each extracting solvent not to exceed .08 milligram per square centimeter (0.5 milligram per square inch) of food-contact surface when tested by the methods described in § 176.170(d). If the finished food-contact article is itself the subject of a regulation in Parts 174 through 178 and § 179.45 of this chapter, it shall also comply with any specifications and limitations prescribed for it by the regulation.

Any person who will be adversely affected by the foregoing regulation may at any time on or before August 22, 1984, 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 is effective July 23, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: July 12, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-19305 Filed 7-20-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 81F-0277]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to broaden the specifications for dimers, trimers, and/or their partial methyl esters prepared from unsaturated C_{18} fatty acids which are used as components of surface lubricants for the manufacture of metallic articles intended for food-contact use. This action responds to a petition filed by Emery Industries, Inc.

DATES: Effective July 23, 1984; objections by August 22, 1984.

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

FOR FURTHER INFORMATION CONTACT: Anthony P. Burnetti, Center for Food Safety and Applied Nutrition (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 October 23, 1981 (46 FR 52032), FDA announced that a petition (FAP 1B3579) had been filed by Emery Industries, Inc., 1400 Carew Tower, Cincinnati, OH 45202, proposing that the food additive regulations be amended in § 178.3910 to broaden the specifications for dimers, trimers, and/or their partial methyl esters prepared from unsaturated C_{18} fatty acids. The additive is used as a component of surface lubricants used in the manufacture of metallic articles intended for food-contact use.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulation 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 Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 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 previously concluded that this action will not have a significant impact on the human environment and that an evironmental impact statement is not required. No new information or comments have been received that would alter the agency's previous determination that there is no significant impact on the human environment, and that an environmental impact statement is not required. 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 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) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 178 is amended in § 178.3910(a)(2) by revising the entry for "Dimers, trimers, and/or their partial methyl esters; * * *," 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.

* * * * *

(a) * * *

(2) * * *

List of substances	Limitations
* * * * *	
Dimers, trimers, and/or their partial methyl esters; such dimers and trimers are of unsaturated C_{18} fatty acids derived from animal and vegetable fats and oils and/or tall oil, and such partial methyl esters meet the following specifications: Saponification value 180–200, acid value 70–130, and maximum iodine value 120.	For use only at a level not to exceed 10 percent by weight of finished lubricant formulation.
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before August 22, 1984, 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 is effective July 23, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: July 6, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-19306 Filed 7-20-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 215, 236 and 886

[Docket No. R-84-1163; FR-1702]

Definition of Income, Rents and Recertification of Family Income for the Rent Supplement and Section 236 Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This rule implements recent statutory changes affecting the definition of income for purposes of eligibility and rent determination, as well as rent requirements and recertification of income under the Rent Supplement (Section 101) and Section 236 Programs.

Separate interim rules implementing the change in the income-percentage formula for determining the tenant rental payment in these programs, without altering the existing regulations governing the definition and calculation of income and adjusted income (Interim Increase Rules), were published on August 24, 1982 (47 FR 36814), and the implementation date of May 1, 1983 was announced on April 1, 1983 (48 FR 13978).

In addition to implementing changes in the definition of income, this interim rule includes some sections of the Interim Increase Rules that are being revised in response to public comment or in an effort to clarify Departmental policy. Therefore, this rule includes amendments to some, but not all, of the sections amended in the Interim Increase Rules.

DATES: Effective Date: October 1, 1984; Comments due: September 21, 1984.

ADDRESS: Interested persons may participate in this rulemaking by submitting such written data, suggestions, or arguments as they may desire to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Each comment should include the commenter's name and address and must refer to the docket number indicated in the heading of this rule. A copy of each comment will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, Washington, DC 20410, telephone (202) 755-5654. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Housing and Community Development Amendments of 1981 ("1981 Amendments"), contained in Title III, Subtitle A of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), amended several provisions of section 101 (Rent Supplement Program) of the Housing and Urban Development Act of 1965 and of section 236 of the National Housing Act. This interim rule implements section 322 (f)(8) and (g)(1) of the 1981 Amendments, concerning the definition of income. It also implements section 322(g)(3) of the 1981 Amendments, which requires income reexamination at least annually of Rent Supplement tenants who are at least 62 years of age.

The 1981 Amendments enacted similar provisions for these and other subsidized programs (Section 8 and Public Housing Programs) concerning definitions of income, rent calculations, and reexamination of income. Final rules implementing the new definitions of annual income and adjusted income for the Section 8 Housing Assistance Payments Programs under the 1981 Amendments and the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181 (1983 Act), as well as the rent calculation and income reexamination provisions of the 1981 Amendments (which had been implemented by interim rules) were published recently, 49 FR 19925, May 10, 1984. To promote uniformity in the operation of the programs, this rule adopts the same definitions set forth in those rules.

To the extent that this rule deals with the subject of rent calculations, it incorporates consideration of public comment received on the Interim Increase Rules. It also reflects consideration of public comment received on a proposed rule with comparable rent calculation provisions for the Public Housing and Section 8 Programs (47 FR 57954, December 29, 1982), which was then followed by the final rule described above.

The portion of this rule that defines annual income has also been the subject of public comment in the form of the proposed rule published in December 1982 for the Public Housing and Section 8 Programs. The members of the public that commented on that proposed rule had similar interests to those affected by this rule. They were either tenants in assisted units (or their representatives), who want to restrict the definition of income and, consequently, limit the amount of rent they pay; or they were owners or managers of assisted projects (or their representatives), who want to simplify the rule and minimize the administrative burden required. This interim rule incorporates the decisions made in that rulemaking.

The portion of this rule that defines adjusted income does not reflect consideration of public comments, since the 1983 Act prescribed the definition after the proposed rule for the Public Housing and Section 8 Programs was published. It does reflect the decision to conform the definition in these programs to the one required by statute for the Public Housing and Section 8 Programs. This decision is based on a desire to foster uniformity among programs, as promoted by the 1981 Amendments, to provide equitable treatment for similarly situated tenants who happen to participate in different HUD-sponsored housing assistance programs, and to simplify the administrative burden for owners and managers who participate in several of these programs. Since the final rules for the Public Housing and Section 8 Programs are being made effective July 1, 1984, with the new definitions of Annual Income and Adjusted Income and new rent calculations applicable October 1, 1984, it would be contrary to the interest of owners and tenants (many of whom will be benefited by the revised definition of adjusted income) to delay implementation of this rule to permit consideration of public comment on those provisions.

The portion of this rule that restricts admission of over-income tenants has not been the subject of official public comment. However, it reflects a HUD requirement established in November of 1981 with issuance of HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs. A key element of the affected public, project owners, did make comments to HUD during the course of training sessions conducted to publicize the requirements of the Handbook. No objections have been expressed since that initial training period. Since this requirement is essentially in place through administrative practice which did elicit comment, it is unnecessary to solicit public comment at this time.

The portion of this rule that implements the annual income recertification requirement enacted in the 1981 Amendments involves no significant exercise of discretion upon

which public comment would be useful. Therefore, public comment on this topic is not considered essential before making the rule effective. However, public comments are invited on all of these topics and will be considered in the adoption of a final rule.

The major changes to the existing rules for the Rent Supplement and Section 236 Programs made in this rule are discussed below.

1. Definition of Annual Income—Sections 215.21 and 236.3

The 1981 Amendments (sections 322 (f)(8) and (g)(1)) amended the statutes authorizing the Rent Supplement Program and the Section 236 Program to insert this language concerning the definition of income:

> "[I]ncome" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary. In determining amounts to be excluded from income, the Secretary may, in the Secretary's discretion, take into account the number of minor children in the household and such other factors as the Secretary may determine are appropriate.

This interim rule moves the discussion of sources of income to be included for purposes of the Rent Supplement and Section 236 Programs from § 215.20, Qualified Tenant, and § 236.2(b), Annual Income, to § 215.21 (formerly captioned Adjusted Income) and to a new § 236.3, respectively, each to be captioned Annual Income. The definition of annual income is to remain similar to the existing definition in each program but is changed in a few ways to conform to the definition adopted for the Section 8 Programs, 49 FR 19925 (May 10, 1984), and for the Public and Indian Housing Programs, 49 FR 21475 (May 21, 1984).

The provisions concerning the amount of welfare assistance included in income (§§ 215.21(b)(6) and 236.3(b)(6)) are revised to address the situation presented in States that designate a portion of the welfare grant for housing when that portion is adjusted in accordance with actual housing costs ("as paid" States), and then reduced by a percentage ("ratable reduction"). The interim rule provides that the ratable reduction be applied only one time for purposes of determining income in these programs. This treatment is consistent with the definition of income as adopted for the Public Housing and Section 8 Programs and with the rent calculation provision in § 236.735 of the Interim Increase Rules.

This policy will avoid a series of recomputations by the welfare agency and by the owner that would otherwise occur. For example, once the owner determines a family's rent based on income, including the full amount possible for the shelter and utility component reduced once by the applicable percentage under the public assistance programs, the welfare agency may reduce that amount again. If HUD were to permit reduction of income a second time and redetermination of the tenant's monthly rental charge, the welfare assistance agency might apply its ratable reduction a third time, and the process might continue through further rounds of reduction. By permitting only one reduction for purposes of computing a tenant's income, families receiving the benefit of HUD housing assistance are treated the same as families in unassisted housing receiving welfare assistance: one ratable reduction is applied.

Included now in the definition of net family assets is the value of property disposed of within the two years preceding the family's application or income reexamination, in a transaction other than an arm's length arrangement. Foreclosure and bankruptcy sales and dispositions in separation or divorce settlements in which the applicant or tenant receives important consideration not measurable in dollar terms are treated as dispositions for full value. The term "net family assets" is used in determining annual income for rent determination purposes as it has been used in all programs for determining eligibility, except that the percentage used to derive imputed income (if actual income is less) has been changed from 10 percent to the current rate earned on passbook savings accounts, as determined by HUD.

As clarification, the list contained in §§ 215.20(d) and 236.2(b)(1) of examples of types of income has been expanded to include (1) compensation for personal services in addition to wages, salaries, overtime pay, commissions, fees, tips and bonuses, (2) a lump-sum payment for the delayed start of a periodic payment, and (3) any earned income tax credit to the extent it exceeds income tax liability.

The list of exclusions from income contained in §§ 215.20(e) and 236.2(b)(2) has been revised to clarify that only the employment income of children is excluded. The reason we continued to include non-employment income of children, such as Supplemental Security Income benefits, while excluding their employment income is to reach the maximum income available to the household for its support while leaving a work incentive for children. In addition, employment income of children is usually insignificant in amount, sporadic, and of a nature that is difficult to verify.

The category of persons whose employment income is excluded has been revised from "minors," which was defined to include full-time students 18 years of age and older, "to children under 18 years of age". The revised definition of adjusted income (discussed below) provides that full-time students are to be treated the same as persons under 18 for purposes of the dependent deduction, because the 1983 Act required such treatment (in the Public Housing and Section 8 Programs) for purposes of that definition. However, the 1983 Act is silent on whether the earnings of full-time students at least 18 years of age should be excluded from income. In light of this silence, the need to preserve scarce subsidy dollars, and the significant increase in the deduction for "minors"—from $300 in the existing regulations to $480 in this interim rule—we see no reason to exclude the earnings of full-time students age 18 and older from the determination of annual income.

The current list of program benefits to be excluded from annual income is characterized in §§ 215.21 and 236.3 as programs that statutorily require exemption from income, and the list is expanded in this interim rule to include additional programs that are the subject of recent legislation: (1) The Department of Health and Human Services' Low-Income Home Energy Assistance Program, (2) the Job Training Partnership Program, and (3) disposition of certain Indian trust funds or judgment funds. The precise interpretation of this last category of statutes is currently the subject of interagency discussions, and additional guidance will be furnished on this category in HUD Handbooks or directives.

2. Definition of Adjusted Income—Sections 215.1, 215.45 and 236.2

The second sentence of the definition of income added by the 1981 Amendments to the statutory authority for the Rent Supplement and Section 236 Programs (cited above) corresponds to the second sentence of section 3(b)(5) of the United States Housing Act of 1937 (the 1937 Act), 42 U.S.C. 1437c(b)(5), after amendment by section 322(a) of the 1981 Amendments, which governs the Public Housing and Section 8 Housing Assistance Payments Programs. However, section 3(b)(5) of the 1937 Act has since been amended by the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, enacted November 30, 1983) (the 1983 Act) specifically to define adjusted income, as follows:

The term "adjusted income" means the income which remains after excluding—

(A) $480 for each member of the family residing in the household other than the head of the household or his spouse) who is under 18 years of age or who is 18 years of age or older and is disabled or handicapped or a full-time student;

(B) $400 for any elderly family;

(C) Medical expenses in excess of 3 per centum of annual family income for any elderly family; and

(D) Child care expenses to the extent necessary to enable another member of the family to be employed or to further his or her education.

This new statutory definition of adjusted income for the Public Housing and Section 8 Programs is being adopted for these programs as well, to be used in determining the amount of monthly rental payment. The definition of adjusted income is found in the definitions sections, § 215.1 and § 236.2, respectively, and obsolete material in § 215.45(b) is removed. The revised definitions increase the amount of the deduction for children and full-time students at least 18 years of age from $300 to $480, and broaden the category of persons eligible for the deduction to include members of the family who are disabled or handicapped persons. A new deduction of $400 is added for "elderly families", which includes families whose head or spouse is disabled, handicapped, or at least 62 years of age. The medical expense deduction is restricted to elderly families. The child care expense deduction is restricted to expenses for the care of children, and not disabled or handicapped family members, but a reason for permitting deduction of child care expenses (in addtion to employment of a family member) is added—furtherance of a family member's education. The increase in the amount of the deduction for dependents and the broadening of those who qualify should help to offset the effect of eliminating the medical deduction for nonelderly families and eliminating the dependent care deduction for disabled and handicapped persons.

All of these changes adhere to the statutory definition of adjusted income enacted for the Public Housing and Section 8 Programs and will make uniform administration of HUD's several housing assistance programs more feasible. This is an important consideration, since some owners have projects in which some families are assisted under the Rent Supplement Program or the Section 236 Program, while others are assisted under the Section 8 Housing Assistance Payments Program.

3. Other Definitions—Sections 215.1 and 236.2

Other definitions, such as "dependent" and "elderly family" are added by this interim rule to conform to definitions adopted for the Public Housing and Section 8 Programs. Definitions that are no longer used in the remainder of the regulations, such as "minor" and "physically handicapped" are removed. In addition, the format of the definitions sections, §§ 215.1 and 236.2, is changed to conform to the single alphabetical listing format used in other HUD regulations.

4. Rent—Sections 215.45, 236.55 and 236.735

Phase-in of Higher Percentage

Section 322 of the 1981 Amendments changed from 25 to 30 the percentage of adjusted income rent supplement tenants and tenants receiving the benefit of Section 236 rental assistance payments are to pay toward rent (§§ 215.45 and 236.735). Section 322 had a similar impact on the formulas for setting rental payments of other Section 236 tenants (§ 236.55).

The issue is discussed here because a comment was received on the Interim Increase Rules that challenged the basis for not phasing in the higher rental rates for new tenants, and this rule addresses comments received on those rules.

Section 322(i) of the 1981 Amendments authorized the Secretary to provide for delayed applicability or staged implementation of the rent computation requirements for tenants already occupying assisted housing if the Secretary determined that immediate application of the procedures would be impracticable, would violate the terms of existing leases, or would result in extraordinary hardship for any class of tenants. The Amendments required tenants whose occupancy began after the effective date of the Amendments to be subject to immediate application of the revised rates, except that the Secretary, in his discretion, was authorized to provide for delayed applicability or staged implementation if he determined that immediate application would be impracticable or that uniform procedures for assessing rents would significantly decrease administrative costs and burdens.

This interim rule does not alter the Secretary's decision in the Interim Increase Rules to exercise his discretion under section 322(i) of the Amendments to phase in rent increases for tenants already occupying assisted housing at the effective date of the Interim Increase Rules in order to minimize hardship to persons relying upon established low rents. Similarly, this interim rule does not change the Secretary's decision not to exercise his discretion to provide for delayed applicability (beyond the delay from October 1, 1981, to the effective date of the Interim Increase Rules) or staged implementation for tenants whose occupancy began after the effective date of the Interim Increase Rules, since they do not have the same hardship. New tenants are likely to be paying less for housing upon entering an assisted program at 30 percent of income than they were paying before, and they have no reason to rely on rents at 25 percent of income. More importantly, the Secretary's discretion under the statute to delay or phase in application of the revised rates to new tenants is not based upon hardship of tenants, as in the case of existing occupants, but is related solely to administrative burdens. The comment submitted on the Interim Increase Rules on behalf of tenants asserted that increased administrative burdens would result from the failure to phase in the increase for new tenants, but no such comment was received from a project owner. The decision made in the Interim Increase Rules to implement the increase immediately for new tenants was not inequitable, since it was clearly contemplated by the statute and there is a logical and justifiable distinction between established program beneficiaries and new entrants to the program. Moreover, these tenants are already paying the full statutory amount of rent under the Interim Increase Rules. At this point it would aggravate the administrative burden to decrease rents for tenants admitted after the effective date of the Interim Increase Rules.

The phase-in of the system for existing tenants began at the first recertification occurring after the effective date of the Interim Increase Rules. For families whose incomes are recertified during Federal Fiscal Year 1984, the rents for the succeeding year are being computed using 28 percent of adjusted income, in Fiscal Year 1985, using 29 percent of adjusted income, and in Fiscal Year 1986, the full 30 percent will be used.

Clarification of Eligibility for Phase-in

The comment received on the Interim Increase Rules suggested that clarification was required as to who would be considered a new entrant to the program for purposes of determining the percentage of adjusted income to be paid. The comment suggested that the following should not be classified as new tenants: (1) Tenants who transfer from one unit to another; (2) tenants

who transfer from one project to another; (3) tenants who transfer from one program to another; and (4) family members who move out of the household but remain in the project, the program, or another assisted program. The Department agrees that tenants in the first category should receive the benefit of the phase-in, i.e., not be considered new tenants. Tenants in the third category who remain in the same project and are transferred from a deep subsidy program also should receive the benefit of the phase-in. However, the other tenants described above are not to have phased-in rents.

The 1981 Amendments provided at section 322(i)(1) for a phase-in of rents for "tenants who are occupying housing assisted under the authorities amended by this section . . . if the Secretary determines that immediate application of [the higher percentages] . . . would result in extraordinary hardship for any class of tenants." Taking into consideration both the hardship on the tenants of immediate application of the higher percentages and the burden on private owners of verifying an applicant's previous participation in HUD programs, the Secretary has determined that for tenants transferring *within the same project*, broadly defined, or transferring from one program to another while remaining in the same project, the hardship on the tenants outweighs the burden on the owner. However, the Secretary has determined that the hardship on tenants transferring from project to project is outweighed by the administrative burden on project owners—sometimes in different parts of the country—to verify that a particular applicant has just moved from a unit in which he or she was paying a particular percentage of adjusted income less than 30 percent for rent, under the same or a similar HUD program. Tenants moving from a shallow subsidy program to a deep subsidy program are already reaping a greater benefit and do not need the additional decrease in rent that would be afforded by the phase-in. With respect to the fourth category of tenants, the remaining "Family" in the original unit will be considered as a prior tenant, but there appears to be no sound reason for extending the same status to the new household unit. Clarifications consistent with the foregoing determinations have been incorporated into the proposed rule at §§ 215.45(d)(1), 236.55(b)(3)(i) and 236.735(d)(1).

Welfare Rent

The comment received on the Interim Increase Rules criticized the way the Secretary implemented the addition, made by the 1981 Amendments, of a welfare rent calculation in the determination of the amount of rental payments made by tenants receiving the benefit of the rental assistance program. The commenter stated that welfare recipients in States that apply a "ratable reduction" to the family's housing cost to determine the housing portion of the welfare grant should not be classified as living in "as-paid" States, since Congress did not intend that such welfare tenants pay more for shelter than they receive from the welfare agency.

The statutory change in question is the amendment to section 236 made by section 322(f)(5) of the 1981 Amendments. It provided that families receiving the benefit of HUD's rental assistance payments who are recipients of welfare assistance in "as-paid" States pay rent based on the amount of their welfare grant for shelter, if the amount is greater than amounts based on a percentage of income. This rule extends to these Section 236 tenants a provision that previously applied to public housing.

Administrative practice with respect to rent and income calculations in the public housing program and with respect to income calculations in the Section 8 program has been to classify "ratable reduction" grant States as "as paid", since the amount of the welfare grant is adjusted to reflect housing costs, and to apply the welfare rent provision to such States with a one-reduction rule. In adopting the welfare rent provisions for use in rent calculations in the Section 236 Rental Assistance Payments program, Congress did not repudiate this practice. HUD does require recognition of one application of the ratable reduction to take into account the fact that the maximum shelter grant a family could ever obtain is the State's maximum for shelter multiplied by the reduction factor once.

Considering the small impact on the family (since both the public assistance grant and the annual income and rental payment ratchet downward), the great administrative burden of several rounds of recomputation, and the need to have a starting point for computing income, the Secretary has determined that this method of determining welfare rent is a reasonable exercise of the Secretary's administrative discretion under section 236(h) of the National Housing Act, 12 U.S.C. 1715z–1(h). This method of calculating welfare rent also reflects a determination to use a uniform method for the Section 236 Rental Assistance Program, the Public Housing Program and the Section 8 Programs.

Ten Percent Annual Increase Maximum

Congress expressed its concern about the effect of the 1981 Amendments on families in federally assisted housing by including in Section 322(i)(1) a provision to limit to a maximum of 10 percent the annual increase in the amount of rent a family would have to pay as a result of the Amendments. The 10 percent ceiling also applies to increases resulting from changes, effective on or after October 1, 1981, in other Federal law defining which governmental benefits shall or may be counted as income.

This 10 percent ceiling is implemented by §§ 215.45(d), 236.55(c), and 236.735(d)(2). These sections do not preclude rent increases in excess of 10 percent where such increases result from increases in actual tenant income, changes in family composition or circumstances or from increases in basic rents. This rule omits reference to application of the cap to persons affected by changes in law defining which governmental benefits are required to or may be considered as income. The Department has determined that it would be more appropriate to provide regulatory direction treating this subject matter at such time as any change in law may occur that would require application of the cap.

The comment received on the Interim Increase Rules stated that the 10 percent ceiling should apply to the use of new definitions of income and adjusted income, when implemented. Now that the new definitions are being implemented, the language concerning the 10 percent maximum is being amended to include application of those definitions. (See §§ 215.45(d), 236.55(b)(3) and 236.735(d).)

In this interim rule, the 10 percent cap is not being applied to Rental Assistance Payments Program tenants receiving welfare payments whose rental payments are based on the housing components of their welfare grant if the housing component is adjusted in accordance with their actual housing costs (section 236(f)(2)(C) of the National Housing Act), without reduction. The reason for this exception is that the failure to apply the cap to these families will not affect them adversely, and application of the cap would, therefore, not serve its purpose of protecting tenants from precipitous rent increases and preserving disposable income for other basic needs. The full cost of such families' rent charges are, in essence, paid by the welfare agency. Since the cap would not serve its purpose in such cases, it is not being applied.

Prohibition Against Decrease

Section 322(i)(1) also included a provision that the new rent determination procedures must not result in a reduction in the rent paid by any tenant below the amount on the day before the Interim Increase Rules were applied to the tenant. The Interim Increase Rules contained an implementing provision in §§ 215.45(f), 236.55(b)(2)(ii)(B), and 236.735(e), to the effect that in no event would the rental payment be decreased below the amount payable by the tenant on the day before the Interim Increase Rules were applied to the tenant unless the decrease in rental payment is caused by a decrease in the family's income, family composition or family circumstances. Section 322(i) of the 1981 Amendments was repealed by the 1983 Act and no reduction provision was enacted to take its place. Therefore, the corresponding rule provisions are being omitted from this interim rule.

5. Annual Recertification of Income

Provisions dealing with the obligation of tenants and project owners to report changes in income and to discontinue assistance to tenants when a certain percentage of income is sufficient to pay the market rental were revised in the Interim Increase Rules to reflect the change in percentage from 25 to 30 percent. In the Section 236 program, annual tenant income recertification was specifically required and the use of a particular form was prescribed by § 236.80 of the Interim Increase Rule. A similar provision with respect to Rent Supplement tenants, § 215.55, is revised in this rule to include persons 62 years of age and older in the annual recertification requirement and to include reference to the form. In the Interim Increase Rule, tenants, as well as owners, were permitted to initiate recertification under a new § 236.81. This concept of an interim recertification initiated by tenants is preserved for Section 236 tenants in the revised § 236.80(b) and is added for Rent Supplement tenants in the revised § 215.55(b).

Sections 215.70 and 236.750, which require that tenants report changes in income that would render them able to pay the unassisted rental with the percentage of income they are required to pay for rent, are revised. We believe that the rental calculations are sufficiently complicated that tenants would be unable to determine when they reach the point where their income is sufficient to pay the unassisted rental, and that the provision is, therefore, unenforceable. Consequently, we have removed that requirement.

6. Response to Other Comments

Three items mentioned in the comment on the Interim Increase Rules brought inadvertent errors to our attention. The first item noted was that words were missing from the first sentence of § 236.735(a). The second error was the inconsistency between the phased in rates from 25 to 30 percent of income for rent determination purposes and the fixed rate of 30 percent stated for reporting and discontinuing rental assistance payments, as described above. These errors in the Interim Increase Rules have been corrected. (See 48 FR 13978, April 1, 1983.)

The third item was the comment that we had removed the provision of § 236.55(c) that required an owner to inform HUD when utility rate changes cause a 10 percent increase in utility expenses included in the utility allowance. Our failure to include appropriate amendment directions in amended § 236.55(b) resulted in the inadvertent removal of subsections (c) and (d). That language has been restored, with the addition of a provision that utility allowances be analyzed when an owner submits a request for a rent increase.

In addition, it came to our attention as a result of this comment that the regulatory provisions governing adjustment of utility allowances in some of HUD's other multifamily housing programs did not provide the protection of owner-initiated revisions to tenants when a rate increase would cause a 10 percent cumulative change in the most recently approved utility allowances, although provisions in owner's contracts do include similar requirements. To make the regulations uniform for similar programs and to make the regulations consistent with contract provisions, this rulemaking includes a revision to § 215.45(e) governing the Rent Supplement Program and 24 CFR Part 886 governing the Section 8 Housing Assistant Payments Program—Special Allocations. Sections 215.445(e), 886.126 and 886.326 are revised to mirror § 236.55(c).

One comment addressed the changes in § 236.715 concerning an owner's determination of eligibility for rental assistance payments. Before revision, the section stated that "the owner will review for eligibility the application by a prospective tenant" and issue a certificate—in the form prescribed by the Secretary—for each eligible applicant if sufficient subsidy is available. The revised language of the Interim Increase Rule simply provides that in determining eligibility the owner must use the form prescribed by the Secretary. The use of the form was the intended addition; therefore, this rule reinstates the original language, adding reference to use of the approved form.

The final issue raised in the comment on the Interim Increase Rules was that HUD violated the Administrative Procedure Act and the Department's own regulations (24 CFR Part 10) by making those rules effective before considering public comments. The APA does not apply to the rent increase rulemaking since the program affected involves grants, benefits and contracts, the basis of an exemption. The change in percentage of income from 25 percent to 30 percent was mandatory under the statute, and the reduced Federal expenditures resulting from prompt implementation of the rule are in the public interest. These bases for omitting consideration of public comments before the effectiveness of the rule were stated in the preamble to the rule, as required by HUD rules (24 CFR Part 10). A recent decision of the Second Circuit Court of Appeals upheld an interim rule implementing a similar provision of the 1981 Amendments that was based on a justification for effectiveness before consideration of public comments. *Williams* v. *Pierce*, 708 F. 2d 57 (1983), *cert. denied*, 104 S. Ct. 719 (1984), *pet. for reh. pending.*

7. Limitation on Admission to Income-Eligible Applicants

Section 236 projects receive the benefit of interest reduction payments by the Secretary to increase the availability of rental housing for lower income families, as stated in section 236(a) of the National Housing Act, 12 U.S.C. 1715z-1(a). The Secretary has the authority under Section 236(h) to make such rules and adopt such procedures as he may deem necessary or desirable to carry out the provisions of that section. In light of the current emphasis on Federal subsidies for existing housing to serve lower income families and the concomitant reduction in Federally assisted housing development, it is particularly important to fully utilize these existing projects that receive indirect Federal subsidy for the intended income group. Therefore, consistent with Departmental policy and practice since November 1981, § 236.70(a) is revised to include a requirement that income-eligible applicants who are otherwise qualified be admitted when available and that no over-income applicants be admitted to a project until the owner has employed his or her best efforts to attract income-eligible applicants. In

addition, no more than 10 percent of the units in a project are to be leased to over-income applicants without prior HUD approval.

Similarly, units covered by Rent Supplement Contracts receive the benefit of Rent Supplement payments during the term of the contract to make available rental housing for lower income families. Under section 101(h) of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s(h), the Secretary has general rulemaking authority similar to that under Section 236(h). To preserve units covered by Rent Supplement Contracts as a housing resource for the intended income group, a new § 215.24, which is patterned after § 236.70(a), is added to Part 215.

These limitations on admission of over-income applicants will not affect tenants in occupancy whose income after admission rises above the income limits for admission. That situation is covered by the provisions concerning termination of assistance, §§ 215.5(c) and 236.80(c).

8. Transition Provisions

A new section has been added to Part 215 and to Part 236 to address the issue of the timing of implementation of the new definitions of Annual Income and Adjusted Income and the new rental charge calculations. The new §§ 215.56 and 236.81 provide that the revisions in this rule of the definitions of Annual Income, Adjusted Income, and calculation of rental charges are effective for examinations and reexaminations conducted on or after October 1, 1984. An owner may schedule an interim examination on or after October 1, 1984, for a tenant whose scheduled regular reexamination comes later. In addition, upon the first reexamination conducted on or after October 1, 1984, a tenant's monthly rental charge for the period from October 1, 1984 until the effective date of the next reexamination will be recalculated, based on the revised rule. If this adjusted monthly rental charge is less than the amount actually charged, the tenant may qualify for a credit toward future payments. Tenants who move out after October 1, 1984 and before their next reexamination may be entitled to a refund.

This treatment affords tenants the advantage (but not the disadvantage) of application of the revised rule from October 1, 1984 forward instead of only from the next scheduled regular reexamination or interim reexamination.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because administrative burdens will not increase substantially under the rule. Small project owners who administer some Section 8 assistance will use essentially the same procedures for tenants receiving assistance under the Rent Supplement or Section 236 Program.

This rule was listed as item numbers H-140-82, H-141-82, RIN 2502-AC05, in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15901, 15927) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Domestic Assistance Numbers are 14.103 and 14.149.

List of Subjects

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies.

21 CFR Part 236

Low and moderate income housing, Mortgage insurance, Rent subsidies.

21 CFR Part 886

Grant programs—housing and community development, Rent subsidies.

Accordingly, 24 CFR Parts 215, 236 and 886 are amended as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. Section 215.1 is revised to read as follows:

§ 215.1 Definitions.

Act. The Housing and Urban Development Act of 1965.

Adjusted Income. Annual Income less:

(a) $480 for each Dependent,

(b) $400 for any Elderly Family,

(c) Medical Expenses in excess of three percent of Annual Income for any Elderly Family, and

(d) Child Care Expenses.

Annual Income. See § 215.21.

Child Care Expenses. Amounts anticipated to be paid by the Family for the care of children under 13 years of age during the period for which Annual Income is computed, but only where such care is necessary to enable a Family member to be gainfully employed or to further his or her education. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of income received from such employment.

Commissioner. The Federal Housing Commissioner or his or her authorized representative.

Contract Rent. The total monthly amount of rent approved by HUD in the project rent schedule as payable by HUD and the tenant to the owner for an assisted unit, i.e., the Rent Supplement Unit Rent.

Dependent. A member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or a Full-time Student.

Dilapidated Housing. A housing unit that does not provide a safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of the occupants. Such a housing unit shall have one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. Such defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

Disabled Person. A person under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423) or in Section 102 of the Developmental Disabilities Services Facilities Construction Amendments of 1970 (42 U.S.C. 2691(*l*)).

Displacee. A person who has been displaced from an urban renewal area, or as a result of governmental action or as a result of a disaster determined by the President to be a major disaster.

Elderly Family. A family whose head or spouse (or sole member) is a person who is an Elderly, Disabled or Handicapped Person. It may include two or more Edlerly, Disabled or Handicapped Persons living together, or one more such persons living with another person who is determined to be essential to their care of well being.

Elderly Person. A person who is at least 62 years of age.

Family. Two or more persons related by blood, marriage, or operation of law, who occupy the same dwelling unit.

Full-time Student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Gross Rent. The total monthly cost of housing a Qualified Tenant, which is the sum of the Contract Rent and any Utility Allowance for the assisted unit.

Handicapped person. A person having a physical or mental impairment that (a) is expected to be of long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

Medical Expenses. Those medical expenses, including medical insurance premiums, that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance.

Net Family Assets. Value of equity in real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land. The value of necessary items of personal property such as furniture and automobiles shall be excluded. (In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund should be counted when determining Annual Income.) In determining Net Family Assets, owners shall include the value of any assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Nonimmigrant Student-Alien. An alien having a residence in a foreign country which he or she has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who is admitted to the United States as a nonimmigrant alien as defined in section 101(a)(15)(F)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)(i)), temporarily and solely for the purpose of pursuing such a full course of study at an established institution of learning or other recognized place of study in the United States. Nonimmigrant Student-Alien also means the alien spouse and minor children of such student if accompanying him or her or following to join him or her.

Qualified Tenant. See § 215.20.

Secretary. The Secretary of Housing and Urban Development or the Secretary's authorized representative.

Substandard Housing. A unit that is either Dilapidated Housing or does not have one of the following plumbing facilities:

(a) Hot and cold piped water inside the unit.

(b) Usable flush toilet inside the structure for the exclusive use of the occupants of the unit.

(c) Usable bathtub or shower inside the structure for the exclusive use of the occupants of the units.

Tenant Rent. The amount payable monthly by the Qualified Tenant as rent to the owner. Where all utilities (except telephone) and other essential housing services are supplied by the owner, Tenant Rent equals Total Tenant Payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the owner and the cost thereof is not included in the amount paid as rent, Tenant Rent equals Total Tenant Payment less the Utility Allowance.

Total Tenant Payment. The portion of the Gross Rent payable by a Qualified Tenat, determined in accordance with § 215.45.

Utility Allowance. If the cost of utilities (except telephone) and other essential housing services for an assisted unit is not included in the rent paid to the housing owner but is the responsibility of the tenant occupying the unit, an amount equal to the estimate approved by HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.

Welfare Assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

§ 215.10 [Amended]

2. Section 215.10 is amended by removing paragraph (a)(3), by redesignating the following paragraphs to reflect its removal, and by removing from the new paragraph (a)(6) the words "or remodeling to create standard units where substandard units previously existed,".

§ 215.20 [Amended]

3. Paragraphs (c), (d), (e) and (f) of § 215.20 are removed, and paragraph (g) is redesignated (c).

4. Section 215.21 is revised to read as follows:

§ 215.21 Annual Income.

(a) Annual Income is the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of income that is temporary, non-recurring or sporadic as defined in paragraph (c) of this section, and exclusive of certain other types of income specified in paragraph (d) of this section.

(b) Income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession (for this purpose, expenditures for business expansion or amortization of capital indebtedness and an allowance for depreciation of capital assets shall not be deducted to determine the net income from a business);

(3) Interest, dividends, and other net income of any kind from real or personal property (for this purpose, expenditures for amortization of capital indebtedness and an allowance for depreciation of assets shall not be deducted to

determine the net income from real or personal property). Where the Family has Net Family Assets in excess of $5,000, Annual Income shall include the greater of the actual amount of income derived from all Net Family Assets or a percentage of the value of all such Assets based on the current passbook savings rate as determined by HUD;

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

(6) Welfare Assistance. If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance agency in accordance with the actual cost of shelter and utilities, the amount of Welfare Assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus

(ii) The maximum amount that the Welfare Assistance agency could in fact allow the family for shelter and utilities. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the Family, spouse, or other person whose dependents are residing in the unit (but see paragraph (c)(5) of this section); and

(9) Any earned income tax credit to the extent it exceeds income tax liability.

(c) Annual Income does not include such temporary, non-recurring or sporadic income as the following:

(1) Casual, sporadic or irregular gifts;

(2) Amounts that are specifically for or in reimbursement of the cost of Medical Expenses;

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans, not used for the above purposes that are available for subsistence are to be included in income; and

(5) The hazardous duty pay to a Family member serving in the Armed Forces away from home and exposed to hostile fire.

(d) Income does not include:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of other assistance programs that includes assistance under the Housing and Urban Development Act of 1965. The following types of income are subject to such exclusion:

(i) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621–4638);

(ii) The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. 2011–2029);

(iii) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951–4993);

(iv) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));

(v) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(vi) Payments or allowances made under the Department of Health and Human Services' Low-Income Energy Assistance Program (42 U.S.C. 8621–8629);

(vii) Payments received under the Job Training Partnership Act (29 U.S.C. 1552(b));

(viii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94–540, 90 Stat. 2503–2504); and

(ix) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407–1408) or from funds held in trust for an Indian tribe by the Secretary of the Interior (25 U.S.C. 117).

(e) If it is not feasible to anticipate a level of income over a 12-month period, the income for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

5. A new § 215.24 is added to read as follows:

§ 215.24 Admission of applicants.

In the initial occupancy of units covered by a Rent Supplement Contract and in later admission of applicants to such units, an owner must lease the unit to an applicant whose income satisfies the income requirements established in § 215.20, who would receive assistance, and who meets the owner's tenant selection standards, if such an applicant is available. The owner may lease such units to applicants who would not receive assistance only after good faith efforts to attract applicants who need assistance are unsuccessful. An owner may not lease more than 10 percent of the units covered by the Rent Supplement Contract to applicants who would not receive assistance without the prior written approval of the Commissioner.

6. Section 215.45 is revised to read as follows:

§ 215.45 Maximum payment under contract for each tenant.

(a) *Amount of assistance.* The rent supplement contract shall provide that the payment on behalf of a qualified tenant shall be that amount by which the Gross Rent for the unit exceeds the Total Tenant Payment, determined in accordance with paragraphs (b) or (c) and (d) of this section.

(b) *Total tenant payment for qualified tenants whose initial lease is effective on or after May 1, 1983.* The Total Tenant Payment rounded to the nearest dollar, shall be the greater of:

(1) 30 percent of one-twelfth of the tenant's Adjusted Income; or

(2) 30 percent of the Gross Rent for the unit.

(c) *Total tenant payment for qualified tenants whose initial lease was effective before May 1, 1983.* The Total Tenant Payment shall be calculated in accordance with paragraph (b) of this section, except that the percentage of income utilized in paragraph (b)(1) of this section, shall be in accord with the following table:

Effective date of recertification	Percentage
May 1, 1983 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	28
Oct. 1, 1984 to Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(d) *Special Conditions.* (1) For purposes of this section, a family is considered to be a Qualified Tenant whose initial lease was effective before May 1, 1983 only if the family resided on April 30, 1983 in a unit under lease with assistance under the Rent Supplement Program or the Rental Assistance Program and its assistance under those programs has been continuous thereafter; or the family resided on July 31, 1982 in a unit with the benefit of Section 8 Housing Assistance Payments, and its participation in the Section 8, Rent Supplement or the Rental Assistance Payments Program has been continuous thereafter. A Qualified Tenant or family shall not be disqualified if, after that date, it moved from one unit to another unit within the same project.

(2) So long as a Qualified Tenant whose initial lease was effective before May 1, 1983 continues to receive assistance in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of (i) application of the percentages in paragraph (c) of this section; (ii) application of the changes in the definitions contained in §§ 215.1 and 215.21 from definitions of comparable terms in regulations in effect immediately before October 1, 1984 and (iii) application of the new annual reexamination requirement in § 215.55 for assisted tenants at least 62 years of age.

(3) So long as a Qualified Tenant whose initial lease was effective on or after May 1, 1983 but which was in occupancy on September 30, 1984, continues to receive assistance in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of (i) application of the changes in the definitions contained in §§ 215.1 and 215.21 from definitions of comparable terms in regulations in effect immediately before October 1, 1984; and (ii) application of the new annual reexamination requirement in § 215.55 for assisted tenants at least 62 years of age.

(4) For the purpose of paragraphs (d) (1)–(3) of this section, the "same project" includes units in buildings located on adjacent sites that are managed as one project.

(5) The limitations contained in paragraphs (d) (2)–(3) of this section do not apply to portions of increases in Total Tenant Payment that are attributable to increases in the Contract Rent or decreases in the Utility Allowance for the unit or to increases in income or changes in family composition or family circumstances that are unrelated to the factors set out in paragraphs (d) (2)–(3) of this section.

(6) In order to facilitate administration of the limitations provided in paragraphs (d) (2)–(3) of this section, upon any regular or interim reexamination of a tenant who was in occupancy on September 30, 1984, the owner shall continue to collect and verify information that would have been taken into account in calculating Annual Income and Adjusted Income as defined in regulations in effect immediately before October 1, 1984, as if such regulations were in effect at the date of such reexamination.

(7) The limitations prescribed in paragraphs (d) (2)–(3) of this section shall be applied in accordance with procedures prescribed by HUD.

(e) *Adjustment in Utility Allowances.* When the project owner requests HUD approval of a rent increase, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the Secretary and request approval of new Utility Allowances.

(f) *Application of terms.* In the case of a cooperative project, the term Contract Rent as used in this part shall mean the charges under the occupancy agreement of members of the cooperative.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2502–0204.)

7. Section 215.55 is revised to read as follows:

§ 215.55 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and family composition of all Qualified Tenants at least once every 12 months. After consultation with the Qualified Tenant and upon verification of the information, the owner shall make appropriate adjustments in the Total Tenant Payment in accordance with § 215.45 and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Rent Supplement payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD.

(b) *Interim reexaminations.* The Qualified Tenant must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the Qualified Tenant's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the Qualified Tenant and make any adjustments determined to be appropriate. Any change in the Qualified Tenant's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and the Rent Supplement Payment must be verified.

(c) *Termination of assistance.* A Qualified Tenant's eligibility for Rent Supplement Payments continues until the Total Tenant Payment equals the Gross Rent. The rent charged at that point shall not exceed the market rent approved by the Secretary. The termination of eligibility at such point will not affect the Qualified Tenant's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the contract. However, assistance also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2502–0204.)

8. A new § 215.56 is added to read as follows:

§ 215.56 Transition provision.

(a) *Admissions and reexaminations on or after October 1, 1984.* All regular or interim reexaminations, or examinations for admission, conducted on or after October 1, 1984, and determinations of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, shall be made in accordance with the revisions to §§ 215.1, 215.21, 215.45 and 215.55, that became effective on October 1, 1984. For purposes of this section, an examination or reexamination is "conducted" at the time the owner, based on its regular practice, begins scheduling and verifying the submission of data by an applicant or tenant,

regardless of the "effective date" of the examination or reexamination.

(b) *Optional interim reexamination.* Each owner shall have the right, at its discretion, to require any Qualified Tenant in occupancy on October 1, 1984, to undergo an interim reexamination, and determination of Annual Income, Adjusted Income, Total Tenant Payment, and Tenant Rent based thereon, in accordance with the Revisions to §§ 215.1, 215.21, 215.45 and 215.55, that became effective on October 1, 1984, at any time after that date and before the next scheduled regular reexamination for such Qualified Tenant.

(c) *Calculation of retroactive adjustment.* For all Qualified Tenants other than those whose examination for admission was conducted on or after October 1, 1984, in accordance with the revisions to §§ 215.1, 215.21, 215.45 and 215.55 that became effective on that date, the owner shall make an additional calculation with respect to the period between October 1, 1984 and the effective date of such reexamination. An adjusted Total Tenant Payment shall be calculated for such period on the basis of—

(1) The Annual Income determined for such period in accordance with regulations and procedures in effect immediately before October 1, 1984;

(2) The Dependent and Elderly Family deductions prescribed in the definition of Adjusted Income in § 215.1;

(3) Medical Expenses taken into account in the calculation of Adjusted Income for such period in accordance with regulations and procedures in effect immediately before October 1, 1984, but only if the Family was an Elderly Family during such period;

(4) Unusual Expenses taken into account in the calculation of Adjusted Income for such period in accordance with regulations and procedures in effect immediately before October 1, 1984, but only if such Unusual Expenses qualify as Child Care Expenses as defined in § 215.1; and

(5) The percentage applied to one-twelfth of the tenant's Adjusted Income in accordance with regulations and procedures in effect immediately before October 1, 1984, to determine the actual monthly rental charge during such period.

(d) *Actual adjustments.* (1) If the adjusted monthly rental charge calculated under paragraph (c) of this section is higher than the actual monthly rental charge for the applicable period, no adjustment shall be made. If the adjusted monthly rental charge calculated under paragraph (c) of this section is lower than the actual monthly rental charge for the applicable period, the amount of such difference shall be offset first against any amounts due from the tenant to the owner, and any remaining balance shall be applied as a credit to the Total Tenant Payment due immediately after the effective date of the reexamination. If the amount of any such credit to a tenant exceeds 25 percent of the Total Tenant Payment due from such tenant, such credit may be applied in not more than four installments.

(2) If a Qualified Tenant vacates a unit after October 1, 1984, and before the first reexamination occurring after such date, the owner shall notify the Qualified Tenant of the possibility of a rent adjustment for the period commencing October 1, 1984, subject to the requirement of a request therefor (made not later than 60 days after vacating the unit) together with notification of a current address to which any refund can be sent. For any tenant making such a timely request, the owner shall make all calculations necessary to determine whether an adjustment is due to the tenant under this paragraph (d) and, if so, the amount of any such adjustment shall be offset first against any amounts due from the tenant to the owner, and any balance shall be refunded to the tenant.

(e) *Increased subsidy needs.* If an owner notifies HUD that its subsidy needs exceed the amount available under its contract with HUD as a result of reduced rental income caused by implementation of the revisions to §§ 215.1, 215.21, 215.45 and 215.55, HUD will follow regular procedures appropriate to the circumstances.

9. Section 215.70 is revised by removing paragraph (b) so that the section reads as follows:

§ 215.70 Form of lease.

Qualified tenants shall be required to execute a lease in a form approved by the Secretary.

§ 215.80 [Removed]

10. Section 215.80 is removed.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

11. Section 236.2 is revised to read as follows:

§ 236.2 Definitions.

Adjusted Income. Annual Income less:

(a) $480 for each Dependent,

(b) $400 for any Elderly Family,

(c) Medical Expenses in excess of three percent of Annual Income for any Elderly Family, and

(d) Child Care Expenses.

Adjusted Monthly Income. One-twelfth of Adjusted Income.

Assisted Admission. Admission to a unit in the program at rent that is less than the HUD-approved market rental.

Annual Income. See Section 236.3.

Basic Rent. The HUD-approved monthly rent for a unit in a Section 236 project determined on the basis of operating the project with payments of principal and interest at the rate of one percent per annum. It includes the cost of utility services if such charges are paid by the project owner.

Child Care Expenses. Amounts anticipated to be paid by the Family for the care of children under 13 years of age during the period for which Annual Income is computed, but only where such care is necessary to enable a Family member to be gainfully employed or to further his or her education. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of income received from such employment.

Commissioner. The Federal Housing Commissioner or his or her authorized representative.

Dependent. A member of the Family household (excluding foster children) other than the Family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or is a Full-time Student.

Disabled Person. A person under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423) or in section 102 of the Developmental Disabilities Services Facilities Construction Amendments of 1970 (42 U.S.C. 2691(*l*)).

Displacee. A person who has been displaced from an urban renewal area, or as a result of governmental action or as a result of a disaster determined by the President to be a major disaster.

Elderly Family. A Family whose head or spouse (or sole member) is a person who is an Elderly, Disabled or Handicapped Person. It may include two or more Elderly, Disabled or Handicapped Persons living together, or one or more such persons living with another person who is determined to be essential to their care or well being.

Elderly Person. A person who is at least 62 years of age.

Family. Two or more persons related by blood, marriage, or operation of law, who occupy the same dwelling unit.

Full-time Student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An

educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Gross Rent. The total monthly cost of housing a Qualified Tenant, which is the sum of the Basic Rent and any Utility Allowance for the assisted unit.

Handicapped person. A person having a physical or mental impairment that (a) is expected to be of long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

Market Rent. The HUD-approved monthly rent determined on the basis of operating the project with payments of principal, interest and mortgage insurance premium that the mortgagor is obligated to pay under the mortgage (disregarding HUD's interest reduction and rental assistance payments). It includes the cost of utility services if such charges are paid by the project owner.

Medical Expenses. Those medical expenses, including medical insurance premiums, that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance.

Net Family Assets. Value of equity in real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land. The value of necessary items of personal property such as furniture and automobiles shall be excluded. (In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund should be counted when determining Annual Income.) In determining Net Family Assets, owners shall include the value of any assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Nonimmigrant Student-Alien. An alien having a residence in a foreign country which he or she has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who is admitted to the United States as a nonimmigrant alien as defined in section 101(a)(15)(F)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)(i)), temporarily and solely for the purpose of pursuing such a full course of study at an established institution of learning or other recognized place of study in the United States. Nonimmigrant Student-Alien also means the alien spouse and alien minor children of such student if accompanying him or her or following to join him or her.

Qualified Tenant. (a) For purposes of Subpart A, an individual or Family whose Annual Income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustment for smaller and larger families, except that HUD may establish income limits higher or lower than 80 percent of the median for the area on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low family incomes, or other factors.

(b) The benefits of the interest reduction payments are available only to an individual or a Family renting a dwelling unit in a project owned by an eligible housing owner or occupying such a dwelling unit as a cooperative member.

Tenant Rent. The amount payable monthly by a Qualified Tenant as rent to the owner. Where all utilities (except telephone) and other essential housing services are supplied by the owner, Tenant Rent equals Total Tenant Payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the owner and the cost thereof is not included in the amount paid as rent, Tenant Rent equals Total Tenant Payment less the Utility Allowance for tenants receiving the benefit of Rental Assistance Payments, and Tenant Rent is the monthly amount calculated under § 236.55 for Section 236 tenants not receiving the benefit of Rental Assistance Payments.

Total Tenant Payment. For the Rental Assistance Payments Program, the monthly amount calculated under § 236.735.

Utility Allowance. If the cost of utilities (except telephone) and other essential housing services for an assisted unit is not included in the rent paid to the housing owner but is the responsibility of the tenant occupying the unit, an amount equal to the estimate approved by HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.

Utility Reimbursement. The amount, if any by which the Utility Allowance for the unit, if applicable, exceeds the Total Tenant Payment for the Family occupying the unit. This term is applicable only to the Rental Assistance Program under Subpart D.

Welfare Assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

12. Section 236.3 is redesignated as § 236.4, and a new § 236.3 is added to read as follows:

§ 236.3 Annual Income.

(a) Annual Income is the anticipated total income received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family from all sources, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of income that is temporary, non-recurring or sporadic as defined in paragraph (c) of this section and exclusive of certain other types of income specified in paragraph (d) of this section.

(b) Income includes but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income for operation of a business or a profession (for this purpose, expenditures for business expansion or amortization of capital indebtedness and an allowance for depreciation of capital assets shall not be deducted to determine the net income from a business);

(3) Interest, dividends, and other net income of any kind from real or personal property (for this purpose, expenditures for amortization of capital indebtedness and an allowance for depreciation of capital assets shall not be deducted to determine the net income from real or personal property). Where the Family has Net Family Assets in excess of $5,000, Annual Income shall include the greater of the actual amount of income derived from all Net Family Assets or a percentage of the value of all such Assets based on the current passbook savings rate as determined by HUD;

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

(6) *Welfare Assistance.* If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance agency in accordance with the actual cost of shelter and utilities, the amount of Welfare Assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus

(ii) The maximum amount that the Welfare Assistance agency could in fact allow the family for shelter and utilities. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the Family, spouse, or other person whose dependents are residing in the unit (but see paragraph (c)(5) of this section); and

(9) Any earned income tax credit to the extent it exceeds income tax liability.

(c) Annual Income does not include such temporary, nonrecurring or sporadic income as the following:

(1) Casual, sporadic or irregular gifts;

(2) Amounts that are specifically for or in reimbursement of the cost of Medical Expenses;

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans, not used for the above purposes that are available for subsistence are to be included in income; and

(5) The hazardous duty pay to a Family member serving in the Armed Forces away from home and exposed to hostile fire.

(d) Income does not include:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of other assistance programs that includes assistance under the National Housing Act. The following types of income are subject to such exclusion:

(i) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621–4638);

(ii) The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. 2011–2029);

(iii) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951–4993);

(iv) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));

(v) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(vi) Payments or allowances made under the Department of Health and Human Services' Low-Income Energy Assistance Program or the Office of Community Services' Crisis Intervention Program (42 U.S.C. 8621–8629);

(vii) Payments received under the Job Training Partnership Act (29 U.S.C. 1552(b));

(viii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94–540, 90 Stat. 2503–2504); and

(ix) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407–1408) or from funds held in trust for an Indian tribe by the Secretary of the Interior (25 U.S.C. 117).

(e) If it is not feasible to anticipate a level of income over a 12-month period, the income for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

13. In § 236.55, paragraphs (a), (b)(1), (b)(2), (c) and (d) are revised, and paragraph (e) is added to read as follows:

§ 236.55 Rental charges.

(a) *Approved rental charges.* The mortgagor shall, with the appoval of the Secretary, establish and maintain a Basic Rent and Market Rent for each dwelling unit.

(b) * * *

(1) *Tenant Rent for qualified tenants whose initial lease is effective on or after May 1, 1983.* The Tenant Rent payable by a Qualified Tenant shall be the greater of the Basic Rent or 30 percent of the tenant's Adjusted Monthly Income, but not more than the Market Rent. In the case of tenant paid utilities, the Utility Allowance may not reduce the Tenant Rent below 25 percent of Adjusted Monthly Income.

(2) *Tenant Rent for qualified tenants whose initial lease was effective before May 1, 1983.* The Tenant Rent shall be calculated in accordance with paragraph (b)(1) of this section, except that instead of 30 percent, the percentage applied to Adjusted Monthly Income shall be as follows:

Effective date of recertification	Percentage
May 1, 1983 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	28
Oct. 1, 1984 to Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(c) *Special Conditions.* (1) For purposes of this section, a family is considered to be a Qualified Tenant whose initial lease was effective before May 1, 1983 only if the family resided on April 30, 1983, in a unit under the Section 236 program paying a rent less than the Market Rent or in a unit receiving Rent Supplement assistance, and its participation in the programs at a below Market Rent (including receipt of Rent Supplement assistance) has been continuous thereafter; or a family that resided on July 31, 1982 in a unit with the benefit of Section 8 Housing Assistance Payments, and its participation in the Section 8, Rent Supplement, or Rental Assistance Payments Program has been continuous thereafter. A family shall not be disqualified if, after that date, it moved from one unit to another unit within the same project.

(2) So long as a Qualified Tenant whose initial lease was effective before May 1, 1983 continues to receive assistance in the same project, its

Tenant Rent shall not be increased by more than 10 percent during any 12-month period as a result of (i) application of the percentages in paragraph (b)(2) of this section; and (ii) application of the revised definitions in §§ 236.2 and 236.3.

(3) So long as a Qualified Tenant whose initial lease was effective on or after May 1, 1983 but which was in occupancy on September 30, 1984, continues to receive assistance in the same project, its Tenant Rent shall not be increased by more than 10 percent during any 12-month period as a result of application of the changes in the definitions contained in §§ 236.2 and 236.3 from definitions of comparable terms in regulations in effect immediately before October 1, 1984.

(4) For the purpose of paragraphs (c)(1)–(3) of this section, the "same project" includes units in buildings located on adjacent sites that are managed as one project.

(5) The limitations contained in paragraphs (c)(2)–(3) of this section do not apply to portions of increases in Tenant Rent that are attributable to increases in the Basic Rent or decreases in the Utility Allowance, or to increases in income or changes in family composition or family circumstances that are unrelated to the factors set out in paragraphs (c)(2)–(3) of this section.

(6) In order to facilitate administration of the limitations provided in paragraphs (c)(2)–(3) of this section, upon any regular or interim reexamination of a tenant who was in occupancy on September 30, 1984, the owner shall continue to collect and verify information that would have been taken into account in calculating Annual Income and Adjusted Income as defined in regulations in effect immediately before October 1, 1984, as if such regulations were in effect at the date of such reexamination.

(7) The limitations prescribed in paragraphs (d)(2)–(3) of this section shall be applied in accordance with procedures prescribed by HUD.

(d) *Adjustments in Utility Allowances.* When the project owner requests HUD approval of a rent increase, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances the project owner must advise the Secretary and request approval of new Utility Allowances.

(e) *Application of terms.* In the case of a cooperative project, the term rent as used in this subpart shall mean the charges under the occupancy agreement of members of the cooperative.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2502-0204.)

14. Section 236.60 is revised to read as follows:

§ 236.60 Excess rental charges.

The mortgagor shall agree to pay monthly to the Secretary the total of all rental charges collected in excess of the Basic Rent in accordance with instructions prescribed by the Secretary.

15. Section 236.70(a) is revised to read as follows:

§ 236.70 Occupancy requirements.

(a) *Admission of applicants.* In the initial occupancy of units and in later admission of applicants, an owner must lease a unit to an applicant whose income satisfies the income requirements established by the Commissioner, who would pay less than the Market Rent, and who meets the owner's tenant selection standards, if such an applicant is available. The owner may lease units to applicants who would pay the Market Rent only after good faith efforts to attract applicants who would pay less than the Market Rent are unsuccessful. An owner may not lease more than 10 percent of the units to applicants who would pay the Market Rent without the prior written approval of the Commissioner. A Nonimmigrant Student-Alien unable to pay the market rent is not eligible for admission to the project.

* * * * *

16. Section 236.80 is revised to read as follows:

§ 236.80 Reexamination of income.

(a) *Regular reexaminations.* The owner must reexamine the income and family composition of all Qualified Tenants at least once every 12 months. After consultation with the Qualified Tenant and upon verification of the information, the owner shall make appropriate adjustments in the Total Tenant Payment in accordance with § 236.55 or § 236.735 and determine whether the Qualified Tenant's unit size is still appropriate. The owner must adjust Tenant Rent and the Rental Assistance Payment, if applicable, to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD.

(b) *Interim reexaminations.* The Qualified Tenant must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the Qualified Tenant's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the Qualified Tenant and make any adjustments determined to be appropriate. Any change in the Qualified Tenant's income or other circumstances that results in an adjustment in the Total Tenant Payment and Tenant Rent must be verified.

(c) *Termination of assistance.* A Qualified Tenant receiving the benefit of rental assistance payments loses eligibility for the assistance when the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the Qualified Tenant's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the contract. However, assistance or eligibility to pay below Market Rent also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

17. Section 236.81 is revised to read as follows:

§ 236.81 Transition provision.

(a) *Admissions and reexaminations on or after October 1, 1984.* All regular or interim reexaminations, or examinations for admission, conducted on or after October 1, 1984, and determinations of Annual Income, Adjusted Income, Total Tenant Payment and Tenant Rent based thereon, shall be made in accordance with the revisions to §§ 236.2, 236.3, and 236.55 (or § 236.735, if applicable) that became effective on October 1, 1984. For purposes of this section, an examination or reexamination is "conducted" at the time the owner, based on its regular practice, begins scheduling and verifying the submission of data by an applicant or tenant, regardless of the "effective date" of the examination or reexamination.

(b) *Optional interim reexamination.* Each owner shall have the right, at its discretion, to require any Qualified Tenant in occupancy on October 1, 1984, to undergo an interim reexamination, and determination of Annual Income, Adjusted Income, Total Tenant Payment, and Tenant Rent based thereon, in accordance with the revisions to §§ 236.3, 236.55, and 236.735, that became effective on October 1, 1984, at any time after that date and before the next scheduled regular

reexamination for such Qualified Tenant.

(c) *Calculation of retroactive adjustment.* For all Qualified Tenants other than those whose examination for admission was conducted on or after October 1, 1984, in accordance with the revisions to §§ 236.2, 236.3, 236.55 and 236.735 that became effective on that date, the owner shall make an additional calculation with respect to the period between October 1, 1984 and the effective date of such reexamination. An adjusted Total Tenant Payment (or Tenant Rent for tenants not receiving the benefit of Rental Assistance Payments) shall be calculated for such period on the basis of—

(1) The Annual Income determined for such period in accordance with regulations and procedures in effect immediately before October 1, 1984;

(2) The Dependent and Elderly Family deductions prescribed in the definition of Adjusted Income in § 236.2;

(3) Medical Expenses taken into account in the calculation of Adjusted Income for such period in accordance with regulations and procedures in effect immediately before October 1, 1984, but only if the Family was an Elderly Family during such period;

(4) Unusual Expenses taken into account in the calculation of Adjusted Income for such period in accordance with regulations and procedures in effect immediately before October 1, 1984, but only if such Unusual Expenses qualify as Child Care Expenses as defined in § 236.2; and

(5) The percentage applied to one-twelfth of the tenant's Adjusted Income in accordance with regulations and procedures in effect immediately before October 1, 1984, to determine the actual monthly rental charge during such period.

(d) *Actual adjustments.* (1) If the adjusted rental charge calculated under paragraph (c) of this section is higher than the actual monthly rental charge for the applicable period, no adjustment shall be made. If the adjusted monthly rental charge calculated under paragraph (c) of this section is lower than the actual monthly rental charge for the applicable period, the amount of such difference shall be offset first against any amounts due from the tenant to the owner, and any remaining balance shall be applied as a credit to the Total Tenant Payment or Tenant Rent as appropriate, due immediately after the effective date of the reexamination. If the amount of any such credit to a tenant exceeds 25 percent of the Total Tenant Payment or Tenant Rent, as appropriate, due from such tenant, such credit may be applied in not more than four installments.

(2) If a Qualified Tenant vacates a unit after October 1, 1984, and before the first reexamination occurring after such date, the owner shall notify the Qualified Tenant of the possibility of a rent adjustment for the period commencing October 1, 1984, subject to the requirement of a request therefor (made not later than 60 days after vacating the unit) together with notification of a current address to which any refund can be sent. For any tenant making such a timely request, the owner shall make all calculations necessary to determine whether an adjustment is due to the tenant under this paragraph (d) and, if so, the amount of any such adjustment shall be offset first against any amounts due from the tenant to the owner, and any balance shall be refunded to the tenant.

(e) *Increased subsidy needs.* If an owner notifies HUD that its subsidy needs exceed the amount available under its contract with HUD as a result of reduced rental income caused by implementation of the revisions to §§ 236.2, 236.3, 236.55 and 236.735, HUD will follow regular procedures appropriate to the circumstances.

18. Section 236.710 is revised to read as follows:

§ 236.710 Qualified tenant.

The benefits of rental assistance payments are available only to an individual or a family renting a dwelling unit in a project that is subject to a contract under this Subpart or occupying such a dwelling unit as a cooperative member. To qualify for such benefits, the individual or family shall satisfy the definition of Qualified Tenant found in § 236.2 of Subpart A. In order to receive rental assistance under this Subpart, it must have been determined that the income of the individual or family is too low to permit the individual or family to pay the approved Gross Rent with 30 percent of such individual's or family's Adjusted Monthly Income, as defined in Subpart A.

§ 236.715 [Amended]

19. The first sentence of § 236.715 is removed and the following sentence is added in its place: The housing owner will review for eligibility each individual or family that applies for rental assistance payments using a form prescribed by the Secretary.

20. Section 236.735 is revised to read as follows:

§ 236.735 Rental assistance payments and rental charges.

(a) *Amount of rental assistance payments.* The rental assistance contract shall provide that the payment on behalf of Qualified Tenant shall not exceed the difference between the Gross Rent and the Total Tenant Payment.

(b) *Total tenant payment for qualified tenants who first receive rental assistance on or after May 1, 1983.* Notwithstanding § 236.55(b), the Total Tenant Payment payable for these Qualified Tenants shall be the highest of the following amounts, rounded to the nearest dollar:

(1) 30 percent of Adjusted Monthly Income as defined in Subpart A;

(2) 10 percent of one-twelfth of Annual Income as defined in Subpart A;

(3) If the family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the monthly portion of such payments which is so designated. If the family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(3) shall be the amount resulting from one application of the percentage.

(c) *Total tenant payment for qualified tenants who were receiving rental assistance on April 30, 1983 and whose assistance has been continuous thereafter.* Notwithstanding § 236.55(b), the total Tenant Payment for these Qualified Tenants shall be calculated in accordance with paragraph (b) of this section, except that instead of 30 percent, the percentage applied to Adjusted Monthly Income shall be as follows:

Effective date of recertification	Percentage
May 1, 1983 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	28
Oct. 1, 1984 to Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(d) *Special Conditions.* (1) For purposes of this section, a Qualified Tenant whose initial lease was effective before May 1, 1983 includes the following: A Qualified Tenant that resided in a unit assisted under the Rental Assistance Program or Rent Supplement Program on April 30, 1983, and whose assistance under those programs has been coutinuous thereafter; and a family that resided in a unit with the benefit of Section 8 Housing Assistance Payments on July 31, 1982 and whose participation in the

Section 8, Rent Supplement or Rental Assistance Payment Program has been continuous thereafter. A Qualified Tenant or family shall not be disqualified if, after that date, it moved from one unit to another unit in the same project. For these purposes, units in buildings located on adjacent sites and managed as one project will be considered part of the same project even if they have separate project numbers and separate mortgages.

(2) Notwithstanding paragraphs (b) and (c) of this section, the Total Tenant Payment payable by a Qualified Tenant who continues to receive assistance in the same project shall not be increased by more that 10 percent during any 12-month period as a result of application of the percentages in paragraph (c) of this section, and application of the revised definitions in §§ 236.2 and 236.3. However, this 10 percent limit does not apply to Families subject to paragraph (b)(3) of this section, provided that the welfare agency includes as the housing component of the Family's grant an amount equal to their entire rent payment, without reduction. The Total Tenant Payment may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributable to increases in income or changes in family composition or family circumstances that are unrelated to the factors set out in this paragraph (d)(2).

(e) *Utility Reimbursement.* Where applicable the Utility Reimbursement shall be paid to the Qualified Tenant. If the tenant and the Utility company consent, the owner may pay the Utility Reimbursement jointly to the Qualified Tenant and the utility company, or directly to the utility company.

21. Section 236.750 is revised by removing paragraph (b) so that the section reads as follows:

§ 236.750 Form of lease.

Qualified Tenants shall be required to execute a lease in a form approved by the Secretary.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM—SPECIAL ALLOCATIONS

22. Section 886.126 is revised to read as follows:

§ 886.126 Adjustment of utility allowances.

When the owner requests HUD approval of adjustment in Contract Rents under § 886.112, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the owner must advise the Secretary and request approval of new Utility Allowances.

23. Section 886.326 is revised to read as follows:

§ 886.326 Adjustment of utility allowances.

When the owner requests HUD approval of an adjustment in Contract Rents under § 886.312, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the owner must advise the Secretary and request approval of new Utility Allowances.

(Sec. 101(g), Housing and Urban Development Act of 1965, 12 U.S.C. 1701s; sec. 236, National Housing Act, 12 U.S.C. 1715b, 1715z-1; sec. 8, United States Housing Act of 1937, 42 U.S.C. 1437f; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: June 14, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-19257 Filed 7-20-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7961]

Income Tax: Taxable Years Beginning After December 31, 1953; Limitation on Foreign Tax Credit for Foreign Oil and Gas Taxes

Correction

In FR Doc. 84-16773 beginning on page 26208 in the issue of Wednesday, June 27, 1984, make the following corrections:

1. On page 26212, first column, first complete paragraph, line four, "and" should read "the".

2. On the same page, third column, first complete paragraph, line twenty-one, "and" should appear between "(2)," and "the".

§ 1.907-0 [Corrected]

3. On page 26213, third column, § 1.907-0 (c), line three, "taxpayer" should read "taxpayer's".

§ 1.907(b)-2 [Corrected]

4. On page 26215, first column, § 1.907(b)-2 (b)(2), line three, "1970" should read "1976".

§ 1.907(c)-2 [Corrected]

5. On page 26218, third column, § 1.907(c)-2 (d)(8), *Example 2,* lines one and two, "factsge a27jn0.064 as in example (1)." should read "facts as in example (1).".

§ 1.907(e)-1 [Corrected]

6. On page 26222, first column, § 1.907(e)-1 (a)(5), *Example (4)* (b), line twelve "$506" should read "$508".

§ 1.907(f)-1 [Corrected]

7. On page 26224, first column, § 1.907(f)-1 (j) *Example (h),* line eleven, "§ 1.979(b)" should read "1979(b)".

§ 1.904-2 [Corrected]

8. On page 26225, first column, § 1.904-2 (a), line six, "of" should read "or".

BILLING CODE 1505-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 1, 4, 7, 13, 18, 19, 21, 47, 55, 70, 71, 72, 170, 178, 179, 194, 195, 196, 197, 200, 211, 213, 231, 240, 245, 250, 251, 252, 270, 275, 285, 290, 295, and 296

[T.D. ATF-179]

Executive Level Reorganization Change of Titles

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision without notice.

SUMMARY: The positions of regional regulatory administrator and Assistant Director (Regulatory Enforcement) have been retitled regional director (compliance) and Associate Director (Compliance Operations) respectively. Therefore, wherever the superceded titles appear 27 CFR, the new titles should be substituted.

EFFECTIVE DATE: January 2, 1984.

FOR FURTHER INFORMATION CONTACT: David Brokaw, Procedures Branch, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and

Firearms 1200 Pennsylvania Avenue, NW., Washington, DC (202–566–7602).

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms announced on December 30, 1983, that the position of Assistant Director (Regulatory Enforcement) is retitled Associate Director (Compliance Operations) effective January 2, 1984 (48 FR 57650 (1983)). The Bureau also announced on January 3, 1984, that the position of regional regulatory administrator is retitled regional director (compliance) effective January 2, 1984 (49 FR 185 (1984)).

Regulatory Amendment

The term "regional regulatory administrator" wherever used in 27 CFR Parts, 1, 4, 7, 13, 18, 19, 21, 47, 55, 70, 71, 72, 170, 178, 179, 194, 195, 196, 197, 200, 211, 213, 231, 240, 245, 250, 251, 252, 270, 275, 285, 290, 295 and 296 is changed to read the "regional director (Compliance)."

"The term "Assistant Director (Regulatory Enforcement)" wherever used in 27 CFR Parts 270, 275, 290 and 295 is changed to read the "Associate Director (Compliance Operations)."

Administrative Procedure Act

Because this Treasury decision is administrative in nature and merely effects an internal title change, it is found unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b) and in compliance with the effective date limitation in 5 U.S.C. 553(d).

Executive Order 12291

This document is not a major rule within the meaning of Executive Order 12291, (46 FR 13193 (1981)). It is also found that this document will not cause:

(a) An annual effect on the economy of a $100 million or more;

(b) A major increase in cost or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to the initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document because it is administrative in nature and is not expected to have a significant or incidental effect on a substantial number of small entities or impose or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is certified under the provisions of 5 U.S.C. 604(b) of the Regulatory Flexibility Act that this final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirements to collect information are imposed.

Drafting Information

The principal author of this document is David Brokaw, Procedures Branch.

Authority and Issuance

This final rule is issued under the authority contained in 27 U.S.C. 205.

Signed: June 15, 1984.

Stephen E. Higgins,

Director.

Approved: July 2, 1984.

Edward T. Stevenson,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 84–19423 Filed 7–20–84; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Tax Division Directive No. 47]

Organization of the Department of Justice; Appendix to Subpart Y—Redelegation of Authority To Compromise and Close Civil Claims

Correction

In FR Doc. 84–8298 beginning on page 12247 in the issue of Thursday, March 29, 1984, make the following correction:

[Directive No. 47—Corrected]

On Page 12248, second column, Sec. 7. (B), line four, "$500,000" should read "$50,000".

BILLING CODE 1505–01–M

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28 CFR Part 16

[AAG/A Order No. 13–84]

Redesignation and Deletion of Privacy Act Systems of Records

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration, Department of Justice, amends § 16.98 of Title 28 of the Code of Federal Regulations to accomplish consistency with changes that have been made to Privacy Act systems of records and published in the **Federal Register**. Such changes consist of system name changes, system number redesignations, and system deletions. These are administrative changes only and have no effect on the public.

DATE: This rule will be effective July 23, 1984.

ADDRESS: Vincent A. Lobisco, Assistant Director, Administrative Services, Staff, Justice Management Division, Department of Justice, Room 6314, 10th and Constitution Avenue NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: Vincent A. Lobisco, (202) 633–4414.

SUPPLEMENTARY INFORMATION: This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities." Since the action here consists solely of administrative changes for practical reasons, and since the changes have no effect on the public, it has been determined that it is unnecessary and contrary to public interest to delay the effective date of this rule. This determination has been made in accordance with 5 U.S.C. 553(b)(B) and (d)(3).

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information, Privacy, and Sunshine Act.

For convenience, system redesignations and deletions are outlined below in the same order as they appear in § 16.98.

Redesignated

Automated Records and Consummated Orders System/Diversion Analysis and Detection System (ARCOS/DADS), JUSTICE/DEA–004, is redesignated as Automated Records and Consummated Orders System/Diversion

Analysis and Detection System (ARCOS/DADS), JUSTICE/DEA–003.

Controlled Substances Act Registration Records, JUSTICE/DEA–006, is redesignated as Controlled Substances Registration Records, JUSTICE/DEA–005.

Registration Status/Investigation Records, JUSTICE/DEA–016, is redesignated as Registration Status/Investigation Records, JUSTICE/DEA–012.

Deleted

Drug Theft Reporting System, JUSTICE/DEA–023 Addict/Abusers System, JUSTICE/DEA–001.

These systems were removed by notice in the **Federal Register** on November 19, 1976 (41 FR 51127).

Redesignated

Air Intelligence Program, JUSTICE/DEA–002, is redesignated as Air Intelligence Program, JUSTICE/DEA–001.

Deleted

Automated Intelligence Records (Pathfinder I), JUSTICE/DEA–003.

This system was removed, through redesignation, by notice in the **Federal Register** on March 18, 1977 (42 FR 15150), but was identified in that publication as Automated Intelligence Records (Pathfinder I), JUSTICE/DEA–002.

DEA/FAA Trans-border Flight Plan Reporting System, JUSTICE/DEA–007.

Defendant Data System, JUSTICE/DEA–008.

Domestic Intelligence Data Base, JUSTICE/DEA–009.

These systems were removed by notice in the **Federal Register** on November 19, 1976 (41 FR 51127).

International Intelligence Data Base, JUSTICE/DEA–011.

This system is being removed by notice in today's **Federal Register** where it is identified as the International Intelligence Data Base, JUSTICE/DEA–007. ("JUSTICE/DEA–007" is consistent with the system identification as most recently published in the **Federal Register** on September 28, 1978 (43 FR 44716).) It has been determined that this system is a duplicative reporting of those records contained and described in the Automated Intelligence Records System (Pathfinder), JUSTICE/DEA–INS–111.

Redesignated

Investigative Reporting and Filing System, JUSTICE/DEA–012, is redesignated as Investigative Reporting and Filing System, JUSTICE/DEA–008.

Office of Internal Security Records, JUSTICE/DEA–014, is renamed and redesignated as Planning and Inspection Division Records, JUSTICE/DEA–010.

Operations Files, JUSTICE/DEA–015, is redesignated as Operations Files, JUSTICE/DEA–011.

Security Files, JUSTICE/DEA–017, is redesignated as Security Files, JUSTICE/DEA–013.

Deleted

Source Registry Narcotics (SRN/1), JUSTICE/DEA–018.

This system was removed by notice in the **Federal Register** on November 19, 1976 (41 FR 51127).

Redesignated

System to Retrieve Information from Drug Evidence (STRIDE), JUSTICE/DEA–019, is redesignated as System to Retrieve Information from Drug Evidence (STRIDE), JUSTICE/DEA–014.

Deleted

Drug Enforcement Administration Semi-Automated Narcotics Trafficker Profiles (KISS), JUSTICE/DEA–025.

This system was removed by notice in the **Federal Register** on November 19, 1976 (41 FR 51127).

Drug Enforcement Administration Specialized Automated Intelligence Files, JUSTICE/DEA–026.

This system was removed by notice in the **Federal Register** on September 28, 1978 (43 FR 44738), but was identified in that publication as Drug Enforcement Administration Specialized Automated Intelligence Files, JUSTICE/DEA–019.

Regional Automated Intelligence Data Systems (RAIDS), JUSTICE/DEA–028.

This system is being removed by notice in today's **Federal Register.** It has been determined that this system is a duplicative reporting of those records contained and described in the Automated Intelligence Records System (Pathfinder), JUSTICE/DEA–INS–111.

Redesignated

Grants of Confidentiality Files (GCF), JUSTICE/DEA–022, is redesignated as Grants of Confidentiality Files (GCF), JUSTICE/DEA–017.

DEA Applicant Investigations, JUSTICE/DEA–024, is redesignated as DEA Applicant Investigations, JUSTICE/DEA–018.

Freedom of Information/Privacy Act Records, JUSTICE/DEA–010, is redesignated as Freedom of Information/Privacy Act Records, JUSTICE/DEA–006.

Accordingly, pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–98, § 16.98 of 28 CFR is amended as set forth below.

Dated: June 25, 1984.

Kevin D. Rooney,

Assistant Attorney General for Administration.

Section 16.98 is amended by revising paragraphs (a), (c), (d)(3), (e), (g) and (h).

§ 16.98 Exemption of Drug Enforcement Administration Systems.

(a) The following systems of records are exempt for 5 U.S.C. 552a (c)(3), (d), (e)(4) (G) and (H), and (f):

(1) Automated Records and Consummated Orders System/Diversion Analysis and Detection System (ARCOS/DADS) (JUSTICE/DEA–003).

(2) Controlled Substances Act Registration Records (JUSTICE/DEA–005).

(3) Registration Status/Investigatory Records (JUSTICE/DEA–012).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k).

* * * * *

(c) The following systems of records are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g) and (h):

(1) Air Intelligence Program (JUSTICE/DEA–001).

(2) Investigative Reporting and Filing System (JUSTICE/DEA–008).

(3) Planning and Inspection Divisions Records (JUSTICE/DEA–010).

(4) Operations Files (JUSTICE/DEA–011).

(5) Security Files (JUSTICE/DEA–013).

(6) System to Retrieve Information from Drug Evidence (STRIDE/Ballistics) (JUSTICE/DEA–014).

(d) * * *

(3) From subsection (d) because access to records contained in these systems would interfere with the overall law enforcement process by revealing a pending sensitive investigation, e.g., it may alert a subject to the existence of an investigation and thereby provide information to the subject which might enable him to avoid detection or apprehension, or it may alert collateral suspects yet unprosecuted in closed cases. Likewise, access to these records could present a serious impediment to law enforcement efforts by simply revealing a sensitive investigative technique. Finally, access to these records may possibly identify a confidential source, or disclose information which would constitute an unwarranted invasion of another individual's privacy or create a potential

danger to the health and safety of law enforcement personnel.

* * * * *

(e) The following systems of records are exempt from 5 U.S.C. 552a (d)(1) and (e)(1).

(1) Grants of Confidentiality Files (GCF) (JUSTICE/DEA–017).

(2) DEA Applicant Investigations JUSTICE/DEA–018).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

* * * * *

(g) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4) (G) and (H), (e)(5) and (8), (f), (g), and (h) of 5 U.S.C. 552a; in addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H), and (f) of 5 U.S.C. 552a:

Freedom of Information/Privacy Act Records (JUSTICE/DEA–006).

This system of records listed in paragraph (g) of this section is exempted because the records contained in the system contain Drug Enforcement Administration law enforcement and investigative information. Individual access to these records might compromise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation.

These exemptions apply only to the extent that information in this system is subject to exemptions pursuant to 5 U.S.C. 552a(j) and (k).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From (c)(3) because the release of the disclosure accounting for disclosure pursuant to the routine uses published for this system would permit the subject of a criminal investigation to obtain valuable information concerning the nature of that investigation and present a serious impediment to law enforcement.

(2) From subsection (c)(4) because an exemption is being claimed for subsection (d) and this subsection will therefore not be applicable.

(3) From subsection (d) because access to records contained in this system would alert a subject to the existence of an investigation and thereby provide information to the subject which might enable him to avoid detection or apprehension, and present serious impediment to law enforcement.

(4) From subsection (e)(1) because in the course of criminal investigations the Drug Enforcement Administration often detects violation of non-drug related laws. In the interests of effective law enforcement, it is necessary that DEA retain all information obtained in criminal investigations because it can aid in establishing patterns of criminal activity and assist other law enforcement agencies that are charged with enforcing other segments of criminal law.

(5) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information, and endanger the life or physical safety of confidential informants.

(7) From subsection (e)(4) (G) and (H) because this system of records is exempt from the individual access provisions of subsection (d).

(8) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual notice requirements could present a serious impediment to law enforcement by interfering with the Drug Enforcement Administration's ability to issue administrative techniques and procedures.

(10) From subsection (f) because this system has been exempted from the individual access provisions of subsection (d).

(11) From subsection (g) because the records in this system are generally compiled for law enforcement purposes and are exempt from the access provisions of subsections (d) and (f), rendering subsection (g) inapplicable.

* * * * *

[FR Doc. 84–19355 Filed 7–20–84; 8:45 am]
BILLING CODE 4410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action NE 1275; OAR–FRL–2636–2]

Revision to State Implementation Plan; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 23, 1983, the State of Nebraska submitted a revision to the State Implementation Plan (SIP) to comply with the federal requirements for new source review (NSR); this included both the Part D requirements for nonattainment areas and prevention of significant deterioration (PSD) in attainment areas. EPA reviewed these regulations and proposed to approve them on August 31, 1983. Today's rule takes final action to approve these regulations. The May 23 submission also included a regulation to comply with the stack height requirements of the Clean Air Act, as amended (Act). EPA reviewed this regulation and proposed to approve it based on a commitment by the state to revise the regulation to comply with the Federal requirements for pubic notice and hearing. This commitment has not yet been fulfilled by the state. Additionally, since the proposal was published, a decision has been rendered by the U.S. Court of Appeals for the District of Columbia Circuit, as explained later in this action, concerning EPA's stack height requirements. Consequently, today's rule takes no action on the state's stack height regulation.

EFFECTIVE DATE: This action is effective August 22, 1984.

ADDRESSES: Copies of the state submission are available for review during normal business hours at the following locations: Environmental Protection Agency, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106; Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460; The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington,

D.C., and State of Nebraska, Department of Environmental Control, 301 Centennial Mall South, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: Mary C. Carter at (816) 374–3791, FTS 758–3791.

SUPPLEMENTARY INFORMATION: On August 9, 1982, EPA received the Nebraska State Implementation Plan revision to comply with the requirements of Part D of the Clean Air Act. EPA took final action to approve certain portions of the submission on March 28, 1983 (see 48 FR 12715 for further information). EPA took no action on the NSR regulations at that time because the state indicated that these regulations were undergoing revisions to more closely parallel the federal requirements for new source review in nonattainment areas published on August 7, 1980.

The revised NSR regulations were submitted as part of a SIP revision by the Governor of Nebraska on May 23, 1983. That submission is the subject of today's action and is comprised of amendments to the following state regulations: Rule 4, "New and Complex Sources; Standards of Performance, Application for Permit, When Required," and Rule 1, "Definitions;" and two new regulations: Rule 4.01, "Prevention of Significant Deterioration of Air Quality," and Rule 3A, "Stack Heights; Good Engineering Practice (GEP)."

New Source Review

Part D of the Clean Air Act, as amended, requires states to include specific new source review regulations in their SIPs for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). Section 172(b)(6) requires plans to have a permit program for the construction and operation of new or modified stationary sources in accordance with the permit requirements of section 173. Specific requirements are codified at 40 CFR 51.18(j). The permit program must assure that when a new source commences operation, there will be sufficient emissions reductions from existing sources to offset the increase in emissions from the new source and to assure reasonable further progress toward attaining the NAAQS; the permit program must require compliance with the lowest achievable emission rate; all sources in the state owned or operated by the permit applicant must be in compliance with all applicable state and federal emission limits; and the applicable implementation plan must be carried out in the nonattainment area in which the source is to be constructed.

EPA has reviewed the revisions to Nebraska Rule 4, "New and Complex Sources; Standards of Performance, Application for Permit, When Required," and the supporting definitions in Rule 1 and finds that these rules closely parallel Federal regulations and meet all requirements of section 172(b)(6) and section 173 of the Act, and the requirements for new sources in nonattainment areas published on August 7, 1980.

The previous lack of an approved SIP which included new source review regulations for nonattainment areas in Nebraska led to the imposition of the construction moratorium (on July 1, 1979), required by section 110(a)(2)(I) of the Act, on all primary nonattainment areas in the state. This action will remove the construction moratorium in the primary nonattainment areas for which a Part D SIP revision has been approved by EPA.

Prevention of Significant Deterioration (PSD)

Section 161 requires each implementation plan to contain emission limitations and other measures to prevent significant deterioration of air quality in each region which is designated attainment or unclassified under Section 107 of the Act. Specific requirements are codified at 40 CFR 51.24. In addition, EPA's regulations promulgated for areas which have no approved SIP are found at 40 CFR 52.21. The new Nebraska Rule 4.01 adopts the Federal PSD requirements by reference.

The EPA has reviewed the new Nebraska Rule 4.01, "Prevention of Significant Deterioration of Air Quality" and finds that this rule meets the requirements of 40 CFR 51.24.

Under this program, Nebraska will be issuing permits and establishing emission limitations that may be affected by the current judicial review of stack height regulations promulgated by EPA on February 8, 1982 (47 FR 5864). For this reason, EPA has requested that the state include the following caveat in all potentially affected permit approvals until the judicial process is completed and the stack height regulations either upheld by the court or revised by EPA:

"In approving this permit, the Nebraska Department of Environmental Control has determined that the application complies with the applicable provisions of the stack height regulations promulgated by EPA on February 8, 1982 (47 FR 5864). Portions of these regulations have been overturned by a panel of the U.S. Court of Appeals for the D.C. Circuit, *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir., 1983). That court decision has been appealed to the U.S. Supreme Court by a group of affected industries. Consequently, this permit may be subject to modification when the judicial process is completed and any regulations revised in response. This may result in revised emission limitations or may affect other actions taken by the source owners or operators."

Nebraska made an enforceable commitment to include this caveat in all affected permits by letter dated May 30, 1984. This letter is part of the SIP revision EPA is approving today.

Stack Heights

Section 123 prohibits stacks taller than good engineering practice (GEP) height and other dispersion techniques that would affect the emission limitation required for the control of any air pollutant to meet the NAAQS or PSD air quality increments. Specific requirements are found at 40 CFR 51.12 (j), (k) and (l).

Before the state submits to EPA a new revised emission limitation that is based on a demonstration of GEP, the state must notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it [see 40 CFR 51.12(j)].

EPA has reviewed Nebraska Rule 3A and finds that the requirements of 40 CFR 51.12(j) are not met by this Rule, as written. The deficiency in the language of the regulation has been discussed with the state. The state has committed to clarifying the language of the regulation accordingly. This commitment has not yet been fulfilled by the state. Additionally, on October 11, 1983, the U.S. Court of Appeals for the District of Columbia Circuit ordered EPA to reconsider portions of the stack height regulations for stationary sources under Section 123 of the Clean Air Act, and reversed other portions of EPA's stack height requirements. The remainder of the stack height regulations were upheld. See *Sierra Club and Natural Resources Defense Council, Inc.* v. *EPA*. Nos. 82–1384, 82–1412, 82–1845, and 82–1889 (D.C. Cir., October 11, 1983). Consequently, it would be inappropriate for EPA to take action on the Nebraska stack height regulation pending EPA's response to the court decision.

The May 23, 1983, submission discussed in this rulemaking was proposed for approval on August 31, 1983 (48 FR 39472). The reader is referred to the proposal for further discussion. No comments were received as a result of the proposed rulemaking.

ACTION: EPA approves the revisions to Nebraska Rules 4 and 1, and approves the new Nebraska Rule 4.01. EPA takes no action on Nebraska Rule 3A.

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 EPA response, are available for public inspection at the EPA Region VII office.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 21, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Incorporation by reference of the State Implementation Plan for the State of Nebraska was approved by the Director of the Federal Register on July 1, 1982.

This notice of proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

List of Subjects in 40 CFR Part 52:

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons.

Date: July 16, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart CC—Nebraska

1. Section 52.1420 is amended by adding a new paragraph (c)(29) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(29) Revisions to Rule 1 "Definitions," and to Rule 4, "New and Complex Sources; Standards of Performance, Application for Permit, When Required;" and a new regulation: Rule 4.01, "Prevention of Significant Deterioration of Air Quality," were submitted by the Governor on May 23, 1983; clarifying letter dated May 30, 1984.

* * * * *

2. Section 52.1439 is revised to read as follows:

§ 52.1436 Significant deterioration of air quality.

The requirements of sections 160 through 165 of the Clean Air Act are met except as noted below.

EPA is retaining § 52.21 (b) through (w) as part of the Nebraska SIP for the following types of sources:

(a) Sources proposing to construct on Indian lands in Nebraska; and,

(b) Enforcement of permits issued by EPA prior to the July 28, 1983, delegation of authority to Nebraska.

[FR Doc. 84-19342 Filed 7-20-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6550

[U-50216]

Utah; Withdrawal of Lands for Reclamation Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 159.91 acres of land within the Ashley National Forest, for use by the Bureau of Reclamation in constructing recreation facilities associated with the Upalco Unit of the Central Utah Project. This action will close the land to mining, but not to surface entry or mineral leasing, for 20 years.

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Ken Latimer, Utah State Office, 801–524–4245.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described land which is under the jurisdiction of the Secretary of Agriculture, is hereby withdrawn from location or entry under the general mining laws (30 U.S.C. Ch. 2), but not from leasing under the general mining laws, and reserved for use by the Bureau of Reclamation, as a recreation facility associated with the Upalco Unit of the Central Utah Project:

Uintah Meridian

T. 2 N., R. 4 W.,
Sec. 4, lots 3 and 4, NW¼SE¼NW¼, NE¼SW¼NW¼.
T. 3 N., R. 5 W.,
Sec. 34, SW¼SW¼, S½NW¼SW¼.

The area described contains 159.91 acres in Duchesne County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

3. The storage, use or control of water will be in accord with existing valid water rights and State law pertaining to appropriation, use, control, and distribution of water.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: July 12, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-19322 Filed 7-20-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6551

[A-18542]

Arizona; Withdrawal of Lands for the Department of the Air Force

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 160 acres of public land in Maricopa County, for use by the Department of the Air Force as an integral part of Williams Air Force Base. This action will close the land to surface entry and mining, but not mineral leasing. The withdrawal will remain in effect for 20 years.

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Mario L. Lopez, Arizona State Office 602–261–4774

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land, which is under the jurisidiction of the Secretary of the Interior, is hereby withdrawn from settlement, sale, location or entry, under the general land laws, including the mining laws, 30 U.S.C., Ch. 2, but not the mineral leasing laws, and reserved for use by the Department of the Air Force as part of Williams Air Force Base:

Gila and Salt River Meridian, Arizona

T. 1 S., R. 7 E.,
Sec. 33, SE¼.

The area described contains 160 acres in Maricopa County.

2. The withdrawal made by this order does not alter the applicability of the public land laws governing use of the land under lease, license, permit or cooperative agreement. The Department of the Air Force will issue leases, licenses, permits or cooperative agreements if it finds the proposed use will not interfere with the purposes of the withdrawal.

This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date, pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Inquiries concering the land should be addressed to the State Director, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Dated : July 12, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-19323 Filed 7-20-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6552

[U-41593]

Utah; Partial Revocation of Executive Order Designating Public Water Reserve No. 107

AGENCY: Bureau of Land Managment, Interior.

ACTION: Public land order.

SUMMARY: This order revokes the Executive order which created Public Water Reserve No. 107, insofar as it affects 38.29 acres of public land. This action will open the lands to surface entry and nonmetalliferous mining. The lands have been and remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Ken Latimer, Utah State Office, 801-524-3074.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. That portion of Public Water Reserve No. 107 granted to the Bureau of Land Management by the Executive Order of April 17, 1926, and further designated by Interpretation No. 201 of March 27, 1934, is hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian, Utah

T. 2 N., R. 2 E.,
Sec. 20, lot 2.

Containing 38.29 acres in Morgan County.

2. At 10 a.m. on August 17, 1984, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 17, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on August 17, 1984, the lands will be open to location for nonmetalliferous mineral location under the United States mining laws. Appropriation of lands for nonmetalliferous minerals under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including adverse possession under U.S.C. Section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The lands have been and will remain open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning these lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: July 13, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-19320 Filed 7-20-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6553

[OR-35915]

Oregon; Public Land Order No. 6512; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct an error in the land description of Public Land Order No. 6512 of January 30, 1984.

EFFECTIVE DATE: August 18, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6512 of January 30, 1984, in FR Doc. 84-3310 published at page 4478, in the issue of Tuesday, February 7, 1984, is corrected as follows: On page 4478, under T. 19 S., R. 46 E., sec. 34, N½NW¼, SE¼NW¼, is corrected to read sec. 34, N½NW¼, SW¼NW¼.

Dated: July 13, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-19321 Filed 7-20-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6554

[NM-58990]

New Mexico; Restoration of Lands to Ownership of the Cheyenne and Arapaho Tribes; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will terminate the withdrawal of 206.62 acres of ceded public lands and restore them to the ownership of the Cheyenne and Arapaho Tribes.

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Dolores L. Vigil, New Mexico State Office, 505-988-6659.

By virtue of the authority contained in Section 3 of the Act of June 18, 1934, 25 U.S.C. 463, and pursuant to the recommendations of the Tribal Council and the Deputy Assistant Secretary of Indian Affairs, and a finding by the Secretary of the Interior that such action is in the public interest, it is ordered as follows:

The following described lands, ceded by the Cheyenne and Arapaho Tribes of Indians to the United States pursuant to agreement ratified by the Act of March 3, 1891, 26 Stat. 1022, having been reserved for use by the Bureau of Indian Affairs for the Concho Indian School and not needed for such uses, are hereby restored to tribal ownership for use and benefit of the Cheyenne and

Arapaho Tribes of Indians and are added to and made a part of the existing reservation, subject to valid existing rights:

Indian Meridian

T. 13 N., R. 7 W.,
Sec. 7, lots 2, 4, 6, and 7.
T. 13 N., R. 8 W.,
Sec. 12, lot 2;
Sec. 13, lot 2.

The areas described aggregate 260.62 acres in Canadian County.

Inquiries concerning the lands should be addressed to the Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501.

Dated: July 12, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-19319 Filed 7-20-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6555

[CA 13989]

California; Partial Revocation of Secretarial Orders of July 2, 1902, as Amended, and February 19, 1929

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two Secretarial orders as they affect 281.41 acres of public land withdrawn for the Bureau of Reclamation, Colorado River Storage Project. This action will restore the lands to surface entry and mining. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: August 21, 1984.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, 916-484-4431.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of July 2, 1902, as amended by Secretarial Order of August 26, 1902, and the Secretarial Order of February 19, 1929, are hereby revoked insofar as they affect the following described lands:

San Bernardino Meridian

T. 9 S., R. 21 E.,
Sec. 25, lots 3, 4, 5, 6, 9 (formerly part of lot 2), 10 (formerly part of lot 7), and NW¼SW¼;
Sec. 26, NE¼SE¼.

The areas described aggregate 281.41 acres in Imperial County.

2. At 10:00 a.m. on August 21, 1984, the lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on August 21, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10:00 a.m. on August 21, 1984, the lands will be opened to location under the United States mining laws. Appropriation of any of the lands decribed in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. The lands have been and will remain open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be directed to the State Director, Bureau of Land Management, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Dated: July 16, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-19351 Filed 7-20-84; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 147 and 147A

[CGD 83-067C]

Interim Shipboard Fumigation Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The purposes of this final rule are to revise the authority citation to the interim shipboard fumigation regulations and to make minor editorial revisions in the ships' stores and supplies regulations.

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Frank K. Thompson, Project Manager, Office of Merchant Marine Safety; 202-426-1577.

SUPPLEMENTARY INFORMATION: Pub. L. 98-89, August 26, 1983, revised and consolidated over 300 statutes related to vessel inspections, marine casualties, licenses and documents issued to seamen, manning of vessels, seamen protection and relief, identification of vessels, and state boating safety programs. In their place, Pub. L. 98-89 was enacted as an organized statement of the law concerning marine safety and the welfare of seamen as Subtitle II of Title 46 U.S.C. The revision and consolidation did not expand or alter Coast Guard authority to prescribe inspection procedures or standards.

The regulations governing use of dangerous articles as ships' stores and supplies on board vessels, 46 CFR Part 147, and the interim regulations for shipboard fumigation, 46 CFR Part 147A, were promulgated pursuant only to the Dangerous Cargo Act (DCA) of 1940, 46 U.S.C. 170. The DCA was partially repealed by the Title 46 revision with only authorization to regulate ships' stores on inspected vessels being retained in 46 U.S.C. 3306(a)(5). Regulations in effect under a statute replaced by Pub. L. 98-89 continue in effect under the corresponding provisions of Pub. L. 98-89. This saving provision of Pub. L. 98-89 does not save the 46 CFR Part 147A regulations as they apply to uninspected vessels since their authorizing act was not replaced by a corresponding provision of the new Title 46.

On January 3, 1975, the Hazardous Materials Transportation Act (HMTA) was signed into law. This Act authorized the Secretary of Transportation to issue regulations for the safe transportation in commerce of hazardous materials. The regulatory authority under the DCA was considered parallel to that under the HMTA. Now, with the partial repeal of the DCA by Pub. L. 98-89, it is necessary to repromulgate 46 CFR Part 147A under the HMTA.

This rulemaking has the following objectives:

1. The interim shipboard fumigation regulations, 46 CFR Part 147A, are repromulgated without substantive revision by replacing citations and references to statutes repealed by Pub. L. 98-89 with citations and references to the appropriate parts of the Hazardous Materials Transportation Act. On both inspected and uninspected vessels, bulk cargoes of grain or grain products may be treated with pesticides which remain in or on the grain during its transportation. Grain so treated is a hazardous material as defined by the HMTA. If the Coast Guard is to ensure

the health and safety of persons on board vessels, these regulations must remain in effect.

2. At several places in the text and Table S of 46 CFR Part 147 citations to provisions of 46 CFR Part 146, which no longer exist, are changed to comparable provisions of Title 49, CFR.

Because these amendments are merely administrative and editorial, the Coast Guard finds that notice and comments are unnecessary. This final rule is effective immediately under 5 U.S.C. 553(d) because it is not a substantive rule.

Drafting Information

The principal persons involved in drafting this document are Mr. Frank K. Thompson, Project Manager, Office of Merchant Marine Safety, and Mr. Michael N. Mervin, Project Counsel, Office of the Chief Counsel.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rulemaking repromulgates the 46 CFR Part 147A regulations under the Hazardous Materials Transportation Act. There is no change to current Coast Guard regulations or procedures.

Regulatory Flexibility Evaluation

Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

46 CFR Part 147

Hazardous materials transportation, Marine safety.

46 CFR Part 147A

Hazardous materials, Occupational safety and health, Vessels.

In consideration of the foregoing, Parts 147 and 147A of Title 46, Code of Federal Regulations, are amended as follows:

PART 147—REGULATIONS GOVERNING USE OF DANGEROUS ARTICLES AS SHIPS' STORES AND SUPPLIES ON BOARD VESSELS

§ 147.03–1 [Amended]

1. In § 147.03–1, by changing the citation "§ 146.04–5 of this subchapter" in the proviso to read "49 CFR 172.101."

§ 147.06–1 through § 147.06–5 [Removed]

2. By removing § 147.06–1 through § 147.06–5.

§ 147.05–100 [Amended]

3. In footnotes 2 and 3 following Table S of § 147.05–100, by changing the citations "§ 146.08–45 of the regulations in this chapter" to read "49 CFR 176.90."

(46 U.S.C. 3306; 49 CFR 1.46(t))

PART 147A—INTERIM REGULATIONS FOR SHIPBOARD FUMIGATION

4. The authority citation to Part 147A is revised as set forth below.

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.4(b).

Dated: July 9, 1984.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 84–18452 Filed 7–20–84; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[General Order 16; Docket No. 84–16]

Enforcement of Orders and Subpenas in Formal Proceedings

Correction

In FR Doc. 84–17925 beginning on page 27753 in the issue of Friday, July 6, 1984, make the following corrections:

1. On page 27753, third column, last line, "no" should be inserted between "and" and "adverse".

2. On page 27754, the first word in the eighth line of § 502.210(b) should read "jurisdiction".

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83–75; RM–4253]

FM Broadcast Station in Bruce, MS; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 233A to Bruce, Mississippi, as that community's first local FM service, in response to a petition filed by Bruce Independent TV, Inc.

DATE: Effective: September 18, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Howard Irvin, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Reporting Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Bruce, Mississippi) (MM Docket No. 83–75 RM–4253).

Adopted: July 2, 1984.
Released: July 13, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is its *Notice of Proposed Rule Making*, 48 FR 7749, published February 24, 1983, issued in response to a petition filed by Bruce Independent TV, Inc. ("petitioner"), proposing the assignment of Channel 296A to Bruce, Mississippi, as that community's first local FM broadcast service. Supporting comments were filed by petitioner in which it reaffirmed its intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Although we initially proposed the assignment of Channel 296A to Bruce, that channel had been previously proposed for assignment to Oxford, Mississippi.[1] Since there is another channel available for assignment to Bruce, we have substituted Channel 233A in lieu of Channel 296A for consideration herein, in order to satisfy the petitioner's expression of interest in providing a first local FM service to Bruce, Mississippi. A staff engineering study reveals that Channel 233A can be assigned to Bruce consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules, provided the transmitter is restricted to an area 3.7 kilometers (2.3 miles) north thereof.

3. In consideration of the above, we believe the public interest would be served by assigning Channel 233A to Bruce, Mississippi, since it could provide a first local FM service to the community.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered,

[1] See, BC Docket No. 82–484, 48 FR 11453, published March 18, 1983.

That effective September 18, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended to include the community listed below, as follows:

City	Channel No.
Bruce, MS	233A

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning the above, contact Nancy V. Joyner or Howard Irvin, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–19359 Filed 7–20–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–1115; RM–4509]

TV Broadcast Station in Clermont, FL; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 68 to Clermont, Florida, as that community's first television broadcast service, in response to a petition filed by H. James Sharp.

DATE: Effective: September 17, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of §73.606(b), table of assignments, TV broadcast stations, (Clermont, Florida) (MM Docket No. 83–1115 RM–4509).

Adopted: July 2, 1984.

Released: July 11, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 48 FR 49886, published October 28, 1983, issued in response to a petition filed by H. James Sharp ("petitioner"), proposing the assignment of UHF television Channel 68 to Clermont, Florida, as that community's first television broadcast service. Supporting comments were filed by petitioner reiterating his intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Clermont (population 5,461,)[1] in Lake County (population 104,870), is located in central Florida, approximately 40 kilometers (25 miles) west of Orlando.

3. The Commission believes the public interest would be served by assigning UHF televison Channel 69 to Clermont, since it could provide the community with its first local television service. As indicated in the *Notice*, the assignment can be made consistent with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 17, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended to include the community listed below, as follows:

City	Channel No.
Clermont, FL	68

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning the above, contact Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–19361 Filed 7–20–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–1237; RM–4544]

TV Broadcast Station in Newton, IA; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 39 to Newton, Iowa, as that community's first local television assignment, at the request of IPBC, Inc.

EFFECTIVE DATE: September 17, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Newton, Iowa) (MM Docket No. 83–1237, RM–4544).

Adopted: July 2, 1984.

Released: July 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 53727, published November 29, 1983, which proposed the assignment of UHF TV Channel 39 to Newton, Iowa, as that community's first local television channel, at the request of IPBC, Inc. ("petitioner"). The channel can be assigned in compliance with the Commission's minimum distance separation and other technical requirements and the petitioner has filed comments reiterating its intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. In view of the expressed interest of the petitioner in providing Newton with its first local television service, we believe the assignment would be in the public interest. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective September 17, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended to read as follows, with respect to the community listed below:

City	Channel No.
Newton, IA	39+

3. It is further ordered, that this proceeding is terminated.

4. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

[1] Population figures were extracted from the 1980 U.S. Census.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-19365 Filed 7-20-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-827; RM 4468]

TV Broadcast Station in Charleston, SC; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 36 to Charleston, South Carolina, in response to a petition filed by Allen Sheets. The assignment could provide Charleston with its fifth commercial television service.

EFFECTIVE DATE: September 17, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554,

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Charleston, South Carolina) MM Docket No. 83-827, RM-4468.

Adopted: July 2, 1984.

Released: July 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 37487, published August 18, 1983, which invited comments on a proposal to assign UHF Television Channel 36 to Charleston, South Carolina, in response to a petition filed by Allen Sheets ("petitioner"). Petitioner submitted comments in support of the *Notice* and indicated that he, or an entity of which he is a part, will apply for the channel, if assigned. No other comments were received.

2. We believe that the petitioner has adequately demonstrated the need for a fifth commercial television assignment in Charleston and that the public interest would be served by assigning UHF Television Channel 36 to that community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective September 17, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Charleston, SC	2+, 4, 5+, *7-, 24, and 36+.

4. It is further ordered, that this proceeding is terminated.

5. For further information contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-19363 Filed 7-20-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1293; RM 4553]

TV Broadcast Station in Conroe, TX; Changes Made in Table of Assignments

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 55 to Conroe, Texas, as that community's second local television assignment, at the request of the Evangelistic Temple.

EFFECTIVE DATE: September 17, 1984.

ADDRESS: Federal Communications Commission, Washington, D. C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Conroe, Texas) MM Docket No. 83-1293, RM-4553.

Adopted: July 2, 1984.

Released: July 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 55592, published December 14, 1983, requesting comments on the proposed assignment of UHF TV Channel 55 to Conroe, Texas, as that community's second local television channel, pursuant to a petition filed by the Evangelistic Temple ("petitioner").[1] As requested in the *Notice*, petitioner has filed comments stating its intention to apply for the channel, if assigned.[2] No other comments concerning this proposal were received.

2. The channel can be assigned in compliance with the Commission's minimum distance separation and other technical requirements. However, a site restriction of at least 14.4 miles southwest is required to avoid short-spacing to unused Channels 40 and 48 in Crockett and Galveston, Texas, respectively.

3. We believe the public interest would be served by assigning the channel, as proposed, as an interest in its use has been expressed. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective September 17, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Conroe, TX	49+ and 55+.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-19364 Filed 7-20-84; 8:45 am]

BILLING CODE 6712-01-M

[1] Petitioner's comments were late-filed but were accompanied by a request for their acceptance. Since no party would be prejudiced by acceptance of the comments, they have been considered herein.

[2] Channel 49 was assigned to Conroe by *Report and Order*, MM Docket 83-610, adopted April 5, 1984, 49 FR 15559, published April 19, 1984.

47 CFR PART 73

[MM Docket No. 83-1324; RM-4626]

Television Broadcast Station in Greenville, TX; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 47 to Greenville, Texas, as that community's first local television allocation, at the request of Channel 47 TV Corporation.

DATES: Effective: September 17, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations, (Greenville, Texas), (MM Docket No. 83-1324 RM-4626).

Adopted: July 2, 1984.
Released: July 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 56612, published December 22, 1983, requesting comments on the petition of Channel 47 TV Corporation ("petitioner") to assign UHF TV Channel 47 to Greenville, Texas, as that community's first local television assignment. The petitioner has filed comments stating its intention to apply for the frequency if assigned. No other comments have been received. The channel can be assigned in compliance with the Commission's minimum mileage separation requirements.

2. We believe the assignment of a first local television channel to Greenville is in the public interest. Accordingly, pursuant to sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered That effective September 17, 1984, the Television Table of assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Greenville, TX	47+.

3. It is further ordered, That this proceeding is terminated.

4. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-19382 Filed 7-20-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR PART 73

[MM Docket No. 83-1234; RM-4533]

TV Broadcast Station in Chippewa Falls, WI; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 48 to Chippewa Falls, Wisconsin, as that community's first local television allocation, at the request of Bushland Radio Specialties.

DATE: Effective: September 18, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (proceeding terminated)

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations, (Chippewa Falls, Wisconsin) (MM Docket No. 83-1234 RM-4533).

Adopted: July 2, 1984.
Released: July 13, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 53726, published November 21, 1983, requesting comments on the proposed assignment of UHF TV Channel 48 to Chippewa Falls, Wisconsin, as that community's first local television channel. This proceeding was instituted at the request of Bushland Radio Specialties ("petitioner") and it has filed comments reiterating its intention to apply for the channel, if assigned. No other comments were received.

2. The channel can be assigned in compliance with the Commission's minimum distance separation and other technical requirements. Since Chippewa Falls is located within 400 kilometers (250 miles) of the U.S.-Canadian border, we requested, and have received, the concurrence of the Canadian Government.

3. We believe the assignment of a first television channel at Chippewa Falls would be in the public interest as an intention to activate the channel has been received. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 18, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Chippewa Falls, WI	48

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-19380 Filed 7-20-84; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[GSAR Acquisition Circular AC-84-2]

Implementation of the Department of Labor's (DOL) Revised Regulations on Labor Standards for Federal Service Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation; correction.

SUMMARY: This document corrects a temporary regulation on labor standards for Federal service contracts that appeared at 25876 in the Federal Register of Monday, June 25, 1984 (49 FR 25872-25877). The action is necessary to correct administrative errors.

EFFECTIVE DATE: June 14, 1984.

FOR FURTHER INFORMATION CONTACT: Edward J. McAndrew, Office of GSA Acquisition Policy and Regulations, Office of Acquisition Policy, GSA, (202) 566–1224.

SUPPLEMENTARY INFORMATION: The corrections are made in the FR Doc. 84–16786 appearing on page 25876 in the issue of June 25, 1984. The administrative corrections changes the word "must" to "shall" in the clauses set forth in sections 552.222–83, 85, and 86. For ease of reference the clauses and their prescriptions are reprinted in their entirety as follows:

552.222–83 Labor Standards Clause for Federal Service Contracts Not Exceeding $2,500.

As prescribed in 522.1005, insert the following clause in solicitations and contracts when the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 is applicable. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

Service Contract Act (May 1984)

Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of $2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

(End of Clause)

552.222–85 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

As prescribed in 522.1006(b)(3) insert the following clause in solicitations and contracts when the contract is expected to be fixed-price service contract containing the clause at 552.222–84, Service Contract Act of 1965 (as amended), and is not a multiyear contract or is not a contract with options to renew:

Fair Labor Standards Act and Service Contract Act—Price Adjustment (May 1984)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with:

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(c) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (b) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(e) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor.

(End of clause)

552.222–86 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts).

As prescribed in 522.1006(b)(1) insert the following clause in solicitations and contracts when the contract is expected to be fixed-price service contract containing the clause at 522.22–84 Service Contract Act of 1965 (as amended), and is a multiyear contract or is a contract with options to renew (note that the adjustments under subparagraphs (c) (2) and (3) of the clause may apply to the base period as well as to subsequent periods):

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts) (May 1984)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 (41 U.S.C. 351–358), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current at the beginning of each renewal option period, shall apply to any renewal of this contract. When no such determination has been made applicable to this contract, then the current Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) shall apply to any renewal of this contract.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with:

(1) The Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of renewal option period;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (c) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

Dated : July 13, 1984.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 84–19332 Filed 7–20–84; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 40560-4060]

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP). The FMP and these implementing regulations (1) establish unique habitat areas of particular concern for coral which are currently or potentially threatened; (2) prohibit the taking or destruction of certain coral except under permit; and (3) provide permit systems for the taking of certain coral for scientific and education purposes and harvesting fish or other marine organisms with toxic chemicals in coral habitat. This action is made necessary by the susceptability of the coral to physical and biological degradation. The regulations are designed to optimize the benefits from the coral resources while conserving the coral and coral reefs.

EFFECTIVE DATE: August 22, 1984.

ADDRESSES: A copy of the combined final regulatory flexibility analysis/regulatory impact review (RFA/RIR) may be obtained from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), initially approved the FMP on July 27, 1983, under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act), and the proposed rules to implement the FMP were published on August 30, 1983 (48 FR 39255). Comments on the FMP and proposed rules were invited through October 14, 1983. These final regulations implement the FMP.

The FMP manages coral resources throughout the fishery conservation zone (FCZ) off the southern Atlantic coastal States from the Virginia-North Carolina border south and through the Gulf of Mexico to the Texas-Mexico border. The management unit consists of the coral and coral reefs throughout this area of the FCZ. Included in this management unit are the corals of the Class Hydrozoa (stinging and hydrocorals), the Class Anthozoa (sea fans, whips, precious corals, sea pen, and stony coral), and the hard bottoms, deepwater banks, patch reefs, and outer bank reefs within the FCZ off the South Atlantic Coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

The preamble to the proposed rulemaking contained background information on the coral resources, its economic value, the condition of coral, and fishing practices. In addition the proposed rulemaking contained a discussion of the need for management and the management strategy. These are not repeated here.

Response to Comments

The U.S. Department of the Interior questioned the application of these FMP implementing regulations within National Parks. Both Councils took action to clarify their intent that these regulations not apply within the FCZ portion of National Marine Sanctuaries and National Parks. This final rule reflects this position.

One commenter took issue with the regulation section prohibiting the taking or destruction of certain coral except under permit. The commenter stated that unless there is an exception for anchoring, a wrench lost overboard, for example, could be grounds for complaint. The intent of the FMP is to protect coral from being destroyed as well as taken, thus it is inconsistent with the FMP to provide exceptions which would result in coral destruction. The commenter went on to question why the Dry Tortugas area was not proposed as a habitat area of particular concern (HAPC). In fact, a portion of the Dry Tortugas is within the confines of the Fort Jefferson National Monument and thus no additional regulations are proposed.

Changes From the Proposed Rule

The final rule differs from the proposed rule as follows:

Section 638.2. The definition of *coral area* is included for clarification.

Section 638.2. The definition of *fish* is revised for clarification.

Section 638.3(b) is changed to make it clear that the regulations do not apply to the FCZ portion of National Marine Sanctuaries and National Parks.

Section 638.5 has been revised to reflect the most recent signaling and boarding procedures recommended by the U.S. Coast Guard (49 FR 9736, March 15, 1984).

Classification

The Assistant Administrator, after considering all comments received on the FMP and the proposed regulations, has determined that the FMP and this rule are necessary and appropriate for conservation and management of the fishery and are consistent with the national standards and other provisions of the Magnuson Act, and other applicable law. A final environmental impact statement was filed with the Environmental Protection Agency, and a notice of availability was published on August 19, 1983 (48 FR 37702).

The Administrator, NOAA, has determined that these regulations are not major under Executive Order 12291. A final regulatory impact review (RIR) has been prepared that analyzes the expected benefits and costs of the regulatory action. The review provides the basis for the Administrator's determination. The FMP's management measures are designed to maintain corals and coral reefs as habitat for marine resources and for their aesthetic value.

The RIR indicates that the regulations will result in benefits to the nonconsumptive users such as scuba divers and the commercial and recreational fishermen who target fishery resources dependent on the coral habitat. The annual value of the fish and shellfish whose life cycle is critically dependent upon coral and coral reef habitat is conservatively estimated to be in excess of $300,000,000. The coral and coral reefs, except for those in areas under oil and gas lease or exploration permit, are unprotected in the FCZ. Large-scale coral harvesting would threaten several major fish and shellfish fisheries as well as the nonconsumptive value derived from coral.

This rule contains two collection of information requirements subject to the Paperwork Reduction Act. A request to collect this information has been approved by the Office of Management and Budget (OMB No. 0648-0136 and 0648-0097).

These regulations will have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act. A final regulatory flexibility analysis has been prepared in compliance with the Regulatory Flexibility Act and has been combined with the RIR.

The Coastal Zone Management offices from each State having an approved program under the Coastal Zone Management Act and whose territorial

waters are adjacent to the management area were provided copies of the FMP and a consistency determination for review as to consistency with their coastal zone management programs. The States of Louisiana, Alabama, and South Carolina agreed with the consistency determination. No responses were received from any other States except Florida; hence it is presumed under 15 CFR 930.41(a) that those States agree with the consistency determination. The States of Georgia and Texas do not have approved programs. The State of Florida has determined that the FMP is inconsistent with the approved Florida coastal management plan. It has been concluded by the Agency, however, that to the maximum extent practicable the Agency action is consistent with the State's coastal zone management program.

List of Subjects in 50 CFR Part 638

Fish, Fisheries, Fishing.

Dated: July 18, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

For the reasons set out in the preamble, chapter VI of 50 CFR is amended by adding a new Part 638 to read as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

Subpart A—General Provisions

Sec.

Subpart B—Management Measures

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

Subpart A—General Provisions

§ 638.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP) developed by the Gulf of Mexico and South Atlantic Fishery Management Councils under the Magnuson Act.

(b) This part regulates fishing for coral and coral reefs by fishing vessels of the United States within the fishery conservation zone (FCZ) off the South Atlantic coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

§ 638.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meaning:

Authorized officer means—

(a) Any commissioned, warrant or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of the department under which the U.S. Coast Guard is operating, to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Center Director means the Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149; telephone 305–361–5761.

Coral area means marine habitat where coral growth abounds including patch reefs, outer bank reefs, deepwater banks, and hard bottoms.

Fish means: (a) The hard and soft corals of the class Hydrozoa (stinging and hydrocorals), and the class Anthozoa (sea fans, whips, precious corals, sea pens, and stony corals); and

(b) All finfish, mollusks, crustaceans, and all other forms of marine animal and plant life in the context of use of any of the following means of fishing or collecting fish:

(1) Toxic chemicals,
(2) Bottom longlines,
(3) Traps,
(4) Pots,
(5) Bottom Trawls, or
(6) Dredges.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

HAPC means coral habitat areas of particular concern.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*)

Management area means that area of the FCZ off the South Atlantic coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

NMFS means the National Marine Fisheries Service.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage; or

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; and

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Prohibited coral means (a) species of coral belonging to the Class Hydrozoa (fire corals and hydrocorals) and Class Anthozoa, Subclass Zooantharia (stony corals and black corals), and Subclass Octocorallaria (the seafans *Georgonia flabellum* or *G. ventalina*), and (b) all coral and coral reefs in the HAPC's.

Regional Director means the Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St.

Petersburg, Florida 33702; telephone 813–893–3141; or a designee.

Scientific and educational purpose means for the purpose of gaining knowledge of coral for management and/or for the benefit of science and humanity.

Secretary means the Secretary of Commerce or a designee.

Take means to attempt to or damage, harm, kill, or collect.

U.S. fish processors means facilities located within the United States for, and vessels of the United States used for or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Magnuson Act.

Vessel of the United States means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than five net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 638.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) These regulations do not apply within the FCZ portion of the following National Marine Sanctuaries and National Parks:

(1) Everglades National Park (36 CFR 7.45);

(2) Looe Key National Marine Sanctuary (15 CFR Part 937);

(3) Fort Jefferson National Monument (36 CFR 7.27);

(4) Key Largo Coral Reef National Marine Sanctuary (15 CFR Part 929);

(5) Biscayne National Park (16 U.S.C. 410gg);

(6) Gray's Reef National Marine Sanctuary (15 CFR Part 938); and

(7) Monitor Marine Sanctuary (15 CFR Part 924);

(c) Certain responsibilities relating to data collection, issuance of permits, and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State and the Secretary.

§ 638.4 Permits and fees.

(a) *General.* Permits are required for persons—

(1) Fishing for prohibited coral; or

(2) Using toxic chemicals to collect fish or other marine organisms in coral areas. A State of Florida permit is acceptable in lieu of a Federal permit for use of toxic chemicals.

(b) *Eligibility.* Fishing for prohibited coral must be for a scientific or educational purpose.

(c) *Fees.* There are no fees for Federal permits.

(d) *Application for a prohibited coral permit.* An application for a permit to fish for prohibited coral must be signed and submitted by the applicant on an appropriate form which may be obtained from the Regional Director. Applicants must provide the following information:

(1) Name, address, and telephone nmber of applicant;

(2) Name and address of harvester, company, institution, or affiliation;

(3) Amount of coral to be fished for by species;

(4) Size of each species;

(5) Projected use of each species;

(6) Collection techniques (vessel types, gear, number of trips);

(7) Period of fishing; and

(8) Location of fishing.

(e) *Application for toxic chemical permit.* An application for a Federal permit to collect fish or other organisms with toxic chemicals in coral areas must be signed and submitted by the applicant on an appropriate form which may be obtained from the Regional Director. Applicants must provide the following information:

(1) Name, address, and telephone number of applicant;

(2) Name and address of harvester, if other than applicant;

(3) Type of chemical;

(4) Period of fishing; and

(5) Location of fishing.

(f) *Permit conditions.* (1) Permits may not be transferrred or assigned;

(2) Permits must be in the possession of the permittee while fishing for prohibited corals or using toxic chemicals;

(3) Permits must be presented for inspection upon request of any authorized officer;

(4) Permittee must have in possession sufficient documentation to establish identity as permittee (e.g., valid driver's license, etc.); and

(5) Other specific conditions as may be listed on the permits.

(g) Unless otherwise specified, application must be submitted to the Regional Director 45 days prior to the date on which the applicant desires to have the permit effective and permits will be issued for the period October 1 through the following September.

(h) All persons holding permits to take prohibited corals for scientific or educational purposes must submit annual reports of their harvest to the Center Director within 30 days following the effective period for the permit. Specific reporting requirements will be provided with the issued permit.

(The information collection requirements contained in paragraph (g) were approved by the Office of Management and Budget under control number 0648–0097. The information collection requirements contained in paragraph (h) were approved under number 0648–0136.

§ 638.5 Prohibitions.

It is unlawful for any person to—

(a) Fail to submit a report within 30 days following the effective period for a permit as specified in § 638.4;

(b) Take or collect fish or other marine organisms with toxic chemicals in coral areas except with a permit as specified in § 638.4;

(c) Fish for prohibited coral except as specified in § 638.4 and § 638.21;

(d) Fail to comply immediately with enforcement and boarding procedures specified in § 638.6;

(e) Use bottom longlines, traps, pots, bottom trawls, or dredges in an HAPC as specified in § 638.22;

(f) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, trade, or export any coral taken or retained in violation of the Magnuson Act, this part, or any other regulation or permit issued to a foreign vessel under the Magnuson Act;

(g) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(h) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (g) of this section;

(i) Resist a lawful arrest for any act prohibited by this part;

(j) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part;

(k) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested fish to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under § 204 of the Magnuson Act which authorized the receipt by such vessel of the U.S.-harvested fish of the species concerned; and

(l) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 638.6 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visability conditions allow, loudhailer is the preferred method for communication between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radio telephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radio-telephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF–FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer; provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radio telephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (dit dah, dit dah)[1] [2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radio telephone or by illuminating the vessels identification.

(2) "RY-CY" (dit dah, dah dit dah dah-dah dit dah dit, dah dit dah dah) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (dit dit dit, dah dah dit dah, dit dit dit dah dah) means "you should stop or heave to; I am going to board you."

(4) "L" (dit dah dit dit) means "you should stop your vessel instantly."

§ 638.7 Penalties

Any person or fishing vessel found to be in violation of this part is subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, and to 50 CFR Part 621 and 15 CFR Part 904 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 638.20 Seasons.

The fishing year for all species of coral and coral resources begins at 0001 hours on October 1 and ends at 2400 hours on September 30.

§ 638.21 Harvest limitations.

(a) No person may fish for prohibited coral or fish with toxic chemicals in any coral area unless such person has in possession a valid permit issued under § 638.4

(b) Prohibited coral taken as incidental catch to other fishing activities must be returned to the water in the general area of fishing as soon as possible. In those fisheries, such as scallops and groundfish, where the entire catch is landed, unsorted prohibited coral may be landed but not sold or traded.

§ 638.22 Area, time limitations.

The following coral HAPCs are established.

(a) *West and East Flower Garden Banks:* The geographical center point of the West Flower Garden Bank (Figures 1A and 1B) is located at 27°52'14.21"N., latitude, 93°48'54.79"W. longitude. The geographical center point of the East Flower Garden Bank, (Figures 1A and 1B) is located at 27°55'07.44"N., latitude, 93°36'08.49"W. longitude. The HAPC is limited to the portions of each bank shallower than the 50 fathom (300 foot) isobath. The following restrictions apply within the West and East Flower Garden Bank HAPC:

(1) Fishing for coral is prohibited except as authorized by a permit issued under § 638.4, and

(2) Fishing with bottom longlines, traps, pots, and bottom trawls is prohibited in the area less than 50 fathoms (300 feet) in depth.

(b) *Florida Middle Grounds.* (1) The area (Figure 2) is bounded by straight lines connecting the following points.

Point
A—28°42.5'N., latitude, 84°24.8'W. longitude
B—28°42.5'N., latitude, 84°16.3'W. longitude
C—28°11.0'N., latitude, 84°0.0'W. longitude
D—28°11.0'N., latitude, 84°7.0'W. longitude
E—28°26.6'N., latitude, 84°24.8'W. longitude
A—28°42.5'N., latitude, 84°24.8'W. longitude

(2) The following restrictions apply within the Florida Middle Grounds HAPC:

(i) Fishing for coral is prohibited except as authorized by a permit issued under § 638.4, and

(ii) Bottom longlines, traps, pots, and bottom trawls may not be fished within the area.

(c) The *Oculina* Bank: The area (Figure 3) is located approximately 15 nautical miles east of Fort Pierce, Florida, at its nearest point to shore. The area is bounded on the north by 27°53'N., latitude; on the south by 27°30'N., latitude; on the east by 79°56'W. longitude; and on the west by 80°'0W. longitude. The following restrictions apply within the *Oculina* Bank HAPC: fishing with bottom

[1] Dit means a short flash of light.

[2] Dah means a long flash of light.

longlines, traps, pots dredges, and bottom trawls is prohibited.

§ 638.23 Gear limitations.

Toxic chemicals may not be used in taking fish or other marine organisms in or on coral reef areas except as may be specified by a permit issued under § 638.4.

§ 638.24 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[FR Doc. 84-19420 Filed 7-19-84; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 674

[Docket No. 40679-4079]

High Seas Salmon Fishery off Alaska

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

ACTION: Interim rule and request for comments.

SUMMARY: NOAA issues an interim rule that requires fishing vessel operators who harvest salmon in the fishery conservation zone (FCZ) off Alaska and who sell, transfer, or deliver salmon in the fishery conservation zone or to a United States port outside Alaska to submit a fish ticket to the Alaska Department of Fish and Game after such sale, transfer, or delivery. Receipt of this ticket is necessary to obtain timely data on salmon catches. These data are intended for inseason management of the salmon fisheries off Alaska.

DATES: This rule is effective on July 18, 1984 until January 23, 1985. Comments are invited until September 4, 1985.

ADDRESS: Send comments to Robert W. McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802.

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

SUPPLEMENTARY INFORMATION: The fishery management plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude (FMP) was initially implemented by emergency regulations (44 FR 29080, May 18, 1979). These regulations, subsequently implemented by final rule (44 FR 51988, September 6, 1979), require any operator of a fishing vessel who harvested salmon off southeast Alaska in the FCZ and whose port of landing is in the United States but outside Alaska, or who sells, transfers, or delivers such salmon in the fishery conservation zone (FCZ), to submit a completed Alaska fish ticket or a fish ticket of the State where the salmon are landed which contains all of the imformation required on an Alaska fish ticket to the Alaska Department of Fish and Game (ADF&G) within one week after the sale, transfer, or delivery.

An emergency interim rule (46 FR 33041, June 26, 1981), implementing Amendment 2 to the FMP, required fishermen to report their salmon catch at an Alaskan port before leaving Alaskan waters and republished the existing reporting requirements for the public's information. In the final rule for Amendment 2 (46 FR 57299, November 23, 1981), the reporting requirements were removed pending approval by the Office of Management and Budget (OMB) under section 3507(g) of the Paperwork Reduction Act (44 U.S.C. 35). OMB subsequently found that the in-person reporting procedures added by Amendment 2 imposed an unjustified burden on fishermen. The reporting requirements of the original FMP were cleared by OMB under Control Number OMB 0648-0016, Pacific Fishermen's Logbook. This interim rule reestablishes the reporting requirement essentially as originally implemented in the FMP and changes the address for submitting fish tickets to—Director, Division of Commercial Fisheries, Alaska Department of Fish and Game, P.O. Box 3-2000, Juneau, AK 99802.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary for the conservation and management of the salmon resource and that it is consistent with the Magnuson Act and other applicable law.

The Regional Director has determined that this action is worthy of a categorical exclusion from further analysis under the National Environmental Policy Act. The potential environmental impacts of this action were discussed in the environmental impact statement prepared for the original FMP and in a supplemental environmental impact statement prepared for Amendment 2. The findings of those two documents are still valid; repromulgation of the reporting requirement will not cause significant environmental impacts.

The Administrator of NOAA has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Only 70 vessels, or seven percent of the fleet, may be affected by this requirement. The reporting burden imposed by the requirement is minimal. For these reasons, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0016.

The Director, Alaska Region, NMFS, has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State of Alaska has agreed with this determination.

Prices for chinook salmon have risen substantially during the 1984 troll season, providing an incentive for harvesting vessels to freeze their harvests for later sale at higher prices. The very short 1984 troll season off the State of Washington may cause ex-vessel prices there to rise such that operators of vessels with freezing capacity will be encouraged to transport their harvests south at the end of the Alaska chinook troll season. As many as 31,500 fish, or 11 to 13 percent of the chinook OY range could thus be taken out of the Alaska area. Reporting requirements for the State of Alaska do not apply to fish sold outside of the State of Alaska, and absent another reporting mechanism, substantial overfishing could result. The State of Washington requires that all landings of salmon be reported, but the information often does not reach the Alaska Department of Fish and Game (ADF&G) in time to be used for inseason management. Thus the Federal reporting requirement, which requires prompt reporting to ADF&G of landings outside the State of Alaska, is necessary to prevent overfishing. At current rates of harvest, it is expected that the OY for chinook salmon will be reached within two weeks after the re-opening of the troll season on July 11. For these reasons, the Assistant Administrator has determined that it is impracticable and contrary to the public interest to provide prior opportunity for comment, or to delay for 30 days the effective date of this rule, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 674

Reporting requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: July 18, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR Part 674 is amended as follows:

PART 674—[AMENDED]

1. The authority citation for Part 674 reads as follows:

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

2. A new § 674.5 is added to read as follows:

§ 674.5 Reporting requirements.

The operator of any fishing vessel subject to this part whose port of landing is in the United States but outside Alaska, or who sells, transfers, or delivers salmon in the FCZ, must submit a completed Alaska fish ticket, or a completed fish ticket of the State where the salmon are landed which contains all of the information required on an Alaska fish ticket, within one week after the date of each landing, sale, transfer, or delivery to the Director, Division of Commercial Fisheries, Alaska Department of Fish and Game, P.O. Box 3–2000, Juneau, AK 99802.

(Approved by the Office of Management and Budget, OMB Control Number 0648–0016)

[FR Doc. 84–19415 Filed 7–18–84; 4:45 pm]

BILLING CODE 3510–22–M

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50 CFR Part 681

[Docket No. 31223–247]

Western Pacific Spiny Lobster Fisheries

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

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule to amend regulations that do not display currently valid Office of Management and Budget (OMB) control numbers. Agencies are required under the Paperwork Reduction Act, to publish in the **Federal Register** OMB control numbers for each collection of information in codified regulations. The intended effect is to make it clear that the collection of information contained in this regulation has been approved by OMB.

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon, 202–634–7432.

List of Subjects in 50 CFR Part 681

Reporting and recordkeeping requirements.

Dated: July 17, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons stated in the summary, 50 CFR Part 681 is amended as follows:

PART 681—WESTERN PACIFIC SPINY LOBSTER FISHERIES

1. The authority citation for Part 215 reads as follows:

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

§ 681.4 [Amended]

2. In § 681.4, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648–0097)" at the end of this section.

§ 681.5 [Amended]

3. In § 681.5, place the parenthetical phrase "(The information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 0648.0016. The information collection requirements contained in paragraph (c) were approved under control number 0648–0013)" at the end of this section.

[FR Doc. 84–19251 Filed 7–20–84; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 49, No. 142
Monday, July 23, 1984

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

Agricultural Marketing Service

7 CFR Parts 1098 and 1007

[Docket Nos. AO-184-A45 and AO-366-A22]

Milk in the Nashville, TE, and GA Marketing Areas; Decision and Termination of Proceeding on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This decision denies a dairy industry proposal that would regulate, or "lock-in", under the Nashville order a pool distributing plant located in the Nashville marketing area until the third consecutive month in which more than one-half of the plant's fluid milk sales are distributed within an other order marketing area. The denial of that proposal renders moot a proposed amendment to the Georgia order intended to facilitate that operation of the proposed Nashville "lock-in" provision. These proposals were considered at a public hearing held November 15, 1983, in Nashville, Tennessee. Another issue considered at the hearing involved location adjustments under the Memphis order. A separate decision on that issue was issued December 23, 1983. The order accompanying the decision terminates the proceeding in this matter.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirement of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. In this regard, it is noted that this decision provides for no change in the current provisions of the two orders.

Prior documents in this proceeding:

Notice of Hearing: Issued September 23, 1983; published September 30, 1983 (48 FR 44841).

Partial Decision: Issued December 23, 1983; published December 29, 1983 (48 FR 57305).

Order amending the Memphis, Tennessee, order: Issued December 28, 1983; published December 30, 1983 (48 FR 57468).

Recommended Decision: Issued April 17, 1984; published April 20, 1984 (49 FR 16799).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Nashville, Tennessee; Georgia; and Memphis, Tennessee, marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Nashville, Tennessee, on November 15, 1983. Notice of such hearing was issued on September 23, 1983 and published September 30, 1983 (48 FR 44841).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Programs, on April 17, 1983, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herin, subject to the following modifications:

Five paragraphs have been added at the end of the findings and conclusions on the material issues.

The material issue on the record of the hearing that is dealt with in this decision is whether a pool distributing plant located within the Nashville marketing area should be "locked-in" as a regulated plant under the Nashville order until the third consecutive month in which more than one-half of its sales of fluid milk are distributed within an other order marketing area. The issues dealing with location adjustment rates under the Memphis, Tennessee, order and the question of whether emergency marketing conditions warranted omission of a recommended decision were dealt with in a partial decision issued December 23, 1983 (48 FR 57305).

Findings and Conclusions

The followng findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

A proposal to amend the Nashville order to provide that a pool distribution plant located within the Nashville Federal order marketing area should be regulated under the Nashville order until the third consecutive month in which more than one-half of its route disposition is within an other order marketing area should be denied.

At the present time, the Nashville order provides that a distributing plant which was a pool plant in the immediately preceeding month but has a greater quantity of fluid milk product dispositions in an other order marketing area shall continue to be a pool plant under the Nashville order until the third consecutive month in which it has a greater proportion of its route disposition in the other order marketing area. Such a provision is designed to minimize month-to-month changes in the order under which a plant is regulated and, thus, provide greater marketing stability for the handler and the producers supplying the affected plant.

A more restrictive "lock-in" provision than the one provided under the current order provisions was proposed by Dairymen, Inc. (DI), a cooperative association representing a large proportion of the producers supplying milk to plants regulated under the Nashville order. The spokesman for DI stated that unless the cooperative's proposal is adopted two distributing plants located within the Nashville order marketing area at Nashville and Murfreesboro, Tennessee, would be pooled under the Memphis and Georgia Federal milk orders, respectively, because they have more sales in those marketing areas than in the Nashville marketing area. The spokesman

contended that both plants should be pooled under the Nashville order to minimize intermarket Class I price alignment problems. He pointed out, too, that under the current order provisions producers located within the same geographic supply area receive widely divergent pay prices in supplying plants located in the Nashville marketing area. This occurs since some of the plants are regulated under the Nashville order order while other plants in the same general area are regulated under other Federal orders.

The witness asserted that with the advent of large processing plants with sales distribution over wide geographic areas, the traditional Federal order method of pooling a distributing plant under the Federal order for the market in which it has the most sales has become outdated. In support of that position, he pointed out that provisions similar to the "lock-in" proposed by DI have been adopted in recent years in the St. Louis-Ozarks and Central Arkansas milk orders.

The DI witness stated that one of the plants that would be affected, a Kroger plant, is located less than 35 miles from Nashville at Murfreesboro, Tennessee. The plant has been pooled under the Georgia order since November 1981 by virtue of having more sales in the Georgia marketing area than in any other Federal order area. At the Murfreesboro location, Kroger is subject to a Class I price under the Georgia order that is 13.5 cents higher than if the plant were pooled under the Nashville order. The witness testified that the producers supplying the Murfreesboro plant are located in the same general geographic area as the principal milk procurement area for handlers regulated under the Nashville order. He also submitted data illustrating that the uniform prices under the Georgia order that were paid to producers delivering milk to the Murfreesboro plant exceeded the uniform prices paid to Nashville producers by an average of 37 cents per hundredweight since January 1982. The witness contended that such a large discrepancy in producer pay prices creates unstable and disruptive marketing conditions in the Nashville supply area.

The other distributing plant that would be affected by the proposed "lock-in" provision is operated by Malone and Hyde. The Malone and Hyde plant began distributing milk on October 31, 1983. While the plant was pooled under the Nashville order for October 1983, it was expected that the plant would have more sales in Memphis than in Nashville in November and in subsequent months. In view of the "lock-in" provision contained in the Nashville order, and the plant's expected sales pattern, witnesses generally agreed that the plant would remain regulated under the Nashville order for the months of November and December 1983 and then shift regulation to the Memphis order in January 1984.

The witness for DI testified that the Malone and Hyde plant, like the Kroger plant, obtains its supply of producer milk from the same area as handlers regulated under the Nashville order. In view of such circumstance, the witness expressed concern that the differences in pooling procedures of the Nashville and Memphis orders could cause disruptive marketing conditions. In this regard he pointed out that because the Memphis order is an individual handler pool, the blend prices paid to Malone and Hyde producers would reflect only Malone and Hyde's individual utilization of producer receipts. He contended that if Malone and Hyde's utilization varied significantly from that of the Nashville marketwide pool, the resulting pay price differences between neighboring producers pooled under the two orders could create disruptive marketing conditions.

The DI witness' major objection to the pooling of the Malone and Hyde plant under the Memphis order was the 22.5-cent lower Class I price that would apply at the Nashville location relative to the Class I price that would apply at such location if the plant were regulated under the Nashville order. He asserted that such a large price advantage for a Memphis-regulated handler located in Nashville would create unfair competitive conditions between that handler and Nashville-regulated handlers. He also questioned whether the Malone and Hyde plant could attract an adequate supply of milk at the lower Memphis Class I price. In this regard, the witness pointed out that the Malone and Hyde producer milk supply is procured in an area from which producers also supply the Alabama and Tennessee Valley markets, as well as Nashville. A Class I utilization percentage at the Malone and Hyde plant which results in a blend price below that obtainable in the other markets would, according to the witness, seriously jeopardize an adequate milk supply for the Malone and Hyde plant.

The witness for DI introduced exhibits indicating that producer pay prices under both the Georgia and Nashville orders would be enhanced if the "lock-in" proposal were adopted. He explained that the higher producer pay prices under the Georgia order would result because the producer milk associated with the Murfreesboro plant and pooled under the Georgia order has a lower Class I utilization percentage than the rest of the Georgia pool. As a consequence, removal of the Kroger plant at Murfreesboro from the Georgia pool would result in a higher blend price to Georgia producers. The witness also contended that the Nashville order blend price to producers would increase if the Kroger plant were pooled under the Nashville order. He explained that the Class I utilization percentage of milk associated with the Kroger plant is higher than the present Class I utilization percentage of the Nashville market. Therefore, the witness concluded, that regulation of the Malone and Hyde plant under the Nashville order as well as the regulation of the Kroger plant would increase the Class I utilization of the Nashville pool and thereby contribute to an increase in the Nashville blend price. Furthermore, he pointed out that because producers delivering milk to the Malone and Hyde plant are producers who historically have been associated with the Nashville pool, their production would not serve to dilute the Nashville pool. In addition, the witness stated that since payments to producers under the Memphis order are distributed through an individual handler pool rather than on a marketwide basis, the regulation of the Malone and Hyde plant under the Nashville order by the proposed "lock-in" provision would not affect returns to producers presently associated with the Memphis market.

Proponent witness testified that the marketing conditions in the Central Arkansas and St. Louis-Ozarks markets which were the basis for the adoption of "lock-in" provisions in the Central Arkansas and St. Louis-Ozarks orders are similar to the marketing conditions that currently exist in the Nashville market. He stated that in both the Central Arkansas and St. Louis-Ozarks markets, "lock-in" provisions were necessitated by the existence of large processing plants with wide distribution areas, similar to the Malone and Hyde plant in Nashville. In both instances, he said, pooling such plant in the market where it had the highest proportion of sales would have resulted in misalignment of Class I prices to competing handlers and blend prices to producers similar to those that would occur if the Malone and Hyde plant is pooled under the Memphis order.

The witness indicated that the principal reason for adopting "lock-in" provisions for the Central Arkansas and

St. Louis-Ozarks orders was the likelihood that the plants in question might shift regulation between several different orders because of almost equal fluid milk sales in the marketing areas of such orders. While the witness testified that he had no definite knowledge of Malone and Hyde's relative volume of distribution in the Nashville and Memphis marketing areas, he was concerned that the plant would shift regulation between the two orders. In his view, such shift would disrupt the competitive relationships between handlers located in Nashville and the blend price relationships between producers supplying those handlers.

A representative of Associated Milk Producers, Inc., testified that a "lock-in" provision similar to the ones adopted in the Central Arkansas and St. Louis-Ozarks orders is necessary in the Nashville order to facilitate orderly marketing of the milk distributed from the Kroger plant at Murfreesboro and the Malone and Hyde plant. He observed too that adoption of the "lock-in" provision would minimize the problem that cooperatives would otherwise have to deal with when producers living side by side in a given area are establishing bases under two different orders without a common base plan.

A witness representing the Kroger company testified in support of the proposed "lock-in" provision on the basis that such provision would eliminate a 36-cent Class I price advantage for a plant located at Nashville and pooled under the Memphis order relative to the Class I price applicable at the Kroger plant at Murfreesboro, located just outside Nashville but pooled under the Georgia order. He indicated that while the Kroger plant does have a 13½-cent price disadvantage in competing with Nashville-regulated handles, it is a situation with which Kroger has lived for some period of time. Furthermore, he noted that regulation under the Georgia order has offered certain advantages in the procurement of milk from nonmember producers.

The witness asserted that the only way to provide effective and stable regulation is to regulate plants in the market in which they are located, provided that they meet such order's pooling requirements. He contended that handlers should not be allowed to switch regulation from one order to another because of the resulting disruptive effects on prices to the dairy farmers and cooperative associations supplying milk to distributing plants.

The Kroger spokesman testified that the Murfreesboro plant distributes approximately 30 percent of its sales in the Georgia marketing area and almost 25 percent in the Nashville market. He stated that milk from Murfreesboro is also distributed in eight other Federal order marketing areas. He also testified that the pattern of sales from the Kroger plant in the various Federal order marketing areas has been stable for some period of time.

The Kroger representative testified that the Kroger plant procures its milk supply from producers located principally in central Tennessee and pays its producers the highest of the following prices: (1) The blend price under the Alabama-West Florida order in the north zone, (2) the blend price under the Georgia order at the Murfreesboro location, or (3) the Nashville order blend price at Nashville plus twenty cents.

A witness representing Dean Foods testified in support of the proposed "lock-in" provision as a means of eliminating the price advantage Malone and Hyde was expected to have at Nashville under the Memphis order. Also, the witness foresaw a potential problem resulting from the individual handler pool provisions of the Memphis order. He pointed out that if the Malone and Hyde plant has a high Class I utilization, other handlers may find it difficult to compete with Malone and Hyde for a supply of producer milk.

A spokesman for Malone and Hyde testified in opposition to the proposed "lock-in" provision. He described Malone and Hyde as a wholesale grocer operating in sixteen southern states. The company serves its own stores, primarily in Memphis, and independently owned groceries throughout the southeast. The witness indicated that the Nashville processing plant would supply warehouses in Tennessee, Mississippi, Alabama, Kentucky, and Missouri from which delivery would be made to the individual grocery stores. The representative of Malone and Hyde stated that the company had begun operations at the Nashville location expecting to be regulated under the Memphis order. This was based upon Malone and Hyde's projection that sales in the Memphis marketing area would be much larger than in any other marketing area. The company estimated that approximately 42 percent of the plant's sales would be in the Memphis marketing area, with 20 percent in Nashville, and smaller percentages in the other areas served by Malone and Hyde. The witness pointed out that if Malone and Hyde is unable to expand its dairy sales to its wholesale grocery customers in areas outside of Memphis, the percentage of its sales in the Memphis area would be even higher than 42 percent.

The spokesman stated that Malone and Hyde had managed its sales for the first month of operation in a manner to assure that the plant would be pooled under the Nashville order. This action was taken by the company in the belief that such procedure would preserve the Nashville order base for producers supplying the plant. The Malone and Hyde representative stated that Class I utilization at the plant is expected to be 80–85 percent of producer receipts, with Malone and Hyde handling its own surplus by diversion to manufacturing plants. He estimated that the overall Class I utilization percentage would be close to the 1982 Memphis market average of 76 percent.

On behalf of Malone and Hyde, the witness expressed strong opposition to the proposed "lock-in" provision. He contended that the plant should be regulated in the market where it competes with other handlers for the majority of its sales and cited the Department's long-standing policy to that effect. He said that there is no likelihood that the plant will shift regulation between orders after it becomes regulated under the Memphis order. In contrast, he pointed out that St. Louis-Ozarks and Central Arkansas "lock-in" provisions were adopted primarily to assure that a plant would not be shifting regulation erratically from one order to another order.

The record of this proceeding does not provide a sufficient basis for making an exception to the Department's traditional position in the determination of where a plant should be pooled. Most orders provide that a plant shall be pooled under the order regulating the market in which the plant has the most sales during the month. These provisions insure that all handlers having their principal sales in a market are subject to the same class prices and other regulatory provisions as their main competitors. As mentioned in this proceeding, exceptions to this policy were made in the cases of the St. Louis-Ozarks and Central Arkansas milk orders. These exceptions, however, were made to deal with marketing conditions which are not prevalent in the Nashville market.

The two principal problems in both the Central Arkansas and St. Louis-Ozarks markets which justified "lock-in" provisions for those orders involved a Class I price alignment problem for the plants involved and the likelihood that the regulation of such plants would shift frequently from one order to another

order due to small changes in the handler's pattern of route distribution.[1] In both instances, the handlers affected by the proposed "lock-in" provisions supported the adoption of such provisions.

In the case of the distributing plant located at Little Rock, Arkansas, a "lock-in" provision was added under the Central Arkansas milk order to minimize the likelihood that the plant would shift to another order. In the event of a shift in regulation from the Central Arkansas order, the handler would have been subject to a 26-cent higher price under the Greater Louisiana order and a 21-cent lower price under the Memphis order. In conjunction with the "lock-in" provision, a change was made in the Memphis location adjustment provision to equalize the Class I prices effective at Little Rock under the Memphis and Central Arkansas orders. However, none of the provisions of the Greater Louisiana order were open for consideration in that proceeding. Consequently, similar action could not be taken under the Greater Louisiana order to equalize the Class I price that would apply at Little Rock with the Class I price application at such location under the Central Arkansas order. Also, it was known that the plant would meet the pooling requirements under all three orders with the likelihood that regulation of the plant could shift from one order to another order since the plant's proportion of distribution in all three marketing areas was expected to be very similar. Therefore, the plant was "locked in" as a pool plant under the Central Arkansas milk order to avoid the intermarket Class I price misalignment that would result between Central Arkansas handlers and the Little Rock handler if the plant at Little Rock were regulated under the Greater Louisiana order. Also, the provision was intended to guard against the instability in producer pay prices that would result from frequent changes in the plant's regulation.

Similarly, the St. Louis-Ozarks order was amended to "lock-in" a large Kroger plant located at Hazelwood, Missouri. The plant had been regulated under the St. Louis-Ozarks order for some time, but increasing sales in the Nashville and Southern Illinois Federal order marketing areas made it likely that the plant would shift regulation among the three orders. In addition to the unstable marketing conditions that would have resulted for competing handlers if the plant had shifted regulation, it was expected that regulation under either the Nashville or Southern Illinois orders would have resulted in significantly lower producer pay prices at the Hazelwood location. To assure an adequate supply of milk for the Kroger plant, the plant was locked in as a regulated plant under the St. Louis-Ozarks order. The "lock-in" provision adopted, however, specified that a plant had to have been regulated under the St. Louis-Ozarks order for the previous thirteen months in order for the provision to apply.

Neither the Kroger plant at Murfreesboro not the Malone and Hyde plant at Nashville poses quite the same type of problems as those that existed in the Central Arkansas or St. Louis-Ozarks markets. Furthermore, the Kroger plant has continued to make route disposition within the Nashville marketing area during the past 2 years of regulation under the Georgia order despite having to pay a 13½-cent higher Class I price than Nashville handlers. In addition, the proportion of sales distributed from the Murfreesboro plant into the various marketing areas it serves has remained fairly constant. It is apparent too that the plant will consistently have more sales in the Georgia marketing area than in any other area. Also, there is no reason to expect that the plant's sales pattern will change significantly.

No evidence was introduced to show that unstable marketing conditions have resulted from the continued pooling of the Kroger plant under the Georgia order. Consequently, there is no reason to believe that failure to adopt a "lock-in" provision under the Nashville order for the Kroger plant will have any destabilizing effects on either the Nashville or Georgia markets.

While it is noted that a 13½-cent difference in Class I price applies at the Murfreesboro plant under the provisions of the Nashville and Georgia orders, location pricing at Murfreesboro under the Georgia order was not an issue open for consideration in this proceeding. Consequently, nothing can be done on the record of this proceeding to change the location adjustment provisions of the Georgia order for milk received at a plant at Murfreesboro.

The primary concern of proponents in relation to pooling the Malone and Hyde plant under the Memphis order, the 22½-cent Class I price advantage for a handler located at Nashville that is pooled under the Memphis order, was corrected by the order amending the Memphis order issued December 28, 1983 (48 FR 57468). That amendment was made on the basis of the record of the proceeding on an emergency basis to ensure that the Class I price applicable at the Malone and Hyde plant would be the same under the Memphis order as under the Nashville order at such time as the Malone and Hyde plant became regulated under the Memphis order. Consequently, such change eliminates the need to "lock-in" the the Malone and Hyde plant as a pool plant under the Nashville order in order to provide competitive equity between handlers similarly located.

There was no concensus among witnesses favoring adoption of the "lock-in" proposal as to the probable effect that reregulation under the Memphis individual handler pool would have on prices received by the Malone and Hyde's producers relative to producer pay prices under the Nashville order. The DI representative theorized that in the event the Malone and Hyde's utilization included any significant amounts of Class II and Class III milk, the blend price to their producers would be lower than the Nashville blend price. In such instance, he stated, Malone and Hyde might have difficulty in attracting an adequate supply of milk. The spokesman for Dean Foods testified that in the event the Malone and Hyde's blend price to producers under the Memphis order is higher than the Nashville blend price, this would cause milk procurement problems for Nashville-regulated handlers.

The record shows that producers located in central Tennessee currently supply milk to handlers regulated under the Georgia and Alabama-West Florida orders, as well as the Nashville order. However, no evidence was presented to show that unstable marketing conditions have occurred as a result of producers from the same area supplying these separate markets. Furthermore, until the plant became fully operational and the Class I utilization of the plant stabilizes, there is no way to determine whether adverse marketing conditions would occur if producers supplying the Malone and Hyde plant are paid on an individual handler pool basis.

Under the current provisions of the Nashville and Memphis orders, there would appear to be little possibility, if any, that the Malone and Hyde plant will shift regulation between these orders after the initial shift in regulation from the Nashville order to the Memphis order. When the plant is in full operation, the Malone and Hyde witness indicated that 42 percent of Malone and

[1] See Milk in the St. Louis-Ozarks Marketing Area; Partial Decision on Proposed Amendments to the Marketing Agreement and Order (44 FR 1741) and Milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas Marketing Area; Partial Decision on Proposed Amendments to Marketing Agreements and to Orders (45 FR 48154).

Hyde's sales would be in the Memphis marketing area. At that time, he estimated, Malone and Hyde sales in the Nashville area would amount to less than one-half of those in Memphis.

While a "lock-in" provision has been used in other orders to prevent a plant from shifting regulation between orders when the plant's proportion of sales in those marketing areas has been relatively close, the current situation in the Nashville and Memphis markets does not require the use of the "lock-in" provision to prevent the Malone and Hyde plant from shifting back and forth between the two markets. In this instance, the Malone and Hyde plant will be distributing more than twice the amount of milk in the Memphis area that it distributes in the Nashville area. Also, until such time as the Malone and Hyde plant acquires more sales in marketing areas other than Memphis, there is a strong possibility that the plant's sales in Memphis would exceed the 50-percent level specified in the proposed amendment. Under such circumstances, the "lock-in" provision would fail to keep the the Malone and Hyde plant regulated under the Nashville order.

For the reasons previously set forth, the "lock-in" proposal should be denied. No evidence was presented to show that the regulation of either the Kroger or the Malone and Hyde plants under orders for marketing areas other than those in which they are located will result in any substantive market instability.

In view of the Department's decision to deny the "lock-in" provision, there is no need to give further consideration to a proposal to amend the Georgia order for the purpose of facilitating the operation of the proposed "lock-in" amendment to the Nashville order. There was no testimony for or against the proposal to amend the Georgia order except as it related to the "lock-in" proposal.

Exceptions to the recommended decision were received from Dairymen, Inc., and Associated Milk Producers, Inc. Both cooperatives excepted to the Department's failure to adopt the "lock-in" provisions proposed by them. As previously noted, such provisions would have locked-in a pool distributing plant located in the marketing area as a pool plant under the Nashville, Tennessee, milk order until the third month that such plant disposes of more than one-half of its route disposition in an other order marketing area.

Malone and Hyde, Inc., the only other interested party that submitted comments on the recommended decision, supported the Department's decision to continue to pool a handler under the order regulating the marketing area in which the handler distributes the greatest proportion of its Class I disposition.

As a basis for certain of its exceptions to the recommended decision, DI relies upon blend price differences for several markets for the period January 1982–March 1984. The rules governing this proceeding provide that official notice "may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character: *Provided*, That interested persons shall be given adequate notice, at the hearing or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed." Thus, the Department is precluded from relying in this final decision on the data included in the exceptions submitted by DI for the months of December 1983 through March 1984 because such action would preclude interested parties the opportunity of commenting on such information.

DI in its exceptions reiterated the position expressed at the hearing "that with the advent of large processing plant with sales distribution over wide geographic areas, the traditional federal order method of pooling a distributing plant under the federal order for the market in which it has the most sales has become outdated." The cooperative pointed out, too, that provisions similar to the "lock-in" proposed by DI have been adopted in recent years in the St. Louis-Ozarks and Central Arkansas milk orders.

The reasons for departing from the Department's traditional position in the determination of where a plant should be pooled in the St. Louis-Ozarks and Central Arkansas milk orders were dealt with at length in the recommended decision. It was pointed out that such exceptions were made to deal with marketing conditions which are not prevalent in the Nashville market. As previously noted, the marketing conditions that are noted in the record of this proceeding do not provide a sufficient basis for adopting the proposed "lock-in" provision.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Termination Order

In view of the foregoing, it is hereby determind that the proceeding with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Nashville, Tennessee, and Georgia marketing areas should be and is hereby terminated.

List of Subjects in 7 CFR Part 1098 and 1007

Milk marketing orders, Milk, Dairy Products.

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

Signed at Washington, D.C., on July 17, 1984.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-19336 Filed 7-20-84; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1736

Electric Standards and Specifications

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR 1736.97, Incorporation by Reference of Electric Standards and Specifications, by issuing a revised REA Bulletin 50–1, Electric Transmission Specifications and Drawings (T–805). This revision would bring the specification in line with the latest national standards and current construction practices.

DATE: Public comments must be received by REA no later than September 21, 1984.

ADDRESS: Submit written comments to the Director, Engineering Standards Division, Room 1256–S, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Donald G. Heald, Transmission Branch, Engineering Standards Division, Rural Electrification Administration, Room 1256–S, Washington, D.C. 20250, telephone (202) 382–9102. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from Mr. Heald at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.), the Rural Electrification Administration (REA) proposes to amend 7 CFR Part 1736.97(b) by revising REA Bulletin 50–1, Electric Transmission Specifications and Drawings (T–805). This bulletin contains the construction standards for REA borrowers' transmission lines operated at 34.5 kV through 230 kV. Bulletin 50–1 was approved for incorporation by reference by the Director of the Office of the Federal Register on July 12, 1983 (Volume 48, No. 134, pages 31852–53). Due to substantive changes that will occur as a result of this proposed revision, REA will seek reapproval for incorporation by reference from the Director of the Office of the Federal Register prior to the issuance of a final rule.

The revision of Bulletin 50–1 is intended to provide (a) a common format for all drawings, (b) application information for various assemblies, (c) clear construction details, (d) several new structures, (e) additional guying assemblies for light and medium duty, (f) expanded specifications to reflect state-of-the-art practices, and (g) numerous new detailed drawings such as guying guides. REA Bulletin 50-1 would be renamed "Electric Transmission Specifications and Drawings for 34.5 kV to 69 kV Structures (T–805A)." This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and, therefore, has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees.

Background

The Rural Electrification Administration (REA) maintains a system of bulletins that contains construction standards and specifications for materials and equipment which are applicable to electric system facilities constructed by REA electric borrowers in accordance with the REA loan contract. These standards and specifications contain REA's requirements for construction units and material items and equipment units commonly used in REA electric borrowers' systems. Currently REA Bulletin 50–1 contains electric transmission specifications and drawings for 34.5 kV through 230 kV. This revision proposes that REA Bulletin 50–1 contain only those specifications and drawings for 34.5 kV through 69 kV. A second publication, proposed REA Bulletin 50–2 (T–805B), will contain specifications and drawings for 115 kV through 230kV. A copy of proposed Bulletin 50–1 is available upon request from Mr. Heald at the address indicated above. All written comments made pertaining to this action will be made available for public inspection during regular business hours at the above address. In view of the above, REA proposes to amend § 1736.97(b) of 7 CFR Chapter XVII by revising REA Bulletin 50–1, Electric Transmission Specifications and Drawings.

Authority: 7 U.S.C. 901 et seq.

List of Subjects in 7 CFR Part 1736

Electric utilities, Engineering standards.

Dated: July 17, 1984.

Jack Van Mark,

Acting Administrator.

[FR Doc. 84–19330 Filed 7–20–84; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

Adjustment of Status to That of Persons Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would redefine the current Service definition of immediate visa availability for adjustment of status of to comform with that of the Department of State, the agency charged with the allocation of visa numbers. The Service currently considers a visa number available if the applicant has a priority date "no later than" the date shown on the Visa Bulletin, while the Department of State considers a visa number available if the applicant has a priority date "earlier than" the date shown on the Visa Bulletin. The Service currently accepts applications for adjustment of status if a visa is immediately available in the calendar month of the date of submission of the application; while the Department of State accepts applications for immigrant visas based on the projection of visa availability for the next calendar month, if the application is submitted after approximately the 10th of the month. By adopting the same language, the Service would alleviate an inequity suffered by applicants filing their applications outside the U.S. at a U.S. Embassy or consulate.

DATES: Comments must be in writing and submitted on or before August 22, 1984.

ADDRESS: Submit comments in duplicate to Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

For Specific Information: Joseph D. Cuddihy, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone (202) 633–3320.

SUPPLEMENTARY INFORMATION: The interpretation of when a visa number is immediately available differs between the Immigration and Naturalization Service, in adjustment of status proceedings, and the Department of State, in the issuance of immigrant visas. Under the current regulations, the Department of State allocates a visa for a subsequent month based on the demand received by a specified date in the current month. That specified date may vary from the 6th to the 12th of the

month. Any demand requested after that specified date is not allocated until the following month. In adjustment of status proceedings, the Immigration Service considers a visa to be immediately available if the Department of State indicates availability in the given calendar month.

In situations where visa numbers regress in a given month, this gives an advantage to the applicant in the United States applying for adjustment of status over the applicant outside the United States applying for an immigrant visa.

For example, under the current regulations, an applicant for a second preference visa, country of chargeability Hong Kong, priority date July 4, 1978, would have a visa immediately available under the definition as used by the Immigration Service anytime during the calendar month of May 1984. On May 10, 1984 the applicant would be eligible to apply for adjustment of status to that of permanent residence, and, in accordance with OI 245.4(a(6), have that application held in abeyance until a visa number again becomes available. If the same applicant were to attempt to apply for an immigrant visa at a U.S. Embassy or consulate on May 10, 1984, the application would be rejected, as the Department of State had already cut off visa allocations for May 1984, and a visa would not be available to a second preference Hong Kong native with a priority date of July 4, 1978 during the month of June 1984.

In order to alleviate this inequity, in the proposed regulation the Immigration Service would conform with the definition of visa availability as used by the Department of State. The Immigration Service, rather than depending on the written Visa Office Bulletin on Availability of Visa Numbers to determine if a visa is immediately available at time of filing, would depend upon the telephonic recording of the Visa Availability Bulletin.

In addition, one technical amendment would be included in this regulation. Under the current regulation, the Immigration Service considers a visa number available if the applicant has a priority date "no later than" the date shown on the Visa Bulletin. The Department of State considers a visa available if the applicant has a priority date "earlier than" the date shown on the Visa Bulletin. The Service would adopt the language of the Department of State.

The proposed regulation would require that a visa number be available at the time of approval of the application. This would insure that a visa allocated for use in a particular month by the Department of State will be returned to the Department for future allocation if not used in the designated month and if visa numbers subsequently regress. This would bring the Service more in line with the policies of the Department of State in the issuance of immigrant visas.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, will not have a significant impact on a substantial number of small entities.

This rule would not be a major rule as defined in section 1(b) of EO 12291.

List of Subjects in 8 CFR Part 245

Administrative practice and procedure, Aliens, Employment, Immigration, Passports and visas.

Accordingly, it is proposed to amend Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

1. In § 245.1, paragraph (e) would be revised as follows:

§ 245.1 Eligibility.

* * * * *

(e) *Availability of immigrant visas under section 245 and priority dates—(1) Availability of immigrant visas under section 245.* An alien is ineligible for the benefits of section 245 of the Act unless an immigrant visa is immediately available at the time the application is filed. If the applicant is a preference or nonpreference alien, the telephonic recording of the Department of State Visa Office Bulletin on Availability of Immigrant Visa Numbers shall be checked to determine whether an immigrant visa is immediately available. An immigrant visa is considered available for accepting and processing the application Form I–485 if the preference or nonpreference category application has a priority date on the waiting list which is earlier than the date indicated in the current telephonic message or the telephonic message indicates that visa numbers for visa applicants in that country are current. Information as to the immediate availability of an immigrant visa may be obtained at any Service office, or by calling the Department of State Visa office recording at (202) 632–2919.

* * * * *

2. In § 245.2 paragraph (a) would be revised as follows:

§ 245.2 Application.

(a) * * *

(4) *Decision.* The applicant shall be notified of the decision and, if the application is denied, the reasons for denial. Except as otherwise provided in this subparagraph, no appeal shall lie from the denial of an application by the district director, but such denial shall be without prejudice to the alien's right to renew the application in proceedings under Part 242 of this chapter or under Part 236 if the alien is a parolee who meets the conditions specified in paragraph (a)(1) of this section. An application for adjustment of status under section 245 of the Act as a preference or nonpreference alien shall not be approved unless an immigrant visa was available at the time of filing in accordance with 8 CFR 245.1(e), a visa number has been requested, and a visa number is currently available at the time of decision in accordance with the telephonic recording of the Department of State Visa Office Bulletin on Availability of Immigrant Visa Numbers. An appeal shall lie from the decision of the district director on an application for the benefits of section 101 or 104 of the Act of October 28, 1977; if the application is denied, the applicant shall be advised of a right to appeal in accordance with the provisions of Part 103 of this chapter. No fee shall be required for filing such appeal.

* * * * *

(Sec. 245 of the Immigration and Nationality Act, as amended (8 U.S.C. 1255))

Dated: July 2, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-19317 Filed 7-20-84; 8:45 am]
BILLING CODE 4410-10-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Central Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Extension of comment period on proposed rule.

SUMMARY: On April 26, 1984 (49 FR 17953), the National Credit Union Administration (NCUA) published a proposed rule concerning corporate central credit unions 12 CFR Part 704. At the request of the Credit Union National Association and the Corporate Forum

Committee of the Association of Credit Union League Executives, the NCUA is extending the comment period from July 18, 1984 to August 31, 1984. This extension will enable the Corporate Forum Committee to complete a review of the proposed rule at its regularly scheduled quarterly meeting.

DATE: Comments must be received on or before August 31, 1984.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street NW., Washington, D.C. 20456. Telephone: (202) 357–1100.

FOR FURTHER INFORMATION CONTACT: Louis P. Acuna, Director, Department of Supervision and Examination, or Robert A. Duff, Department of Supervision and Examination. Telephone: (202) 357–1065.

SUPPLEMENTARY INFORMATION: The proposed rule was made as part of the agency's continuing review of regulations and as a result of provisions in the Garn-St Germain Act which permit the NCUA to differentiate the functions of corporate central credit unions from natural person credit unions. The proposal will update and provide flexibility to the rule. Refer to the April 26, 1984 **Federal Register** (Vol. 49, No. 82, pages 17953–17956) for additional information.

Procedures for Regulatory Development

The action will not have a significant economic impact on a substantial number of small credit unions. As a result of their mission of serving other credit unions, corporate federal credit unions are among the largest credit unions in assets. As of year-end 1983, there were no operating corporate federal credit unions having assets of less than $1 million. Therefore, a Regulatory Flexibility Analysis is not required.

List of Subjects in 12 CFR Part 704

Credit Unions.

Authority: 12 U.S.C. 1766(a).

By the National Credit Union Administration Board on the 12th day of July 1984.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 84-19424 Filed 7-20-84; 8:45 am]

BILLING CODE 7535-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAR-FRL-2635-7]

Approval and Promulgation of State Implementation Plans; Revisions to the Montana Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: In its September 23, 1980 final rulemaking on the Montana State Implementation Plan (SIP) (45 FR 62982), the Environmental Protection Agency (EPA) approved portions of the Montana plan conditioned on the submission of a number of additional items. In its final rulemaking of March 4, 1980, on the Montana State Implementation Plan (45 FR 14036), EPA disapproved the Missoula plan for carbon monoxide (CO).

EPA today is proposing to approve materials submitted by Montana concerning: (1) Satisfaction or modification of conditional approvals for Colstrip (total suspended particulate), Billings (carbon monoxide), and source test procedures (statewide); (2) the Missoula carbon monoxide plan which had been previously disapproved; and (3) the deletion of two street projects contained in the Missoula Total Suspended Particulate (TSP) plan.

DATES: Comments must be received on or before August 22, 1984.

ADDRESSES: Comments should be directed to: John F. Wardell, Director, Montana Office, Environmental Protection Agency, Federal Building, Drawer 10096, 301 S. Park, Helena, Montana 59626.

Copies of the materials submitted by the Governor and comments received on this proposal may be examined during normal business hours at:

Environmental Protection Agency, Montana Office, Federal Building, Room 292, 301 S. Park, Helena, Montana 59626

Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295

FOR FURTHER INFORMATION CONTACT: Thomas O. Harris, Montana Office, Environmental Protection Agency, Federal Building, Drawer 10096, 301 S. Park, Helena, Montana 59626, 8–585–5414 or 406–585–54486.

SUPPLEMENTARY INFORMATION: On April 24, 1979, the Governor of Montana submitted to EPA the SIP revision for Montana in response to the Part D requirements of the Clean Air Act.

On August 2, 1979 (44 FR 45420), EPA published a notice of proposed rulemaking which described the nature of the SIP revision, discussed certain provisions which, in EPA's judgement, did not comply with the requirements of the Act and requested public comment.

On March 4, 1980, EPA published a notice of final rulemaking, 45 FR 14036, approving additional elements of the SIP, conditionally approving others, including Billing CO and Colstrip TSP, as well as a schedule for the submission of a list of test procedures for emission limitations which are part of the SIP. The Missoula CO plan was disapproved on March 4, 1980 (45 FR 14036). Also, on March 4, 1980, EPA published a notice of proposed rulemaking, 45 FR 14072, soliciting comments on the deadlines associated with the conditional approvals set forth in 45 FR 14036.

On September 23, 1980, in a notice of final rulemaking, 45 FR 62982, EPA approved the schedules for submission of certain portions of the plan, including Billings CO, Colstrip TSP, and the compilation of a list of source test procedures.

The material which EPA is acting on today was submitted by the Governor of Montana on the following dates: (1) Missoula and Billings carbon monoxide—August 14, 1981; and (2) Colstrip Total Suspended Particulate and source test procedures—September 21, 1981.

Detailed Discussion

This section contains a discussion of the various portions of the State's submittal and EPA's proposed action on each of them.

Statewide Portion

I. Source Test Procedures

The source test procedures which the State is committed to use are those set forth in Appendix A of 40 CFR Part 60, with the following variations:

A. The Bureau may in specific cases, recommend the use of a different sampling or analytical procedure to facilitate minor changes in methodology; to incorporate the usage of equivalent methods; or to facilitate usage of alternate proven methods.

B. EPA Method 5—Particulate Sampling, etc. For non-NSPS sources, impinger weights or "back half" is required as part of total particulate catch in compliance determination. Use of a heated teflon flex-tube between probe and sample box is recommended in sampling areas where physical

movement of sample box and probe is sufficiently difficult to jeopardize sampling procedure.

The means for enforcing the testing procedures are set forth in Administrative Rules of Montana (ARM) 16.8.708 "Testing Requirements," as follows:

Any person or persons responsible for the emission of air contaminants into the outdoor atmosphere shall upon written request of the director provide the facilities and necessary equipment, including instruments and sensing devices and shall conduct tests using methods approved by the director. Such tests shall include, but not be limited to, a determination of the nature, extent, quantity and degree of air contaminants, which are or may be emitted as a result of such operation at all sampling points designated by the director and the data shall be recorded in a permanent log at least once each hour, if applicable. This data shall be maintained for a period of not less than one year and shall be available for review by the department. Such testing and sampling facilities may be either permanent or temporary at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction or safe practice. (History: Sec. 69–3913, R.C.M. 1947; order MAC 16–1; adp. 12/31/72; eff. 12/31/71.)

The list of source test procedures and the mechanism described for enforcing their use are adequate. EPA proposes to approve this portion of Montana's plan.

Nonattainment Area Plans

I. Missoula Carbon Monoxide (CO)

The Montana SIP submission of April 24, 1979, did not include a carbon monoxide plan for the Missoula area. Only a schedule for updating the emissions inventory, conducting a dispersion modeling exercise and developing the necessary control strategies was included. Since the plan was already several months past due, EPA considered this response unsatisfactory and the plan was disapproved in EPA's notice of final rulemaking dated March 4, 1980 (45 FR 14036).

A subsequent evaluation of the 18 transportation control measures recommended by EPA as a means of further reducing CO levels indicated that the measures were either inappropriate for application to Missoula's problem, or would not provide significant additional reduction in CO levels. The Missoula area was designated nonattainment for the 8-hour CO standard on the basis of data collected in the vicinity of the Brooks-South-Russell intersection. The intersection was subsequently modeled and a control strategy was developed based on a redesign and reconstruction of that intersection. The modeling results indicate that construction of the intersection will reduce concentrations to 8.33, which is below the standard of 9.0 parts per million for an 8-hour period.

Construction of the intersection, however, cannot be completed until December 31, 1985; therefore, it will not be possible for Missoula to attain the standard by December 31, 1982, the attainment date specified in § 172 of the Clean Air Act for CO nonattainment areas without an attainment date extension.* EPA has interpreted the Act, however, to allow areas like Missoula an attainment date later than December 31, 1982 when a later date represents the most expeditious attainment schedule that is practicable. See 48 FR 50694–50695, Section IV.B.1(c)(ii) (November 2, 1983). EPA believes that the State's submittal shows adequately that the December 31, 1985 attainment date reflects the most expeditious attainment date practicable.

The plan was adopted by the State Board of Health following a public hearing and several public meetings in the Missoula area. The plan contains commitments by local governmental units to implement the proposed control strategy. The Montana Department of Highways (MDOH) has also committed to implementing the control strategy by including the Brooks-South-Russell intersection project in its 105 construction program. MDOH is committed to begin construction on the project in calendar year 1985, and expects to complete the project in one construction season.

Although the data used in the Missoula modeling effort indicates that the 8-hour standard for carbon monoxide will be achieved on or before December 31, 1985, there is some data to indicate that Missoula may suffer from an areawide CO problem due mainly to emissions from wood stoves, a source not explicitly accounted for in the model. A carbon monoxide analyzer has been located and operated in a residential area with a high concentration of wood stoves and where a large amount of wood is burned. This data will be used in a study to determine the degree and extent of the problem. If the modeling shows that wood burning is a significant cause of violations of the CO standard, the Missoula plan will have to be revised to address the problem.

The Missoula CO plan was originally disapproved because it was not submitted on or near the date it was originally due. However, a complete Missoula plan was submitted by the Governor on August 14, 1981. The plan calls for achievement of the 8-hour CO standard by December 31, 1985. As stated earlier, the plan would achieve the standard as expeditiously as practicable. For that reason, EPA considers it an adequate response to the Agency's November 2, 1983 policy statement and is therefore proposing to approve the Missoula plan.

II. Billings Carbon Monoxide (CO)

On March 4, 1980, in a notice of final rulemaking (45 FR 14036), EPA conditionally approved the Billings CO plan because the control strategy did not demonstrate attainment of the 8-hour CO standard by December 31, 1982, and because some of the input data used in the modeling effort was outdated.

The intersection where the violations occurred has been remodeled and carbon monoxide concentrations were estimated at ten surrounding sites. the results show that CO concentrations will be less than the 8-hour standard of 9.0 parts per million at nine of the ten sites by December 1982. The remaining site indicated a modeled concentration of 10.1 parts per million in December 1982. This site is located in a remote section of the Yellowstone County Fairgrounds, rarely frequented by the public.

The State installed a carbon monoxide monitor in the vicinity of the receptor site where the violation of the standard was predicted to occur. The second high 8-hour values recorded at that site for calendar years 1981 and 1982 were 7.1 and 5.5 parts per million, respectively. Both values are well below the 8-hour standard of 9 parts per million. The 1983 data, although not yet available in validated form, is also expected to show no violations of the standard.

EPA believes that the emission reductions resulting from implementation of the federal motor vehicle control program under Title II of the Clean Air Act will assure continued attainment of the CO standard at all of the modeling receptor sites in the Billings area, including the fairgrounds site. Since these measures and the monitoring data collected by the State at the fairgrounds site indicate that the area will continue to attain the CO

* EPA cannot approve Montana's recent request for an attainment date extension under section 172(a)(2) of the Act because Montana has not met that section's requirements on attainment date extensions.

standards, EPA is proposing to approve the Billings CO plan.

III. Colstrip Total Suspended Particulate (TSP)

In a March 4, 1980 notice of final rulemaking (45 FR 14036), EPA approved the Colstrip plan on the condition that the State issue a permit to Western Energy Company requiring that the company carry to completion all of the activities set forth in the State's October 4, 1979 submission.

On September 21, 1981, the Governor submitted a copy of the permit issued to Western Energy Company in response to EPA's comments. The permit contains all of the needed requirements, and EPA now proposes to approve the Colstrip plan.

IV. Missoula Total Suspended Particulate (TSP)

The State is requesting to delete the Reserve Street and 5th–6th Street couplet projects from the particulate control strategy that EPA approved for the area on March 4, 1980 (44 FR 14036). The State contends that the 5th–6th Street couplet is no longer necessary because the city and county have succeeded in paving many more streets than were originally scheduled on the TSP plan.

With respect to the Reserve Street Project, when it was originally included in the particulate plan, it was anticipated that funds would be available for its completion prior to 1982. However, because of reductions in highway funds, it is currently estimated that the project will not be funded until the late 1980's or early 1990's.

EPA agrees with Montana that the paving of other streets not included in the control strategy will compensate for the decision not to complete the 5th–6th Street couplet and Reserve Street projects, and consequently will not interfere with timely attainment of the primary TSP standard. Therefore, EPA proposes to approve the deletion of the Reserve and 5th–6th Street projects from the Missoula TSP plan.

Under 5 U.S.C. 605b, 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).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

This notice of proposed rulemaking is issued under the authority of section 110 of the Clean Air Act (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons.

Dated: February 28, 1984.

John G. Welles,

Regional Administrator.

[FR Doc. 84–19338 Filed 7–20–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[GA–007; OAR–FRL–2636–1]

Approval and Promulgation of Implementation Plans; Georgia; Blue Bird Body Bubble

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On January 27, 1984, Environmental Protection Division of the Georgia Department of Natural Resources submitted a bubble permit for EPA's approval as a State Implementation Plan (SIP) revision. The bubble would allow Blue Bird Body Company in Fort Valley to meet a plantwide limit on volatile organic compound (VOC) emissions from its operations rather than meet the emission limits specified in the Georgia regulations for individual operations. EPA proposes to approve this bubble and solicits public comment on the proposal.

DATES: To be considered, your comments must reach us by August 22, 1984.

ADDRESSES: Copies of the materials submitted by Georgia may be examined during normal business hours at the following locations:

Air Management Branch, EPA, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365

Air Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 270 Washington Street, SW., Room 816, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Walter Bishop, Air Management Branch, EPA Region IV, at the above address, telephone 404/881–2864 (FTS 257–2864).

SUPPLEMENTARY INFORMATION: The Georgia Environmental Protection Division (EPD) has submitted as a SIP revision an alternative emission reduction plan for Blue Bird Body Company, which manufactures buses and motor homes at its facility in Fort Valley. This area is unclassified for ozone. The individual operations which cause emissions of VOC are covered by Georgia regulation 391–3–1–.02(2)(ii), VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products. The company had originally expected to be exempt from the regulation by using low-solvent coatings, thus reducing emissions below the 100 tons per year applicability cutoff point. However, this proved to be impossible, and the company then proposed a VOC bubble: low-solvent coatings are to be used for certain operations only and instead of meeting the emission limits specified by the State's regulation for individual operations, the company will meet a plantwide cap assuring an equivalent or greater reduction in VOC emissions. Compliance will be determined on the basis of a daily calculation of the VOC content of the coatings used in the previous 24 hours. Such calculations will include any dilution or make-up solvent used.

The company has had difficulty obtaining the low-solvent coatings required for its VOC control plan. However, all are now in use except for a low-solvent primer still requiring extensive field testing. On February 29, 1984, the company entered into a consent order with EPD; this order (not part of the SIP revision) specifies that all low-solvent coatings will be in use by July 1, 1984.

The bubble permit for Blue Bird Body received public hearing on May 16, 1983, and was submitted to EPA as a SIP revision on January 27, 1984. EPA finds that it is consistent with the Agency's Policy Statement of December 8, 1980 and meets the criteria for approval specified in the Agency's Emission (45 FR 30824) on daily averaging of VOC Emissions and Trading Policy of April 7, 1982 (47 FR 15076), and proposed to approve it. The public is invited to participate in this rulemaking by submitting written comments.

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.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: June 21, 1984.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 84-19343 Filed 7-20-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[Region II Docket No. 35; OAR-FRL-2635-8]

Designation of Areas for Air Quality Planning Purposes; Revision to Section 107 Attainment Status Designations for New York State

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA's) proposed approval of part of a request from New York State to revise its air quality designations with regard to the Hudson Valley Air Quality Control Region (AQCR) and Washington County. If approved, most of the Hudson Valley AQCR would be designated as "better than national standards" with regard to the ozone national ambient air quality standard. EPA proposes to approve the Hudson Valley AQCR redesignation request for the section south of the Albany-Schenectady-Troy Unbanized Area. EPA proposes to disapprove the request with regard to the Albany-Schenectady-Troy Urbanized Area and adjacent areas downwind of the urbanized area (including Washington County). Such designations are required by Section 107 (d) of the Clean Air Act and may be revised at the request of a state.

This action will mean that air quality in all of New York State, outside of the New York City and Albany metropolitan areas, will be designated as being "better than national standards" for ozone.

DATE: Comments must be received on or before August 22, 1984.

ADDRESSES: All comments should be addressed to: Richard T. Dewling, Acting Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the proposal submitted by New York State are available for public inspection during normal business hours at the following addresses:

Environmental Protection Agency, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278

New York State Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233.

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

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act directed each state to submit to the Administrator of the Environmental Protection Agency (EPA) a list of attainment status designations with respect to the national ambient air quality standards for all areas. EPA received such designations from the states and promulgated them on March 3, 1978 (43 FR 8962). As authorized by the Clean Air Act, these designations have been revised from time to time at a state's request.

EPA's Review Criteria

EPA uses several criteria for reviewing redesignations. These are based on EPA policy as outlined in a "Section 107 Designation Policy Summary" memo of April 23, 1983 from the Director for EPA's Office of Air Quality, Planning and Standards (OAQPS). The criteria that apply to today's action are as follows:

(1) The number of exceedances of the ozone standard based on data from the last three complete ozone seasons must average 1.0 or less, or that last two complete ozone seasons must have had no exceedances; and

(2) There must be evidence of an implemented control strategy approved by EPA.

State Submittal

On February 14, 1984 the New York State Department of Environmental Conservation (NYSDEC) submitted a request to revise two of its air quality designations for ozone to "better than national standards" (i.e., attainment).

The State requested that EPA redesignate parts of the Hudson Valley Air Quality Control Region (AQCR) from "does not meet primary standard" (i.e., nonattainment) to "better than national standards" with respect to ozone. In addition, the State requested that Washington County in the Nothern AQCR be redesignated from "cannot be classified" to "better than national standards" for ozone.

Previous EPA Action

On March 7, 1984 (49 FR 8439) EPA disapproved a December 29, 1982 request from New York State to redesignate the Hudson Valley AQCR to attainment of the ozone standard. As discussed in the notice of proposed rulemaking for the March 7, 1984 action (48 FR 38255, August 23, 1983), EPA concluded that there were insufficient ozone data collected in the Hudson Valley AQCR during the 1982 ozones season to justify the redesignation. Subsequently, a complete set of ozone air quality data for the 1983 ozone season was collected and forms the basis of New York's February 14, 1984 resubmittal of its request for redesignation.

EPA's Findings

An area can be designated as "better than national standards" (i.e., attainment) if the average number of expected exceedances over a three-year period is less than or equal to 1.0 per year. The number of "expected exceedances" is the frequency of daily peak ozone concentrations above the ozone air quality standard adjusted to account for the probability that ozone exceedances occurred on days without data during the ozone season. However, for the number of expected exceedances to be valid, there should be no long periods of time without monitoring data.

During the past three years (1981-1983), two of the three ozone monitoring stations in the Hudson Valley AQCR clearly attained the standard. Only one exceedance of the ozone standard was recorded at Poughkeepsie over the three-year period and no exceedances were recorded at Schenectady. These data result in a zero and a 0.4 frequency of expected exceedances for Schenectady and Poughkeepsie, respectively. Since these frequencies are less than 1.0, the monitors at Schenectady and Poughkeepsie show attainment of the ozone air quality standard.

Nevertheless, the other monitoring site in the AQCR at Rensselaer was unable to collect two and one-half months of ozone data during the ozone season of 1982. (This issue was discussed in EPA's Aug. 23, 1983 and Mar. 7, 1984 Federal Register notices, referenced in the preceding section of today's notice.) The Rensselaer ozone monitor recorded two exceedances during 1980, one in 1981, insufficient data in 1982, and no exceedances in 1983. Therefore, the calculated expected exceedances for the most recent three years with complete data are 2.1 for 1980, 1.2 for 1981, and zero for 1983. The three-year average is 1.1 expected exceedances per year.

Since the frequency of expected exceedances at the Rensselaer monitor is greater than the 1.0 average per year

needed for attainment of the ozone standard, EPA must disapprove the part of the State's redesignation request associated with the urban area around the Rensselaer monitor.

EPA policy on boundaries of nonattainment areas is described in the April 21, 1983 memo from OAQPS cited earlier. For rural ozone problems, a county is the minimum size area to be considered. In urban areas, the entire urbanized area including fringe areas of development is the minimum area for consideration.

The urban area associated with the Rensselaer ozone monitor is the Albany-Schenectady-Troy Urbanized Area as defined by the U.S. Bureau of the Census. EPA policy requires that the Schenectady urban area remain as part of the nonattainment area, despite the fact that the Schenectady ozone monitor shows attainment of the ozone standard. This policy is appropriate because the Schenectady urban area may contribute to the ozone concentrations recorded at the Rensselaer monitor. In addition, all of Rensselaer County is also included in the area proposed for disapproval based upon the rural ozone boundary policy cited earlier. Finally, all of the areas downwind of the Albany-Schenectady-Troy Urbanized Area that are presently classified as not meeting the ozone standard will remain nonattainment. Therefore, the areas proposed by the EPA to remain designated as not meeting the primary standard for ozone are as follows:

- Those portions of Albany, Schenectady, and Rensselaer Counties that are included in the Albany-Schenectady-Troy Urbanized Area as defined by the U.S. Bureau of the Census;
- The remainder of Rensselaer County;
- Those portions of Albany and Schenectady Counties that are surrounded by the Albany-Schenectady-Troy Urbanized Area and the northern border of Albany and Schenectady Counties; and
- The Towns of Clifton Park, Halfmoon, and Waterford and the City of Mechanicville in Saratoga County.

Based on the lack of exceedances of the ozone standard at Poughkeepsie and Schenectady, the remaining portion of the Hudson Valley AQCR (that part south of the Albany-Schenectady-Troy Urbanized Area) clearly meets the first criterion for redesignation. The other criterion concerns an implemented, EPA-approved control program. EPA has determined that the State is implementing the control program approved by EPA on March 19, 1981 (46 FR 17557). Therefore, the areas that are proposed by EPA to be approved for redesignation to "better than national standards" for ozone are as follows:

- Columbia, Dutchess, Greene, Orange, Putnam, and Ulster Counties; and
- Those parts of Albany and Schenectady Counties that are south of, and not included in, the Albany-Schenectady-Troy Urbanized Area.

The State also proposed that EPA approve a redesignation from "cannot be classified" to "better than national standards" for Washington county, located downwind of the Albany area. The State originally designated Washington County as "cannot be classifed" with respect to the ozone standard becasue of a lack of monitoring data in the County. (See 44 FR 45650, Aug. 3, 1979.) The State based its request to redesignate the County on the fact that it had proposed redesignation of the Albany metropolitan area to attainment of the standard. It reasoned that a rural area should be classified as "better than national standards" for ozone if it is downwind of an area that meets the ozone standard.

Since the EPA does not believe there is sufficient information to approve the State's request to redesignate the Albany urban area and the downwind areas to "better than national standards," the request to redesignate Washington County is porposed for disapproval as well.

Future EPA Actions—Hudson Valley AQCR

EPA intends to reconsider automatically the State's request to redesignate the Albany urban area and the area downwind of Albany (including Washington County) to "better than national standards," with respect to ozone following receipt of ozone data from the 1984 ozone season. The redesignations that EPA is proposing to disapprove in today's notice will be reevaluated based on the same criteria used to evaluated the present request.

Specifically, if the Rensselaer monitor records a valid set of data for the 1984 ozone season and these data show that there were 1.9 or less expected exceedances of the ozone standard during the 1984 ozone season, then the monitor will have recorded compliance with the ozone standard for the area. This is because the average of 1.9 estimated exceedances in 1984, zero in 1983 and 1.2 in 1981 is approximately 1.0 expected exceedances per year for the three-year period. (This answer has been rounded to the nearest tenth as required by 40 CFR Part 51, Appendix H.) This frequency of expected exceedances demonstrates compliance with the standard.

Future EPA Actions—Washington County

While there still is no ozone monitoring site in Washington County, EPA agrees with the State that Washington County can be designated as "better than national standards" if the Albany area is redesignated as "better than national standards." The County is rural (population 55,000) and is located downwind of the Albany area. Therefore, if an when EPA approves a redesignation to "better than national standards" for the Albany area, EPA will also approve a redesignation to "better than national standards" with respect to ozone for Washington County.

EPA's Proposed Action

Today, EPA is proposing to approve part of the State's requests to redesignate much of the Hudson Valley AQCR to "better than national standards" with respect to ozone.

EPA proposes to disapprove the State's redesignation request for the Albany-Schenectady-Troy Urbanized Area, Rensselaer County and the areas of Albany, Schenectady and Saratoga Counties downwind (north) of the Albany urban area that are presently designated as not meeting the ozone standard. EPA also proposes to disapprove the State's request to redesignate Washington County as "better than national standards" with respect to ozone. EPA will reassess the State's request when 1984 ozone air quality data are available.

EPA proposes to approve the State's redesignation request for the Counties of Columbia, Dutchess, Greene, Orange, Putnam, and Ulster and those parts of the Counties of Albany and Schenecetady that are south of, and not included in, the Albany-Schenctady-Troy Urbanized Area.

EPA's proposed approval of part of the State's redesignation request is based on its meeting the requirements of Sections 107 and 301 of the Clean Air Act and applicable EPA guidelines.

Interested persons are invited to comment on the proposal and on whether it meets Clean Air Act requirements. Comments received by August 22, 1984 will be considered in EPA's final decision. All comments received will be available for inspection at the Region II office of EPA, at 26 Federal Plaza, Room 1005, New York, New York 10278.

Under 5 U.S.C. 605(b), I have certified that this redesignation will not have a significant economic impact on a significant number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

Dated: June 13, 1984.

(Sec. 107 and 301 of the Clean Air Act as amended [42 U.S.C. 7407 and 7601])

Richard T. Dewling,

Acting Regional Administrator Environmental Protection Agency.

[FR Doc. 84-19341 Filed 7-20-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 264

[OSWER-FRL 2627-3]

Hazardous Waste Management; Permit Applications for Hazardous Waste Land Treatment, Storage, and Disposal Facilities; Availability of Guidance Manual

Correction

In FR Doc. 84-18311 beginning on page 28274 in the issue of Wednesday, July 11, 1984, make the following correction on page 28274: In the third column, in the fourth line from the bottom, the telephone number for the Superintendent of Documents, U.S. Government Printing Office, should read "783-3238".

BILLING CODE 1505-01-M

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40 CFR Part 421

[OW-FRL-2635-6]

Effluent Guidelines and Standards; Nonferrous Metals Manufacturing Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Public hearing.

SUMMARY: Notice is hereby given of a hearing open to the public to discuss and receive comments on pretreatment standards recently proposed in the Federal Register relating to the Nonferrous Metals Manufacturing Point Source Category (June 27, 1984; 49 FR 26352). The hearing will be held to elicit additional comments on the regulation. These comments will be used to further assist the Agency in developing the final regulations.

DATE: The public hearing has been scheduled for August 21, 1984.

ADDRESS: The public hearing will be held at the following address: L'Enfant Plaza Hotel, 480 L'Enfant Plaza East SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Harold B. Coughlin, Effluent Guidelines Division (WH-552), (202) 382-7192, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: Registration for the hearing will be held from 8:30 to 9:00 a.m. The hearing will start at 9:30 a.m. Opportunity will be given throughout the hearing for the audience to submit written questions to the Presiding Officer. These questions will be addressed during a question and answer session at the conclusion of the oral testimony presentations.

For those persons making an oral presentation, it is requested that a written transcript of their presentation, as well as correct spelling of names, affiliations and addresses, be submitted to the court recorder. Official transcripts of the hearing will be available upon request.

Dated: July 16, 1984.

Henry L. Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84-19340 Filed 7-20-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 761

[OPTS-62039;, TSH FRL 2600-4]

Polychlorinated Biphenyls (PCBs); Modification of Definition of Totally Enclosed Manner for PCB Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), generally prohibits the manufacture, processing, distribution in commerce, and use of polychlorinated biphenyls (PCBs) in other than a totally enclosed manner. Section 6(e)(2)(C) ot TSCA defines "totally enclosed manner" as any manner that will ensure that any exposure of humans or the environment to PCBs will be insignificant. According to this section, in determining "totally enclosed manner," the Administrator will establish by rule what constitutes significant exposure to PCBs. In the Federal Register of May 31, 1979 (44 FR 31514), EPA issued a regulation that implemented section 6(e). In that rule, EPA defined "significant exposure" to PCBs as "any exposure of human beings or the environment to PCBs as measured or detected by any scientifically acceptable analytical method." This notice proposes to amend the May 1979 PCB Rule to: (1) Delete the definition of "significant exposure;" (2) modify the definition of "totally enclosed manner;" and (3) present the Agency's current framework for assessment of PCB exposure. These modifications to the May 1979 PCB Rule are consistent with EPA's current approach to assessing exposure to PCBs.

DATES: An informal hearing, if requested, will be held on September 6, 1984, in Washington, D.C. The exact time and location of the hearing will be available by calling the TSCA Assistance Office toll free at (800-424-9065), or, in Washington, D.C., by calling (554-1404). Comments on this proposed rule and requests to participate in the informal hearing must be submitted by August 22, 1984.

ADDRESS: All comments should be sent in triplicate to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

Comments should include the docket number OPTS-62039. Comments received on this proposed rule will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107, Environmental Protection Agency, 401 M St., SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Procedures for Informal Hearings

EPA will conduct all hearings in accordance with EPA's "Procedures for Conducting Rulemaking under section 6 of the Toxic Substances Control Act" (40 CFR Part 750). Commenters who want to participate in the informal hearings must write to EPA's TSCA Assistance Office (see address listed under **"FOR FURTHER INFORMATION CONTACT"**) and indicate that they want to participate. The informal hearings are meant to provide an opportunity for commenters to present additional information or to discuss new issues, not

to repeat information already presented in written comments.

II. Background

Section 6(e) of TSCA generally prohibits the manufacture, processing, distribution in commerce, and use of PCBs. The statute provides, however, two exceptions under which EPA may, by rule, allow a particular use of PCBs to continue. Under section 6(e)(2) of TSCA, EPA may allow PCBs to be used in a "totally enclosed manner." A "totally enclosed manner" is defined by TSCA to be "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant, as determined by the Administrator by rule." TSCA also allows EPA to authorize the use of PCBs in a manner other than a totally enclosed manner if the Agency finds that the use "will not present an unreasonable risk of injury to health or the environment."

In the Federal Register of May 31, 1979 (44 FR 31514), EPA issued a regulation that implemented section 6(e). (This rule is hereafter referred to as the May 1979 PCB Rule and is listed in the Code of Federal Regulations under 40 CFR Part 761). Among other things, the May 1979 PCB Rule: (1) Generally excluded from regulation materials containing PCBs in concentrations of less than 50 parts per million (ppm); (2) designated all intact, non-leaking capacitors, electromagnets, and transformers (other than railroad transformers) as "totally enclosed," and permitted their use without specific conditions; and (e) authorized 11 non-totally enclosed uses of PCBs, based on the finding that they did not present unreasonable risks. In addition, in the May 1979 PCB Rule, EPA defined the terms "significant exposure" and "totally enclosed manner" within the context of section 6(e)(2) of TSCA. "Significant exposure" is defined as any exposure of human beings or the environment to PCBs as measured or detected by any scientifically acceptable analytical method. (40 CFR 761.3(dd)). "Totally enclosed manner" is defined as any manner that will ensure that any exposure of human beings or the environment to any concentration of PCBs will be insignificant; that is, not measurable or detectable by any scientifically acceptable analytical method. (40 CFR 761.3(hh).)

The Environmental Defense Fund (EDF) successfully challenged the 50 ppm cutoff and the designation of PCB electrical equipment as "totally enclosed" in *EDF* v. *EPA*, 636 F. 2d 1267 (D.C. Cir. 1980). In that decision, the U.S. Court of Appeals for the District of Columbia invalidated a portion of the rule and remanded the rule to EPA for further action. The definition of the terms "significant exposure" and "totally enclosed manner" in the May 1979 Rule were not, however, challenged and therefore not reviewed by the court in *EDF* v. *EPA*.

As a consequence of the court's decision in *EDF* v. *EPA*, EPA conducted a number of rulemaking actions. The action specifically relevant to the subject of today's notice of proposed rulemaking was published in the Federal Register of August 25, 1982 (47 FR 37342). (This rule will hereafter be referred to as the PCB Electrical Equipment Rule.) In that amendment to the May 1979 PCB Rule, among other things, EPA considered the effects on human health and the environment from various uses of PCBs in electrical equipment.

Following the promulgation of the PCB Electrical Equipment Rule, the Edison Electric Institute (EEI), the National Electrical Manufacturers Association (NEMA), EDF, Natural Resources Defense Council (NRDC), and the American Paper Institute (API) filed petitions for review of the PCB Electrical Equipment Rule. These actions were consolidated in the U.S. Court of Appeals for the District of Columbia Circuit.

On March 23, 1984, EEI, NEMA, API, and EPA filed a joint motion with the Court to hold the lawsuit in abeyance pending implementation of a settlement agreement reached between these parties. The court granted this joint motion on April 25, 1984. Under the settlement, EPA agreed to a schedule for conducting a rulemaking that would address the definitions of the terms "significant exposure" and "totally enclosed manner" in § 761.3 and certain provisions of § 761.20 relating to these terms. A Notice of Proposed Rulemaking to amend the PCB Electrical Equipment Rule would be issued by July 15, 1984, and a final rule would be promulgated by November 1, 1984. According to the settlement, this rulemaking activity by EPA will also defer a related motion that was filed by EEI and NEMA under section 19(b) of TSCA to remand the PCB Electrical Equipment Rule. EEI and NEMA agreed to withdraw their petition and the section 19(b) motion upon completion of this rulemaking. EDF, NRDC, and intervenor Chemical Manufacturers Association had no objection to the court's granting this motion.

III. Summary of Proposed Amendments

As a result of the settlement, EPA is proposing the following modifications to the May 1979 PCB Rule:

1. Deletion of the definition of "significant exposure" in § 761.3.

2. Revision of the definition of "totally enclosed manner" in § 761.3, by deleting the current definition and substituting the following: " 'Totally enclosed manner' means any manner that will ensure no exposure of human beings or the environment to any concentration of PCBs."

3. Revision of the introductory text of § 761.20 by deleting the sixth, seventh, and eighth sentences, which state:

> In addition, the Administrator hereby finds that any exposure of human beings or the environment to PCBs as measured or detected by any scientifically acceptable analyfical method is a significant exposure. . . . Since any exposure to PCBs is found to be a significant exposure, a totally enclosed manner is a manner that results in no exposure of humans or the environment to PCBs.

The following two sentences would be substituted therefor: "In addition, the Administrator hereby finds, for purposes of section 6(e)(2)(C) of TSCA, that any exposure of humans or the environment to PCBs, as measured or detected by any scientifically acceptable analytical method, may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. For purposes of determining which PCB items are totally enclosed, pursuant to section 6(e)(2)(C) of TSCA, since exposure to such items may be significant, the Administrator further finds that a totally enclosed manner is a manner which results in no exposure to humans or the environment to PCBs."

Subsequent to the promulgation of the 1979 rule, which contained the definition of "significant exposure," EPA took a new look at its assessments of PCB exposure. The Agency no longer believes that the definition in the 1979 rule is useful. Hence, EPA has agreed that the concept of "significant exposure" in the May 1979 PCB Rule should be amended to reflect the Agency's most recent policies concerning exposures from activities involving PCBs. (For a discussion of the Agency's current approach to exposure assessment, see Unit III.C of this preamble.)

A. Deletion of the Definition of "Significant Exposure"

As used in section 6(e) of TSCA, the concept of "significant exposure" is

applicable only to the Agency's determination of uses of PCBs in a "totally enclosed manner." Under section 6(e)(2)(C) of TSCA, "totally enclosed manner" means "any manner which will ensure that any exposure to PCBs will be *insignificant* as determined by the Administrator by rule" (emphasis added). In the May 1979 PCB Rule, for purposes of implementing section 6(3)(2)(C) of TSCA, EPA defined "totally enclosed manner" and "significant exposure." If promulgated, this proposed rule would delete the separate definition of "significant exposure," because EPA believes that definition is no longer useful, and does not reflect the Agency's current analyses concerning exposures from activities involving PCBs.

B. Revision of the Definition of "Totally Enclosed Manner"

The current definition of "totally enclosed manner" in § 761.3 is "any manner that will ensure that any exposure of human beings or the environment to any concentration of PCBs will be insignificant; that is, not measurable or detectable by any scientifically acceptable analytical method." Under the proposed amendment, the term would be defined as "any manner that will ensure no exposure of human beings or the environment to any concentration of PCBs." The effect of the "totally enclosed" definition is not changed by this amendment; under either definition, only PCB equipment that is intact and nonleaking qualifies as being used in a "totally enclosed manner." The proposed modification would continue to ensure that any exposures from activities involving PCBs in a "totally enclosed manner" will be insignificant.

C. Rationale for the Proposed Amendments

Since the May 1979 PCB Rule, EPA's methodology for assessing exposures from activities involving PCBs has changed. In the Closed and Controlled Waste Manufacturing Processes Rule, which was published in the Federal Register of October 21, 1982 (47 FR 46980), the Agency determined that for certain exposure scenarios, exposure to low concentration levels of certain PCBs (non-Aroclor) is insignificant with respect to risks to public health and the environment. That rule establishes PCB concentration limits for products, air emissions, water effluents, and wastes based on a determination of *de minimis* risk.

The Closed and Controlled Waste Manufacturing Processes Rule provides an exclusion from the general ban on the manufacture, processing and distribution in commerce of PCBs for closed and controlled waste manufacturing processes. Closed manufacturing processes are processes that generate PCBs but release PCBs in concentrations below the practical limits of quantitation (LOQs) for PCBs in specific media. EPA concluded that for all practical purposes, it would be impossible to determine whether regulation of PCB concentrations below the practical LOQ had any effect on actually reducing releases of PCBs. (The PCB compounds involved in closed PCB manufacturing processes, which are referred to as "non-Aroclor PCBs," are not easily measured in air emissions, water effluents, products, or process waste streams, because up to 209 different chemical compounds can be produced and are present in different concentrations in a sample undergoing analysis.) Thus, PCBs in concentrations below the LOQ would present *de minimis* risk.

On June 27, 1984, the Agency promulgated a regulation amending the Closed and Controlled Waste Manufacturing Rule by excluding inadvertently generated and certain recycled PCBs from the prohibitions of section 6(e) of TSCA. ("Part 761—Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations," 49 FR 28172, July 10, 1984.) This amendment is based on EPA's determination that these PCBs do not present an unreasonable risk of injury to health or the environment. In support of this recent PCB rule, EPA conducted a series of asessments to estimate the maximum probable human exposure to PCBs under various situations. Included among the factors considered by EPA in support of these exposure assessments were the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure.

Detailed descriptions of these exposure assessments are included in the support document for the June 27, 1984, rule entitled, "Exposure Assessment for Polychlorinated Biphenyls (PCBs): Incidental Production, Recycling, and Selected Authorized Uses (Final Report; May 2, 1984)."

IV. Agency's Position on Health and Environmental Effects of PCBs

A. Human Health Effects From Exposure to PCBs

The effects of PCBs have been previously described in various documents that are part of the administrative record for the various PCB rulemakings. Copies of these documents are available through EPA's TSCA Assistance Office (see address above listed under "FOR FURTHER INFORMATION CONTACT").

EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin; circulate throughout the body; and be stored in the fatty tissue.

In some cases, chloracne may occur in humans exposed to PCBs. Chloracne is painful, disfiguring, and may require a long time before the symptoms disappear. Although the effects of chloracne are reversible, EPA considers these effects to be significant.

In addition, EPA finds that PCBs may cause reproductive effects, developmental toxicity, and oncogenicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available human data indicate that prenatal exposure to PCBs can result in various degrees of developmentally toxic effects. Postnatal effects have been demonstrated in immature animals after exposure to PCBs prenatally and via breast milk.

Since the administration of PCBs to experimental animals results in tumor formation, reproductive effects, and developmental toxicity, EPA finds that there is the potential to produce these effects in humans exposed to PCBs. EPA finds no evidence to suggest that the animal data would not be predictive of the potential for oncogenic effects in humans.

Available data indicate little or no mutagenic activity from PCBs. EPA believes, however, that more information is needed to draw a conclusion on the possibility of mutagenic effects from PCBs.

B. Environmental Effects of PCBs

In previous PCB rules, EPA concluded that PCBs can be concentrated in freshwater and marine organisms. The transfer of PCBs up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of PCB-containing food sources. Available data show that PCBs affect the productivity of phytoplankton communities, cause deleterious effects on environmentally important freshwater invertebrates, and impair reproductive success in birds and mammals.

PCBs also are toxic to fish at very low exposure levels. The survival rate and the reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs also have been demonstrated.

EPA conducted an environmental risk assessment of PCBs for the June 27, 1984 rule, including a review of available environmental data. This assessment can be found in the support document entitled "Environmental Risk and Hazard Assessments of Polychlorinated Biphenyls" (September 1983). EPA concluded that ambient concentrations and food chain transport of PCBs may impair the reproductive potential of commercially valuable fish and certain wild mammals. PCB residues also are strongly correlated with reductions in natural populations of marine mammals and may be correlated with declines in river otter populations. High PCB residues have been found in various birds, especially gulls and carnivorous birds, but no resulting effects have been demonstrated.

In addition, EPA estimated the toxicity for the monochlorinated through hexachlorinated biphenyls and for decachlorinated biphenyls. These estimates show that as the number of chlorine atoms on the biphenyl molecule increases, the no observable effect concentration (NOEC) for fish decrease.

V. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested parties an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review 2 weeks after publishing the final rule in the **Federal Register.** The effective date will be calculated from the promulgation date.

VI. Official Record of Rulemaking

In accordance with the requirements of section 19(a)(3)(E) of TSCA, EPA is issuing the following list of documents that constitute the record of this proposed rulemaking. A supplementary list or lists may be published at any time on or before the date that the final rule is issued.

A. Previous Rulemaking Records

(1) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Disposal and Marking Final Regulation" published in the **Federal Register** of February 17, 1978 (43 FR 7150).

(2) Official rulemaking record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibition Rule" published in the **Federal Register** of May 31, 1979 (44 FR 31514).

(3) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment" published in the **Federal Register** of August 25, 1982 (47 FR 37342).

(4) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution, and Use in Closed and Controlled Waste Manufacturing Processes" published in the **Federal Register** of October 21, 1982 (47 FR 46980).

(5) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations" published in the **Federal Register** of July 10, 1984 (49 FR 28172).

B. Federal Register Notices

(6) USEPA, "Polychlorinated Biphenyls (PCBs) Disposal and Marking Final Regulation." 43 FR 7150; February 17, 1978.

(7) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions." 44 FR 31514; May 31, 1979.

(8) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment." 47 FR 37342; August 25, 1982.

(9) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes." 47 FR 46980; October 21, 1982.

(10) USEPA, "Polychlorinated Biphenyls (PCBs); Exclusion, Exemptions, and Use Authorizations." 48 FR 55076; December 8, 1983.

VII. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this amendment to the PCB rule is not a major rule as the term is defined in section 1(b) of the Executive Order, because the annual effect of the rule on the economy will be substantially less than $100 million; it will not cause a major increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. This proposed rule merely modifies the definition of "totally enclosed manner" under section 6(e)(2)(C) of TSCA (without changing the regulatory effect of the definition) and describes the Agency's current policy on the assessment of PCB exposure.

This proposed amendment was submitted to the Office of Management and Budget (OMB) prior to publication as required by the Executive Order.

VIII. Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

This proposed rule would modify the definition of "totally enclosed manner" in the PCB rule and would describe the Agency's PCB exposure assessment. Since EPA expects this proposed rule to have no negative economic effect to any business entity, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.Therefore, a regulatory flexibility analysis is not required and will not be completed for this rulemaking.

IX. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.SC. 3501 et seq.

(Sec. 6, 90 Stat. 2020 (15 U.S.C. 2605))

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Intergovernmental relations.

Dated: July 13, 1984.

Alvin L. Alm,

Acting Administrator.

PART 761—[AMENDED]

Therefore, it is proposed that 40 CFR Part 761 be amended as follows:

1. In § 761.3, the definition of "Significant exposure" is removed, and the definition of "totally enclosed manner" is revised to read as follows:

§ 761.3 Definitions.

* * * * *

"Totally enclosed manner" means any manner that will ensure no exposure of human beings or the environment to any concentration of PCBs.

* * * * *

2. In § 761.20, the introductory text is revised to read as follows:

§ 761.20 Prohibitions.

Except as authorized in § 761.30, the activities listed in paragraphs (a) and (d) of this section are prohibited pursuant to section 6(e)(2) of TSCA. The requirements set forth in paragraphs (b) and (c) of this section concerning export and import of PCBs for purposes of disposal and PCB Items for purposes of disposal are established pursuant to section 6(e)(1) of TSCA. Subject to any exemptions granted pursuant to section 6(e)(3)(B) of TSCA, the activities listed in paragraphs (b) and (c) of this section are prohibited pursuant to section 6(e)(3)(A) of TSCA. In addition, the Administrator hereby finds, under the authority of section 12(a)(2) of TSCA, that the manufacture, processing, and distribution in commerce of PCBs at concentrations of 50 ppm or greater and PCB items with PCB concentrations of 50 ppm or greater present an unreasonable risk of injury to health within the United States. This finding is based upon the well-documented human health and environmental hazard of PCB exposure, the high probability of human and environmental exposure to PCBs and PCB items from manufacturing, processing, or distribution activities; the potential hazard of PCB exposure posed by the transportation of PCBs or PCB items within the United States; and the evidence that contamination of the environment by PCBs is spread far beyond the areas where they are used. In addition, the Administrator hereby finds, for purposes of section 6(e)(2)(C) of TSCA, that any exposure of human beings or the environment of PCBs, as measured or detected by any scientifically acceptable analytical method, may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. For purposes of determining which PCB items are totally enclosed, pursuant to section 6(e)(2)(C) of TSCA, since exposure to such items may be significant, the Administrator further finds that a totally enclosed manner is a manner which results in no exposure to humans or the environment to PCBs. The following activities are considered totally enclosed: distribution in commerce of intact, nonleaking electrical equipment such as transformers (including transformers used in railway locomotives and self-propelled cars), capacitors, electromagnets, voltage regulators, switches (including sectionalizers and motor starters), circuit breakers, reclosers, and cable that contain PCBs at any concentration and processing and distribution in commerce of PCB Equipment containing an intact, nonleaking PCB Capacitor. See paragraph (c)(1) of this section for provisions allowing the distribution in commerce of PCBs and PCB Items.

* * * * *

[FR Doc. 84-19344 Filed 7-20-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Solidago Spithamaea (Blue Ridge Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to determine a plant, *Solidago spithamaea* (Blude Ridge Goldenrod) to be a threatened species under the authority contained in the Endangered Species Act of 1973, as amended. *Solidago spithamaea* (Blue Ridge goldenrod) is endemic to high mountain peaks in North CArolina and Tennessee. Only three populations of *Solidago spithamaea* (Blue Ridge goldenrod) are known to exist; one is on public land administered by the U.S. Forest Service and the other two are on privately owned lands. Past loss of habitat and populations has occurred due to the recreational development of the high mountain peaks where this plant occurred. The continued existence of this plant is threatened by trampling and habitat disturbance due to heavy use by hikers. This proposal, if made final, would implement the protection provided by the Endangered Species Act of 1973, as amended, for *Solidago spithamaea* (Blue Ridge goldenrod).

DATES: Comments from all interested parties must be received by September 21, 1984. Public hearing requests must be received by September 6, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Plateau Building, Rm A–5, South French Broad Avenue, Asheville, N.C., 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Currie, Botanist, 704/258–2850 ext. 382 or FTS: 8/672–0321 (see **ADDRESSES** section above).

SUPPLEMENTARY INFORMATION:

Background

Solidago spithamaea (Blue Ridge goldenrod) was described from material collected in North Carolina by M.A. Curtis in the 1930's. Today, three populations of the species are known: Two in Avery County, North Carolina, and one on the border of Mitchell County, North Carolina and Carter County, Tennessee. Two populations are located on privately owned lands and one is located on public lands administered by the U.S. Forest Service. Two additional populations were historically known for the species but both sites have been developed and no Blue Ridge goldenrod have been relocated there during recent searches. the plant is considered extirpated from these sites or the original reports are considered erroneous. *Solidago spithamaea* is an erect perennal herb that arises from a short stout rhizome, and is a member of the aster family. The yellow flowers are borne in heads arranged into a corymbiform inflorescence. *Solidago spithamaea* grows above 4,600 feet in dry rock crevices of granite outcrops on high peaks in the Blue Ridge Mountains. The comtinued existence of *Solidago spithamaea* is threatened by trampling and habitat disturbance due to heavy use of its habitat by hikers. Construction of new trails and other recreational improvements at any of the sites could further jeopardize this plant. This rule proposes to determine *Solidago spithamaea* to be a threatened species and would implement the protection provided by the Endangered Species Act of 1973, as amended.

Past Federal government actions affecting this plant began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. The Secretary of the Smithsonian presented this report (House Document No. 94–51) to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended). *Solidago spithamaea* was included in the Smithsonian report and the 1975 notice of review as a threatened species. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82479); *Solidago spithamaea* was included in that notice as a category–1 species. Category–1 species are those for which data in the Service's possession indicate listing is warranted.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Solidago spithamaea* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of *Solidago spithamaea* was warranted, and that although other pending proposals had precluded its proposal, expeditious progress was being made to add species to the list. This finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Publication of this proposal constitutes the next one-year finding requirement, which must be made by October 13, 1984.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Solidago spithamaea* M.A. Curtis (Blue Ridge goldenrod) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

Three populations of *Solidago spithamaea* are known to exist in Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee. Two other historically known populations are assumed extirpated or the original reports are believed to be erroneous; both sites have been developed and the Blue Rudge goldenrod has not been reverified for over 60 years, although searches have been conducted. Of known extant populations, two are located on privately owned lands and one is located on public land administered by the U.S. Forest Service. The greatest damage to *Solidago spithamaea* in the past has probably come from the commercial development of the open mountain summits where it occurs. The construction of observation platforms, trails, parking lots, roads, suspension bridges, etc., have taken their toll either through the actual construction process or later by trampling due to hikers and sightseers (Kral, 1979). Today, heavy trampling occurs at two locations where *Solidago spithamaea* is known to be extant (Massey et al., 1980). Some of the open areas where these plants grow might be better protected by routing hikers away from the sites so that trampling could be avoided. With anticipated increased usage by sightseers, rock climbers, and hikers at all three localities where *Solidago spithamaea* occurs, significant impact on this species in the form of increased soil erosion, soil compaction, and trampling, could occur if protection is not provided. Likewise, additional development at any of the locales, such as expansion of trails or sidewalks, could further threaten this species if proper planning does not occur. To quote one botanist, *Solidago spithamaea* ". . . seems to have an instinct for growing in the most scenic sites, thus coming underfoot and underseat."

B. Overutilization for commercial, recreational, scientific, or educational purposes.

Not applicable to this species.

C. Disease or predation.

Not applicable to this species.

D. The Inadequacy of Existing Regulatory Mechanisms

During the summer of 1979, North Carolina passed new legislation to protect its rare plants. *Solidago spithamaea* is protected under that State law (N.C. General Statute 19–B, 202.12–202.19) as an endangered species. This legislation provides protection from intrastate trade and provisions for monitoring and proper management. Tennessee does not currently have State legislation to protect endangered plants.

The Forest Service's regulations prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered rare, or unique species (36 CFR Part 261). These regulations, however, are difficult to enforce. The Endangered Species Act could offer additional protection to this species through Section 7—interagency cooperation requirements and recovery planning.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Solidago spithamaea is an early pioneer species growing on rock ledges in full sun. Depending upon the elevation and suitability of the site for supporting woody vegetation, invasion of ericaceous shrubs may occur, which could eliminate *Solidago spithamaea* by over-crowding and shading. this is a very slow process; however, proper management planning for *Solidago spithamaea* would need to address this aspect of the species' biology. Natural rock slides, severe storms, or other natural events may also eliminate populations of this plant.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the Service proposes to list *Solidago spithamaea* as threatened. Critical habitat is not being determined for reasons discussed below. Threatened status is proposed since one population is located on public lands (thus subjecting all proposed activities to the provisions of section 7 of the Act) and the present private owners are cooperative.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Solidago spithamaea* at this time. As discussed in the "Summary of Factors" section, all known locations for *Solidago spithamaea* receive visitor use, and associated trampling is a major threat to this species. Designation of these areas as critical habitat would increase public interest, and possibly lead to vandalism

and taking at the heavily used sites and thereby increase the threat to the plant. No benefits would be derived from the public notification portions of a critical habitat designation since the owners and managers of the three sites are already aware of the location of *Solidago spithamaea*. Vandalism and taking of listed plants is not regulated by the Endangered Species Act, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. These regulations and those of the Forest Service are also extremely hard to enforce. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. Therefore, it does not appear to be prudent to determine critical habitat for *Solidago spithamaea* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 40 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. One population of *Solidago spithamaea* occurs on U.S. Forest Service-administered public lands; proper protection and management plans are needed for the species at this site but no major conflicts are expected.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Solidago spithamaea*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the Untied States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Solidago spithamaea* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. This new protection will apply to *Solidago spithamaea* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through sections 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Solidago spithamaea;*

(2) The location of any additional populations of *Solidago spithamaea* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Solidago spithamaea*.

Final promulgation of the regulation on *Solidago spithamaea* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Service's local Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Kral, Robert. 1979. *Solidago spithamaea*, individual species reports submitted to the U.S. Forest Service, Southeastern Area, as part of Cooperative Agreement #42–283.

Massey, J.R., P.D. Whitson, and T.A. Atkinson. 1980. Endangered and Threatened Plant Survey of Twelve Species in the Eastern part of Region 4. Report submitted to U.S. Fish and Wildlife Service, Region 4, under contract 14–16–004–78–108.

Authors

The primary authors of this proposed rule are Dr. Andrew F. Robinson, Jr., U.S. Fish and Wildlife Service, Lloyd 500 Building, Portland, Oregon 97232 and Ms. E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following plant, in alphabetical order, under the family Asteraceae, to the List of Endangered and Threatened Plants

§ 17.12 Endangered and threatened plants.

* * * * *

(h)* * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family						
*	*	*	*	*	*	
Solidago spithamaea	Blue Ridge goldenrod	U.S.A. (NC, TN)	T		NA	NA
*	*	*	*	*	*	

Dated: July 3, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-19301 Filed 7-20-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Dicerandra Immaculata (Lakela's Mint)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Dicerandra immaculata* (Lakela's mint), a small plant in the mint family, to be an endangered species. *Dicerandra immaculata* is endemic to a very small area of ancient dunes near the Atlantic Coast in St. Lucie and Indian River Counties, Florida. All known colonies of *Dicerandra immaculata* occur on private property. The continued existence of this plant is endangered by sand mining, a fungal disease which attacks the seeds, and by the development of commercial and residential communities on the line of ancient dunes between Vero Beach and Fort Pierce. This proposal, if made final, would implement Federal protection and recovery provisions afforded by the Endangered Species Act of 1973, as amended, for *Dicerandra immaculata.*

DATES: Comments from all interested parties must be received by September 21, 1984.

Public hearing requests must be received by September 6, 1984.

ADDRESSES: Interested persons, organizations, and agencies are requested to submit comments to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and material relating to this proposal are available for public inspection, by appointment, during normal business hours (7:00 a.m.–4:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien at the above address (904791–2580 and FTS 946–2580), or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION:

Background

Dicerandra immaculata (Lakela's mint) is a low-growing, dome-shaped shrub of the mint family (Lamiaceae). The plants reach 38 centimeters (15 inches) in height, and bear erect flowers, in small cymes, at the tips of the stems. The spotless, lavender-rose to purplish (rarely white) corolla of the flower separates *Dicerandra immaculata* from other species of this genus occurring in the southeastern United States. *Dicerandra immaculata* was described by Olga Lakela in 1963, based on material collected in southern Indian River County, Florida, in 1962. The species is restricted to coastal sand pine scrub vegetation in Indian River and St. Lucie Counties, Florida. Florida sand scrub habitats are found on relict dunes along former ocean shorelines. The soils consist of highly drained, sterile sands.

In *Dicerandra immaculata* habitat, sand pine (*Pinus clausa*) forms an overstory, while oaks (*Quercus geminata, Q. virginianam,* and *Q. myrtifolia*) form an understory. Other small trees or shrubs found in this plant community include scrub hickory (*Carya floridana*), cabbage palm (*Sabal palmetto*), saw palmetto (*Serenoa repens*), hog plum (Ximenia americana), and tough bumelia (*Bumelia tenax*). Epiphytes (*Tillandsia fasiculata* and *T. recurvata*) are present. *Dicerandra immaculata* is one of the rarest plants known from the sand scrub community type. Rare animals found in *Dicerandra immaculata* habitat include the Florida scrub jay (*Aphelocoma c. coerulescens*) and the scrub lizard (*Sceloporus woodi*). The Florida scrub jay is considered a threatened species by the State of Florida; the scrub lizard is considered rare by the Florida Committee on Rare and Endangered Plants and Animals.

Only 10 colonies of *Dicerandra immaculata* are know. They occur in an area 0.8 kilometers (0.5 mile) wide by 4.8 kilometers (3 miles) in Indian River and St. Lucie Counties, Florida, between the cities of Vero Beach and Fort Pierce. The plants occur in the vicinity of four small sandhills, with an elevation over 14 meters (45 feet), representing ancient coastal dunes. *Dicerandra immaculata* occurs on soil series of the Astatula, Paola, and St. Lucie sands. All known colonies occur on private property. The continued existence of this species is threatened by sand mining, commercial and residential development, and a fungal disease affecting the seeds.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the

Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. The Secretary of th Smithsonian presented this report (House Document No. 94–51) to Congress on January 9, 1975. On July 1, 1975, the Director published a notice of review in the **Federal Register** (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act. On June 16, 1976, the Director published a proposed rule in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Dicerandra immaculata* was included in the Smithsonian report, the July 1, 1975, notice of review, and the June 16, 1976, proposal.

The 1978 Endangered Species Act Amendments required that all proposals over 2 years old be withdrawn, except that a 1 year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals which had expired (44 FR 70796). On December 15, 1980, the Service published a revised notice of review in the **Federal Register** (45 FR 82479); *Dicerandra immaculata* was included in Table 3 as a category 1 species. Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the Act, as amended, further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Dicerandra immaculata* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petition for *Dicerandra immaculata* was warranted, and that although pending proposals had precluded proposal of *Dicerandra immaculata*, expeditious progress was being made to add this species to the list. This finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Publication of this proposal constitutes the next one year finding requirement of October 13, 1984.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 38062, August 8, 1983) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors decribed in section 4(a)(1). These factors and their application to *Dicerandra immaculata* Lakela (Lakela's mint) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Dicerandra immaculata is known only from a 0.8 kilometers (0.5 mile) by 4.8 kilometers (3 miles) area in Indian River and St. Lucie Counties, Florida, between the cities of Vero Beach and Fort Pierce. Only 10 colonies of the plant are known; these are considered to represent a single population. All of the colonies occur on private land suitable for residential or commercial development. Most of one colony was recently destroyed by commercial development. Another site has been partially destroyed by clearing and construction of houses in a platted subdivision. Two other colonies are threatened by sand mining. This commercial and residential development has occurred in the last 2 years and such activities are expected to continue in the near future, affecting most or all of the remaining colonies of *Dicerandra immaculata.*

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

Not applicable.

C. Disease of Predation

Dicerandra immaculata is subject to mildew attack, which destroys the viability of the seeds before they are dispersed (Robinson, 1981).

D. The Inadequacy of Existing Regulatory Mechanisms.

No Federal, State, or local laws or regulations protect *Dicerandra immaculata* or its habitat at present.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Peninsular Florida has one of the highest human population growth rates in the United States. The current heavy development pressures on the limited uplands can be expected to intensify in the area in which *Dicerandra immaculata* occurs.

The Service has carefully assessed the best scientific information available ragarding the past, present, and future threats faced by this species in determining to prepare this rule. Based on this evaluation, the preferred action is to list *Dicerandra immaculata* as endangered. The few remaining colonies of this species are continuing to decline and the plant is in danger of extinction throughout its range. Critical habitat is not being proposed for *Dicerandra immaculata;* the reason for this decision is discussed in the following section.

Critical Habitat

Section (a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. This species is found only on small areas of privately-owned lands, where no Federal involvements are known at present. Publication of critical habitat maps in the **Federal Register** could attract attention to the limited remaining areas where *Dicerandra immaculata* occurs, subjecting the remaining sites to vandalism. The resultant attention could also encourage incresed trespassing and Frustrate property owners. Should future Federal activities take place in the areas in which *Dicerandra immaculata* occurs, the Service feels that such activities will be brought to the Service's attention without the designation of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection,and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States and requires that recovery actions be carried out for all listed species. Recovery actions are initiated by the Service following listing. The protection required by Federal agencies is discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their action with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed

species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of such a species. If a Federal action may affect the species, the Federal agency involved must enter into consultation with the Service. No Federal involvements affecting *Dicerandra immaculata* are known at present.

The act and implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions which apply to all endangered plant species. With respect to *Dicerandra immaculata*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not cultivated nor common in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. *Dicerandra immaculata* is not known to occur in any area under Federal jurisdiction, so this prohibition would not apply. Requests for copies of the regulations on plants, and inquiries regarding them, may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules ar hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Dicerandra immaculata;*

(2) The location of any additional populations of *Dicerandra immaculata* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts on *Dicerandra immaculata.*

Final promulgation of the regulation on *Dicerandra immaculata* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such request must be made in writing and addressd to the Field Supervisor, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Austin, D.F., C.E. Nauman, and B.E. Tatje. 1980. Endangered and threatened plant survey in southern Florida and the National Key Deer and Great White Heron National Wildlife Refuges, Monroe County, Florida. Report submitted to U.S. Fish and Wildlife Service, Atlanta, Gerogia.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. Vol. II: Aquifoliaceae through Asteraceae. U.S.D.A. Forest Service Publication R8-TP2.

Lakela, O. 1963. *Dicerandra immaculata* Lakela, sp. nov. (Labiatae). Sida 1(3):184–185.

Robinson, A.F., Jr. 1981. *Dicerandra immaculata.* Status review prepared for U.S. Fish and Wildlife Service files. Jacksonville Endangered Species Field Station, Jacksonville, Florida.

Authors

The primary author of this proposed rule is Dr. Michael M. Bentzien, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2737 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580). Dr. Andrew F. Robinson, Jr., U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232, and Dr. Gail S. Baker, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99501, prepared preliminary listing documents on which this proposed rule is based. Ms. E. LaVerne Smith served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under Lamiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Lamiaceae—Mint family:						
*	*	*	*	*	*	*
Dicerandra immaculata	Lakela's mint	U.S.A. (FL)	E	NA	NA	

—Continued

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * *	* * *	*	*	*		

Dated: July 6, 1984.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-19300 Filed 7-20-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR 20

Migratory Bird Hunting; Supplemental Proposals for Early Season Migratory Bird Hunting Regulations Frameworks

Correction

In FR Doc. 84-18124 beginning on page 28026 in the issue of Monday, July 9, 1984, make the following correction.

On page 28026, first cloumn, in the "**DATES**" paragraph, line 3, "July 8, 1984" should read "July 18, 1984."

BILLING CODE 1505-01-M

50 CFR Part 23

Export of American Ginseng Harvested in 1984 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed findings.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates the international trade in certain animal and plant species. Export of animals and plants listed in Appendix II of CITES may occur only if the Scientific Authority (SA) has advised the permit-issuing Management Authority (MA) that such exports will not be detrimental to the survival of the species, and if the MA is satisfied that the animals or plants were not obtained in violation of laws for their protection.

This notice announces proposed findings by the United States SA and MA for the export of American ginseng from certain States that have not yet received export approval for the 1984 season.

The Service began to make multi-year findings for the export of American ginseng on a State-by-State basis in 1982 when it issued SA and MA findings covering the 1982–84 seasons. Certain States had not been granted multi-year export approval because they had not satisfied the MA guidelines. The Service requests information and comments on whether 1984 export approval should be granted to this later group of States that have satisfied both the SA and MA guidelines. The Service also requests information on the population status of the species, the environmental and economic impacts that might result from the findings, and possible alternative approaches to meeting CITES requirements.

DATE: The Service will consider information and comments received by August 7, 1984, in making its proposed findings and rule.

ADDRESS: Please send correspondence concerning this notice to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, P.O. Box 3654, Arlington, Virginia 22203. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Federal Wildlife Permit Office, Room 620, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Scientific Authority: Dr. Richard L. Jachowski, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653–5948.

Management Authority: Mr. Thomas J. Parisot, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, P.O. Box 3654, Arlington, Virginia 22203, telephone (703) 235–1937.

SUPPLEMENTARY INFORMATION: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates the international trade in CITES listed species. Export of species listed in Appendix II of CITES may only occur upon approval of both a Scientific Authority and Management Authority of the countries of export. In the United States, Scientific and Management Authority responsibilities are assigned to the Secretary of the Interior and are carried out by the Fish and Wildlife Service. This notice concerns the Service's finding on export of American ginseng (*Panax quinquefolius*) taken in the 1984 season, with particular reference to States for which the export of ginseng taken in that season has not already been approved (see 47 FR 43704, Oct. 4, 1982, and 48 FR 45775, Oct. 7, 1983).

In 1982, the Service reported that it had found that the status of wild ginseng does not vary greatly from year to year within any given State, and that information compiled to date was adequate to justify multi-year findings under CITES. As described in the October 4, 1982, notice (47 FR 43701), the Service used information compiled since 1977 to make multi-year findings under CITES. Even though findings were made approving the export of ginseng harvested in certain States in the 1982–84 seasons, the Service indicated it would continue to monitor the status of ginseng each year, and would retain the option of revising the findings at any time if new information showed the need for a change. The Service now requests current information of the types listed below for the purpose of such monitoring. In addition, the Service will also consider any biological and harvest information submitted concerning those States that are not currently approved and are seeking export approval for ginseng harvested in 1984. Information submitted in the past need not be resubmitted if it is incorporated by reference and its validity is re-affirmed. The State of Vermont has recently submitted information in support of a request for export approval of wild ginseng harvested from the State in 1984.

Request for Information and Comments

The Service recognizes that a public comment period for this proposed notice is important and looks forward to receiving all and every public comment possible concerning the Federal actions described in this notice. However, a standard 30-day comment period would provide an additional delay in publishing the final findings for the 1984 ginseng harvest season. This may adversely affect the harvest season already under way in the States awaiting export approval. A further delay may also adversely impact State conservation programs for this species by reducing compliance with State

certification, documentation, and reporting requirements.

The Service, therefore, finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, to grant a 15-day public comment period on these proposed findings.

Scientific Authority Findings (SA)

Under CITES the SA must make a finding that ginseng export will not be detrimental to the survival of the species. To make this determination, the SA will consider the following general criteria:

(1) Whether similar export has occurred in the past and has not reduced the numbers or distribution of the species, nor caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystem;

(2) Whether harvest and export are expected to increase, decrease, or remain constant; and

(3) Whether the life history of the species and the structure and function of its place in its ecosystem indicate that the present or proposed level of export will not appreciably reduce the numbers or distribution of the species, nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystem.

For ginseng, the determination of whether export will not be detrimental to the survival of the species is based on an evaluation of the following information concerning each affected State (see notice of Apr. 5, 1982; 47 FR 14666):

(1) Historic, present and potential distribution of ginseng on a county basis, using county or township outline maps, and indicating the source(s) and accuracy of this information. Also to be considered is the distribution of preferred or potential habitat on a regional or Statewide basis, indicating recent trends in loss or protection of habitat.

(2) Approximate number or density of ginseng populations per county or region, and the approximate number of all known ginseng localities in the State, including also the source of this information;

(3) Average number of plants per population or patch, or local abundance of wild ginseng on a county or regional basis in the State, indicating the source(s), general reliability, and accuracy of the information. Also to be considered are any changes from previous years or differences from historical population sizes.

(4) An assessment of population trends on a county or regional basis and an indication if populations of ginseng are believed to be increasing, decreasing, stable, extirpated, or unknown. Included in this assessment is the source(s) and general reliability and accuracy of this information;

(5) An assessment of harvest intensity on a county or regional basis indicating if the relative collecting intensity is heavy, moderate, light, none, or unknown, and any changes from previous years. Also to be considered should be the known or estimated number of ginseng collectors in the State.

(6) A county map showing those counties in which ginseng is reported to be commercially cultivated, including statewide amount of cultivated ginseng reported to be harvested and certified for export.

(7) Number of roots per pound harvested, on a county or regional basis or, if these are not available, on a Statewide basis. Also to be considered is an assessment of any trend in wild root sizes or number of roots per pound over previous years.

(8) The State's current research program on ginseng and its progress, including a summary of results so far obtained;

(9) A description of the State's harvest practices and controls, including regulations on length of harvest season, any harvest restrictions such as size and age of collected plants, and any seed planting requirements.

Management Authority Findings

In addition to the SA advice that the ginseng exports will not be detrimental to the survival of the species, the MA must be satisfied that ginseng exported was not obtained in contravention of laws for its protection.

Criteria used by the MA in determining if a State program qualifies for export are that the State has implemented the following regulatory measures and supplied certain information to the Service (Relisted from notice of July 10, 1980 (45 FR 46464):

(1) State licensing or regulation of dealers purchasing or selling ginseng in the State;

(2) State requirements that these licensed or registered ginseng dealers maintain true records of their commerce in ginseng, and report such commerce to the State;

(3) Inspection and certification by State personnel of all ginseng shipments from the State. This certification is necessary to authenticate that the ginseng was legally taken from wild or cultivated sources within the State. Experience has shown the value of a State official inspection and certification program which can document that the weight of the roots in question were legally taken from the wild or artifically propagated in that State.

In order to determine if these criteria are met, the Service reviews the following extant information or materials from each affected State:

(a) A copy of the State ginseng law and regulations;

(b) State dealer, grower, or digger license or registration rules;

(c) Cost of license or registration;

(d) Date of harvest season and season of selling/buying operations;

(e) Dealer records, maintenance and reported requirements;

(f) Samples of current year dealer certificates and reporting forms;

(g) Sample of current year State certificate of legal take and origin;

(h) Sample of diggers license, if any, indicating cost of license and dates this license is effective;

(i) Description of State certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or from the State; and

(j) Name, address, and telephone number of the State person to contact concerning such information.

In the notice of December 4, 1982, (45 FR 80444) the Service announced that the MA would approve export of artificially propagated ginseng only from States approved for export of wild-collected ginseng because those States had the program necessary to document the source of the roots. The Service also then announced that it would approve the export of artificially propagated ginseng from other States if an approved program and acceptable procedures have been implemented to minimize the risk that wild-collected plants would be exported as cultivated.

The Service previously noted (47 FR 3869) that, beginning with the 1983 harvest season, the MA would require each State seeking export approval for wild or cultivated ginseng to have a legally established ginseng program requiring that a State official examine and certify all ginseng transported out of the State.

This certification must verify State of origin, legal take, year of take, weight of shipment, whether the roots were taken from the wild or artificially propagated, date of certification, shipment number, dealer's State registration number, and signature of both the dealer and State certifying official. The Service believes that a program of State inspection remains the proper method of insuring legal ginseng export. However, in an

attempt to examine other possible methods, the Service will consider the adequacy of programs other than State examination of ginseng leaving the State. Such a proposed system must offer the same assurances as does an actual examination of the shipment and dealers' records of origin, legal take and whether wild or cultivated roots are involved in the shipment.

Previous Export Approval

The Service decided in 1982 (47 FR 43701) to grant multi-year export approval for 1982–84 only to States with a legally regulated ginseng program that provided for a State inspection and certification system and that satisfied all other criteria of both the SA and MA. These findings were reaffirmed and export from certain additional States was approved on October 7, 1983, (48 FR 45775) and on March 19, 1984 (49 FR 10123). Currently, export approvals are as follows:

1982 through 1984 harvests: Arkansas, Georgia, Illinois, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Vermont (artificially propagated only), Virginia, West Virginia, and Wisconsin (wild only). The Service approved export of ginseng lawfully taken during the 1982–84 seasons for these States because they fully met MA criteria.

1982–83 harvests only: Indiana, Tennessee, and Wisconsin (artificially propagated only).

Ginseng from States approved only for the export of the 1982–83 legally harvested ginseng were not granted further export approval until an acceptable ginseng program was developed. The Service did not grant general approval for exports of American ginseng taken from the States other than those listed above during the 1982–84 harvest seasons.

Indiana has recently implemented an acceptable State Ginseng Export program. Wisconsin has proposed an experimental export program that it claims will offer the same legal assurance as the standard State certification program required by the Service. This program includes the annual measurement of cultivated ginseng gardens by a county tax assessor, and certification to the State of all ginseng commerce by growers and dealers. The appropriate State officials are to spot check these procedures and examine collected records of ginseng commerce from all State dealers and growers. These compiled records of ginseng commerce are then to be sent to the Federal Wildlife Permit Office for review analysis. A Service decision will be made prior to the 1985 harvest season whether to continue the approval of this Wisconsin export program. The Service proposes to grant 1984 United States export approval for these two States.

The Vermont Department of Agriculture recently submitted information to both the SA and MA in support of export approval of wild ginseng harvested in that State. This information is a status report entitled "American ginseng in Vermont" (Dec. 1, 1983) which presents a summarization of a 1983 literature review and field survey information of the type requested by the SA to facilitate the making of a non-detriment finding. This report also explains its export control program to assure the MA of the legality of the Vermont-harvested, State-certified ginseng. In response, the Service is considering granting export approval for 1984 harvested Vermont wild ginseng. The Service's ginseng export findings for all States will be re-evaluated in 1985.

Request for Information and Comments

The Service requests information and comments on the requirements for demonstrating that ginseng is not harvested in contravention of laws for its protection and that it originates in particular States. Information is also needed to determine if export will not be detrimental to the survival of the species.

The Service also requests information on environmental and economic impacts and effects on small entities (including small business, small organizations, and small governmental jurisdictions) that would result from findings for or against export approval. This information will aid the Service in complying with requirements of the National Environmental Policy Act, Executive Order 12291, and the Regulatory Flexibility Act, and in preparing any required analyses of effect. The Service determined that the findings for the 1981–82, and 1983 harvest seasons were not a major rule under Executive Order 12291 and did not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. For ginseng, exporters normally derive their product from the ginseng harvested in a number of States. Therefore, the approval or disapproval of export from any one State would not significantly affect the industry. For the 1984 harvest, the Service has analyzed the impacts and concluded that the determinations made for the 1981, 1982, and 1983 seasons are unchanged. These findings do not contain information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

The notice of proposed findings is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; 87 Stat. 884, as amended), and was prepared by S. Ronald Singer, Federal Wildlife Permit Office.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (Agriculture), Treaties.

Accordingly, it is proposed to amend Part 23 of Title 50, *Code of Federal Regulations*, as set forth below:

PART 23—ENDANGERED SPECIES CONVENTION

Subpart F—Export of Certain Species

In § 23.51, revise paragraph (e) to read as follows:

§ 23.51 American ginseng (Panax quinquefolius)

(e) 1982 through 1984 harvests: Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Vermont (artificially propagated only), Virginia, West Virginia, Wisconsin.

1982–83 harvest only: Tennessee.
1984 harvest only: Vermont (wild).

Conditions on findings: Roots must be documented as to State of origin and season of collecting. Wild and artificially propagated roots must be certified by the State as legally collected and such certification must be presented upon export.

Dated: June 27, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-19428 Filed 7-20-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 669

Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

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

ACTION: Notice of public hearings and request for comments; addition of a public hearing.

SUMMARY: In reference to a notice of public hearings for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands that was published

June 20, 1984, 49 FR 25258, the Caribbean Council has added another public hearing.

DATE: An additional hearing has been scheduled for July 23, 1984. It will convene at 2:00 p.m.

ADDRESS: The hearing will be held at the City Hall Conference Room, Aguadilla, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Mr. Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, 809–753–6910.

Dated: July 18, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84–19370 Filed 7–20–84; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 49, No. 142
Monday, July 23, 1984

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 Stabilization and Conservation Service

1984–85 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination: 1984–85 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas.

SUMMARY: This notice sets forth the determination of the 1984–85 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with Section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventh-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: C. Douglas Richardson, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447–4281.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." It has been determined that this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Commodity Loan and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Section 314 of the Agricultural Adjustment Act of 1938, as amended ("the 1938 Act"), provides that marketing quota penalties shall be assessed whenever a kind of tobacco is marketed which is in excess of the marketing quota established for the farm on which such tobacco is produced. Section 314 of the 1938 Act also provides that the rate of penalty per pound for a kind of tobacco shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year. The Crop Reporting Board, Statistical Reporting Service, U.S. Department of Agriculture determines and announces annually the average market price for all kinds of tobacco.

Since the determination of 1984–85 marketing year rates of penalty reflect only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Notice of Determination

Accordingly, it has been determined that the 1984–85 marketing year rate of penalty for all kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY

[1984–85 Marketing Year]

Kinds of tobacco	Cents per pound
Burley	133
Flue-cured (types 11, 12, 13, and 14)	133
Flue-cured (type 21)	95
Fire-cured (types 22, 23, and 24)	136
Dark air-cured (types 35 and 36)	113
Virginia sun-cured (type 37)	99
Cigar-filler and binder (types 42, 43, 44, 53, 54, and 55)	79

Signed at Washington, D.C., on July 18, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84–19334 Filed 7–20–84; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Tonto National Forest Grazing Advisory Board; Meeting

The Tonto National Forest Grazing Advisory Board will meet September 11, 1984, at 1:00 p.m. at the Tonto National Forest Supervisor's Office, 102 S. 28th Street, Phoenix, Arizona. The purpose of this meeting is to cover the following agenda items:

1. Selection of officers by the newly elected Advisory Board.
2. Review the proposed expenditure of Range Betterment Funds for Fiscal Year 1985, as authorized by Pub. L. 94–579 (FLPMA section 403).
3. General review including Board recommendations concerning development of Allotment Management Plans.

The meeting will be open to the public. Persons who wish to attend should notify James L. Kimball, Forest Supervisor, Tonto National Forest, 102 S. 28th Street, P.O. Box 29070, Phoenix, Arizona 85038, telephone: (602) 261–3205. Written statements may be filed with the Board, before or after the meeting.

Oral statements may be made by public attendance when recognized by the Chair.

Dated: July 12, 1984.

John C. Bedell,

Acting Forest Supervisor.

[FR Doc. 84–19324 Filed 7–20–84; 8:45 am]

BILLING CODE 3410–11–M

Rule Electrification Administration

Oglethorpe Power Corp. Tucker, Ga; Proposed Loan Guarantee

AGENCY: Rule Electrification Administration (REA).

ACTION: Proposed Loan Guarantee.

SUMMARY: Under the authority of Pub. L. 93–32 (87 STAT. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin

20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider (a) providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $56,125,000 to Oglethorpe Power Corporation (OPC), Tucker, Georgia, and (b) supplementing such a loan with an insured REA loan at 5 percent interest in the approximate amount of $26,725,000 to OPC. This insured loan and loan guarantee commitment will provide funds needed to finance the 1.9 MW Tallassee Hydroelectric and the 350 kW Whitewater Hydroelectric Power Plants, approximately 11 miles of 46 kV transmission line, 120 miles of 115 kV transmission line, 60 miles of 230 kV transmission line, distribution and transmission substations and line and substation modifications. OPC will be required to obtain a portion of its financing from private sources.

FOR FURTHER INFORMATION CONTACT: Mr. F.F. Stacy, Jr., General Manager, Oglethorpe Power Corporation, P.O. Box 1349, Tucker, Georgia 30085.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Stacy at the address given above.

In order to be considered, proposals must be submitted on or before August 22, 1984, to Mr. Stacy. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as OPC and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with REA.

Copies of REA Bulletin 20–22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: July 11, 1984.

Jack Van Mark,

Acting Administrator.

[FR Doc. 84–19331 Filed 7–20–84; 8:45 am]

BILLING CODE 3410–15–M

Soil Conservation Service

Tuscumbia River Watershed, Mississippi and Tennessee

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: A.E. Sullivan, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of Mississippi, is hereby providing notification that a record of decision to proceed with the installation of the Tuscumbia River Watershed project is available. Single copies of this record of decision may be obtained from A.E. Sullivan at the address shown below.

FOR FURTHER INFORMATION CONTACT: A.E. Sullivan, State Conservationist, Soil Conservation Service, 100 West Capitol Street, Suite 1321, Jackson, Mississippi 39269, telephone 601–960–5205.

Dated: July 8, 1984.

A.E. Sullivan,

State Conservationist.

[FR Doc. 84–19313 Filed 7–20–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed under Subpart Q of the Board's Procedural Regulations; Week Ended July 13, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings; (See 14 CFR 302.1701 et seq.).

Date filed	Docket No.	Description
July 9, 1984	42337	American Airlines, Inc., c/o Alfred V.J. Prather, Prather, Seeger, Doolittle & Farmer, 1101 Sixteenth Street NW., Washington, DC 20036. Application of American Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Board's Regulations applies for a certificate of pubic convenience and necessity authorizing it to serve between Miami and London. Conforming Applications, Motions to Modify Scope and Answers may be filed by Aug. 6, 1984.
July 11, 1984	41365	Aerovias Nacionales de Colombia, S.A. (AVIANCA) c/o Robert D. Papkin, Squire, Sanders & Dempsey, 1201 Pennsylvania Avenue NW., Washington, DC 20004 Amendment No. 1 to Application of Aerovias Nacionales de Colombia, S.A. (AVIANCA) pursuant to section 402 of the Act and Subpart Q of the Board's Regulations in order to add Santo Domingo, Dominican Republic, and Port-au-Prince, Haiti, as additional intermediate points on Route 1 of its current foreign air carrier permit, and to add Santo Domingo, Dominican Republic, and an additional intermediate point on Route 2 of its current permit. Answers due Aug. 8, 1984.
	42096	Air Haiti, S.A., c/o Harry A. Brown, Esq., Bowen & Atkin, 2020 K Street NW., Washington, DC 20006. Amendment No. 1 to Application of Air Haiti, S.A., pursuant to section 402 of the Act and Subpart Q of the Board's Regulations amends its request for foreign air carrier permit so that it will request: Authority to engage in foreign air transportation of passengers, property and mail between: 1. A points or points in Haiti, an intermediate point or points in the Bahamas, and the co-terminal points in Miami, Florida; Atlanta, Georgia, Chicago, Illinois; New York, New York and beyond any of the co-terminals to Montreal, Canada; and 2. A point or points in Haiti, and intermediate point or points in the Dominican Republic and the terminal point San Juan, Puerto Rico; and 3. A points or points in Haiti, the intermediate point New York, New York and the co-terminal point Montreal, Canada. Answers due Aug. 8, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–19360 Filed 7–20–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84-7-30]

Eastern Air Lines; Order To Show Causes

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 84-7-30.

SUMMARY: The Board has tentatively decided to reissue Eastern Air Lines' certificate of public convenience and necessity for Route 389 to allow it to serve Barranquilla, Colombia as an additional intermediate point.

Objections

All interested persons having objections to the Board's tentative findings and conclusions, that this action be taken, as described in the order cited above, shall, no later than August 7, 1984, file a statement of such objections with the Civil Aeronautics Board (20 copies, addressed to Docket 42108, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428) and mail copies to Eastern Air Lines and the Departments of State and Transportation.

A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Board will issue an order which will make final the Board's tentative findings and conclusions and issue a certificate authorizing Eastern to engage in foreign air transportation of persons, property and mail.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5432. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Nancy R. Kessler, (202) 673-5035, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: July 12, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-19381 Filed 7-20-84; 8:45 am]

BILLING CODE 6320-01-M

[84-7-36]

Application of Cook Inlet Aviation, Inc., for Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (84-7-36).

SUMMARY: The Board is proposing to find Cook Inlet Aviation, Inc. fit, willing, and able and to issue it a certificate of public convenience and necessity under section 401 of the Federal Aviation Act authorizing it to provide interstate and overseas schedule air transportation of persons, property, and mail.

DATES: All interested persons wishing to respond to the Board's tentative fitness determination and proposed certificate award shall file, and serve upon all persons listed below no later than August 1, 1984, a statement of their response, together with a summary of testimony, statistical data, and other material expected to be relied upon to support any objections raised.

ADDRESS: Responses should be filed in Docket 41835, and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon the parties listed in Appendix A to the order.

FOR FURTHER INFORMATION CONTACT: Peter M. Bloch, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-7-36 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-7-36 to that address.

By the Civil Aeronautics Board: July 12, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-19383 Filed 7-20-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 42243]

Air Niagara Continuing Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on August 22, 1984, at 9:30 a.m. (local time) in Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 84-19382 Filed 7-20-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-7-37]

Fitness Determination of Las Vegas Airlines, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84-7-37, Order to Show Cause.

SUMMARY: The Board is proposing to find that Las Vegas Airlines, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than August 2, 1984, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-7-37 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-7-37 to that address.

By the Civil Aeronautics Board: July 12, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-19384 Filed 7-20-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-7-39]

Fitness Determination of Resorts International Airline, Inc., d/b/a RIA

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84-7-39, Order to show Cause.

SUMMARY: The Board is proposing to find that Resorts International Airline, Inc. d/b/a/ RIA is fit, willing, and able

to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards.

Responses

All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 6, 1984.

FOR FURTHER INFORMATION CONTACT: Franklin J. McDermott, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673–5105.

SUPPLEMENTARY INFORMATION: The complete text Order 84–7–39 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–7–39 to that address.

By the Civil Aeronautics Board: July 13, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–19385 Filed 7–20–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Current Population Survey—December 1984, Latchkey Children Supplement
Form numbers: Agency—CPS–1, CPS–260, OMB—New
Type of request: New collection
Burden: 23,000 respondents; 384 reporting hours
Needs and uses: The National Institute of Child Health and Human Development (NICHD) in conjunction with the Bureau of the Census has proposed this survey for inclusion as a supplement to the December 1984 Current Population Survey. The primary purpose of collecting these data is to determine the extent to which children 3–13 years of age and enrolled in school are left alone or in the care of others during nonschool hours. Data will be used in developing child care policies and day care funding.
Affected public: Individuals or Households
Frequency: On occasion
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: July 11, 1984.

Edward Michals,

Department Clearance Officer.

[FR Doc. 84–19328 Filed 7–20–84; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1987 Commodity Transportation Survey Pretest
Form numbers: Agency—None; OMB—None
Type of request: New
Burden: 240 respondents; 120 reporting hours
Needs and uses: The Commodity Transportation Survey provides statistical data about the geographic distribution and mode of transport use of shipment made by establishments in manufacturing, mining, and selected wholesaling industries. The data are used by both government and private transportation planners. This pretest will investigate improved methods of collecting industrial flow data.
Affected public: Small Business or Organizations
Frequency: One Time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: July 11, 1984.

Edward Michals

Department Clearance Officer.

[FR Doc. 84–19329 Filed 7–20–84; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

Trustees of the University of Pennsylvania; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 84–58. Applicant: Trustees of the University of Pennsylvania, Philadelphia, PA 19104. Instrument: Toroidal Ion Energy Analyzer, Model HVE–3290. Manufacturer: High Voltage Engineering, The Netherlands. Intended Use: See notice at 49 FR 7842.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides an energy range from 50 to 200,000 electron volts and capabilities for simultaneous detection of energy and angular distribution over an angle of 30 degrees. The National Bureau of Standards advises in its memorandum dated July 9, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)
[FR Doc. 84-19315 Filed 7-20-84; 8:45 am]
BILLING CODE 3510-DS-M

National Bureau of Standards

Proprietary Measurements

AGENCY: National Bureau of Standards, Commerce.

ACTION: Use of NBS Facilities for Proprietary Measurements.

SUMMARY: The National Bureau of Standards (NBS) announces that it will allow the use of certain of its facilities at its Gaithersburg, Maryland, and Boulder, Colorado, sites by industry and other private parties for carrying out proprietary measurements. The use of NBS facilities will be in accordance with the procedures set out at the end of this notice.

EFFECTIVE DATE: Interested persons may file requests for use of NBS facilities following publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis A. Swyt, Chief, Program Office, Office of the Associate Director for Programs, Budget and Finance, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-3137.

SUPPLEMENTARY INFORMATION: The National Bureau of Standards (NBS) announces its intent to make available specifically designated facilities at its Gaithersburg, Maryland, and Boulder, Colorado, laboratories for use by private industry and other technically qualified persons in carrying out proprietary measurements. The purpose in instituting this program is to support Government policy to improve U.S. international competitiveness by providing U.S. industry access to special Government facilities to advance technology and improve productivity.

The use of NBS facilities will be carried out in accordance with the terms, conditions, and procedures set out in Chapter 7, subchapter 7.10 "Use of Designated NBS Facilities for Proprietary Measurements" of the NBS Administrative Manual. These procedures are set out in full as an appendix at the conclusion of this notice.

The term "proprietary measurements" as defined in those procedures means "laboratory analysis, measurements or testing of specific materials, chemicals or devices done for only a private party where the results do not appear in the public domain and are to be treated as confidential information." In instituting this program however, NBS does not intend to replace its general policy to operate as an open institution dedicated to the widest dissemination of measurement and standards information for the public benefit.

Each user of NBS facilities under this program shall bear fully the appropriate costs related to the use of the facility. Each such use of NBS facilities may commence only after the proposed user has entered into a written agreement with NBS that incorporates the appropriate terms and conditions as set out in the mentioned NBS procedures.

Dated: July 17, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

Appendix—Administrative Manual Subchapter: Use of Designated NBS Facilities for Proprietary Measurements

Sections

7.10.01 Purpose

This subchapter states the policies and procedures to be followed in the use of specifically designated NBS facilities for proprietary measurements, including conditions under which such use is allowed, approval is given, and fees for such use are established and collected.

The intent is not to replace the general NBS policy to operate as an open institution dedicated to the widest dissemination of measurement and standards information for the public benefit.

The purpose is to support Government policy to improve U.S. international competitiveness by providing U.S. industry access to special Government facilities to advance technology and improve productivity. The presumed public benefit is to the U.S. economy as a whole resulting from the economy of making full use of a public facility without necessitating a duplication of the facility elsewhere.

7.10.02 Scope

The policies and procedures on proprietary measurements outlined in this subchapter apply to all NBS facilities in NBS-Gaithersburg, NBS-Boulder which have been specifically approved by the Director for such use.

7.10.03 Policy

Under certain specified conditions, NBS will allow use of specific measurement and test facilities by private parties who wish the resulting information to be treated as proprietary.

7.10.04 Definitions of Key Terms

For the purpose of this policy statement, the following terms are defined as given:

NBS Measurement and Test Facilities

NBS owned scientific apparatus, measuring instruments, and/or testing equipment and their related support systems.

Proprietary Measurements

Laboratory analysis, measurements or testing of specific materials, chemicals or devices done for only a private party where the results do not appear in the public domain and are to be treated as confidential information.

7.10.05 Roles and Responsibilities

The NBS Director has the legal authority to allow the use of NBS facilities for proprietary measurements. He also has the legal responsibility to see that its use conforms to legal requirements, administrative procedures, and Administration policies.

The Director will designate specific facilities for use for proprietary measurements.

Having designated a particular facility, the Director will also review and approve each request for such use.

The Center Director is responsible that the conditions for such use of facilities within the Center be met.

7.10.06 Conditions for the Use of NBS Facilities for Proprietary Measurements

1. Alternative facilities of equal or superior performance are not otherwise readily available to the user elsewhere.

2. Such use has been found by the NBS Director to be useful or beneficial to the Government itself.

3. Equal opportunity for access to the facilities is provided to potential users.

(a) *Notification.* There will be wide public notice of the availability of the NBS' facilities for such use.

(1) **Federal Register:** announcement and publication of the NBS administrative procedure.

(2) *Commerce Business Daily:* publication for the business community, including small businesses, of a list of designated facilities, their capabilities and the procedures for applying for their use.

(3) *New Release.* NBS Public Information service directly to general press and trade journals.

(4) *NBS Announcements:* Letter from NBS Director to key officials of business, industry, trade, educational, professional, and standards groups including associations of small R&D business firms.

(5) *Special Publications:* NBS publication on NBS facilities which highlights availability for proprietary measurements.

(6) *Other:* Informing of NBS constituents through NBS technical staff in course of technical contacts.

(b) *Queuing.* Access to the NBS facilities will be essentially on a first-come-first-serve basis with matters of scheduling and priorities determined by the facility manager according to criteria of public interest and needs of on-going NBS programs.

4. Appropriate costs related to the use of the facility are borne by the user.

5. Such use does not interfere with the execution of NBS programs.

6. Such use does not present a danger of injury to NBS staff, the users, or the facilities.

7. Such use shall be subject to termination at any time at the will of NBS.

8. Personnel from the private firm using the NBS facilities meet the security clearance requirements established for research associates and guest workers.

9. The private firm using the NBS facilities enter into a written agreement with NBS whereby the private firm—

(A) Agrees to hold NBS, the Department of Commerce, its employees and agents, harmless from all liability that may arise with use of the facilities,

(b) Meets the conditions applicable to any inventions that may be worked through such use of the facilities as set out in the agreement, and

(c) Agrees to meet with other conditions relevant to such use as are set out in that agreement.

7.10.07 Designation of a Facility for Use for Proprietary Measurements

1. The Director will select and announce which facilities are designated for such use.

2. The organizational units responsible for the facility will be informed in writing through the Associate Director for Programs, Budget, and Finance (ADPBF) of the designation of the facility for use for proprietary measurements.

3. The ADPBF shall maintain permanent records of:

(a) The designation of facilities,

(b) The individual requests for use of such facilities, and

(c) The actual instances of use.

7.10.08 Procedure for the Approval, Conduct and Recovery of Costs for Individual Instances of Use of Designated NBS Facilities for Proprietary Measurements

1. Upon written request from a private party to use an NBS measurement and/or test facility designated for proprietary measurements, the Center Director determines whether or not the conditions for such use can and will be met, documents his determination in the Center's permanent files, and applies to the Director for approval of the specific instance of use.

2. With the approval of the Director and upon written notification of the Director through the ADPBF, the Center Director may enter into a written agreement with the private concern.

3. Following regular procedures, the Center establishes an Expense and Income Cost Center ("Testing—Foreign Government and Public") and collects fees according to a schedule appropriate for such cost centers (see NBS Administrative Manual 8.06.06 "Appropriate Charges").

(a) The cost center series reserved exclusively for proprietary measurements is *XXX.*

(b) The cost center title is to identify in key words that the work is proprietary, done on a designated facility, and for a specific private concern. For example:

"Proprietary—SANS—Dupont"
"Proprietary—Reactor—Exxon"
"Proprietary—Accelerator—Smith"

4. Annually, the ADPBF shall examine the frequency, nature, and cost recovery status of proprietary measurements at NBS and report findings to the Director.

7.10.09 Special Considerations and Background Information: Legal Authority

U.S. Code, section 91, Title 20

"The facilities for study, research and illustration in the Government departments . . . shall be accessible, under such rules and restrictions as the officers in charge of each department . . . may prescribe, subject to such authority as is now or hereafter may be permitted by law, to the scientific investigations and to duly qualified individuals, students and graduates of any institution of higher learning . . ."

Department Administrative Order 202-311, section 4.02a.2

States that: "Heads of Department have authority, even in the absence of specific statutory authority, to grant to a private individual, business, or organization a revocable license to use Government property, subject to termination at any time at the will of the Government, provided that such use does not injure the property in question and serves some purpose useful or beneficial to the Government itself."

DoC DAO 202-311, section 4.02b.1 Grants heads of Department of Commerce operating units authority to issue rules regarding use of facilities for research, study, or other purposes deemed to benefit the Government.

7.10.10 Handling of Measurement Results

To maintain the proprietary nature of the measurement data which result from use of its facilities, NBS will arrange that either

(1) The user obtains the measurement data directly and exclusively from the measuring apparatus, or

(2) Where NBS must obtain the measurement data from the apparatus, NBS will provide the user with the sole record of the data; NBS will not retain record of this data in any form.

[FR Doc. 84-19316 Filed 7-20-84; 8:45 am]
BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Revised NOAA Directive Implementing the National Environmental Policy Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final revisions to NOAA Directives Manual 02-10.

SUMMARY: This notice presents final revisions to the NOAA Directives Manual (NDM) 02-10 which establishes NOAA's procedures for implementing the National Environmental Policy Act of 1969 (NEPA) in compliance with regulations of the Council on Environmental Quality, Executive Order No. 12114 on Environmental Effects Abroad of Major Federal Actions (signed January 4, 1979), and the environmental analysis requirements of other laws affecting NOAA programs. These changes affect NOAA internal procedures only.

EFFECTIVE DATE: This directive is effective July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Joyce M. Wood or Thomas E. Bigford, Ecology and Conservation Division, Office of Policy and Planning, National Oceanic and Atmospheric Administration, Room 6111, Herbert Hoover Building, Department of Commerce, Washington, D.C., 20230, 202–377–5181.

SUPPLEMENTARY INFORMATION: This revision updates and supercedes the July 24, 1980 (45 FR 49312), version of NDM 02–10. These changes were published in draft for public review on February 6, 1984 (49 FR 4413). NOAA allowed a 45-day period for review and comment which expired March 22, 1984. Responses to comments plus other technical changes are described below.

(1). Summary

Revisions are administrative and procedural improvements intended to enhance NOAA's ability to comply with a variety of legislative mandates and Executive Orders without unnecessarily delaying and duplicating steps in the decisionmaking process while ensuring public involvement in decisionmaking. These improvements result from a better understanding of agency roles and responsibilities relative to NEPA. The revised NDM 02–10 implements experiences gained during a decade of experience with NEPA.

Notable changes in this version of NDM 02–10 include: a list of definitions, explanations, and acronyms; a description of the general environmental analysis process to which proposed actions are subjected; a mechanism through which NOAA Line Offices may develop specific criteria to determine whether proposed actions are significant or non-significant; consideration of NEPA compliance for emergency regulatons; new sections on procedures necessary for environmental assessments; and removal of the existing appendices. The environmental analysis process described in para. 4 provides an overview of the basic steps in NOAA's procedures to comply with NEPA, including guidance on when this directive applies and the type of action that may be required by NEPA. Tasks described in this directive are now prefaced by a "may" or "should" if the action is recommended and a "must" if the action is required.

A major reason for these revisions is that the agency has at times burdened itself and the public with excessive administrative requirements and time delays. To address these problems, NDM 02–10 now includes in its explanation of "significant" (see subpara. 3q, 13a, and 13b) a new procedure whereby NOAA program managers may propose specific criteria to distinguish "significant" from "non-significant" actions. Those criteria will help NOAA offices determine early in the planning process which actions may be significant and to begin work on the appropriate NEPA document, if any. The criteria used to base such decisions must be approved by NOAA's NEPA office, the Ecology and Conservation Division (ECD) in the Office of Policy and Planning. NOAA anticipates that use of specific criteria will reduce the number of actions deemed to require an Environmental Impact Statement (EIS). At the same time, we expect that this new procedure will not infringe on the quality of NOAA's environmental analysis or on the opportunity for meaningful public involvement, but will enable the agency to focus its attention on actions where environmental concerns are substantive. To increase efficiency further, NOAA will rely on related analyses and public reviews associated with the regulatory review process and the requirements of various executive orders and resource management plans to support normal NEPA compliance efforts. These new procedures delegate much of the authority to decide questions such as "significance" to the NOAA Line Offices. That approach should save time in agency NEPA compliance efforts. ECD, which will retain its role as the lead NEPA office in NOAA, will make the final decision on applying NDM 02–10 to any agency action.

General guidance on interpretation of the term "significant," previously presented in several sections of NDM 02–10, has been collated in subpara. 13a. This new section will help NOAA offices determine the appropriate course of action for NEPA compliance. NOAA's National Marine Fisheries Service has developed specific criteria (see subpara. 13b) to define "significant" as it relates to fishery management plans. Other NOAA offices may choose to prepare their own criteria at some later date. Any future criteria will be published in the **Federal Register** as amendments to NDM 02–10. As noted above, ECD must approve all specific criteria prior to publication and implementation. The 1983 amendments to the Magnuson Fishery Conservation and Management Act have expanded the scope of emergency regulations in fisheries management. Therefore, subpara. 5d has been added to provide guidance on NEPA compliance for emergency situations. The range of possible emergency actions requires that the guidance in subpara. 5d be more general than in other portions of NDM 02–10.

A section (para. 8) on procedure has been added to describe the steps involved in preparing an environmental assessment (EA). Para. 9 and subpara. 13a discuss the contents of EAs.

All nine appendices included in the previous version of NDM 02–10 are now deleted. Those appendices specified all NOAA decision making processes with possible NEPA ramifications, but are deleted since the processes continually change as NOAA's missions evolve through legislative and administative developments. The new appendices (para. 13) now include subpara. 13a for general guidance on "significant," subpara. 13b for specific criteria applicable to fishery management plans and amendments, and subpara. 13d for sample letters of transmittal for various NEPA documents. The full text of the revised NDM 02–10 follows presentation of comments received and NOAA's response.

(2). Comments and Response

NOAA received four comments on the proposed revisions, two from Federal agencies [Department of the Interior (DOI), Environmental Protection Agency (EPA)] and two from States [Connecticut (CT), Maryland (MD)]. Each party supported NOAA's goal of streamlining agency NEPA compliance procedures but offered recommendations for further improvements. Several other changes suggested by internal reviews are also provided. Specific comments and NOAA's responses follow.

a. The application of terms "major" and "significant" varies. The directive needs to be revised to be consistent internally and with the Council on Environmental Quality (CEQ) regulations. (DOI)

The definition of "significant" in subpara. 3(q) has been corrected to include consideration of the "context" of proposed actions, not simply their intensity. Subpara. 13a(3) provides greater detail. Other clarifications have been made in the text.

b. Copies of environmental assessments (EA) should be made available, as appropriate, to interested parties early in the review process. (DOI)

Subpara. 8b(2) discusses procedures for EA availability. NOAA will circulate documents when the proposed action is particularly controversial or of national importance. Subpara. 13d(5) has been reworded to convey that policy. When appropriate, a public notice will be published or a comment period held.

The NOAA position is supported by CEQ sec. 1506.6.

c. The criteria in subpara. 13b used to determine significance of fishery management plan activities should be expanded to address unique or unknown risks. (DOI)

This comment is well taken. A sentence has been added to the end of subpara. 13b to emphasize the importance of factors mentioned in subpara. 13a(3) in making decisions on significance, including unique or unknown risks.

d. ECD should maintain a more involved oversight role in decisions on categorical exclusions (CE). (EPA)

ECD has played an oversight role in CE determinations for several years. The office will continue in that capacity but with more dependence on Line Offices for decisions. NOAA offices have shown that they are fully capable of appying NDM 02–10 to all program activities, including those worthy of a CE.

e. Several sentences in subpara. 4b(1) on the general NEPA process are slightly misleading, especially subpara. (g) through (j). (EPA)

Subpara. 4b(1) briefly describes the NEPA process. Specific details are left out under each point since the sequence of steps, not the legal requirements, is the point of the discussion. The first sentence directs readers to the relevant sections of CEQ's NEPA regulations for further information. For brevity, specific language from CEQ regulations is not repeated here.

f. The second sentence in subpara. 5a(3) on categorical exclusions should be rephrased to avoid confusion on NEPA compliance for certain regulations. (EPA)

Subpara. 5a(3) and 5c(3) (f) have been reworded to include this recommended language.

g. Subpara. 5a(4) should be moved to signify its application to all types of actions, not only management plans. (EPA)

Alternative approaches to NEPA compliance described in subpara. 5a(4) apply to all types of actions undertaken. However, since such approaches are used most often with management plans, the discussion is presented under that heading. Elsewhere, to avoid unnecessary redundancies, a cross reference is given to subpara. 5a(4).

h. Shouldn't "EA" be changed to "CE" in the last sentence of subpara. 5c(3)? (EPA)

Yes. That editorial mistake has been corrected.

i. Use of the term "discussion paper" in para. 9 is confusing. (EPA)

To avoid confusion, the term has been replaced by EIS. Technically, NOAA uses duscussion paper to mean an EIS prior to NOAA clearance and filing at EPA. Since the difference is not important, we will use only EIS.

j. The directive should state that final EISs must respond appropriately to all comments received on the draft, not sinply include the comments. (EPA)

NOAA agrees. Language and cross references to the CEQ regulations have been added to subpara. 4b and 9b(5).

k. The text in subpara. 9b(3) and (4) should be corrected to state the proper roles of EPA and CEQ in granting exemptions to the public comment periods for EISs. (EPA)

These subparagraphs have been renumbered. The new subpara. 9b(5) has been changed to show that EPA grants exemptions on original EISs. Subpara. 9b(6) now describes CEQ's role in exemptions for supplemental EISs.

l. Note that copies submitted to EPA at the time of filing fulfill only the NEPA filing requirements and that additional copies should be sent to EPA headquarters and regional offices for actual review and comment. (EPA)

These changes have been made in subpara. 9b(2) and 13e(2).

m. What is the "mechanism" for developing criteria for determining significance in subpara. 13b? (EPA)

The mechanism is merely the on-going opportunity mentioned in the preamble and 3q for NOAA Line Office to prepare criteria for specific programs. The mechanism or administrative procedure enables offices to propose criteria and amend NDM 02–10 if they so desire.

n. NOAA should notify appropriate agencies in a State when an action affecting that State could receive a CE or be processed as an emergency action. (CT)

The text has been amended in subpara. 3c and 5d to recommended that NOAA offices maintain contact with appropriate State agencies throughout the planning process for actions under consideration for a CE or that are being processed as emergency actions.

o. When distributing documents for public review, NOAA should utilize State "single points of contact" to insure that all concerned State agencies are notified of the action. Use of the Clearinghouse review function is required in Executive Order No. 12372 and alluded to in NOAA's administrative regulations (15 CFR Part 930). (CT, MD)

Subpara. 7a and 9b(4) have been expanded to include this point.

(3). Other Changes

NOAA has also identified other paragraphs in this directive that need to be revised. The more substantive changes include the following.

a. Subpara 5b(3)(b)

Added language to note that the list of examples given is not exhaustive.

b. Subpara. 5c(3)(i)

Added routine data collection programs developed under sec. 303(c) of the Magnuson Fishery Conservation and Management Act (MFCMA).

c. Subpara. 5d(3)

This subparagraph has been reorganized and expanded to provide greater detail on alternative arrangements available for use during emergency actions.

d. Subpara. 9a

The requirement that draft EISs state the preferred alternative(s) has been expanded. In the absence of a perferred alternative(s), the new wording requires that some sense of direction be given so the public can focus their review efforts.

e. Subpara. 11c

The description of the record of decision (ROD) has been corrected to agree with subpara. 3o and CEQ sec. 1505.2. The major change is that the ROD should describe the environmentally preferable alternative(s) and any monitoring or enforcement programs.

f. Subpara. 13a(6)

The role of socioi-economic effects in determining the significance of effects on the human environment has been clarified.

g. Subpara. 13b(1)

This subparagraph and criterion 1 for determining significance of fishery management actions have been amended slightly to clarify the relation of the criteria to the intent of the MFCMA, particularly national standard 1, which states:

"[c]onservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery" (16 U.S.C. 1851). Together, standard 1 and criterion 1 cover all fishery species potentially affected by fishing operations. A cross reference to the national standard guidelines has been included so NEPA document preparers will incorporate the intent of the standards with the five criteria in subpara. 13b. ECD realizes that the national standard guideline 50 CFR 602.11(d) allows approval of management actions that could lead to overfishing in certain limited

situations such as a mixed fishery where a stock in poor condition occurs with a stock subject to intense fishing pressures.

Dated: July 13, 1984.

Samuel A. Lawrence,

Director, Office of Administrative and Technical Services.

02-10 ENVIRONMENTAL REVIEW PROCEDURES (Reference: PP2, 377-5181)

Paragraph

1. Purpose
2. References
3. Definitions, Explanations, and Acronyms
4. Applying the Environmental Analysis Process
5. Type of Environmental Documents Needed to Satisfy NEPA
6. Environmental Analysis of Proposals with Potential International Implications
7. Public Involvement and Scoping
8. EA Preparation and Approval
9. EIS Preparation and Approval
10. Comment on Other Agencies' EISs
11. Integration of NEPA and E.O. 12114 into the NOAA Decisionmaking Process
12. Predecision Referrals to CEQ
13. Appendices
14. Effect on Other Instructions

1. Purpose

a. Intent of Revision

This directive revises NOAA's environmental review policies and procedures, 45 FR 49312 (July 24, 1980). The changes will improve efficiency, reduce administrative redundancies, continue the agency's objectives of sound resource management, and maintain informed public involvement in Federal decisionmaking. This directive incorporates all requirements of the NEPA regulations issued by the Council on Environmental Quality (CEQ) at 43 FR 55978 (November 24, 1978) and by the Department of Commerce (DOC) in its NEPA directive, DAO 216-6 (March 11, 1983).

This revision also reiterates provisions in the previous version of NDM 02-10 with respect to the environment outside the United States pursuant to Executive Order No. 12114 on Environmental Effects Abroad of Major Federal Actions, 44 FR 1957 (January 4, 1979) as implemented by DOC in Department Administrative Order (DAO) 216-12 (March 11, 1983).

b. Major Changes

(1) Proposed changes are administrative and procedural improvements intended to add efficiency to NOAA's NEPA compliance efforts. These improvements stem from a better understanding of agency roles and responsibilities under NEPA. Shifts in agency direction, including new programs, also prompted this review.

(2) Notable changes in this revision include: a detailed list of definitions, explanations, and acronyms (para. 3) with special emphasis on the use of categorical exclusions; description of the general environmental analysis process (para. 4); separate discussions on NEPA procedures for each category of NOAA activity, e.g., management plans, amendments, projects, regulations, emergency regulations, etc. (para. 5); discussions of procedural requirements for environmental assessments (para. 8) and environmental impact statements (para. 9); and special guidance for determining "significance," including criteria applicable to fishery management plan actions (para. 13). The appendices, which are included in earlier versions of NDM 02-10, have been deleted to avoid confusion resulting from changes in agency programs and procedures.

2. References and Background

The following laws, regulations, executive orders, and administrative orders are cited in the text of this directive:

a. National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA).

b. CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR Parts 1500 to 1508 (November 24, 1978). Cited herein by CFR Part number only, e.g., CEQ sec. 1500.

c. Executive Order No. 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957 (January 4, 1979).

d. Executive Order No. 12291, Federal Regulation, 46 FR 13193 (February 17, 1981).

e. NOAA Administrator's Letter No. 17, Environmental Impact Statements (April 3, 1978).

f. Department Administrative Order 216-6, Implementing the National Environmental Policy Act (March 11, 1983). (DAO 216-6).

g. Department Administrative Order 216-12, Environmental Effects Abroad of Major Federal Actions (March 11, 1983). (DAO 216-12).

3. Definitions, Explanations, and Acronyms

The following terminology is used in this directive. Most explanations outlined here are derived from regulations and directives listed in para. 2 above, particularly the CEQ NEPA regulations (subpara. 2b). The CEQ regulations should be consulted for more comprehensive explanations. Cross references to relevant CEQ sections are provided after each definition, where appropriate.

a. Amendment

A change to either a project or management plan. Each amendment should be accompanied by a brief statement or supported by a notation in the files that a categorical exclusion applies or by further environmental analysis [either an EA, EIS, or supplemental EIS (SEIS)].

b. Applicant

Any party who may propose to NOAA an action that should be accompanied by an environmental analysis. Depending on the program, the applicant could be an individual, private organization, State, territory, governmental body, or foreign nation (see subpara. 4b(4)).

c. Categorical Exclusion (CE)

Decisions granted to certain types of actions which individually or cumulatively do not have the potential to pose significant threats to the human environment and are therefore exempted from both further analysis and requirements to prepare environmental documents (CEQ sec. 1508.4). The main text of this directive presents specific actions and general categories of other actions found to warrant a CE. The responsible program manager (defined below in subpara. 3p) is advised to prepare a memorandum to or notation for the file of each decision to use a CE. A notation refers to a brief comment or mark in the NEPA records of a NOAA office. Periodic copies of such records and notations must be sent to ECD. If a memorandum is prepared, a copy must be sent to ECD; in the absence of a memorandum, the RPM must notify ECD regarding the action. The RPM and ECD can require an EA or EIS for an action normally covered by a CE if the proposed action could result in any significant impacts as described in subpara. 3q, 13a, or 13b. When appropriate, the RPM should consult with States while planning actions that may be worthy of a CE and notify such States of actions which receive a CE, as described in subpara. 5b(3) and 5c(3).

d. Controversial

Refers to a substantial dispute which may concern the nature, size, or environmental effects, but not the propriety, of a proposed action (NOAA General Counsel Opinion No. 101, March 8, 1983).

e. ECD

Ecology and Conservation Division in the Office of Policy and Planning, National Oceanic and Atmospheric Administration. The office responsible

for ensuring NEPA compliance for NOAA under NDM 02–10 and for DOC under DAO 216–6 and DAO 216–12. ECD must give final clearance to all NEPA documents prior to public availability. That clearance authority is exercised by signing the appropriate transmittal letters. ECD also provides general guidance on preparation of environmental documents, approves criteria to determine the appropriate document to be prepared, works with Line Offices to establish categorical exclusions, establishes and/or approves criteria to define "significant," is available for consultations as requested, coordinates NOAA comments on EISs prepared by other Federal agencies, makes predecision referrals to CEQ and monitors DOC activities for NEPA compliance.

f. Environmental Analysis Process

The systematic analysis and evaluation applied to all proposed NOAA actions not covered by a categorical exclusion. This analysis could result in the preparation of one or more of the environmental documents listed in subpara. 3h below.

g. Environmental Assessment (EA)

A document prepared by a Federal agency which presents a brief analysis of the environmental impacts of the proposed action and its alternatives, including sufficient evidence to determine that either: (1) An environmental impact statement is required; or (2) a finding of no significant impact should be declared (CEQ sec. 1508.9).

h. Environmental Document

An environmental assessment, finding of no significant impact, draft environmental impact statement, supplement to a draft environmental impact statement, final environmental impact statement, supplement to a final environmental impact statement, or a record of decision (CEQ sec. 1508.10).

i. Environmental Impact Statement (EIS)

A detailed written report which describes a proposed action, the need for the action, alternatives considered, the affected environment, and the environmental consequences of the proposed action and other reasonable alternatives. An EIS is prepared in two stages, a draft and a final; either stage may be supplemented (CEQ sec. 1508.11).

j. Finding of No Significant Impact (FONSI)

A document which declares that an action will not significantly affect the human environment. A FONSI is supported by an environmental assessment (CEQ sec. 1508.13).

k. Major Federal Action

An activity, such as a project or program, which may be fully or partially funded, regulated, conducted, or approved by NOAA. "Major" reinforces but does not have a meaning independent of "significant" as defined in subpara. 3q and 13a(3) below. Such major actions require preparation of an environmental document unless covered by a categorical exclusion (CEQ sec. 1508.18). CEQ's definition of "scope" (CEQ sec. 1508.25) should be used to assist determinations of the type of document needed for NEPA compliance.

l. Management Plan

A program or policy statement that describes a resource, the need for management, alternative management strategies, possible consequences of such alternatives, and selects recommended management measures. Included, for example, are fishery, sanctuary, and State coastal management plans. Such plans may incorporate an environmental document into a single consolidated package.

m. Notice of Intent

A short **Federal Register** announcement of agency plans to prepare an environmental impact statement or to hold a scoping meeting. The notice may be published separately or combined with other announcements (CEQ sec. 1508.22).

n. Project

A grant, loan, loan guarantee, land acquisition, construction, license, permit, modification, regulation, or research program for which NOAA is involved in the review, approval, implementation, or other administrative action.

o. Record of Decision (ROD)

A concise statement for the public record of the decision on the proposed action, the alternatives considered, the environmentally preferable alternative(s), and whether all practicable means to avoid or minimize environmental harm have been adopted. Addressed in subpara. 11c (CEQ sec. 1505.2).

p. Responsible Program Manager (RPM)

The person with primary responsibility to determine the need for and ensure preparation of any environmental document. The RPM could be the director of a NOAA office, the NEPA compliance coordinator of a Line Office, or a program director in a Line Office (LO). The RPM shall be designated by the Assistant Administrator responsible for the proposed action.

q. Significant

A measure of the intensity and the context of effects of a major Federal action on, or the importance of that action to, the human environment (CEQ sec. 1508.14). "Significant" is a function of the short-term, long-term, and cumulative impacts of the action on that environment. Significance is determined according to the general guidance in subpara. 13a unless specific criteria (e.g., subpara. 13b) are developed by a RPM. Determinations of non-significance will be made by the RPM but reviewed by ECD prior to clearance. All specific criteria for "significant" must be approved by ECD and published in the **Federal Register** as amendments to subpara. 13c of NDM 02–10 (CEQ sec. 1508.27).

r. Supplemental Environmental Impact Statement (SEIS)

An environmental document prepared to amend an earlier EIS when significant change is proposed beyond the scope of analysis in the original EIS or when significant new circumstances or information arise which could affect the proposed action (CEQ sec. 1502.9). SEISs may be necessary when significant changes are proposed to an action after a final EIS has been released to the public.

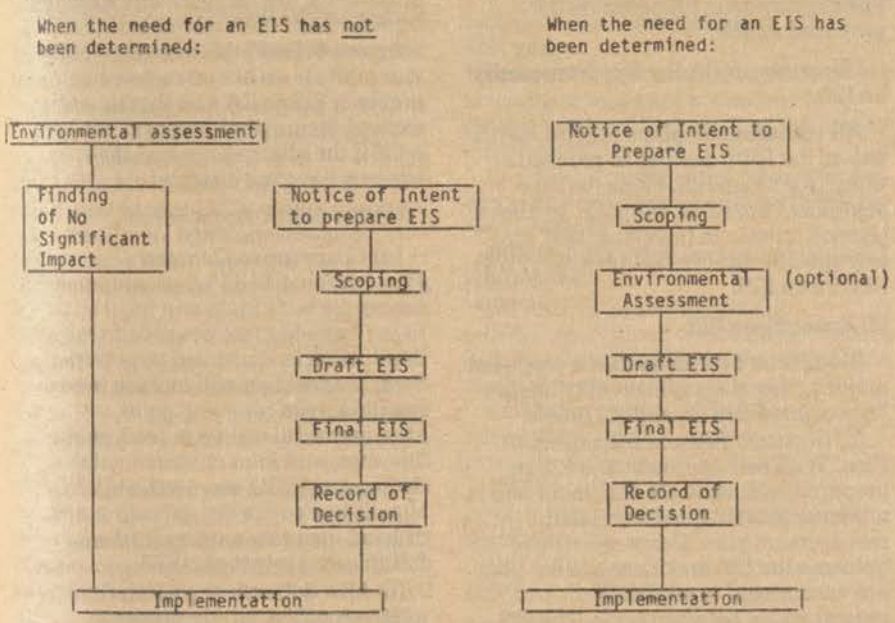
s. Acronyms

The following acronyms are used in this directive:

APA—Administrative Procedure Act
CE—Categorical exclusion
CEQ—Council on Environmental Quality
CFR—Code of Federal Regulations
CZMA—Coastal Zone Management Act
DAO—Department Administrative Order
DOC—U.S. Department of Commerce
DSM—Deep Seabed Mining
EA—Environmental assessment
ECD—Ecology and Conservation Division, Office of Policy and Planning
EIS—Environmental impact statement (draft and final)
EO—Executive Order
EPA—U.S. Environmental Protection Agency
ESA—Endangered Species Act
FMP—Fishery management plan
FONSI—Finding of no significant impact
FR—Federal Register
FWCA—Fish and Wildlife Coordination Act

GC—Office of General Counsel, NOAA
LO—NOAA Line Office (National Marine Fisheries Service; National Ocean Service; National Weather Service; National Environmental Satellite, Data and Information Service; Office of Oceanic and Atmospheric Research)
MFCMA—Magnuson Fishery Conservation and Management Act (Magnuson Act)
MMPA—Marine Mammal Protection Act
MPRSA—Marine Protection, Research, and Sanctuaries Act
NDM—NOAA Directives Manual
NEPA—National Environmental Policy Act
NOAA—National Oceanic and Atmospheric Administration
OCRM—Office of Ocean and Coastal Resource Managment, National Ocean Service, NOAA
OTEC—Ocean Thermal Energy Conversion
ROD—Record of Decision
RPM—Responsible program manager
SEIS—Supplemental environmental impact statement

Figure 1. The NEPA process.



4. Applying the Environmental Analysis Process

a. General

Environmental analysis is the process undertaken by the responsible program manager (RPM) to identify the scope of issues related to the proposed action and to determine the necessary steps for NEPA compliance (CEQ sec. 1500.2). Such an analysis should be undertaken for any major Federal action proposed to be implemented in the United States or by United States citizens outside U.S. jurisdiction.

b. The Process

(1) The environmental analysis process includes all of the actions required by CEQ parts 1502 and 1503 to comply with NEPA. Briefly, the series of actions is (see Figure 1):

(a) Define the proposed action; (b) compare the action and potential environmental consequences to this directive for guidance on the proper type of NEPA document; (c) if appropriate, prepare an environmental assessment (EA); (d) based on the EA, prepare a finding of no significant impact or FONSI (which ends the NEPA compliance process for nonsignificant actions) or initiate planning for an environmental impact statement (EIS); (e) publish a notice of intent to prepare an EIS and a notice of intent to scope key issues in the EIS; (f) prepare the draft EIS, distribute for public comment, and hold a public hearing(s); (g) incorporate public comments and responses into a final EIS; (h) publish and distribute the final EIS for public comment; and (i) release a record of decision summarizing the proposed action.

(2) This analysis is to be coordinated by the RPM and initiated as early as possible in the planning process, regardless of whether the RPM anticipates the need for an EA or EIS. In the case of uncertainty regarding preparation of the proper environmental documents, early consultation with ECD will assist the RPM in determining the best means for NEPA compliance. Consultation with ECD during the early stages of document preparation should ease review and clearance at later stages of the decisionmaking process.

(3) NEPA compliance may involve preparation of one or more environmental documents. The RPM should consult para. 7, 8, and 9 below regarding scoping and document distribution.

(4) In those cases where actions are planned by Federal or non-Federal agency applicants (defined in subpara. 3b) prior to NOAA involvement, the NEPA coordinator for the appropriate program will, upon request, supply potential applicants with guidance on the scope, timing, and content of any required environmental analysis. Possible programs and actions, plus the NOAA contact for further NEPA guidance, are listed in Table 1.

TABLE 1.—NOAA CONTACTS FOR COMMON ACTIONS SUBJECT TO NEPA

Program	Applicant	NOAA contact
Coastal Zone Management Programs (Sec. 306, CZMA)	Coastal States, Territories and Commonwealths	National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), NEPA Compliance Coordinator.
National Marine Sanctuaries (Title III, MPRSA)	States, private individuals and organizations	National Ocean Service, OCRM, NEPA Compliance Coordinator.
Estuarine Sanctuaries and Beach Access Acquisition (Sec. 315, CZMA).	States	Do.
Coastal Energy Impact Program (Sec. 308, CZMA)	Coastal States and local governments	Do.
Fishery Management Plans (Sec. 305, MFCMA)	Regional Fishery Management Councils or National Marine Fisheries Service.	National Marine Fisheries Service headquarters, NEPA Coordinator.
Regulations, Permits and Waivers under the MMPA [Secs. 101(a)(2), 101(a)(3), and 104, MMPA].	Private parties, scientific institutions, and foreign nations.	National Marine Fisheries Service, Office of Protected Species and Habitat Conservation
Deep Seabed Mining Licenses and Permits (DSM)	Private industry	National Ocean Service, OCRM, NEPA Compliance Coordinator.
Ocean Thermal Energy Conversion Licenses (OTEC)	...do	Do.

TABLE 1 —NOAA CONTACTS FOR COMMON ACTIONS SUBJECT TO NEPA—Continued

Program	Applicant	NOAA contact
Regulations, Permits and Waivers under the MMPA [Secs. 101(a)(2), 101(a)(3), and 104, MMPA].	Private parties, scientific institutions, and foreign nations.	National Marine Fisheries Service, Office of Protected Species and Habitat Conservation
Deep Seabed Mining Licenses and Permits (DSM)	Private industry	National Ocean Service, OCRM, NEPA Compliance Coordinator.
Ocean Thermal Energy Conversion Licenses (OTEC)	do	Do.

(5) RPMs should consult this directive when their involvement in an action proposed by State or local agencies or Indian tribes is reasonably foreseeable and could be a major Federal action.

(6) RPMs should also consult with ECD and this directive before communicating with other Federal agencies regarding whether and to what extent NOAA will become involved in developing proposals for such agencies, or in the preparation of environmental analyses or documents initiated by such agencies.

(7) When a proposed action involves several organizational units in NOAA, the RPMs should determine which manager should take the lead role in environmental analyses and the responsibility for preparation of any environmental document.

(8) Where disagreements arise regarding NOAA's NEPA procedures for any action, ECD will make the final decision. A complete statement of ECD's authorities and functions is presented in subpara. 3e. All of those ECD roles may be used to support NOAA's environmental analyses.

c. Terminating the Process

NOAA may stop the environmental analysis process at any stage if program goals shift, support for a proposed action diminishes, the original analysis becomes outdated, or other special circumstances prevail. If a draft EIS has already been filed with EPA, the RPM must notify the Chief, ECD, of any contemplated termination of the environmental analysis prior to completion of the final EIS. If the environmental analysis process is terminated, the final EIS will not be prepared. After RPM approval and ECD notification, the termination must be announced in the **Federal Register**. Such terminations must be explained in writing by the RPM through ECD to EPA so that EPA may withdraw the draft EIS and close its file on the action. In addition, for supplemental documents only, ECD must notify CEQ if the process stops after issuance of a draft supplemental EIS but before issuance of the final.

5. Type of Environmental Documents Needed to Satisfy NEPA

The procedures for complying with domestic laws, regulations, executive orders, and administrative orders differ depending on whether the proposed action is a management plan, an amendment to the plan, a research project or regulation, or an emergency regulation. See para. 6 below for guidance on NEPA compliance for international treaties, commissions, and compacts.

a. Management Plans

Management plans require either an EA or EIS; a CE does not apply to management plans unless an EA or EIS has already been prepared on the proposed action.

(1) Requires an EA But Not Necessarily an EIS

All management plans require an EA unless the RPM decides to proceed directly with an EIS. Plans that are significant based on subpara. 3q above, general criteria in (subpara. 13a), and any specific criteria (subpara. 13b) will require an EIS.

(2) Requires an EIS

RPMs who determine that a proposed major action is significant may choose between options (a) and (b) below.

(a) Separate EIS and Management Plan. With this approach, the EIS is prepared as a separate document and is not incorporated into the related management plan. Cross references between the EIS and management plan are encouraged to minimize redundancies between texts. The EIS must comply fully with the CEQ NEPA regulations, including requirements for contents and administrative procedures. The plan and EIS may be printed under the same cover.

(b) Consolidated EIS and Management Plan. EIS contents may be combined with the contents of related management plans to yield a single "consolidated" document. These documents must still satisfy the CEQ regulations and all requirements for plan and EIS contents and administrative procedures but need not be prepared according to the CEQ recommended outline for EISs. The consolidated document must contain a detailed table of contents identifying required sections of the EIS. ECD must clear the NEPA aspects of each consolidated document since the document serves as an EIS as well as a management plan. Similarly, all consolidated documents must be filed at EPA and follow the normal administrative procedures for any EIS, including public review.

(3) Categorical Exclusion

No management plan may receive a categorical exclusion, i.e., all plans must be accompanied by an EA or EIS. However, regulations to implement a plan, where such regulations are addressed in the plan and related NEPA documents, are categorically excluded from further NEPA documentation [see subpara. 5c(3)(f)]. Management plans that address an action covered by a previous EIS or EA and that do not expand the original proposal can receive a CE if the alternatives and their impacts have not changed.

(4) Other NEPA Approaches

(a) *Cooperative Document Preparation.* (i) NOAA programs should cooperate with State and local agencies to the fullest extent possible to reduce duplication in document preparation. Such cooperation will include, where possible, joint planning, joint environmental research, joint public hearings, and joint environmental documents (CEQ sec. 1506.2(b)). NOAA should work with the appropriate State or local agencies as joint lead agency in fulfilling the intent of NEPA.

(ii) Like documents prepared solely by a NOAA office, jointly prepared documents must discuss any inconsistencies of a proposed action with any approved State or local plan or law (CEQ sec. 1506.2(d)).

(b) *Adoption of Other Federal Documents.* (i) NOAA programs may adopt an EA, draft EIS, or final EIS or portion thereof prepared by another Federal agency if the language satisfies the standards of the CEQ regulations and this directive.

(ii) When adopting an entire EIS without change, the RPM should recirculate the document as a final EIS. However, if the actions covered by the document are changed in a potentially

significant manner, the document should be circulated as a draft and final (CEQ sec. 1506.3).

(iii) NOAA programs cannot adopt final decisions presented in documents prepared by other agencies. RPMs should prepare a new FONSI if adopting an EA or a new ROD if adopting an EIS.

b. Amendments to Management Plans and Regulatory Revisions

An EA or supplemental EIS may be necessary when an amendment is proposed or when additional relevant information affecting the analysis becomes available. All amendments, except those receiving a CE, require an EA or EIS. Revisions of regulations may require an EA or EIS if such revisions are not addressed in a management plan amendment or related NEPA document. If the RPM has doubt concerning significance, an EA will be used to determine whether a FONSI, SEIS, or an EIS is appropriate. Criteria included in subpara. 13a and 13b may aid in determining the significance of amendments. ECD is available for consultation on these determinations.

(1) Requires an EA But Not Necessarily an EIS

(a) Amendments determined not to merit a CE require an EA unless the RPM decides to proceed directly with an EIS. If the EA reveals that no new significant impacts will result from the amendment, the RPM may prepare a FONSI, integrate it with the EA, and follow the procedures set forth in para. 8 below. If the EA reveals significant impacts that may or will differ in context or intensity from those described in the previously published EA or EIS on the action being amended, preparation of a SEIS or new EIS will be required.

(b) Examples of actions requiring at least an EA are amendments to coastal management and fishery management plans where such amendments could result in impacts which differ significantly in content or intensity from those described in a previously published EA or EIS.

(c) When circumstances change or information becomes available bearing on the impacts of an action addressed in a previously published EA or final EIS, the circumstances or information will be reviewed by the RPM to determine whether a new EA, EIS, or supplemental EIS should be prepared, even if no amendment to a plan is contemplated.

(2) Requires a New or Supplemental EIS.

Amendments which do not result in a FONSI, as determined on a case-by-case basis according to subpara. 5b(1) above or that may be reasonably expected to result in new and significant impacts, require preparation of either a new or supplemental EIS (based on the extent of new impacts). The guidelines for determining the need for a new or supplemental EIS are the same as for an initial EIS (see subpara. 3q. 13a, and 13b). Direct, indirect, and cumulative effects of related actions (CEQ sec. 1508.8) must be considered.

(3) Categorical Exclusion

(a) Amendments falling within the range or scope of alternatives addressed in a previous EA or EIS do not require preparation of an additional environmental document if the initial analysis is determined by the RPM to be valid and complete. Similarly, amendments falling within one of the general categories described in subpara. 5b(3)(b) may also receive a CE. If a CE is determined to be appropriate, a memorandum or notation must be prepared for the files with a copy to ECD (subpara. 3c).

(b) Examples of CEs for amendments include, but are not limited to, the following.

(i) *Routine administrative actions.* Ongoing or recurring actions with limited potential for effect on the human environment, such as:

(aa) Reallocations of yield within the scope of a previously published FMP or fishery regulation.

(bb) Combining management units in related FMP.

(ii) *Actions of limited size or magnitude.* Actions which do not result in a significant change in the original environmental action such as:

(aa) Minor technical additions, corrections, or changes to a management plan or regulation.

(bb) Extension of the period of effectiveness of a management plan or regulation.

(iii) *Other actions within the scope of subpara. 5b(3)(a).*

(4) Other NEPA Approaches

LO's may cooperate with State or local agencies on a joint environmental document [subpara. 5a(4)(a)] or adopt a document prepared by another Federal agency [subpara. 5a(4)(b)].

c. Projects and Other Actions

NOAA is involved in some actions generally categorized as projects, including: Funding and budget decisions; preproposal actions; regulations; research programs; and actions on permits and licenses. Requirements for environmental analysis for these and similar activities are described below.

(1) Requires an EA But Not Necessarily an EIS

(a) Projects that may have significant impacts are subject to an EA unless the RPM determines that an EIS will be prepared. If an EA is prepared, it will determine if significant impacts may occur. The general criteria in subpara. 13a may aid RPM decisions on significance.

(b) The decision of whether to prepare an EIS hinges on the specific proposed action, the guidance in subpara. 13a and 13b, and CEQ sec. 1501.4.

(c) The following types of actions fall within this category.

(i) Financial assistance awards for land acquisition or construction, such as those administered under the Coastal Energy Impact Program (CEIP), where such actions may result in significant impacts.

(ii) Promulgations of regulations, policies, or criteria for entire programs, i.e., not single actions [addressed in subpara. 5c(3)(f) below] but program-wide actions or procedures with a potential effect on the human environment. Includes, but is not limited to, regulations for national marine and estuarine sanctuaries, fishery management, deep seabed mining, ocean thermal energy conversion, and coastal management.

(iii) Acquisition, construction, or modification of new facilities budgeted by NOAA or major relocations of NOAA personnel undertaken for programmatic reasons.

(iv) Other actions, including research, that may have significant environmental impacts (DAO 216–6).

(v) Proposals for legislation, as defined in CEQ sec. 1508.17.

(2) Requires an EIS

An EIS is required for major Federal projects or actions determined by the RPM to be significant (subpara. 3q, 13a, and 13b). The RPM may proceed directly to an EIS without preparing an EA. These projects or actions include the following.

(a) Major new projects or programmatic actions that may significantly affect the environment.

(b) Actions required by law to be subject to an EIS, such as an application for any license for ownership, construction, and operation of an Ocean Thermal Energy Conversion facility or for a Deep Seabed Mining license or permit.

(c) Research projects, activities, and programs when any of the following may result:

(i) Research is to be conducted in the natural environment on a scale at which substantial air masses are manipulated (e.g., extensive cloud-seeding experiments), substantial amounts of mineral resources are disturbed (e.g., experiments to improve ocean sand mining technology), substantial volumes of water are moved (e.g., artificial upwelling studies), or substantial amounts of wildlife habitats are disturbed;

(ii) Either the conduct or the reasonably foreseeable consequences of a research activity would have a significant impact on the quality of the human environment (DAO 216-6);

(iii) Research that is intended to form a major basis for development of future projects (e.g., Project Stormfury cloudseeding) which would be considered major actions significantly affecting the environment under this directive (DAO 216-6); or

(iv) Research that involves the use of highly toxic agents, pathogens, or non-native species in open systems.

(d) Federal plans, studies, or reports prepared by NOAA that could determine the nature of future major actions to be undertaken by NOAA or other Federal agencies that would significantly affect the quality of the human environment.

(e) Proposals for legislation, as defined in CEQ sec. 1508.17, which require the preparation of a legislative EIS in accordance with CEQ or DAO 216-6.

(3) Categorical Exclusions

The following categories of projects or other actions do not normally have the potential for a significant effect on the human environment and are therefore exempt from the preparation of either an EA or an EIS (subpara. 3c). When several similar actions, each worthy of a CE, are anticipated, a generic memorandum to the file may be submitted instead of a separate memorandum for each action.

(a) *Research.* Programs or projects of limited size and magnitude or with only short-term effects on the environment. Examples include natural resource inventories and environmental monitoring programs conducted with a variety of gear (satellite sensors, fish nets, etc.) in water, air, or land environs. Such projects may be conducted in a wide geographic area without need for an environmental document provided related environmental consequences are limited or short-term.

(b) *Financial and Planning Grants.* Financial support services, such as a Saltonstall-Kennedy grant, fishery loan or grant disbursement under the Fisherman's Contingency Fund or Fishing Vessel and Gear Compensation Fund, or a grant under the Coastal Zone Management Act where no environmental consequences are anticipated beyond those already analyzed in establishing such programs, laws, or regulations. If no initial analysis was prepared, this section would not require preparation of a retroactive environmental document. New financial support services and programs should undergo an environmental analysis at the time of conception to determine if a CE could apply to subsequent actions.

(c) *Minor Planning Activities.* Projects where the proposal is for an impact amelioration action such as planting dune grass or for minor project changes, restoration or rehabilitation projects, or improvements such as adding picnic facilities to a coastal recreation area unless such projects in conjunction with other related actions may result in a cumulative impact (CEQ sec. 1508.7).

(d) *Pre-proposal Actions.* Actions before a proposal exists do not require any NEPA analysis. A "proposal" exists at that stage in the development of an action when an agency subject to NEPA has a goal and begins its decisionmaking process, including consideration of environmental impacts, toward realization of that goal (CEQ sec. 1508.23).

(e) *Programmatic Functions.* The following NOAA programmatic functions with no potential for significant environmental impacts are generally exempt from the environmental documentation requirements of NEPA: Routine experimental procedures; program plans and budgets; mapping, charting, and surveying services; ship support; fisheries financial support services; basic research or research grants except as provided in subpara. 5c(3); enforcement operations; basic environmental services, such as weather observations, communications, analyses, and predictions; environmental satellite services; environmental data and information services; air quality observations and analysis; support of international global atmospheric and Great Lakes research programs; executive direction; administrative services; and administrative support of the National Advisory Committee on Oceans and Atmosphere and other advisory bodies.

(f) *Regulations Implementing Projects or Plans.* When an EA or EIS has been or will be prepared for specific projects or plans serving as the basis for the following activities, implementation of regulations within the scope of the plan and related NEPA documents will receive a categorical exclusion. Examples include: coastal zone management programs; national estuarine or marine sanctuaries; fishery management plans; and regulations and waivers issued under sec. 101(a)(2), 101(a)(3) of the MMPA.

(g) *Permits.* Permits for scientific research and public display under the ESA and MMPA and grants under the MMPA.

(h) Listing actions under sec. 4(a) of the ESA. Listing, delisting and reclassifying species and designating critical habitat.

(i) Other categories of actions which would not have significant environmental impacts, including routine operations, routine maintenance, actions with short-term effects, or actions of limited size or magnitude.

d. Emergency Actions

(1) Emergency actions are promulgated: (a) To implement management plans or amendments to plans; (b) to establish or implement projects, e.g., coastal energy impact programs; or (c) to take other actions, e.g., fishery management actions without a fishery management plan. These emergency actions are subject to the same NEPA requirements as are non-emergency plans, projects, and actions. Emergency actions are subject to the environmental analysis process outlined in para. 4, to the requirements and guidance of para. 5 concerning the type of environmental documents needed to satisfy NEPA, and to the requirements for public involvement and scoping set forth in para. 7. Despite the emergency nature of a proposal action, RPMs must maintain contact with State government agencies to insure that all State concerns are addressed within the time constraints of the emergency action. If time constraints limit compliance with any aspect of the environmental analysis, process, the RPM should contact ECD to determine alternative approaches, as discussed in subpara. 5d(3).

(2) The RPM should determine whether an EA or an EIS will be prepared for emergency actions. The emergency action may be categorically excluded if the RPM determines that it satisfies the threshold criteria for "controversial," "major," and "significant" (subpara. 3d, k, and q) that apply to "non-emergency" actions. In the event of uncertainty regarding the necessary environmental document for an emergency action or whether a CE is appropriate, the RPM should consult with ECD as early as possible regarding the appropriate course of action.

(3) Those emergeny actions which are determined by the RPM to receive a CE or require an EA leading to a FONSI will not be delayed by any time constraints or requirements established by NEPA or this directive. If the RPM determines that the emergency action requires preparation of an EIS, the RPM should determine whether the requirements associated with EIS preparation, filing, and public review would delay implementation of the emergency action and endanger achievement of the objectives of the action. If preparation of the EIS would not delay the emergency action sufficiently to prevent attaining the objectives, an EIS must be prepared and associated procedures satisfied before the emergency action becomes effective. If the RPM determines that time or other restrictions may limit attaining the objectives of the emergency action, the RPM should ask ECD to consult CEQ about alternative arrangements.

(4) Alternative arrangements must satisfy the CEQ guidance on emergencies (sec. 1506.11). Possible arrangements include shortened public review periods, review periods held concurrently with effective emergency regulations but completed before final regulations are implemented, or ECD staff assistance in preparing necessary documents. These arrangements are limited to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA requirements and review.

6. Environmental Analysis of Proposals With Potential International Implications

a. General

This paragraph applies to NOAA activities, or impacts thereof, which occur outside the territory of the United States, or which may affect resources not subject to the management authority of the United States, as addressed by E.O. No. 12114 and DAO 216-12. Specifically, except as provided in subpara. 6b, these provisions should be followed for these categories of NOAA actions.

(1) Major Federal actions significantly affecting the environment of the global commons outside the exclusive jurisdiction of any nation, e.g., the oceans, the atmosphere, the deep seabed, or Antarctica;

(2) Major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(3) All other major Federal actions significantly affecting the environment of a foreign nation, including, but not limited to, those that provide to that nation:

(a) A product and/or a principal product, emission, or effluent which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(b) A physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances; and

(4) Major Federal actions outside the United States, its territories, and possessions which significantly affect natural or ecological resources of global importance designated for protection by the President under the provisions of E.O. No. 12114, or, in the case of resources protected by international agreement binding on the United States, by the Secretary of State. For marine resources, "outside the United States" is defined as outside the 200-mile fishery conservation zone or 200-mile exclusive economic zone.

b. Constraints

(1) Environmental documents on actions subject to this section should be as complete and detailed as possible under the circumstances. However, in analyzing activities or impacts which occur outside the United States, it may on occasion be necessary to limit the circulation, timing, review period, or detail of an EA or EIS for one or more of the following reasons:

(a) Diplomatic consideration;

(b) National security considerations;

(c) Relative unavailability of information;

(d) Commercial confidentiality; and

(e) The extent of NOAA's role in the proposed activity.

(2) When full compliance with this directive is not possible consideration may be given to the preparation of:

(a) Bilateral or multilateral environmental studies, relevant or related to the proposed actions, by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member of participant;

(b) Concise reviews of the environmental issue involved, including EAs, summary environmental analyses, or other appropriate documents.

(3) RPMs, in consulation with ECD and the NOAA General Counsel (GC), will decide whether an EA or EIS should be prepared on an action under this section.

c. Special Efforts

Certain activities having environmental impacts outside the United States require special efforts because of their international environmental significance. These include activities mentioned in subpara. 6a and those which:

(1) Threaten natural or ecological resources of global importance or which threaten the survival of any species;

(2) May have a significant impact on any historic, cultural or national heritage or resource of global importance; or

(3) Involve environmental obligations set forth in an international treaty, convention, or agreement to which the United States is a party.

d. Consultation

In preparing an environmental document for an activity which may affect another country or which is undertaken in cooperation with another country and will have environmental effects abroad, the RPM should consult with ECD both in the early stages of document preparation (in order to determine the scope and nature of the environmental issues involved) and in connection with the results and significance of such documents, except when the factors listed in subpara. 6b(1) (a), (b), or (d) would indicate otherwise. ECD and NOAA GC will consult, as appropriate, with other offices in the DOC, CEQ, and Department of State when the proposed action or its environmental consequences are likely to involve substantial policy considerations. When consulting with foreign officials, every effort must be made to take into account foreign sensitivities and to understand that one of NOAA's objectives in preparing environmental documents in cases involving effects abroad is to provide environmental information to foreign decisionmakers, as well as to responsible NOAA officials. Finally, NOAA's efforts in preparing these environmental documents will be directed, in part, toward strengthening the ability of other countries to carry out their own analyses of the likely environmental effects of proposed actions.

7. Public Involvement and Scoping

a. General

RPMs must make every effort to involve the public early in the development of a proposed action and to ensure that public concerns are adequately considered in the decisionmaking process. Public

involvement may be solicited through participation in advisory groups, invitation to meetings and hearings, solicitation of comments on draft and final documents, and regular contacts as appropriate. Interested persons may obtain information and status reports on EAs, EISs, and other elements of the environmental review process from the RPM or ECD. RPMs will be guided by CEQ sec. 1506.6 and by NOAA Directive 21–25 (Release of Mission Information and Responses to Freedom on Information Act requests) in providing adequate public involvement in the environmental review process. NOAA offices should use State "single points of contact" to insure that all appropriate State government agencies are given the opportunity to participate in the decisionmaking process. This applies to early planning and comments on environmental documents.

b. Scoping

Scoping is "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action" (CEQ sec. 1501.7). The fullest practicable public participation and interagency consultation will be sought to ensure the early identification of significant environmental issues related to a proposed action. Usually scoping is conducted shortly after a decision is made to prepare an EIS. However, scoping may be used during the EA process to help determine the need for an EIS. Scoping and public involvement may be satisfied by many mechanisms, including planning meetings, public hearings, and requests for comment on discussion papers and other versions of decision and background documents.

c. Notice of Intent

(1) Scoping officially begins with publication in the **Federal Register** of a "notice of intent" to prepare an EIS (CEQ sec. 1501.7) but may in practice begin in the early stages of program development. The notice should be published as soon as practicable after the need for an EIS has been determined. The notice must include (CEQ sec. 1508.22):

(a) The proposed action and possible alternatives.

(b) NOAA's proposed scoping process including any meetings to be held.

(c) The name and address of the agency contact for further information about the proposed action and the EIS.

(2) When there is likely to be a lengthy period between the decision to prepare an EIS and actual preparation of the draft EIS, publication of the notice of intent may be delayed until a reasonable time in advance of preparation of that draft EIS.

(3) If a RPM decides not to pursue a proposed action after a notice of intent has been published, a second notice should be published to inform the public of the change.

(4) The notice of intent may be combined with similar notices required for preparation of other documents. This will minimize redundancy while still notifying the public of prospective actions.

d. Scoping Process

As part of the scoping process, the actions described in CEQ sec. 1501.7(a) must be fulfilled, when appropriate; CEQ sec. 1501.7(b) is not mandatory. If the proposed action has already been subject to a lengthy development process which has included early and meaningful opportunity for public participation, those prior activities can be substituted for this requirement. Scoping meetings should inform interested parties of the proposed action and alternatives and solicit comments on that action. Written and verbal comments must be accepted during the waiting period after publication of the notice of intent and must be considered in the environmental analysis process. The scoping process will include, where relevant, consideration of the impact of the proposed action on: floodplains and wetlands, as described in NOAA Directive 02–12; sites included in the National Trails and Nationwide Inventory of Rivers, as required by Presidential Directive dated August 2, 1979; sites nominated or designated by the Advisory Council on Historic Preservation, as required by 36 CFR Part 800; the National Marine Fisheries Service's habitat conservation policy (48 FR 43142); and other appropriate laws and policies.

8. EA Preparation and Approval

a. Purpose

(1) The purpose of an EA is to determine whether significant environmental impacts could result from a proposed action. If the action is determined not to be significant, the EA and resulting FONSI will be the final environmental documents required by NEPA. If the EA reveals that significant environmental impacts may be reasonably expected to occur, then an EIS must be prepared. The contents of an EA are discussed in CEQ sec. 1508.9.

(2) The EA serves to:

(a) Briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or FONSI;

(b) Facilitate preparation of the EIS. The EA must include brief discussions of the need for action, alternatives as required by sec. 102(2)(e) of NEPA, environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consluted.

(3) The environmental analysis in the EA provides the basis for determining whether or not the proposed action is significant. Therefore, the EA must address those factors outlined in subpara. 13a and 13b. Additionally, an EA must analyze the proposed action with respect to the laws and policies listed in subpara. 7d.

b. Review and Clearance

(1) An EA leading to a FONSI must be submitted by the RPM to ECD for NOAA review and clearance prior to public availability. The FONSI, which must be attached to or incorporated into the EA, notifies reviewers that the environmental impacts of the proposed action have been determined by the RPM to be nonsignificant for NEPA purposes. For NOAA review and clearance, the RPM must submit to ECD for signature one copy of the EA and the original letter to reviewers (details on the format and content of the letter are included in subpara. 13d).

(2) EAs should be submitted to ECD at least three days prior to the requested clearance date; less time may be sufficient when ECD reviewd early versions of the EA. After NOAA clearance by ECD, the RPM may publish a notice of availability in the **Federal Register** for those EAs with national implications or of broad interest to the public. Similarly, when EAs address unusual or new actions, the RPM may, at his or her discretion, provide up to 30 days public review. The RPM may consult with ECD to arrange alternatives procedures for providing public involvement, including various combinations of notices and mailings (see CEQ sec. 1506.6). In certain circumstances, ECD, in consultation with the RPM, may require that the proposed action not be taken until 30 days after the notice of availability has been published. These circumstances include those where significant reservations based on environmental concerns have been expressed by consulting agencies or the public.

c. Significant Action

Where the proposed action is found to be potentially significant, the RPM may proceed directly with preparation of an EIS without submitting the EA for NOAA approval. Early review of draft discussion papers by ECD may help to

avoid future problems and to expedite subsequent review of the EIS (para. 9).

9. EIS Preparation and Approval

a. Purpose

Should a determination be made by the RPM that significant environmental impacts could result from a proposed action, an EIS will be prepared in accordance with CEQ sec. 1502.10–1502.18. The EIS cover must clearly state whether it is a separate EIS or an EIS consolidated with a management plan, and whether the document supplements an earlier EIS. For general guidance on EIS procedures, refer to CEQ sec. 1502. Note that NOAA (Administrator's Letter No. 17) and CEQ (CEQ sec. 1502.14(e)) policy requires identification of the preferred alternative(s) in the draft EIS whenever such preferences exist and in the final EIS unless another law prohibits the expression of such a preference. When preferred alternatives do not exist, the document must provide a range of preferences or other indication of alternatives most likely to be selected. In that way, the public can focus their effort in the most effective manner.

b. Review and Clearance

(1) A preliminary version of the EIS, modified as necessary by the RPM in response to comments received from ECD and other appropriate NOAA offices, constitutes the draft or final EIS. One copy of the EIS and two letters, one filing the document with the Environmental Protection Agency (EPA) and one transmitting it to all other reviewers, must be prepared by the RPM for the signature of the Chief, ECD. Copies of letter formats are attached at the end of this directive. After these letters are signed by the Chief, ECD, the originating RPM will take all further actions, including filing the document at EPA and distributing it to interested parties.

(2) The deadline for ECD receipt of draft and final EISs submitted for clearance is five days prior to filing at EPA; less time may be sufficient in those cases where ECD has reviewed earlier versions. The deadline for filing at EPA is 3:00 p.m. each Friday for publication of a "notice of availability" in the Federal Register the following Friday. Five copies of draft and final EISs are required by EPA headquarters at filing unless the proposed action affects more than one EPA region or the document is a programmatic EIS (an EIS on an entire program, e.g., deep seabed mining or the "next radar" system called NEXRAD, that could affect a large part of the nation), in which case more copies are required. Specific guidance on the number of copies needed for filing is available from ECD upon request. An equivalent number of any source documents, appendices, or other supporting analyses must also be submitted to EPA at filing. [Note that copies submitted to EPA at the time of filing, fulfill the NEPA filing requirements and that additional copies should be sent to EPA headquarters and regional offices for actual review and comment.] All EIS copies submitted to EPA must be identical in form and contend to the copies distributed or made available to the public and other interested parties.

(3) Once filed by NOAA, EPA will prepare a "notice of availability" that will be published in the Federal Register, as noted above. All public review and "cooling off" periods begin the day of publication of that notice. No review period should end on a weekend or holiday.

(4) Concurrent to filing with EPA, copies of each draft EIS and general transmittal letter must be sent to all Federal, State, and local government agencies, public groups, and individuals who may have an interest in the proposed action. Copies of each final EIS must be sent to parties who commented on the draft, individuals or groups specifically requesting a copy, and others as determined by the RPM. Source documents, appendices, and other supporting information should be circulated to the public when the RPM determines that reviewers would benefit from the additional information. The EIS and related documents must be made available for public inspection at locations deemed appropriate by the RPM, such as the public libraries and State "single points of contact" designated under E.O. 12373 or the A–95 clearinghouse mechanism established by the Office of Management and Budget (41 FR 2052).

(5) The public comment period on draft EISs should be at least 45 days unless a specific exemption is granted by EPA through ECD. Final EISs must include comments received during the public review period of the draft EIS and respond in an appropriate manner, as described in CEQ sec. 1503.4. The "cooling off" period on final EISs is 30 days, unless an exemption is granted by EPA through ECD.

(6) A supplemental EIS may be required in certain cases under CEQ sec. 1502.9(c) (1) and (*2). Supplemental EISs must be prepared, circulated, and filed as prescribed by CEQ sec. 1502.9(c)(4) and in accordance with para. 9 of this directive. Public comment periods for draft and final supplemental EISs are the same as for original EISs. Requests for special exemptions from the comment period must be granted by CEQ through ECD. If a supplemental EIS is prepared, it must be introduced into any administrative record on the proposed action and distributed as described above for initial EISs. The transmittal letters to EPA and the public must state the title and publication date of the initial document to which the supplement relates.

(7) In certain cases, usually characterized by pending emergencies, negative socio-economic impacts, or threats to human health and safety, the RPM may request ECD assistance in shortening the review and "cooling off" periods for initial or supplemental EISs.

10. Comments on Other Agencies' Environmental Impact Statements

NEPA requires that EISs be submitted for review to any Federal agency which has jurisdiction by law or special expertise over the resources potentially affected. The Chief, ECD, coordinates DOC review of and comments on other agencies' EISs and forwards all comments to the originating agencies. When comments are requested, copies of the incoming EIS and a letter noting the deadline for receipt of comments will be sent by ECD to appropriate DOC elements. Guidance in the preparation of these comments is available in CEQ sec. 1503.3, NOAA Administrator's Letter N. 17, and from ECD.

11. Integration of NEPA and E.O. 12114 Into the NOAA Decisionmaking Process

a. Inclusion of Environmental Documents in the Dicisionmaking Process.

Environmental documents prepared in accordance with this directive must accompany any other decision documents in the NOAA decisionmaking process. The alternatives and proposed action identified in all such documents must correspond. Any environmental document prepared on a proposal will be part of the administrative record of any decision, rulemaking, or adjudicatory proceedings held on that proposal.

b. Preparation of Environmental Documents for NOAA Programs

Environmental documents should be prepared at the earliest practicable time so that the environmental review process will run concurrently with and be integrated into NOAA decisionmaking.

c. Record of Decision

The final EIS, final regulations, or a separate **Federal Register** notice must clearly present NOAA's preferred alternative(s), environmentally preferable alternative(s), and any monitoring or enforcement programs in a record of decision (ROD) for public review and comment. The ROD must contain the elements listed in CEQ sec. 1505.2.

12. Referrals to CEQ of Environmentally Unsatisfactory Actions

RPMs will notify ECD of actions by other Federal agencies believed to be environmentally unsatisfactory, i.e., worthy of a "referral," under CEQ sec. 1504.3. The Chief, ECD, will recommend referrals to the Administrator of NOAA. ECD will work closely with the RPMs to prepare the letters and support materials required in the referral process.

13. Appendices

a. Guidance for Defining Significance

(1) As required by NEPA sec. 102(2)(c) and CEQ sec. 1502.3, EISs must be prepared for every recommendation or report on proposals for legislation and other "major Federal actions" significantly affecting the quality of the human environment. Federal management plans, plan amendments, actions, or projects which will or may cause a significant impact on the human environment require preparation of an EIS.

(2) "Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. "Major" reinforces but does not have a meaning independent of "significant." "Actions" include: new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals. Refer to CEQ sec. 1508.18 for additional guidance.

(3) "Significant" requires consideration of both context and intensity. Context means that significance of an action must be analyzed with respect to society as a whole, the affected region and interests, and the locality. Both short- and long-term effects are relevant. Intensity refers to the severity of the impact. The following factors should be considered in evaluating intensity (CEQ sec. 1508.27):

(a) Impacts may be both beneficial and adverse;

(b) Degree to which public health or safety is affected;

(c) Unique characteristics of the geographic area;

(d) Degree to which effects are likely to be highly controversial;

(e) Degree to which effects are highly uncertain or involve unique or unknown risks;

(f) Degree to which the action establishes a precedent for future actions with significant effects or represents a decision in principle about a future consideration;

(g) Individually insignificant but cumulatively significant impacts;

(h) Degree to which the action adversely affects entities listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources;

(i) Degree to which endangered or threatened species, or their habitat, are adversely affected; and

(j) Whether a violation of Federal, State, or local law for environmental protection is threatened.

(4) "Affecting" means will or may have an effect (CEQ sec. 1508.3). "Effects" include direct, indirect, or cumulative effects of an ecological, aesthetic, historic, cultural, economic, social, or health nature (CEQ sec. 1508.8).

(5) "Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations (CEQ sec. 1508.17). The NEPA process for proposals for legislation significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress (CEQ sec. 1506.8).

(6) "Human environment" includes the relationship of people with the natural and physical environment. Although economic or social effects often result from a proposed action, such issues are not intended by themselves to require preparation of an EIS. Each EIS must discuss interrelated economic, social, and natural or physical environmental effects (CEQ sec. 1508.14).

b. Specific Guidance for Fishery Management Plans and Amendments

An EIS must be prepared for a FMP or amendment when the RPM determines that any one of the following five criteria may be reasonably expected to occur. If none of these criteria may be reasonably expected to occur, the RPM should prepare an environmental assessment (EA) or determine, in accordance with subpara. 3b, 5a(3), 5b(3), and 5d(2) above, the applicability of a CE from further NEPA documentation. NEPA document preparers should also consult 48 FR 7402 (50 CFR Part 602) for guidance on the seven national standards that serve as principles for approval of all FMPs and amendments. The five criteria follow.

(1) The proposed action may be reasonably expected to jeopardize the long-term productive capability of any stocks that may be affected by the action.

(2) The proposed action may be reasonably expected to allow substantial damage to the ocean and coastal habitats.

(3) The proposed action may be reasonably expected to have a substantial adverse impact on public health or safety.

(4) The proposed action may be reasonably expected to affect adversely an endangered or threatened species or a marine mammal population.

(5) The proposed action may be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target resource species or any related stocks that may be affected by the action.

Two other factors to be considered in any determination of significance are controversy and socio economic effects. Although no action should be deemed to be significant based solely on its controversial nature, this aspect should be used in weighing the decision on the proper type of analysis needed to ensure full compliance with NEPA. Socio-economic factors related to users of the resource should also be considered in determining controversy and significance. The RPM should rely on subpara. 13a(3) for further factors involved in determining when an action may be "significant."

c. Criteria for Other NOAA Actions

[Reserved]

d. Guidance on Transmittal Letters for EAs and EISs

(1) All letters must be prepared on "Office of the Administrator" letterhead.

(2) Letters will be dated after being signed by the Chief, ECD.

(3) Fill in all appropriate blanks in the sample letter formats.

(4) In the first sentence of Exhibit 2, the first parenthetical note relates to the discussion in subpara. 9b(2) that noted the EPA need for more than five copies of certain EISs, especially programmatic EISs and EISs on actions that may affect more than one EPA regional office.

(5) Note in subpara. 9b(2) that EAs need not be transmitted to EPA. Also,

EAs on controversial actions or national issues should be distributed to the public.

(6) Examples of transmittal letters are attached at the end of this directive.

(a) Exhibit 1—EIS transmittal letter from NOAA to reviewers.

(b) Exhibit 2—EIS transmittal letter from NOAA to EPA.

(c) Exhibit 3—FONSI transmittal letter from NOAA to reviewers.

(d) Exhibit 4—FONSI transmittal memo from ECD to Assistant Administrator.

14. Effect on Other Instructions

This directive revises and supersedes NDM 02-10 versions published January 17, 1979, and July 24, 1980 (45 *FR* 49312).

Exhibit a—EIS Transmittal Letter

Dear Reviewer: In accordance with provisions of the National Environmental Policy Act of 1969, we enclose for your review our (DRAFT/FINAL) environmental impact statement on (Title of Project).

(1 Paragraph Abstract)

Any written comments or questions you may have should be submitted to the responsible official identified below by (Due Date for Comments). Also, one copy of your comments should be sent to me in Room 6111, PP2, U.S. Department of Commerce, Washington, D.C. 20230.

Responsible Person

Name
Address
Telephone Number

Thank you.

Sincerely,
(Insert Name)
Chief
Ecology and Conservation Division
Enclosure

Exhibit b—Draft EIS/Final EIS Transmittal to EPA

(Insert Name)
Management Information Unit
c/o Director, Office of Federal Activities (A-104), U.S. Environmental Protection Agency, Waterside Mall, Room 2119, 401 M Street SW., Washington, D.C. 20460

Dear (Insert Name): Enclosed for your consideration are five (Verify Number With ECD) (Appropriate Documents, i.e., Draft EIS or Final EIS) on (Title of Project).

Additional Paragraph(s) or Information as Necessary

If you have any questions about the enclosed statement, contact either the official responsible for this program (Name of Assistant Administrator and Telephone Number) or me at 377-5181.

Concurrent with this transmittal to EPA, copies of the (DRAFT EIS/FINAL EIS) are being mailed to Federal agencies and other interested parties.

Sincerely,
(Insert Name)
Chief
Ecology and Conservation Division
Enclosures

Exhibit c—Finding of No Significant Impact Transmittal Letter to Interested Parties

To all Interested Government Agencies and Public Groups:

Under the National Environmental Policy Act, an environmental review has been performed on the following action.

Title:
Location:
Summary:
Responsible Official: (Assistant Administrator Level with Address and Telephone Number)

The environmental review process led us to conclude that this action will not have a significant effect on the human environment. Therefore, an environmental impact statement will not be prepared. A copy of the finding of no significant impact including the supporting environmental assessment is enclosed for your information. Please submit any written comments to the responsible official named above by (Due Date for Comments). Also, please send one copy of your comments to me in Room 6111, PP2, U.S. Department of Commerce, Washington, D.C. 20230.

Sincerely,
(Insert Name)
Chief
Ecology and Conservation Division

Exhibit d—FONSI Transmittal Memo (From ECD to Appropriate Assistant Administrator)

To: List Routing Code—(Insert name)
From: PP2—(Insert Name)
Subject: Finding of No Significant Impact of (Title)

On the basis of the information presented in the subject environmental assessment, I concur in your determination that the proposed action will not have a significant effect on the human environment in accordance with the Council on Environmental Quality's regulations implementing the National Environmental Policy Act. Therefore, a finding of no significant impact is appropriate.

[FR Doc. 84-19406 Filed 720-84; 8:45 am]
BILLING CODE 3510-12-M

CONSUMER PRODUCT SAFETY COMMISSION

Electrical Consumer Products with Electronic Intergrated Circuit Controls; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission has shceduled a public meeting with manufacturers of electrical consumer products, manufacturers of electronic integrated circuits, and organizations that develop voluntary safety standards for electrical consumer products that employ electronic integrated circuit controls. Participation by interested manufacturers and standards-developing organizations is invited.

DATES: (1) The meeting will begin at 10:00 a.m. on July 31, 1984. (2) Requests from manufacturers and standards-developing organizations to participate, and copies of their presentations, should be received by the Office of the Secretary no later than July 27, 1984.

ADDRESSES: The meeting will be in the third floor conference room at 1111 18th Street, NW., Washington, D.C.

Requests from manufacturers and standards organizations to participate, and copies of their presentations, should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: Carl Blechschmidt, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Commission is interested in receiving information and views from industry about the use and safety of electronic intergrated circuits (ICs) that are employed within electrical consumer products to control their operation. The use of these ICs, which are also known as microchips, chips, microcircuitry or microprocessors, has increased greatly in recent years. Some incidents involving failures of products using these chips, and the large-scale conversion of many types of products to the use of these devices, have raised concerns about the safety of products using ICs.

The purpose of the meeting is to obtain information concerning the design, costs, quality control, and manufacture of ICs and consumer products using ICs. Also desired is information on standards in existence or needed for such products and on ways in which safety can be ensured or improved in products using ICs.

The Commission is contacting representative IC manufacturers, electrical product manfacturers, industry trade associations, and standards organizations concerning participation in the meeting. Representatives of manufacturers and standards organizations who want to participate should call or write Sadye E. Dunn, Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6800, not later than July 27, 1984. Copies of the participants' presentations should be provided to the Secretary by that date. The Commission reserves the right to impose time limitations on the presentations of the

participants and to limit duplicative or irrelevant comments. The meeting will consist of presentations by the participants, followed by questions by the Commissioners.

Dated: July 19, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-19477 Filed 7-20-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Overseas Dependents Schools National Advisory Panel on the Education of Handicapped Dependents

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Overseas Dependents Schools National Advisory Panel on the Education of Handicapped Dependents has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law, and is being renewed as an advisory committee.

This committee was established pursuant to Pub. L. 94-142, "Education For All Handicapped Children Act of 1975."

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

July 5, 1984.

[FR Doc. 84-18229 Filed 7-20-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Section 10721 Tender Rate Increases/ Recovery of New Highway Taxes

AGENCY: Military Traffic Management Command, Army Department, DOD.

ACTION: Notice reiterating policy.

SUMMARY: The Military Traffic Management Command is reiterating its policy that the recently legislated vehicle tax increase may not be recovered from DOD shippers in the form of surcharges or any other type of add-on chargers to carriers' freight rates.

FOR FURTHER INFORMATION CONTACT: (Recovery of New Highway Taxes) Mr. George J. Rotblut, Attn: MT-INN-G, Telephone: (202) 756-1598. (Tender Filing Procedures) Mr. Allen Kirby, Attn: MT-INN-T, Telephone: (202) 756-1149/ 1567. Address: Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041.

SUPPLEMENTARY INFORMATION: The recently legislated highway vehicle tax restructuring will result in higher taxes for many truckers. Some carriers doing business with the Department of Defense (DOD) will absorb these new taxes into their current rates in order to remain competitive. Other, less competitive carriers, may want to recover their increased tax costs from DOD shippers.

The Military Traffic Management Command (MTMC), as the DOD traffic manager, views the new truck taxes as another cost of doing business the same as any other carrier cost adjustment. Therefore, freight rate increases for purposes of recovering the new tax payments will be treated the same as any other rate increases. Section 10721 tender freight rate increases may be filed on not less than thirty days notice. MTMC will not accept taxes recoveries in the form of surcharges or any other type of add-on charges on section 1021 tenders.

The Guaranteed Traffic program (GT) will not be changed to allow for the new taxes. GT rates cannot be increased to cover these new carrier costs (taxes).

Carriers should consider that rate increases will affect their competitive positions.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 84-19353 Filed 7-20-84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Guaranteed Student Loan Program and Plus Program

AGENCY: Department of Education.

ACTION: Notice of Special Allowances for Quarter Ending June 30, 1984.

SUMMARY: The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Program (GSLP) or the PLUS Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087-1). Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087-1(b)(2)(B), for the quarter ending June 30, 1984 the special allowance will be paid at the following rates:

	Applicable interest rate percent	Annual special allowance rate percent	Special allowance rate percent for quarter ending June 30, 1984
GSLP loan or PLUS loans made prior to Oct. 1, 1981.	7	6.75	1.6875
	9	4.75	1.1875
GSLP loans or PLUS loans made on or after Oct. 1, 1981.	7	6.74	1.685
	8	5.74	1.435
	9	4.74	1.185
	12	1.74	0.435
	14	0.00	0.00

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate by making the following four calculations:

(a) *Step 1.* Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies;

(b) *Step 2.* Subtract for that average the applicable interest rate (7, 8, 9, 12, or 14 percent) of loans for which a holder is requesting payment;

(c) *Step 3.* (1) Add 3.5 percent to the remainder; and

(2) In the case of loans made before October 1, 1981, round the sum upward to the nearest one-eighth of one percent;

(d) *Step 4.* Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

FOR FURTHER INFORMATION CONTACT: Roxanne Flanagan, Program Specialist, or Larry Oxendine, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 245-2475.

Dated: July 17, 1984.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-19299 Filed 7-20-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for Policy, Safety, and Environment

Dose Assessment Advisory Group; Renewal

This notice is published in accordance with the provisions of § 101-6.1015 of the General Services Administration (GSA) Interim Rule on Advisory Committee Management, section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92-463), and following consultation with the

Committee Management Secretariat, General Services Administration, notice is hereby given that the Dose Assessment Advisory Group (DAAG) charter has been renewed for a 2-year period ending on July 16, 1986.

The renewal of the DAAG has been determined necessary and in public interest in connection with the performance of duties imposed upon the Department of Energy by law. The committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act, Pub. L. 95–91, and the GSA Interim Rule on Federal Advisory Committee Management, and other directives issued in implementation of those Acts.

Further information regarding this committee may be obtained from Gloria Decker (202) 252–8990.

Issued in Washington DC, on July 16, 1984.

K. Dean Helms,

Advisory Committee Management Officer.

[FR Doc. 84–19312 Filed 7–20–84; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective August 1, 1984. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE–034, Washington, D.C. 20585. Telephone: (202) 252–6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million Btu's
Alabama [1]	4.42
Arizona [1]	4.18
Arkansas [1]	4.06
California	4.12
Colorado [2]	4.13
Connecticut [1]	4.54
Delaware [1]	4.43
Florida	4.21
Georgia [1]	4.42
Idaho [2]	4.13
Illinois	4.44
Indiana	4.23
Iowa [1]	4.19
Kansas [1]	4.19
Kentucky [1]	4.44
Louisiana [1]	4.06
Maine [1]	4.54
Maryland [1]	4.43
Massachusetts	4.38
Michigan [1]	4.44
Minnesota	3.93
Mississippi [1]	4.42
Missouri [1]	4.19
Montana [2]	4.13
Nebraska [1]	4.19
Nevada [1]	4.18
New Hampshire [1]	4.54
New Jersey [1]	4.43
New Mexico	3.85
New York	4.41
North Carolina [1]	4.42
North Dakota [1]	4.19
Ohio	4.22
Oklahoma [1]	4.06
Oregon [1]	4.18
Pennsylvania	4.36
Rhode Island [1]	4.54
South Carolina [1]	4.42
South Dakota [1]	4.19
Tennessee [1]	4.42
Texas	3.93
Utah [2]	4.13
Vermont [1]	4.54
Virginia [1]	4.42
Washington [1]	4.18
West Virginia [1]	4.44
Wisconsin [1]	4.44
Wyoming [2]	4.13

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM–79–21.

[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during May 1984 was $34.53 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective August 1, 1984, is $7.74 per million BTU's.

Section III Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of March 1984, April 1984, and May 1984.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective August 1, 1984, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, March 1984, April 1984, and

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

May 1984. Reported prices for sales in March 1984 were adjusted by the percent change in the nationwide volume-weighted average price from March 1984 to May 1984. Prices for April 1984 were similarily adjusted by the percent change in the nationwide volume-weighted average price from April 1984 to May 1984. The volume-weighted 3-month average of the adjusted March 1984 and April 1984, and the reported May 1984 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selectd as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of March 1984, April 1984, and May 1984. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending July 16, 1984, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of May 1984. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A	*Region B*
Connecticut	Delaware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	

Region C	*Region D*
Alabama	Illinois
Florida	Indiana
Georgia	Kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	

Region E	*Region F*
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma
Nebraska	Texas
North Dakota	
South Dakota	

Region G	*Region H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Issued in Washington, DC, July 18, 1984.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 84-19438 Filed 7-20-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RE84-536-000]

Alamito Co.; Filing

July 18, 1984.

The filing Company submits the following:

Take notice that on July 6, 1984, Alamito Company (Alamito), a wholly-owned subsidiary of Tuscon Electric Power Company, tendered for filing the Alamito-Tucson 12 Year Power Sale Agreement. The Agreement sets forth the terms and conditions on which Alamito will sell power and energy to Tucson from the San Juan Generating Station Unit No. 3 and from the Springerville Generating Unit No. 1 when it becomes operational. Alamito states that the rates will be based on a cost of service formula.

Alamito requests an effective date of November 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to be come a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19386 Filed 7-20-84 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-98-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc.; Filing of Rate Schedule AIC

July 17, 1984.

Take notice that on July 6, 1984, Arkansas Louisiana Gas Company (Arkla) tendered for filing a Rate Schedule AIC to its FERC Gas Tariff, First Revised Volume No. 2, which is the following:

Original Sheet Nos. 223 and 224.

Arkla's Rate Schedule AIC is being filed as an alternate rate to Arkla's ECOSHARE TRANSPORTATION RATE SCHEDULE, to be effective if and so long as any part of the revenues from the transportation charges for the service that would otherwise be due and payable to Arkla under the ECOSHARE TRANSPORTATION RATE SCHEDULE are required to be credited to Arkla's Account No. 191.

Arkla states that the revenues will be the same as would otherwise be payable under Arkla's ECOSHARE TRANSPORTATION RATE SCHEDULE except for the addition of the $0.05 per MMBtu incentive allowance permitted under § 157.209(f) of the regulations.

Arkla proposes that the effective date be the date of the filing, July 6, 1984, because the filing complies with a regulation specifically permitting the additional incentive allowance. (18 CFR 157.209(f)(2)(ii)(B)). If such waiver is not granted, Arkla proposes the effective date be thirty days after the filing date.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 24 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before July 23, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19387 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-525-000]

Boston Edison Co.; Filing

July 17, 1984.

The filing Company submits the following:

Take notice that on July 2, 1984, Boston Edison Company (Boston) tendered for filing a Notice of Cancellation of Rate Schedule FPC No. 105. Edison states that the rate schedule to be cancelled is a transmission agreement among the Joint Owners of the Pilgrim 2 nuclear project providing for their support, in proportion to their respective Pilgrim 2 ownership interest, of certain Edison-owned transmission facilities which were constructed for the Pilgrim 2 project.

Edison requests an effective date of November 1, 1982.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of 385.211, 385.214). All such motions or protests should be filed on or before July 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19388 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-54-012]

Colorado Interstate Gas Co.; Compliance Filing

July 17, 1984.

Take notice that on July 9, 1984, Colorado Interstate Gas Company (CIG) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Eighteenth Revised Sheet No. 7
Substitute Eighteenth Revised Sheet No. 8
Substitute Seventeenth Revised Sheet No. 7
Substitute Seventeenth Revised Sheet No. 8
Fifth Revised Sheet No. 17
Fifth Revised Sheet No. 29
Substitute Sixteenth Revised Sheet No. 7
Substitute Sixteenth Revised Sheet No. 8
Second Substitute Fifteenth Revised Sheet No. 7
Second Substitute Fifteenth Revised Sheet No. 8
Fourth Revised Sheet No. 17
Fourth Revised Sheet No. 29
Third Substitute Fourteenth Revised Sheet No. 7
Third Substitute Fourteenth Revised Sheet No. 8
Third Revised Sheet No. 17
Third Revised Sheet No. 29

CIG's filing is made in compliance with the Federal Energy Regulatory Commission's order of May 25, 1984, which directed CIG to file within 75 days modifications in the minimum bill provisions of its H-1 and F-1 rate schedules. The required changes were ordered to be made effective October 1, 1982.

CIG states that its revised tariff sheets: (1) State the fixed cost component per Mcf reflected in the effective rates for Rate Schedules H-1 and F-1; (2) add sentences to the minimum bill provisions of Rate Schedules H-1 and F-1 which state the total fixed costs currently assigned to each rate schedule; and (3) revise the minimum bill in CIG's combined H-1 and F-1 Service Agreement with Natural as required by the May 25 order. The schedules supporting the calculations of the unit and overall fixed cost figures stated in the revised tariff sheets are included in Appendices A and B.

CIG proposes that these tariff sheets and revisions to the Service Agreement be made effective as of October 1, 1982 and the subsequent dates noted on the subject tariff sheets accompanying the filing. CIG requests waivers of the Commission's regulations as may be necessary to accept the filing in its present form.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before July 23, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19389 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-178-002]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Corp.; Request Under Blanket Authorization

July 17, 1984.

Take notice that on July 9, 1984, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP84-178-002 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act that they propose to transport natural gas on behalf of Bethlehem Steel Corporation (Bethlehem) under their authorizations issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Columbia Transmission proposes to continue transporting up to 30,000 dt equivalent of natural gas per day on behalf of Bethlehem until June 30, 1985. In addition, Columbia Transmission requests authority to transport through June 30, 1985 an additional 35,000 dt per day on behalf of Bethlehem and Columbia Gulf would participate in the transportation of the additional 35,000 dt per day. It is indicated Columbia Gulf would receive the quantities at an existing interconnection with ANR Pipeline Company at Patterson, Louisiana and redeliver to Columbia Transmission which would redeliver to Baltimore Gas and Electric Company for ultimate delivery to Bethlehem. It is indicated that Bethlehem has purchased this gas from Caliche Pipeline Company.

Columbia Transmission states that it would charge its rates set forth in Rate Schedule TS-1 and that the storage and transmission charge is currently 40.11 cents per dt equivalent, exclusive of company-use and unaccounted-for gas and the storage, transmission and gathering charge is currently 44.93 cents per dt, exclusive of company-use and unaccounted for gas. Columbia Transmission states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas.

Columbia Gulf states that it would charge either its average system-wide unit onshore or offshore transmission costs, exclusive of company-use and unaccounted-for gas, as set forth in its Rate Schedule T-2 and that the onshore transportation charge is currently 26.19 cents per dt and the offshore transportation charge is currently 44.63 cents per dt. Columbia Gulf states that it would retain, for company-use and unaccounted-for gas percentages of the total quantity of natural gas delivered into its system. This percentage is currently 3.33 percent for transportation from offshore and 2.58 percent from onshore, it is explained.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19390 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1496-001]

Frank J. Eppich; Application

July 18, 1984.

Take notice that on July 5, 1984, Frank J. Eppich filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director, Vice President—Monongahela Power Company
Director, Vice President—Allegheny Generating Company
Director—Ohio Valley Electric Corporation

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such motions or protest should be filed on or before July 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19391 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-533-000]

Idaho Power Co.; Filing

July 18, 1984.

The filing Company submits the following:

Take notice that on July 5, 1984, Idaho Power Company (Idaho) tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during May, 1984, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement 31
Sierra Pacific Power Company—Supplement 29
Portland General Electric Company—Supplement 24
Washington Water Power Company—Supplement 19
Montana Power Company—Supplement 28
Pacific Power & Light Company—Supplement 13
Puget Sound Power & Light Company—Supplement 9

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19392 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-m

[Docket Nos. ER80-618-003, ER80-665-002, and ER80-666-002]

Madison Gas and Electric Co.; Refund Report

July 18, 1984.

Take notice that on July 2, 1984, the Madison Gas and Electric Company submitted for filing its refund report pursuant to the Commission's letter order dated May 30, 1984.

In compliance with the terms of the Offer of Settlement as accepted by the Commission, the revenue amounts collected under the suspended rates in excess of the settlement rates were mailed to each affected customer on June 29, 1984. Interest was added to the refund in accordance with section 35.19a of the Commission's regulations. Interest was computed to the day of mailing.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before July 31, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19393 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-536-000]

Phillips Gas Pipeline Co.; Application

July 18, 1984.

Take notice that on July 2, 1984, Phillips Gas Pipeline Company (Phillips Gas), 456 Home Savings & Loan Building, Bartlesville, Oklahoma 74004, filed in Docket No. CP84-536-000 an application pursuant to section 7(c) of the Natural Gas Act to acquire an existing crude oil pipeline to be converted to natural gas service, to construct certain additional facilities to make the conversion and to operate all such facilities to transport in interstate commerce gas from central and southern Oklahoma to northern Texas for further transportation south to refineries and petrochemical plants near the Texas Gulf coast, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Phillips Gas proposes to acquire the 153-mile 30-inch diameter Oklahoma segment of the 500-mile crude oil pipeline, formerly owned by Seaway Pipeline, Inc.[1] (Seaway), that extends from Cushing, Payne County, Oklahoma, to a point of interconnection with the Texas section of the Seaway line owned by Phillips Natural Gas Company [2] a subsidiary of Phillips Petroleum Company. In order to convert the crude pipeline to natural gas service, Phillips Gas proposes to remove from the pipeline 23 check valves, used to prevent the back-flow of crude oil when the pumps were shut down, and install four gate valves and 24 vent block valves to comply with the U.S. Department of Transportation pipeline codes. Phillips Gas would also install three new scraper pig and ball launchers and retrievers for pipeline maintenance and clean out operations, it is said.

Phillips Gas proposes to transport, on a firm basis for a period of 17 years, up to 75,000 Mcf of natural gas per day for Phillips Petroleum Company pursuant to a newly proposed PGPL-1 Rate Schedule. Phillips Gas proposes a cost of service rate based upon a 14.85 percent rate of return and a depreciation rate of 4 percent.

Phillips Gas estimates approximate costs of $41 million for the purchase of the pipeline, $8 million for construction and conversion and nearly $1 million for de-watering and line-pack gas.

Phillips Gas proposes to finance the project with a debt equity ratio of 55 percent to 45 percent upon an estimated cost of approximately $50 million. Phillips Gas anticipates that its corporate affiliate, Phillips Investment Company, would provide paid-in capital of approximately $22.8 million with the balance to be in the form of long-term debt through loans from Phillips Investment Company with interest at an annual rate of 13.5 percent.[3]

Phillips Gas' subject proposal would provide an outlet for natural gas in central Oklahoma that has otherwise been shut-in, noncontracted for or underproducted for lack of a transporting pipeline. Phillips Gas states that by converting the crude oil pipeline to natural gas service the proposal would make use of a facility that has become uneconomic to operate and at the same time provide a natural gas line at what appears to be a considerable cost savings over the cost of constructing a new facility. Phillips Gas indicates the availability of the Oklahoma gas would be beneficial to those refineries and petrochemical industries in the Texas Gulf coast area by providing a reliable and consistent source of gas and thereby prevent cold weather interruptions that have occurred with considerable frequency in recent past winter periods.

Phillips Gas proposes to place the converted facility in operation prior to the end of 1984.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene for a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice, that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Phillips Gas to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19394 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

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[1] It is indicated that the Seaway system extended from Freeport, Texas, on the Gulf of Mexico coast, to Cushing, Oklahoma.

[2] This portion of the system would be operated as an intrastate entity under the jurisdiction of the Texas Railroad Commission, it is explained.

[3] Phillips Gas states tht delay of certificate approval beyond September 1, 1984, could effect the interest rate.

[Docket No. ER84-529-000]

Public Service Company of Colorado; Filing

July 18, 1984.

The filing Company submits the following:

Take notice that Public Service Company of Colorado (PSC) on July 2, 1984, tendered for filing a proposed change in its Contract for Interconnection and Transmission Service with Tri-State Generation and Transmission Association, Inc. (Tri-State), dated October 5, 1979, on file with the Commission under the Company's FERC Rate Schedule No. 24.

PSC states that the purpose of Supplement and Amendment No. 2 is to establish a point of interconnection at or near Dillon, Colorado to be known as the Blue River Interconnection.

PSC states that copies of the filing were served upon all parties to the Agreement and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 30, 1984. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19395 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-532-000]

South Carolina Electric & Gas Co.; Filing

July 18, 1984.

The filing Company submits the following:

Take notice that on July 5, 1984, South Carolina Electric Gas Company (SCE&G) tendered for filing a Capacity Sale Contract dated April 12, 1984, between SCE&G and Carolina Power & Light Company (CP&L). This Contract provides for SCE&G to furnish to CP&L two hundred (200) megawatts of system capacity and associated energy.

SCE&G requests an effective date of June 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been mailed to CP&L, according to SCE&G.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 27, 1984. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19396 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP 84-99-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 18, 1984.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 6, 1984 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

To Be Effective August 10, 1984

Seventh Revised Sheet No. 74
Original Sheet No. 74D
Original Sheet No. 74E
Original Sheet No. 74F
Second Revised Sheet No. 120
First Revised Sheet No. 122
First Revised Sheet No. 123
Seventh Revised Sheet No. 164-167
Original Sheet No. 168
Original Sheet No. 169
Original Sheet No. 170
Original Sheet No. 171
Seventh Revised Sheet No. 172

On November 5, 1982 Texas Eastern was granted blanket certificate authorization in Docket No. CP82-535-000, [21 FERC 62, 199] which allows Texas Eastern to perform short term transportation under § 157.209. Accordingly Texas Eastern is filing the aforementioned tariff sheets pursuant to § 157.209(f) in order to provide a vehicle to perform such transportation. These tariff sheets incorporate into Texas Eastern's FERC Gas Tariff a new Rate Schedule AIC, related Form of Service Agreement, and conforming changes to the General Terms and Conditions as part of Texas Eastern's FERC Gas Tariff, Fourth Revised Volume No. 1.

The proposed effective date of these tariff sheets is as indicated above.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19397 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-534-000]

Tucson Electric Power Co.; Filing

July 18, 1984.

The filing Company submits the following:

Take notice that on July 6, 1984, Tucson Electric Power Company (Tucson) tendered for filing and Agreement of Assignment between Tucson and its wholly-owned subsidiary, Alamito Company. The assignment assigns to Alamito all of Tucson's rights and obligations with respect to the sale of Power under its Ten Year Power Sale Agreement with San Diego Gas and Electric Company.

Tucson requests an effective date of November 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 27, 1984. Protest will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19398 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-535-000]

Tucson Electric Power Co.; Filing

July 18, 1984.

The filing Company submits the following:

Take notice that on July 6, 1984, Tucson Electric Power Company (Tucson) tendered for filing an Interconnection Agreement between Tucson and Alamito Company, a wholly-owned subsidiary of Tucson. The Agreement establishes various transmission services which will be provided to Alamito by Tucson and establishes the terms and conditions for the exchange of energy between the parties.

Tucson requests an effective date of November 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19399 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2121-000]

Linda Winikow; Application

July 18, 1984.

Take notice that on July 5, 1984, Linda Winikow filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positons:

Vice President—Orange and Rockland Utilities, Inc.

Vice President—Rockland Electric Company

Vice President—Pike County Light & Power Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19400 Filed 7-20-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to the followed in refunding $14,372.72 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Aztex Energy Company, a reseller-retailer of motor gasoline located in Knoxville, Tennessee.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0032.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Aztex Energy Company (Aztex) which settled possible pricing and allocation violations in the firm's sales of motor gasoline to wholesale and retail customers during the January 1, 1979 through December 31, 1979 audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Aztex pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Aztex motor gasoline during the audit period may file claims for refunds from the consent order fund. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: July 6, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Aztex Energy Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0032.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines

by which the OHA may formulate and implement a plan of distribution for funds received as part of a settlement agreement or pursuant to a Remedial Order. The Subpart V process may be used in situations where the DOE is unable readily to identify the persons or firms who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's or firm's injuries. *See Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Aztex Energy Company (Aztex). Aztex is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Knoxville, Tennessee. The firm was subject to the Mandatory Petroleum Price and Allocation Regulations set forth in 10 CFR Part 211 and Part 212, Subpart F, until January 28, 1981, when motor gasoline and other refined petroleum products were exempted from price and allocation controls. Exec. Order No. 12287, 46 FR 9909 (Jan. 30, 1981). An ERA audit of Aztex's records revealed possible regulatory violations in the amount of $437,597.05 with respect to the firm's pricing of motor gasoline during the period January 1, 1979 through December 31, 1979 (the audit period). Additionally, the audit revealed that Aztex may have violated the Mandatory Petroleum Allocation Regulations during the same period by failing to supply certain of its base period customers with their adjusted base period allocations of motor gasoline. The alleged violations of the price regulations were set forth in a Notice of Probable Violation (NOPV) issued to the firm by the ERA on May 8, 1980. A second NOPV, issued on May 9, 1980, set forth the alleged allocation violations. In order to settle all claims and disputes between Aztex and the DOE regarding the "specified transactions" which were the subject of the audit, Aztex and the DOE entered into a consent order on October 7, 1981, in which Aztex agreed to remit $14,372.72 to the DOE. The consent order amount took into account a refund of $180,293.84 which Aztex had made to the marketplace prior to decontrol. *See* Consent Order ¶ 5. The consent order payment to the DOE was deposited in an interest-bearing escrow account for ultimate distribution by the DOE in accordance with applicable laws and regulations. This Proposed Decision concerns the distribution of the $14,372.72 that was deposited into the escrow account, plus accrued interest.

II. Proposed Refund Procedures

We have considered the ERA's Petition for the Implementation of Special Refund Procedures and have determined that it is appropriate to establish such a proceeding with respect to the Aztex consent order fund. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings to parties who were injured by alleged regulatory violations is the focus of Subpart V proceedings. *See generally Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (*Vickers*). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. The first stage will attempt to refund moneys to identifiable purchasers of Aztex motor gasoline who were injured by Aztex's alleged pricing or allocation practices during the period January 1, 1979 through December 31, 1979. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (*Amoco*) (refund procedures established for first stage applicants, second stage refund procedures tentatively proposed).

A. Refunds to Identifiable Purchases

According to records in the ERA audit file, Aztex sold motor gasoline to approximately 113 identified customers during the audit period. These customers included independent dealers, jobbers, a refiner, a farmers' cooperative, state and local governments, and other end-users and commercial accounts. Aztex also supplied gasoline to at least one consignee and one subsidiary. According to the audit file, the majority of Aztex's sales of motor gasoline occurred in Tennessee, although some customers apparently were located in Kentucky and Virginia. We believe that potential claimants in this proceeding will fall into the following categories: (1) Resellers (including retailers and refiners acting in the capacity of resellers) of motor gasoline, and (2) firms, individuals, or organizations that were consumers (end-users) of Aztex motor gasoline. The motor gasoline purchased by claimants will have been purchased either directly from Aztex or from other firms in a chain of distribution leading back to Aztex. As explained below, we propose that the Aztex consent order fund be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Aztex's alleged pricing or allocation practices.

1. *Claims Based on Alleged Price Violations.* With respect to customers who were consumers of Aztex motor gasoline, our experience in prior special refund proceedings has led us to believe that this category of customers can be presumed to have absorbed the full impact of any overcharges. *See* 10 CFR 205.282(e); *see also Marion Corp.,* 12 DOE ¶ 85,014 (1984); *Standard Oil (Indiana)/Union Camp. Corp.,* 11 DOE ¶ 85,007 (1983). We therefore propose that consumers need only submit information concerning the quantities of Aztex motor gasoline they purchased during the consent order period in order to demonstrate that they were injured.

We have also determined that agricultural cooperatives should not be required to make a detailed demonstration that they absorbed Aztex's alleged overcharges. While cooperatives operate as resellers, they are owned by their customers, and it can be assumed that those customer/owners incurred the injuries resulting from Aztex's alleged overcharges to the cooperatives. Likewise, the ultimate consumers of the motor gasoline purchased by the cooperative will receive the benefit of the refund either as a price reduction or as a distribution at the close of the cooperative's fiscal year. *See Office of Special Counsel* 9 DOE ¶ 82,538 at 85,203 (1982) (*Tenneco*). Thus, any agricultural cooperative will be required only to submit information concerning its purchase volumes, and a full explanation of the manner in which refunds will be passed through to its customers.(*1*)

Resellers who file refund claims based upon Aztex's alleged pricing violations generally will be required to establish that they absorbed the alleged overcharges. To make this showing, they will have to demonstrate that, at the time they purchased motor gasoline from Aztex, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, resellers will be required to show that they maintained "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement,* 10 DOE ¶ 85,029 at 88,125 (1982) (*Ada*). The maintenance of a bank will not, however, automatically establish injury.(*2*)

With respect to applicants who demonstrate that they are entitled to refunds based upon Aztex's alleged price violations, we propose to utilize a

volumetric method of allocating refunds. Under this method, a per gallon volumetric refund amount is calculated by dividing the settlement amount by the total volume of those products covered by the consent order that were sold by the firm during the consent order period. In previous refund cases where audit records have identified a well-defined and limited number of allegedly overcharged customers, and where specific overcharge amounts have been alleged, we have determined that refunds should be based on the pro rata share of the alleged overcharges. *See e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984). In the present case, however, information about alleged overcharges in the May 8, 1980 NOPV and the audit papers is not sufficiently specific to permit use of that methodology. The fact that a large portion of the alleged overcharges has already been refunded to the marketplace through price reductions further complicates any assessment of appropriate pro rata refunds in this proceeding, particularly since the audit records do not identify the recipients of those price reductions. Finally, the possibility of allocation claims in this proceeding would preclude a pro rata distribution based on alleged overcharged amounts even if specific information with respect to such amounts were readily available. We are therefore proposing to use the volumetric methodology to allocate the Aztex consent order fund. However, the recovery of a specific amount for each gallon of motor gasoline purchased is, like the other presumptions we are employing in this case, subject to challenge by refund claimants who seek to establish that the presumption should not be applied in their cases. *See Amoco*, 10 DOE at 88,199. Based on the information available to us at this time, the volumetric refund amount will be $0.00049 per gallon ($14,372.72 divided by 29,521,434 gallons of motor gasoline). Successful claimants will receive refunds based on their eligible purchase volumes mutltiplied by the volumetric refund amount, plus a proportionate share of the interest accrued on the consent order fund since it was remitted to the DOE.

We also intend to establish a threshold below which eligible resellers will not be required to make a detailed demonstration that they absorbed the alleged overcharges. The threshold figure should strike an appropriate balance between two competing considerations. While we are concerned that the expense of preparing an application not be grossly disproportionate to the potential refund to be gained, at the same time we believe that resellers that request large refunds should establish that they did not pass through any overcharges to their customers. In the past, the threshold has frequently been established as average monthly purchases of 50,000 gallons. *See Ada*, 10 DOE at 88,122. Our analysis of the record in this proceeding, however, leads us to conclude that a threshold higher than 50,000 gallons per month is appropriate here. Because of the extremely small per gallon refund available in this proceeding, claimants who purchased at the 50,000 gallons per month threshold level throughout the one year consent order period would receive a refund of only $294 plus interest (600,000 gallons multiplied by $0.00049). Thus, in order for a claimant to receive a refund in excess of that small amount, it would be required to prepare and submit detailed proof of injury. We believe that such a requirement would be excessively burdensome. After weighing and balancing various factors, and considering data in the audit file regarding the level of purchases by Aztex's customers, we have tentatively concluded that any eligible Aztex customer will be presumed to have incurred injury if the refund based on its total purchases of Aztex motor gasoline does not exceed $2,500.(3)

2. *Claims Based on Alleged Allocation Violations.* Claims for refunds based on alleged allocation violations are substantially different from those based on alleged overcharges.

Allocation claims are based on the consent order firm's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. *See* 10 CFR Part 211. In prior cases, we have held that allocation claimants should have been aware of alleged violations at the time they occurred, and should have contemporaneously complained to the DOE of the alleged violations. *See Tenneco; Amoco.* However, according to the audit records in the present case, Aztex allegedly violated the allocation regulations by the use of incorrect allocation fractions. *See* 10 CFR 211.10(b).(4) It is therefore likely that Aztex's base period purchasers were not necessarily aware of this alleged allocation violation, and thus were not in a position to have filed a timely complaint. Hence, we intend to treat allocation claims filed in this proceeding with greater flexibility than in past cases if they are based upon allegedly erroneous allocation fractions. With respect to this limited type of claim, we shall not require, as we did in *Tenneco*, that an allocation claimant must have contemporaneously complained of the consent order firm's alleged allocation practices. We propose that such an allocation claimant need only (i) submit information sufficient to document that it did not receive an alternate supply of motor gasoline, and (ii) provide a reasonable demonstration that its claim is well-founded, including the best available evidence of the injury sustained by the claimant.(5) However, with respect to other types of alleged allocation violations, we will presume that such claimants were aware of Aztex's alleged violations, and will not approve allocation claims for those months unless a timely complaint was made to the DOE. Finally, we propose to adopt a rebuttable presumption that if, during the course of the entire consent order period, an allocation claimant received aggregate volumes of motor gasoline at least equal to its adjusted base period allocation for that period, it was not injured by Aztex's failure to supply correct volumes during certain months. In view of the small size of the Aztex consent order fund, we believe that this presumption is justified in order to limit eligibility for allocation refunds to only those firms that were most adversely affected by Aztex's alleged allocation practices.

In accordance with our prior decisions, claimants who make a reasonable demonstration of an allocation violation may receive a refund based on the injury they probably sustained, which is generally on the basis of profits lost as a result of the failure to receive the allocated product. *See* 10 CFR 205.280; *Tenneco Oil Co./ Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982). We propose to follow this method in the present proceeding as well. However, if we receive numerous allocation claims, we may depart from the case-by-case method of calculating allocation claim refund amounts as done in prior proceedings and adopt a more general formula.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. In prior special refund cases, we have not approved refunds for less than $15.00 (the approximate cost to the government of issuing refund checks) because the cost to the public of issuing such small refunds exceeds the restitutionary benefits that may be achieved. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before distributing

any of the funds received as a result of the consent order involved in this proceeding, we intend to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. We will attempt to notify potential claimants in order to make them aware of this proceeding and to afford them an opportunity to comment on the procedures tentatively outlined in this Proposed Decision. At the present time, we lack addresses for many of Aztex's customers. We will contact all those potential claimants for whom we have addresses and will continue our efforts to obtain the addresses of other purchase of motor gasoline from Aztex.(6)

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in various ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of proposals containing alternative distribution schemes.

It Is Therefore Ordered That:

The $14,372.72 refund amount supplied by Aztex Energy Company pursuant to the consent order executed on October 7, 1981, will be distributed in accordance with the foregoing Decision.

Footnotes

(1) If the claimant is a regional cooperative that sells motor gasoline to local co-ops, we shall require the applicant to notify its customers that the distribution of any refund is expessly conditioned upon the redistribution of the refund by the local co-ops to their own customers.

(2) Several groups of purchasers shall be presumed not to have been injured by Aztex's alleged overcharges, and will therefore not be eligible for refunds. If resellers made only spot purchases from Aztex, for example, they will be ineligible to receive any refunds, unless they make a showing that rebuts the presumption that they were not injured. As we have previously noted, spot purchasers would not have made spot market purchases of a firm's product at increased prices unless they were able to pass through the full amount of the firm's quoted selling price at the time of purchase to their own customers. *See Vickers* at 85, 396–97. In order to overcome the rebuttable presumption that they were not injured, spot purchasers should submit additional evidence to establish that they were unable to recover the increased prices they paid to Aztex. *See Amoco* at 88,200.

It appears from the ERA audit file that at least one of Aztex's customers operated as an Aztex consignee. The prices charged by a consignee generally include a set, per gallon commission fee that is added to the wholesale price. This arrangement would have insured that a consignee did not absorb any alleged overcharges. Therefore, we also propose to establish a rebuttable presumption that claims submitted by consignees should not be approved. This presumption will be rebuttable if a consignee is able to establish that its sales volumes, and its corresponding commission revenues, declined due to the alleged uncompetitiveness of Aztex's prices. *See Amoco* at 88,200. We also note that Weigels, the one firm indentified as a consignee in the ERA audit files, apparently purchased some motor gasoline from Aztex on a non-consignment basis. The presumtion of non-injury of course does not apply to gasoline sold by the firm on other than a consignment basis.

As indicated in the text of this Dicision, Aztex also supplied motor gasoline to a subsidiary, Cloud-Southern Fuel Company, 50 percent of which was owned by Aztex during the audit period. However, these sales were not included in the audit which led to the NOPVs issued to Aztex and, thus, are not among the "specified transactions" which are covered by the consent order. *See* consent order ¶¶ 4 and 5. Accordingly, Cloud-Southern is not eligible for refunds from the Aztex consent order fund. It would also not be appropriate to grant a refund to this firm since the refund would inure to Aztex. In addition, it is unclear from the ERA audit file whether some of the retail outlets listed as customers of Aztex were independent dealers or Aztex company-operated stations. Any of the retail stations supplied by Aztex that were Aztex company-operated retail outlets should not be eligible for refunds since they were part of Aztex for pricing purposes. *See* 10 CFR Part 212, Subpart F. On the other hand, retail stations whose locations were owned and supplied by Aztex, but which were independently operated, will be elighible for refunds since they did not benefit from Aztex's alleged overcharges. Consequently, any refund applicant in this proceeding will be required to state that it was not an Aztex affiliate or subsidiary during the audit period.

(3) This provision shall of course not apply to claimants who fall into one of the groups of purchasers that are presumed not to have been injured by Aztex's alleged pricing practices. *See* footnote 2. With respect to eligible claimants, our examination of the audit records has not revealed the existence of any reseller customer whose purchase volumes would be large enough to generate a volumetric refund in excess of the $2,500 threshold. (A claimant would need to have purchased more than 5,100,000 gallons of motor gasoline from Aztex during the one year consent order period in order to receive a volumetric refund of $2,500.) Should there be any such claimants, however, these firms may limit their claims to the threshold level. If, however, they wish to receive refunds based upon their actual level of purchases, they will be required to make a detailed showing that they absorbed to alleged overcharges. Claimants that fail to make this showing will still be entitled to refunds based upon their purchase levels up to the threshold refund amount.

(4) Throughout the audit period, suppliers were required to calculate an allocation fraction pursuant to 10 CFR 211.10(b) prior to making an allocation. The allocation fraction for a particular month was calculated by dividing the supplier's allocable supply for that month by its supply obligation for the corresponding month of the base period.

(5) In discussing the showing required of allocation claimants in prior Subpart V proceedings, we stated that the firm would have to submit sufficient information to demonstrate that its claim was "not spurious." *See, e.g., Amoco,* 10 DOE at 88,220; *Tenneco,* 9 DOE at 85,206. In practice, we have approved allocation claims when an applicant has made a reasonable demonstration that its claim is well-founded. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.,* 10 DOE ¶ 85,012 (1982); *Compare Tenneco Oil Co./Kern Oil & Refining Co.,* 10 DOE ¶ 85,003 (1982) (refund application denied), *aff'd sub nom. Kern Oil & Refining Co.* v. *DOE,* No. CV 83–0096 RG (C.D. Cal. December 1, 1983) (DOE motion for summary judgment granted). Regardless of how we denominate the standard to be used in allocation refund cases, it must be emphasized that it is an equitable standard and less stringent than the level of proof required to demonstrate an actual violation of the DOE regulations. *See Kern Oil & Refining Co.,* v. *Tenneco Oil Co.,* 3 Fed. Energy Guidelines ¶ 26,469 (Temp. Emer. Ct. App. 1983).

(6) Three Aztex customers, Quality Oil Company, Quick Way Market, and Sexton Oil Company, have already contacted the DOE in connection with Aztex's alleged regulatory violations. They will be included on the service list in this proceeding.

[FR Doc. 84–19416 Filed 7–20–84; 8:45 am]
BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $9,719 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcment proceedings involving Blaylock Oil Company, Inc., a reseller-retailer of motor gasoline located in Homestead, Florida.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All

comments should conspicuously display a reference to case number HEF–0037.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 100 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Blaylock Oil Company, Inc., which settled possible pricing violations in the firm's sales of motor gasoline to wholesale and retail customers during the October 1, 1979 through December 31, 1979 audit period.

The Proposed Decision clarifies a prior Proposed Decision issued on February 7, 1984, which was found by the United States District Court for the Northern District of Georgia to be deficient in one respect. *Blaylock Oil Co.* v. *DOE*, Civ. No. C84–764 (June 5, 1984).

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Blaylock pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Blaylock motor gasoline during the audit period may file claim for refunds from the consent order fund. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Comments submitted in response to the February 7, 1984 Proposed Decision need not be refiled. Commenting parties are requested to submit within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: July 12, 1984.

George B. Breznay,

Director, Office of Hearing and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Blaylock Oil Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0037.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as part of a settlement agreement or pursuant to a Remedial Order. The Subpart V process may be used in situations where the DOE is unable readily to identify the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Blaylock Oil Company, Inc. (Blaylock). Blaylock is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Homestead, Florida. The firm was subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F until January 28, 1981, when motor gasoline and other refined petroleum products were exempted from price and allocation controls. Exec. Order No. 12287, 46 FR 9909 (January 30, 1981). A DOE audit of Blaylock's records revealed possible regulatory violations in the amount of $90,829.43 with respect to the firm's pricing of motor gasoline during the period October 1, 1979 through December 31, 1979 (the audit period). In order to settle all claims and disputes between Blaylock and the DOE regarding the firm's sales of motor gasoline during that three month period, Blaylock and the DOE entered into a consent order on October 15, 1981, in which Blaylock agreed to remit to the DOE $9,719 to be deposited into an interest-bearing escrow account for ultimate distribution to the parties injured by the alleged overcharges. The firm also agreed to pay a civil penalty of $292.

On February 7, 1984, in response to the ERA's request, the OHA issued a Proposed Decision and Order (PDO) tentatively outlining a two-stage procedure for the distribution of the escrowed Blaylock consent order funds. We stated that, in the first stage, the funds would be distributed to claimants who satisfactorily demonstrated that they had been adversely affected by Blaylock's alleged pricing practices. In addition, we noted that after meritorious claims were paid in the first stage, a second-stage procedure might become necessary. We pointed out that the ultimate distribution of any funds remaining after first-stage claims had been disposed of could not be determined until after the first stage. We stated that we intended to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

On March 7, 1984, Blaylock filed a document entitled "Petition for Modification or Recision of Proposed Decision and Order of the Office of Hearings and Appeals, Case Number HEF–0037." In that document, Blaylock contended that distribution of the consent order funds pursuant to Subpart V is prohibited by the terms of the consent order and would harm the business reputation and good will of the firm. On March 12, 1984, this Office sent a letter to Blaylock in which we stated that the March 7 submission would be treated as comments concerning the PDO. We further stated that we would address the issues raised by Blaylock when we issued a final Decision and Order in this proceeding.

On April 18, 1984, Blaylock filed suit for declaratory judgment and injunctive relief against the DOE in the United States District Court for the Northern District of Georgia. Blaylock's complaint was based on substantially the same contentions as those raised in its March 7 submission to this Office. In a decision issued on June 5, 1984, the court rejected the contention that this refund proceeding was barred by the settlement. *Blaylock Oil Co.* v. *DOE*, Civ. No. C84–764 (N.D. Ga. June 5, 1984). The court did, however, find that the language of the PDO was "deficient in one respect." *Id.*, slip op. at 14–15. Specifically, the court noted that the PDO characterized certain groups (i.e., resellers whose claims are based on

purchases of less than 50,000 gallons and end-users) as being exempt from the requirement that they demonstrate that they were injured by Blaylock's alleged overcharges. Since Subpart V specifically provides for refunds to "injured persons," 10 CFR 205.280, the court concluded that "customers must prove injury in order to collect refunds." *Id.*, slip op. at 15. The court therefore granted Blaylock's petition for a preliminary injunction in part, and directed the DOE not to proceed with the Blaylock special refund proceeding until such time as the language in the PDO is modified in accordance with the court order. *Id.*, slip op. at 16.

II. Discussion.

As the district court stated, the purpose of the Subpart V procedures is to provide refunds to those parties who were injured by actual or alleged violations of the DOE regulations. The February 7, 1984 PDO which we issued with respect to the Blaylock Subpart V proceeding recognized this purpose, and it stated that, "We propose that the Blaylock consent order funds be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Blaylock's alleged pricing practices." PDO at 2. It certainly was not our intention to propose that refunds be granted to parties who were not found to be injured by the alleged overcharges. However, in view of the new PDO in this proceeding which more precisely explains the procedures we intend to implement.(*1*)

In view of the differences in the types of firms that file refund applications and in the types of information and data that are available to show injury, in numerous special refund proceedings we have exercised our equitable discretion under Section 205.282(e) of the Subpart V regulations to establish presumptions with respect to the injuries sustained by various categories of claimants.(*2*) *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982) (*Ada*). The rationale for the use of such presumptions is based on considerations of both equity and administrative efficiency:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.
>
> 10 CFR 205.282(e).

Presumptions have been established for certain types of applicants because we recognize that certain persons lack the resources and sophisticated accounting systems needed to be able to submit detailed proof of injury. The use of presumptions enables individual consumers and small firms who experienced injury as a result of alleged overcharges to qualify for refunds. *See Standard Oil Company (Indiana)/ Ridge View Standard*, 12 DOE ¶ 85,009 at 88,016 (1984). They also permit the affected public to participate in refund proceedings in spite of the difficulty each firm has in establishing how much of the alleged overcharges was experienced at its level of distribution. In the *Amoco* proceeding, for example, we used national price and profit margin data to establish presumptions concerning the proportion of injury sustained at various levels of distribution of the various Amoco products. *See Amoco*, 10 DOE at 88,205–17. In many other proceedings, we have established small claims threshold purchase levels below which claimants were not required to submit further proof of injury. *See, e.g., Ada*, 10 DOE at 88,122. In addition, we have generally presumed that end-users absorbed overcharges since they do not resell the covered products they purchase, and they were not subject to Federal energy regulations. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In Subpart V proceedings, we attempt to distribute consent order funds to those persons who were injured as a result of the alleged pricing and allocation violations settled by the consent order. Most consent orders resolve a firm's alleged violations in general categories of transactions without providing information as to how the alleged overcharges were allocated among particular purchasers and without indicating the weight which any purchaser's specific alleged overcharge was given in the settlement process. In these situations, we generally presume that the alleged overcharges were spread equally among all gallons of product sold which were covered by the settlement, unless more precise information is available from the audit file or other enforcement documents.

In Subpart V proceedings, injury may be demonstrated in a number of ways and the type of showing required will generally vary with the size and nature of the claimant and the completeness and degree of sophistication of the claimant's records. For example, as noted above, an end-user claimant who was the ultimate consumer of the petroleum product which was allegedly sold at illegal prices may be presumed to have absorbed the alleged overcharges since it did not have the opportunity to pass through the alleged overcharges by reselling the product bearing the alleged overcharges. An end-user can thus demonstrate sufficiently the injury it experienced by showing that it did in fact purchase specific quantities of the product from the consent order firm. On the other hand, a claimant whose business operations were at the wholesale or retail level of the petroleum industry distribution chain, and which was permitted by price controls to pass through to its resale customers any price increases charged by its supplier, is generally required to submit more detailed proof that it absorbed the alleged overcharges and thereby incurred an injury.

III. Proposed Refund Procedures

We will now apply the general principles discussed above to the Blaylock Subpart V proceeding. As we have stated, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See generally Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. The first stage will attempt to refund moneys to identifiable purchasers of Blaylock motor gasoline who are able to make a showing that they have been injured by Blaylock's alleged pricing practices during the period October 1, 1979 through December 31, 1979. After meritorious claims are paid out in the first stage, a second-stage refund procedure may become necessary. *See Amoco* (refund procedures established for first-stage applicants; second-stage refund procedures tentatively proposed).

We propose that the Blaylock consent order funds be distributed to claimants who satisfactorily demonstrate that they have been injured by Blaylock's alleged pricing practices. From our review of the record, we believe that the claimants in this proceeding will fall into the following categories: (1) resellers (including retailers) of motor gasoline, and (2) firms, individuals, or organizations that were consumers (end-users) of Blaylock motor gasoline. The motor gasoline purchased by these claimants will have been purchased either directly from Blaylock or from other firms in a chain of distribution leading back to Blaylock.

Resellers generally will be required to establish that they absorbed the alleged overcharges. To make this showing, they

will have to demonstrate that, at the time they purchased motor gasoline from Blaylock, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, resellers will be required to show that they maintained "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Ada.* However, resellers will not be required to submit further proof of injury if their claims are based on average monthly purchases of less than 50,000 gallons.(3) *Id.*, 10 DOE at 88,122. As in many prior special refund cases, we will presume that all purchasers were injured to some extent by the alleged pricing practices which led to the issuance of the consent order. The adoption of a threshold level below which a claimant does not have to submit any additional evidence of injury is based upon a balancing of several factors. First, the cost of compiling information sufficient to make a detailed showing of injury should be considered. Second, the per gallon refund amount must be considered in conjunction with the length of the audit period. Third, the nature of the potential refund applicant's business operations should be considered. As we have stated in previous refund cases, our experience indicates that small businesses, such as single outlet retailers, generally maintain a less sophisticated recordkeeping system than larger firms. The threshold level should be set to minimize unnecessary burdens on small businesses which, without a threshold level, might well be precluded from receiving refunds to redress their injuries. After weighing and balancing these various factors, we have concluded that adoption of the 50,000 gallons per month threshold is appropriate in this case. In order to demonstrate injury due to Blaylock's alleged overcharges, resellers whose claims are based upon the threshold purchase level need only provide documentation that verifies their specific monthly purchases of Blaylock motor gasoline.

If resellers made only spot purchases from Blaylock, however, we propose that they should be presumed to have suffered no injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–7. The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, spot purchasers should submit additional evidence to establish that they were unable to recover the increased prices they paid to Blaylock. *See Amoco*, 10 DOE at 88,200.

With respect to customers who were consumers of Blaylock motor gasoline, as noted above our experience in prior special refund proceedings has led us to conclude that this category of customers absorbed the full impact of any overcharges. *See also Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana)/Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983). Therefore, in this proceeding, we propose that consumers need only document the specific quantities of Blaylock motor gasoline they purchased during the consent order period in order to demonstrate injury.

With respect to applicants who demonstrate that they are entitled to refunds, we propose to utilize a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by the total volume of those products covered by the consent order that were sold by the firm during the consent order period. In the present case, based on the information available to us at this time, the volumetric refund amount will be $0.00459 per gallon ($9,719 divided by 2,116,189 gallons of motor gasoline). Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proportionate share of the interest accrued on the consent order fund since it was remitted to the DOE. However, the recovery of the specified amount for each gallon of motor gasoline purchased is, like the other presumptions we are employing in this case, subject to challenge by refund claimants who seek to establish that the presumption should not be applied in their cases and are able to demonstrate that the alleged overcharges resolved by the consent order were disproportionately borne by them, resulting in a level of injury in excess of the volumetric presumption.

As in previous cases, we will establish a minimum refund amount of $15.00 for first-stage claims. We have found through our experience in prior refund cases that the cost of processiong claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize the distribution process to solicit comments on these proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing the proposed and final Decisions and Orders in the **Federal Register**, copies of these decisions will be provided to the Southeastern Independent Oil Marketers Association, and also to the Independent Gasoline Marketers Council, the National Oil Jobbers Council, the Service Station Dealers of America, the Society of Independent Gasoline Marketers of America, and the Allied Gasoline Retailers Association of Florida. These organizations should be helpful in advising potential claimants of this proceeding. In addition, we are continuing our efforts to obtain a list of the names and addresses of first purchasers of Blaylock motor gasoline.(4)

In the event that money remains after all first-stage claims have been disposed of, undistributed funds could be distributed in various ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is Therefore Ordered That:

The $9.719 refund amount supplied by Blaylock Oil Company, Inc. pursuant to the consent order executed on October 15, 1981, will be distributed in accordance with the foregoing Decision.

Footnotes

(1) We are also reviewing, and, where necessary, revising draft proposed and final decisions in other pending Subpart V proceedings to make it clear that in order for a claimant to be eligible for a refund in a Subpart V proceeding, the individual or firm must have suffered injury resulting from the alleged overcharges resolved by the Consent Order.

(2) This Office has processed more than 11,000 refund applications and distributed more than $40 million in Subpart V proceedings. Our refund decisions therefore reflect substantial administrative experience. This expertise permits us to establish the sorts of presumptions that help in distributing refunds equitably and efficiently.

(3) Resellers whose average monthly purchases during the period for which a refund is claimed exceed 50,000 gallons, and who fail to demonstrate sufficiently that they absorbed the alleged overcharges, or who

limit their claims to the threshold amount, will still be eligible under this presumption for a refund for purchases up to the 50,000 gallons per month threshold. *See Vickers*, 8 DOE at 85,396; *see also Ada*, 10 DOE at 88,122.

(4) In the letter accompanying the copy of the February 7, 1984 PDO which we sent to Blaylock, we requested the firm's assistance in providing us with the names of its customers. The firms's March 7 submission construes this as an order directing the firm to submit this information. This is not the case. We have no intention of requiring Blaylock to provide the requested infomation.

[FR Doc. 84-19417 Filed 7-20-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of June 22 Through June 29, 1984

During the Week of June 22 through June 29, 1984, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: July 11, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 22 through June 29, 1984]

Date	Name and location of applicant	Case No.	Type of Submission
May 21, 1984	Economic Regulatory Administration/Pel-Star Energy, Inc., Washington, DC.	HRJ-0050	Request for Protective Order. If granted: Economic Regulatory Administration would enter into a Protective Order with Pel-Star Energy, Inc., regarding the release of copies of ARCO's Pipe Line documents which were attached to ERA's November 22, 1983 Response to Statement of Objectives.
June 25, 1984	Cooper, Kirkham & McKinney, San Francisco, California	HFA-0231	Appeal of an Information Request Denial. If granted: Cooper Kirkham & McKinney would receive access to copies of all enforcement documents, information, reports, audits and other materials relating to a Consent Order between the Department of Energy and Union Oil Company of California.
June 25, 1984	Marathon Oil Company, Washington, DC	HRH-0027	Request for Evidentiary Hearing. If granted: An evidentiary hearing would be convened in connection with the Statement of Objectives submitted by Marathon Oil Company in response to the April 21, 1980 Proposed Remedial Order issued to Marathon Oil Company.
June 25, 1984	MGPC, Inc., Los Angeles, California	HRD-0221 and HRH-0221	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by MGPC, Inc. in response to the May 8, 1984 Proposed Remedial Order (Case No. HRO-0226) issued to MGPC, Inc.

REFUND APPLICATIONS RECEIVED

[Week of June 22 to June 29, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No.
June 25, 1984	Belridge/North Dakota; Amoco/North Dakota	RQ8-94, RQ21-95
June 26, 1984	Marion/Bon Secour Fisheries, Inc.	FR37-8
June 28, 1984	Belridge/Standing Rock Sioux Tribe; Amoco/Standing Rock Sioux Tribe	RF8-96, RF21-97

[FR Doc. 84-19418 Filed 7-20-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2635-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Martha Chow; Office of Standards and Regulations; Regulation and Information Management Division (PM-223); U.S. Environmental Protection Agency; 401 M Street SW.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Research and Development Programs

• Title: Examination of Costs from Selected Water Systems (EPA #1105).

Abstract: EPA will collect data once on costs and characteristics of water supply systems. This collection will include systems both in and out of compliance with maximum contaminant levels under the Safe Drinking Water Act. The Agency will use the data to compare costs and characteristics of these systems and to assess the cost of complying with the regulations.

Respondents: Businesses plus state and local governments.

Agency PRA Clearance Requests Completed by OMB

EPA #0002, POTW Pretreatment Program Approval Request, was approved 3 June 1984 (OMB #2040-0009).

EPA #0309, Fuel Additive Manufacturer Notification, was approved 9 July 1984 (OMB #2000-0011).

EPA #0314, Fuel Manufacturer Notification for Motor Vehicle Fuel,

was approved 9 July 1984 (OMB #2000–0283).

EPA #0983, NSPS for Petroleum Refinery Fugitive Emissions, was approved 18 May 1984 (OMB #2060–0067).

EPA #1157, NSPS for Rotogravure Printing and Coating of Flexible Vinyl and Urethane—Reporting and Recordkeeping, was approved 3 July 1984 (OMB #2060–0073).

EPA #1168, Notice of Rights in Data and Contract Requirements for Delivery of Additional Data, was approved 18 June 1984 (OMB #2030–0012).

EPA #1169, Questionnaire to Obtain Bidding and Contractural Data Under EPA Construction Grants, was approved 20 June 1984 (OMB #2090–0010).

Comments on all parts of this notice should be sent to:

Martha Chow (PM–223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation and Information Management Division, 401 M Street SW., Washington, D.C. 20460

and

Wayne Leiss, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, D.C. 20503.

Dated: July 16, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84–19235 Filed 7–20–84; 8:45 am]

BILLING CODE 6560–50–M

[OW-FRL-2636-3]

Water Quality Criteria; Request for Comments; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Extension of the comment period on the draft bacteriological ambient water quality criteria document.

SUMMARY: Environmental Protection Agency (EPA) announces a 60 day extension for public comment on a draft bacteriological criteria document.

DATE: Written comments should be submitted by September 24, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Kent Ballentine, Environmental Protection Agency, Criteria Branch (WH–585), Washington, D.C. 20460. (202) 245–3030.

SUPPLEMENTARY INFORMATION: On Thursday, May 24, 1984, EPA announced the availability for public comment of a draft bacteriological criteria document (49 FR 21987). By a letter dated June 6, 1984, the Association of Metropolitan Sewage Agencies requested a 60-day extention of the original comment period of July 23, 1984. EPA has decided to grant the requested extension of the comment period. EPA will now consider comments received by September 24, 1984.

Dated: July 16, 1984.

Henry L. Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84–19339 Filed 7–20–84; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Order Declaring Insolvency and Appointing Receiver; Puget Sound Production Credit Association

ACTION: Notice.

On October 7, 1983, the Governor of the Farm Credit Administration ("FCA"), pursuant to the provisions of § 4.12 of the Farm Credit Act of 1971, 12 U.S.C. 2183(b), and 12 CFR 611.1130, issued an order which declared the Puget Sound Production Credit Association ("PCA") insolvent and appointed Dan Williams as receiver for purposes of liquidating its assets, paying its creditors and winding up its affairs.

In his capacity as receiver, Dan Williams, as agent of the FCA, is granted possession of all of the assets of Puget Sound PCA and is empowered to execute, acknowledge, and deliver any instrument necessary for any authorized purpose and such instruments are valid and effectual as if they had been executed by the PCA's officers by authority of its board of directors. For the purpose of alleviating certain logistical problems associated with obtaining the receiver's signature on documents during his unavailability or absence, the Order Insolvency and Appointing Receiver is hereby amended to authorize the receiver to delegate signatory authority to an employee of the PCA in receivership. As with all of the receiver's duties and authorites, this authority will be exercised in accordance with the specific requirements and controls contained in the FCA Receivership Manual.

In order to facilitate the performance of his duties as receiver of the Puget Sound PCA, and to clarify his authority as agent of the FCA, the Order Declaring Insolvency and Appointing Receiver, as hereby amended, is published in its entirety:

Order Declaring Insolvency and Appointing Receiver

On 10 August, 1983, the Farm Credit Administration ("FCA") determined that the capital of the Puget Sound Production Credit Association ("PCA"), Mt. Vernon, Washington, was impaired and, pursuant to 12 CFR 611.1140, imposed special supervisory procedures upon the further operations of the Puget Sound PCA until further notice. 48 FR 39289, as corrected by 48 FR 40319.

The FCA has now further determined that the impairment of the Puget Sound PCA's capital cannot be corrected through structural or operating changes and that the Puget Sound PCA is in default upon its obligation to the Federal Intermediate Credit Bank of Spokane. Therefore, pursuant to the provisions of § 4.12 of the Farm Credit Act of 1971, 12 U.S.C. 2183(b) and 12 CFR 611.1130, I hereby declare the Puget Sound PCA insolvent and appoint Dan Williams as receiver for the purpose of liquidating its assets, paying its creditors and winding up it affairs.

I. Actions To Be Taken Immediately

This order shall constitute notice that the receiver is hereby granted possession of all assets of the Puget Sound and shall take the following actions:

A. Post a notice in substantially the following form on the door of the PCA's home office and each branch office:

Puget Sound Production Credit Association, Mt. Vernon, Washington, is in the possession and charge of the undersigned as receiver appointed by the Farm Credit Administration.

By: ————Receiver

Date: ————

B. Provide notice that Puget Sound PCA has been declared insolvent and appointing a receiver by written notice, served personally or by first class mail on all persons and entities that the receiver knows to own any equities in the PCA or to be holding or in possession of any assets of the PCA.

II. The Powers and Duties of the Receiver

A. The receiver, subject to the terms of this order and the FCA Receivership Manual, is authorized and empowered to:

(1) Take any action the receiver considers appropriate or expedient to carry on the business of the PCA during the process of liquidating its assets and winding up its affairs;

(2) Extend credit to existing borrowers as necessary to honor existing

commitments and to effectuate the purposes of the receivership;

(3) Borrow such sums as may be necessary to effectuate the purpose of the receivership;

(4) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the PCA's assets or property, or rehabilitate or improve such property and assets;

(5) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the PCA or the receiver has a lien or in which the PCA or receiver has an interest of value, and pay off and discharge any liens, claims, or charges of any nature against such property;

(6) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the receiver or the PCA or in which the receiver, the PCA or its creditors or members has any interest, and represent in every way the PCA, its members and creditors;

(7) Employ attorneys to give legal advice and assistance for the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs;

(8) Hire any employees necessary for proper administration of the receivership, including the hiring of liquidation agents, which employees shall be covered by a bond satisfactory to the receiver and the FCA;

(9) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effectual as if it had been executed by the PCA's officers by authority of its board of directors;

(10) Sell for cash any mortgage, deed of trust, chose in action, note, contract, judgment or decree, stock or debt owing to the association or any property (real or personal, tangible or intangible) acquired in satisfaction thereof;

(11) Purchase or lease office space, automobiles, furniture, equipment, and supplies necessary for the conduct of the receivership;

(12) Release any asset, or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome;

(13) Settle, release, or obtain release of, for cash or other consideration, claims and demands against, or in favor of, the PCA or the receiver;

(14) Pay out of the assets of the PCA all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver, as determined by the receiver, except as otherwise provided herein;

(15) Pay out of the assets of the PAC all approved claims of indebtedness in accordance with priorities established herein;

(16) Take all actions and have such rights, powers and privileges as are necessary and incident to the exercise of any specific power; and

(17) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the FCA authorizes, directs, confers or imposes by order or by amendment or this order of by regulation.

B. All rights, privileges and powers of the board of directors and officers of Puget Sound PCA are hereby suspended, and the positions of said individuals with the PCA are hereby terminated.

III. Preservation of Equity

No capital stock, participation certificates, equity reserves or other allocation equities of Puget Sound PCA shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities, except as provided for in this order or as otherwise approved by the FCA.

IV. Notice to Stockholders

As soon as practicable after the receiver takes possession of the Puget Sound PCA, the receiver shall notify each holder of stock and participation certificates of the following matters:

(1) The number of such holders owns;

(2) The options available to such holder regarding the repayment or transfer of loans;

(3) The services available to current borrowers during the winding up of the affairs of the Puget Sound PCA;

(4) The names and locations of the other production credit associations to which the Puget Sound PCA's territory has been assigned; and

(5) Such other matters as the receiver or the FCA deems necessary.

V. Creditors Claims

A. The receiver is directed to publish promptly a notice to creditors to present their claims against the Puget Sound PCA, with proof thereof, to the receiver by a date specified in the notice, which shall be 90 calendar days after the first publication. The notice shall be published again 30 days and 60 days, respectively, after the first publication. Claims filed after the specified date shall be disallowed, except as the receiver, with the concurrence of the FCA, may approve them for full or partial payment from the PCA's assets remaining undistributed at the time of approval. The receiver shall promptly mail a similar notice to any creditor shown on the PCA's books at the creditor's last address appearing thereon.

B. The receiver, with the approval of the FCA, shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority which is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Mailing notice of the disallowance to the claimant's last address appearing on the PCA's association's books or on the proof of claim shall be sufficient notice. Unless, within 30 days after notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance, disallowance shall be final. The receiver shall reconsider any claim upon the timely request of the claimant and, with the concurrence of the FCA, may approve or disapprove such claim in whole or in part.

C. The receiver shall cause to be filed with the FCA, at such times and in such manner as FCA shall require, a complete list of claims presented, indicating the character of each claim and whether allowed by the receiver.

D. Creditors' claims which are allowed and approved by the FCA shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established herein and in such manner and amounts as the receiver deems appropriate, with the approval of the FCA.

VI. Sale and Transfer of Loans

A. The receiver is authorized to sell loans to any commercial lending institution at fair market value (including the amount borrowed to purchase stock in the Puget Sound PCA); and

B. The receiver is authorized to sell loans to a PCA that has been authorized, by charter amendment, agreement or otherwise, to make loans in the territory heretofore served by the Puget Sound PCA ("purchasing PCA") only on the following basis:

(1) A loan may be sold at its fair market value (including the amount borrowed to purchase stock or participation certificates in the Puget

Sound PCA) and the borrower will immediately make the required capital investment in the purchasing PCA by providing cash sufficient therefor or by increasing the loan by an amount necessary to make such capital investment; or

(2) The loan may be sold at its fair market value (including the amount borrowed to purchase stock or participation certificates in Puget Sound PCA) in conjunction with an agreement between the borrower, the receiver, the Federal Intermediate Credit Bank of Spokane, and the purchasing PCA, which provides for a loan from the Federal Intermediate Credit Bank of Spokane for the required capital investment in the purchasing PCA, to be repaid on or before the completion of the liquidation of Puget Sound PCA, on terms set forth in the agreement.

VII. Priority of Claims

A. The following priority of claims shall apply to the distribution of assets:

(1) All costs, expenses and debts of the PCA in receivership that were incurred or, with the approval of the FCA, expressly assumed on or after the date of the appointment of the receiver.

(2) All claims for taxes incurred prior to the appointment of the receiver.

(3) All claims for costs, expenses and debts of the PCA in receivership that were incurred or, with the approval of the FCA, expressly assumed after the date Puget Sound PCA was placed under procedures of the FCA pursuant to FCA Regulation 12 CFR 611.1140.

(4) All claims for wages or salaries, including vacation, severance, and sick leave pay incurred during the 90 days prior to the order imposing special supervisory procedures of the FCA upon the PCA's operations, pursuant to FCA Regulation 12 CFR 611.1140.

(5) All claims of creditors which are secured by, or constitute a lien on, assets or property of the PCA in accordance with the laws of the jurisdiction in which the Puget Sound PCA is located, and in the order of priority established by such laws. Such claims shall be paid in accordance with the "equity rule" whereby the claimant shall have the right to receive, consistent with the priorities established in this section, full dividends from the receivership on the total claim with the collateral securing such claim to be held available to pay any deficiency between the total claim and such dividends.

(6) All secured claims of the FICB except those provided for in subsection (5), including interest accrued before and after the appointment of the receiver, except claims it may have by reason of its ownership of stock in the PCA, minus any setoff for stock of the FICB owned by the Puget Sound PCA.

(7) All claims of general creditors.

(8) All claims of stockholders and holders of participation certificates and other equities in accordance with the priorities set forth in the bylaws of the Puget Sound PCA.

B. All claims of any class described in section (A) shall be paid in full, or provision made for such payment, prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay any class of claims in full, distribution on such class shall be on a pro rata basis.

VIII. Inventory, Examination and Audit

A. As soon as practicable after taking possession, the receiver shall make an inventory of the assets of the Puget Sound PCA as of the date possession was taken. Such inventory shall include the book value and the fair market value of the association's assets and any security therefor. The method of listing assets must provide such information to the satisfaction of the FCA. One copy of the inventory shall be filed with the FCA.

B. The Puget Sound PCA in Receivership shall be examined and audited by the FCA on an annual basis. The cost of such examination and audit, as determined by the FCA, shall be paid from the assets of the Puget Sound PCA in Receivership.

C. The FCA may from time to time prescribe accounting practices to be followed and require such reports as it deems appropriate on such forms as it may prescribe. One copy of the reports required by this section shall be filed with the Deputy Governor, Office of Examination and Supervision, Region II, FCA, and one copy shall be retained in the receiver's principal office.

IX. Final Discharge and Release of Receiver

When the receiver recommends final distribution of assets or is otherwise relieved of its duties by the FCA, the receiver shall file with the FCA a detailed report in a form satisfactory to the FCA. Unless the FCA otherwise directs, upon final liquidation of the receivership or when the receiver completes or is otherwise relieved of its duties, the receivership shall be examined and audited pursuant to 12 CFR 617.7090. The receiver's accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released.

X. Adjoining Production Credit Associations

A. Pending appropriate amendment to their respective charters, the production credit associations which are chartered to operate in territories adjoining that of the Puget Sound PCA are hereby authorized to extend credit and other services as authorized by law to any eligible borrower located within the territory of the Puget Sound PCA on such terms and conditions as may be approved by the FICB of Spokane.

B. The representative of the FCA at the Puget Sound PCA and the President of the FICB of Spokane shall be notified of this declaration of insolvency and appointment of receiver immediately upon execution of this order and a copy of same shall be transmitted to them by electronic mail. The representative of the FCA is hereby authorized to act as the agent of the receiver for purposes of this order.

This order is effective October 7, 1983, at 11:50 a.m., Eastern Standard Time.

C.T. Fredrickson,

Senior Deputy Governor.

[FR Doc. 84-19345 Filed 7-20-84; 8:45 am]

BILLING CODE 6705-01-M

Order Declaring Insolvency and Appointing Receiver; Southern Oregon Production Credit Association

ACTION: Notice.

On October 19, 1983, the Governor of the Farm Credit Administration ("FCA"), pursuant to the provisions of § 4.12 of the Farm Credit Act of 1971, 12 U.S.C. 2183(b), and 12 CFR 611.1130, issued an order which declared the Southern Oregon Production Credit Association ("PCA") insolvent and appointed Dan Williams as receiver for purposes of liquidating its assets, paying its creditors and winding up its affairs.

In his capacity as receiver, Dan Williams, as agent of the FCA, is granted possession of all of the assets of Southern Oregon PCA and is empowered to execute, acknowledge, and deliver any instrument necessary for any authorized purpose and such instruments are valid and effectual as if they had been executed by the PCA's officers by authority of its board of directors. For the purpose of alleviating certain logistical problems associated with obtaining the receiver's signature on documents during his unavailability or absence, the Order Declaring Insolvency and Appointing Receiver is hereby amended to authorize the receiver to delegate signatory authority to an employee of the PCA in receivership. As with all of the

receiver's duties and authorities, this authority will be exercised in accordance with the specific requirements and controls contained in the FCA Receivership Manual. In order to facilitate the performance of his duties as receiver of the Southern Oregon PCA, and to clarify his authority as agent of the FCA, the Order Declaring Insolvency and Appointing Receiver, as hereby amended, is published in its entirety:

Order Declaring Insolvency and Appointing Receiver

On 10 August, 1983, the Farm Credit Administration ("FCA") determined that the capital of the Southern Oregon Production Credit Association ("PCA"), Medford, Oregon, was impaired and, pursuant to 12 CFR 611.1140, imposed special supervisory procedures upon the further operations of the Southern Oregon PCA until further notice. 48 FR 39290, as corrected by 48 FR 40319.

The FCA has now further determined that the impairment of the Southern Oregon PCA's capital cannot be corrected through structural or operating changes and that the Southern Oregon PCA is in default upon its obligation to the Federal Intermediate Credit Bank of Spokane. Therefore, pursuant to the provisions of § 4.12 of the Farm Credit Act of 1971, 12 U.S.C. 2183(b) and 12 CFR 611.1130, I hereby declare the Southern Oregon PCA insolvent and appoint Dan Williams as receiver for the purpose of liquidating its assets, paying its creditors and winding up its affairs.

I. Actions to be Taken Immediately

This order shall constitute notice that the receiver is hereby granted possession of all assets of the Southern Oregon PCA and shall take the following actions:

A. Post a notice in substantially the following form on the door of the PCA's home office and each branch office:

Southern Oregon Production Credit Association, Medford, Oregon, is in the possession and charge of the undersigned as receiver appointed by the Farm Credit Administration.

By: ——— Receiver

Date: ———

B. Provide notice that Southern Oregon PCA has been declared insolvent and appointing a receiver by written notice, served personally or by first class mail on all persons and entities that the receiver knows to own any equities in the PCA or to be holding or in possession of any assets of the PCA.

II. The Powers and Duties of the Receiver

A. The receiver, subject to the terms of this order and the FCA Receivership Manual, is authorized and empowered to:

(1) Take any action the receiver considers appropriate or expedient to carry on the business of the PCA during the process of liquidating its assets and winding up its affairs;

(2) Extend credit to existing borrowers as necessary to honor existing commitments and to effectuate the purposes of the receivership;

(3) Borrow such sums as may be necessary to effectuate the purpose of the receivership;

(4) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the PCA's assets or property, or rehabilitate or improve such property and assets;

(5) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the PCA or the receiver has a lien or in which the PCA or receiver has an interest of value, and pay off and discharge any liens, claims, or charges of any nature against such property;

(6) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the receiver or the PCA or in which the receiver, the PCA or its creditors or members has any interest, and represent in every way the PCA, its members and creditors;

(7) Employ attorneys to give legal advice and assistance for the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs;

(8) Hire any employees necessary for proper administration of the receivership, including the hiring of liquidation agents, which employees shall be covered by a bond satisfactory to the receiver and the FCA;

(9) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effectual as if it had been executed by the PCA's officers by authority of its board of directors;

(10) Sell for cash any mortgage, deed of trust, chose in action, note, contract, judgment or decree, stock or debt owing to the association or any property (real or personal, tangible or intangible) acquired in satisfaction thereof;

(11) Purchase or lease office space, automobiles, furniture, equipment, and supplies necessary for the conduct of the receivership;

(12) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome;

(13) Settle, release, or obtain release of, for cash or other consideration, claims and demands against, or in favor of, the PCA or the receiver;

(14) Pay out of the assets of the PCA all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver, as determined by the receiver, except as otherwise provided herein;

(15) Pay out of the assets of the PCA all approved claims of indebtedness in accordance with priorities established herein;

(16) Take all actions and have such rights, powers and privileges as are necessary and incident to the exercise of any specific power; and

(17) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the FCA authorizes, directs, confers or imposes by order or by amendment of this order or by regulation.

B. All rights, privileges and powers of the board of directors and officers of Southern Oregon PCA are hereby suspended, and the positions of said individuals with the PCA are hereby terminated.

III. Preservation of Equity

No capital stock, participation certificates, equity reserves or other allocated equities of Sourthern Oregon PCA shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities, except as provided for in this order or as otherwise approved by the FCA.

IV. Notice to Stockholders

As soon as practicable after the receiver takes possession of the Southern Oregon PCA, the receiver shall notify each holder of stock and participation certificates of the following matters:

(1) The number of shares such holder owns;

(2) The options available to such holder regarding the repayment of transfer of loans;

(3) The services available to current borrowers during the winding up of the affairs of the Southern Oregon PCA;

(4) The names and locations of the other production credit associations to which the Southern Oregon PCA's territory has been assigned; and

(5) Such other matters as the receiver or the FCA deems necessary.

V. Creditors Claims

A. The receiver is directed to publish promptly a notice to creditors to present their claims against the Southern Oregon PCA, with proof thereof, to the receiver by a date specified in the notice, which shall be 90 calendar days after the first publication. The notice shall be published again 30 days and 60 days, respectively, after the first publication. Claims filed after the specified date shall be disallowed, except as the receiver, with the concurrence of the FCA, may approve them for full or partial payment from the PCA's assets remaining undistributed at the time of approval. The receiver shall promptly mail a similar notice to any creditor shown on the PCA's books at the creditor's last address appearing thereon.

B. The receiver, with the approval of the FCA, shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority which is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Mailing notice of the disallowance to the claimant's last address appearing on the PCA's association's books or on the proof of claim shall be sufficient notice. Unless, within 30 days after notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance, disallowance shall be final. The receiver shall reconsider any claim upon the timely request of the claimant and, with the concurrence of the FCA, may approve or disapprove such claim in whole or in part.

C. The receiver shall cause to be filed with the FCA, at such times and in such manner as FCA shall require, a complete list of claims presented, indicating the character of each claim and whether allowed by the receiver.

D. Creditors' claims which are allowed and approved by the FCA shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established herein and in such manner an amounts as the receiver deems appropriate, with the approval of the FCA.

VI. Sale and Transfer of Loans

A. The receiver is authorized to sell loans to any commercial lending institution at fair market value (including the amount borrowed to purchase stock in the Southern Oregon PCA); and

B. The receiver is authorized to sell loans to a PCA that has been authorized, by charter amendment, agreement or otherwise, to make loans in the territory heretofore served by the Southern Oregon PCA ("purchasing PCA") only on the following basis:

(1) A loan may be sold at its fair market value (including the amount borrowed to purchase stock or participation certificates in the Southern Oregon PCA) and the borrower will immediately make the required capital investment in the purchasing PCA by providing cash sufficient therefor or by increasing the loan by an amount necessary to make such capital investment; or

(2) The loan may be sold at its fair market value (including the amount borrowed to purchase stock or participation certificates in Southern Oregon PCA) in conjunction with an agreement between the borrower, the receiver, the Federal Intermediate Credit Bank of Spokane, and the purchasing PCA, which provides for a loan from the Federal Intermediate Credit Bank of Spokane for the required capital investment in the purchasing PCA, to be repaid on or before the completion of the liquidation of Southern Oregon PCA, on terms set forth in the agreement.

VII. Priority of Claims

A. The following priority of claims shall apply to the distribution of assets:

(1) All costs, expenses and debts of the PCA in receivership that were incurred or, with the approval of the FCA, expressly assumed on or after the date of the appointment of the receiver.

(2) All claims for taxes incurred prior to the appointment of the receiver.

(3) All claims for costs, expenses and debts of the PCA in receivership that were incurred or, with the approval of the FCA, expressly assumed after the date Southern Oregon PCA was placed under procedures of FCA pursuant to the FCA Regulation 12 CFR 611.1140.

(4) All claims for wages or salaries, including vacation, severance, and sick leave pay incurred during the 90 days prior to the order imposing special supervisory procedures of the FCA upon the PCA's operations, pursuant to FCA Regulation 12 CFR 611.1140.

(5) All claims of creditors which are secured by, or constitute a lien on, assets or property of the PCA in accordance with the laws of the jurisdiction in which the Southern Oregon PCA is located, and in the order of priority established by such laws. Such claims shall be paid in accordance with the "equity rule" whereby the claimant shall have the right to receive, consistent with the priorities established in this section, full dividends from the receivership on the total claim with the collateral securing such claim to be held available to pay any deficiency between the total claim and such dividends.

(6) All secured claims of the FICB except those provided for in subsection (5), including interest accrued before and after the appointment of the receiver, except claims it may have by reason of its ownership of stock in the PCA, minus any setoff for stock of the FICB owned by the Puget Sound PCA.

(7) All claims of general creditors.

(8) All claims of stockholders and holders of participation certificates and other equities in accordance with the priorities set forth in the bylaws of the Southern Oregon PCA.

B. All claims of any class described in section (A) shall be paid in full, or provision made for such payment, prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay any class of claims in full, distribution on such class shall be on a pro rata basis.

VIII. Inventory, Examination and Audit

A. As soon as practicable after taking possession, the receiver shall make an inventory of the assets of the southern Oregon PCA as of the date possession was taken. Such inventory shall include the book value and the fair market value of the association's assets and any security therefor. The method of listing assets must provide such information to the satisfaction of the FCA. One copy of the inventory shall be filed with the FCA.

B. The Southern Oregon PCA in Receivership shall be examined and audited by the FCA on an annual basis. The cost of such examination and audit, as determined by the FCA, shall be paid from the assets of the Southern Oregon PCA in Receivership.

C. The FCA may from time to time prescribe accounting practices to be followed and require such reports as it deems appropriate on such forms as it may prescribe. One copy of the reports required by this section shall be filed with the Deputy Governor, Office of Examination and Supervision, Region II, FCA, and one copy shall be retained in the receiver's principal office.

IX. Final Discharge and Release of Receiver

When the receiver recommends final distribution of assets or is otherwise relieved of its duties by the FCA, the receiver shall file with the FCA a detailed report in a form satisfactory to the FCA. Unless the FCA otherwise directs, upon final liquidation of the receivership or when the receiver completes or is otherwise relieved of its duties, the receivership shall be examined and audited pursuant to 12 CFR 617.7090. The receiver's accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released.

X. Adjoining Production Credit Associations

A. Pending appropriate amendment to their respective charters, the production credit associations which are chartered to operate in territories adjoining that of the Southern Oregon PCA are hereby authorized to extend credit and other services as authorized by law to any eligible borrower located within the territory of the Southern Oregon PCA such terms and conditions as may be approved by the FICB of Spokane.

B. The representative of the FCA at the Southern Oregon PCA and the President of the FICB of Spokane shall be notified of this declaration of insolvency and appointment of receiver immediately upon execution of this order and a copy of same shall be transmitted to them by electronic mail. The representative of the FCA is hereby authorized to act as the agent of the receiver for purposes of this order.

This order is effective October 19, 1983, at 6:00 p.m., Eastern Standard Time.

C.T. Fredrickson,

Senior Deputy Governor.

[FR Doc. 84-19346 Filed 7-20-84; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-714-DR]

KS; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA-714-DR), dated June 22, 1984, and related determinations.

DATED: June 22, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0501.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter of June 22, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from severe storms, tornadoes and flooding beginning on June 7, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Robert Bouffard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Doniphan County for Individual Assistance and Public Assistance.
Brown County for Individual Assistance.
Atchison, Jackson and Nemaha Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 84-19309 Filed 7-20-84; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 221-003880-004.

Title: Palm Beach Marine Terminal Agreement.

Parties:

Port of Palm Beach
Birdsall, Inc.

Synopsis: This amendment modifies the basic lease agreement by adding 6,000 square feet of warehouse space to the original lease located at the Port's relocated warehouse at Palm Beach. The rate for the additional space is $2.00 per square foot.

Agreement No.: 202-005600-049.

Title: Philippines North America Conference.

Parties:

American President Lines, Ltd.
Hapag-Lloyd AG
Lykes Bros. Steamship Co., Inc.
A.P. Moller (Maersk Line)
Sea-Land Service, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would require that neutral body fines imposed under the provisions of article 17 of the agreement be payable only in U.S. currency.

Agreement No.: 223-010615.

Title: Los Angeles Marine Terminal Agreement.

Parties:

City of Los Angeles.
American President Lines, Ltd.

Synopsis: The agreement provides for the use of a pipeline right-of-way for the construction, maintenance and operation of a subsurface pipeline for the purpose of transporting bunkering fuel. The agreement shall terminate on December 31, 2001. The parties have

requested a shortened Federal Maritime Commission review period of 14 days.

Dated: July 18, 1984.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 84-19366 Filed 7-20-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 18, 1984.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and rquirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before August 2, 1984.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Judith McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT:

A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

Propose approval, under delegation, to extend with minor changes—

1. Report title: Membership Application Forms.

Agency form No: FR 2083-2083E.

OMB Docket No: 7100-0046.

Frequency: On occasion.

Reporters: New and existing banks who which to become members of the Federal Reserve System.

Small businesses are not affected.

General description of report: Respondent's obligation to reply is mandatory (12 U.S.C. 321-328); a pledge of confidentiality is not promised.

The application provides managerial, financial, and structural data necessary for the Federal Reserve Board to evaluate a new or existing bank's application for admission to the Federal Reserve System pursuant to criteria established by statute and regulation (Regulation H).

Board of Governors of the Federal Reserve System, July 18, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-19405 Filed 7-20-84; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

July 19, 1984.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at lest ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Judith McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880).

Request for extension, with minor revision—

1. Report title: Foreign Branch Report of Condition.

Agency form No.: FFIEC 030.

OMB Docket No.: 7100-0071.

Frequency: Annual.

Reporters: State member banks.

Small businesses are not affected.

General description of report: Respondent's obligation to reply is mandatory [12 U.S.C. 321, 324, and 602]; a pledge of confidentiality is promised [5 U.S.C. 552(b)(8)].

This report contains detailed asset and liability information for foreign branches of U.S. banks and is required for regulatory and supervisory purposes. The information is used to analyze foreign operations of U.S. banks. In addition to changing the report form number from FR 2105f to FFIEC 030, only minor revisions have been proposed to reflect changes to the U.S. commerical bank Report of Condition, which were effective beginning with the March 1984 reports.

Board of Governors of the Federal Reserve System, July 18, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-19404 Filed 7-20-84; 8:45 am]

BILLING CODE 6210-01-M

Fifth Third Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

July 18, 1984.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49

FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 10, 1984.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Fifth Third Bancorp*, Cincinnati, Ohio; to acquire 100 percent of the voting shares of The First National Bank of Findlay, Findlay, Ohio. Comments on this application must be received not later than August 15, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Barnett Banks of Florida, Inc.*, Jacksonville, Florida; to merge by acquiring 100 percent of the voting shares of Bank of Florida Corporation, St. Petersburg, Florida, thereby indirectly acquiring Bank of Florida in St. Petersburg, St. Petersburg, Florida, and Bank of Florida, N.A., Chiefland, Florida.

2. *B.C. Bankshares, Inc.*, Canton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Canton, Canton, Georgia.

3. *Citizens Corporation*, Eastman, Georgia; to become a bank holding company by acquiring 90 percent of the voting shares of Citizens Bank and Trust Company, Eastman, Georgia.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Capital Bancorporation, Inc.*, Clayton, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Bloomsdale, Bloomsdale, Missouri.

2. *Huntsville Bancshares, Inc.*, Huntsville, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Farmers and Merchants Bank, Huntsville, Missouri.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Cental Bank Shares, Inc.*, Cheyenne, Wyoming; to become a bank holding company by acquiring at least 80 percent of the voting shares of American National Bank of Riverton, Riverton, Wyoming.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *ClayDesta Bancshares, Inc.*, Midland, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of ClayDesta National Bank, Midland, Texas.

Board of Governors of the Federal Reserve System, July 18, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-19402 Filed 7-20-84; 8:45 am]

BILLING CODE 6210-01-M

National City Corporation; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 1984.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *National City Corporation*, Cleveland, Ohio; to acquire Plaza Trust Company, Columbus, Ohio, a company that engages in trust company activities. These activities are to be conducted in the State of Ohio.

Board of Governors of the Federal Reserve System, July 18, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-19401 Filed 7-20-84; 8:45 am]

BILLING CODE 6210-01-M

Peoples State Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benfits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Peoples State Bancshares, Inc.*, Grant, Alabama; to engage *de novo* in the sale of credit life, accident and health and unemployment insurance directly related to the extensions of credit, as permitted by Title VI, Section 601(A) of the Garn-St Germain Depository Institutions Act of 1982.

Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *Farmers National Bancorp, Inc.*, Remington, Indiana; to engage *de novo* in making or acquiring for its own account or for the account of others, loans and other extensions of credit, such as would be made by a mortgage company or a finance company. These activities are to be conducted in the State of Indiana.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Delta Corporation*, Helena, Arkansas; to engage *de novo* in real estate appraisal. These activities are to take place in the states of Arkansas, Oklahoma, Missouri, Texas, Louisiana, Mississippi, and Tennessee.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *The Resource Companies, Inc.*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary Resource Capital Advisers, Inc., Minneapolis, Minnesota, in providing investment advisory services. The area to be served will be the Ninth Federal Reserve District which is comprised of the states of Montana, North Dakota, South Dakota and Minnesota, and portions of Wisconsin and Michigan.

Board of Governors of the Federal Reserve System, July 18, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-19403 Filed 7-20-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Region IX, San Francisco, CA, Office of Public Buildings and Real Property; Intent To Prepare an Environmental Impact Statement; Menlo Park, San Mateo County, CA

Pursuant to Council on Environmental Quality Regulations, notice is hereby given that GSA is preparing a Master Plan and Environmental Impact Statement (EIS) for the consolidation of the U.S. Geological Survey's (USGS) Western Regional Center at 345 Middlefield Road, Menlo Park, California.

The Western Regional Center has 304,000 square feet of office and research laboratory space, including about 24,000 square feet in temporary buildings and trailers, at its Menlo Park campus; the campus serves 1,600 employees. In addition, USGS leases 65,000 square feet of space at 3475 Deer Creek Road in Palo Alto; the Deer Creek facility serves 200 employees.

The USGS proposes to consolidate the Deer facilities and those now in temporary structures into existing permanent buildings and about 66,000 square feet of new buildings on its Menlo Park campus.

The Master Plan and EIS will consider the integration of any new buildings with the existing buildings. The EIS will evaluate the impacts of the proposed Master Plan as well as of other alternatives for long-term development of the site.

Public scoping meetings will be held at 2 p.m. and 7:30 p.m., July 26, 1984, at the Administrative Conference Room, City of Menlo Park Administrative Center, 701 Laurel Street, Menlo Park, California.

Written comments or information that should be considered in the development of the Master Plan or in the assessment of environmental and socioeconomic impacts for the EIS should be directed to Miss Mary E. Brant, Regional Facilities Planner, Planning Staff, Real Estate Division (9PEP), General Services Administration, 525 Market Street, San Francisco, California 94105, telephone 415-974-7624.

Dated: July 13, 1984.

Edwin W. Thomas,

Regional Administrator.

[FR Doc. 84-19327 Filed 7-20-84; 8:45 am]

BILLING CODE 6820-23-M

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve an existing information collection.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert, GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20445.

FOR FURTHER INFORMATION CONTACT: Rosa McCullough, Procurement Operations Support Division, Office of Federal Supply and Services (202-557-2741).

SUPPLEMENTARY INFORMATION:

a. Purpose

The form is completed by contractors bidding on Government contracts for commodities/services and is used to ensure that adequate competition is available for all procurements.

b. Annual Reporting Burden

This is estimated as follows: Respondents and responses 10,000; hours 7,500.

c. Obtaining Copies of Proposal

Requestors may obtain copies of the proposal from the Directives and Reports Management Branch (ATRAI), Room 3007, GS Building, Washington, DC 20405, telephone (202-566-0666).

Dated: July 12, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84-19349 Filed 7-20-84; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D-0193]

Availability of Compliance Policy Guide for Marketing OTC Combination Drug Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of FDA Compliance Policy Guide 7132b.16 entitled "OTC Drugs—General Provisions and Administrative Procedures for Marketing Combination Products." The guide describes FDA's enforcement policy with respect to over-the counter (OTC) drug products containing combinations of active ingredients being considered in the OTC drug review for which final monographs are not yet in effect.

ADDRESS: Written comments on this compliance policy guide and requests for single copies may be sent to the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Lane, Rockville, MD 20857, 301-443-7281.

SUPPLEMENTARY INFORMATION: Concern about precipitate marketing of OTC drug products containing combinations of active ingredients has prompted FDA to announce its enforcement policy on the marketing of OTC combination drug products. This policy is described in Compliance Policy Guide 7132b.16, "OTC Drugs—General Provisions and Administrative Procedures for Marketing Combination Products."

OTC drugs that are subject to published final monographs promulgated as part of the review of OTC drug products conducted by FDA must be marketed in accordance with those final monographs. Compliance Policy Guide 7132b.16 describes the agency's enforcement policy with respect to drug products containing combinations of active ingredients being considered in the OTC drug review for which final monographs are not yet in effect.

This compliance policy guide is available for public examination between 9 a.m. and 4 p.m., Monday through Friday, in the Docket Management (HFA-305). Requests for single copies of the compliance policy guide may be submitted to the Dockets Management Branch and should be identified with the docket number found in brackets in the heading of this document.

In accordance with 21 CFR 10.85 (d) and (i), any interested person may submit written comments on this compliance policy guide. Such comments will be considered in determining whether modification of the guide is warranted; however, the agency will not defer regulatory action pending review of such comments. Received comments may be sent in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 17, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-19303 Filed 7-20-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0230]

Radiation Technology, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Radiation Technology, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a source of gamma radiation to control trichinae and other helminths in pork.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 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 4M3789) has been filed by Radiation Technology, Inc., Lake Denmark Rd., Rockway, NJ 07866, proposing that Part 179 (21 CFR Part 179) of the food additive regulations be amended to provide for the safe use of a cobalt 60 or cesium 137 source of gamma radiation to control trichinae and other helminths in pork by irradiating pork at doses not to exceed 100 kilorads.

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: July 11, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-19304 Filed 7-20-84; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Privacy Act of 1974; Computer Matching Program

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (DHHS).

ACTION: Notice of a Computer Matching Program—Social Security Administration/State agencies maintaining reports from financial institutions about annual interest income paid to individual account holders.

SUMMARY: SSA is issuing public notice of its intent to conduct a matching program with the various State agencies maintaining reports from financial institutions about annual interest income paid to individual account holders. The matching program will be an interface involving SSA's Supplemental Security Income Record (SSR) (**Federal Register,** dated October 13, 1982, pages 45635-45636), matched against extracts of the files of the State agencies maintaining interest income data reported by financial institutions. The initial operation will involve the State of California's "599 file." The 599 file is maintained by the California Franchise Tax Board, based on data reported by financial institutions throughout the State. The purpose of the match is to detect unreported or misreported income or resources which could affect the eligibility of Supplemental Security Income (SSI) recipients. Currently, State law permits including in such matching operations only those SSI recipients residing in Los Angeles, Alameda, Shasta, and Santa Barbara counties.

DATE: The data exchange will begin in FY 1984 as a pilot operation. Cost benefit information and comments received will determine whether the match should be continued, expanded, or terminated.

ADDRESS: Interested individuals may comment on this proposal by writing to the Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

All comments received will be available for public inspection at 3–F–1 Operations Building at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Gasparotti, Chief, State and Federal Programs Interface Branch, Office of System Requirements, 3–J–7 Operations Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–6080.

SUPPLEMENTARY INFORMATION: The matching program will be a computerized interface involving SSA's SSR (**Federal Register**, dated October 13, 1982, pages 45635–45636), matched against extracts of the files maintained by the State agencies which maintain records of annual interest income. The initial operation will involve the State of California's 599 file. The purpose of the match is to detect unreported or misreported income and resources which could affect the eligibility of SSI recipients.

This matching operation is a result of an October 1979 General Accounting Office report entitled, "Social Security Should Obtain and Use State Data to Verify Benefits for All Its Programs." In short, the report criticized SSA for not using State and local data in the enforcement of its payment programs.

Obtaining interest income data through a matching operation will permit timely, proper payment of title XVI benefits as well as detect and/or prevent erroneous payments.

Further information regarding the matching program including the authority for the program, a description of the program, the personal records to be matched, the dates of the program, security safeguards, and plans for disposition of the records are provided in the text below. This information is required by paragraph 5.f.1 of the Revised Supplemental Guidance for Conducting Matching Programs (**Federal Register**, May 19, 1982, pages 21657–21658). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Dated: July 17, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Notice of a Computer Matching Program Social Security Administration (SSA) Matching With State Records of Individual Interest Income Reported by Financial Institutions

A. Authority

Section 1631(e)(1)(B) of the Social Security Act.

B. Description of Computer Matching Program

1. Organizations Involved

The Social Security Adminstration (SSA) and the State agencies which maintain records of individual interest income supplied by financial institutions. Initially, the match will involve the State of California's "599 file." The 599 file is maintained by the California Franchise Tax Board, based on data reported by financial institutions throughout the State.

2. Purpose

This matching operation resulted from an October 1979 General Accounting Office report entitled, "Social Security Should Obtain and Use State Data to Verify Benefits for All Its Programs." The report criticized SSA for not using State and local data in the enforcement of its payment programs. State interest income data supplied by financial institutions will be used to verify appropriate title XVI unearned income adjustments to detect and/or prevent erroneous payments due to excess income or resources. Presently, verification data are obtained through voluntary reporting or beneficiaries, who often claim to be unaware of the need to report or accurately furnish such data.

3. Procedures

If the match becomes an ongoing one, the State agencies maintaining individual interest income data will furnish extracts of their files containing identifying data (name, Social Security number, date of birth) and pertinent interest income data. This file will be processed against SSA's record of all title XVI beneficiaries. However, in some cases it may be necessary for SSA to have the State perform the actual matching operation. For those records matched, action will be taken to assure that Supplemental Security Income benefits have been adjusted appropriately. The State information will be treated as a third-party lead requiring confirmation with the individual concerned prior to payment adjustment. SSA will make no further subsequent contacts with the States as part of this matching program, except in specific cases where there is an inconsistency.

In the California pilot, SSA will send—as it customarily does—the State Data Exchange (SDX) tape which is a subsystem of the Supplemental Security Income Record (SSR), to the California Department of Social Services. The Department of Social Services will then relay the information to the California Franchise Tax Board which will conduct the match for SSA. The Franchise Tax Board will then send the results of the match to SSA.

C. Records to be Matched

SSA will institute a computer match of the SSR, (HHS/SSA/OURV 09–60–0103, **Federal Register**, dated October 13, 1982, pages 45635–45636), against extracts of the State maintained files containing individual interest income data supplied by financial instiutions. Initially, the match will involve the State of California's 599 file. California will perform the matching operation for SSA against data extracted from the SSR for California title XVI recipients and will provide SSA with data only for those records matched.

D. Projected Starting and Ending Dates

The match will begin in FY 1984 as a pilot operation. A cost benefit analysis will be undertaken to determine whether the match should be continued, expended, or terminated.

E. Security Safeguards

When SSA performs the matching operation, security safeguards pertaining to the SSR as reflected in the **Federal Register**, dated October 13, 1982, pages 45635–45636, will apply. All magnetic tapes and disks are within an enclosure attended by security guards. Anyone entering or leaving this encolosure must have special badges which are issued only to authorized personnel. The same safeguards will apply to the State tapes while they are in the possession of SSA. All micorofilm and paper files are accessible only by authorized personnel with a need to know. Safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. The State records received when SSA conducts the match will be used only for the purposes of the matching program and will be returned after the match is performed.

When the States perform matching operations, they will follow the safeguards established in existing agreements made with SSA. All States receive the SSR at this time for administering a variety of health/income-maintenance programs. The existing agreements call for the State:

1. To limit access to the data to only those employees and officials who need it to perform their official duties;

2. To store the data in an area that is physically safe from access by unathorized persons;

3. To store and process magnetic tapes in such a way that unauthorized persons cannot retrieve the information by means of computer, remote terminals, or other means;

4. To advise all personnel who will have access to the data of the confidential nature of the information, the safeguards required, and the criminal sanctions for noncompliance contained in Federal statutes (such as section 1106(a) of the Social Security Act), and any relevant State statutes; and

5. To permit SSA to make onsite inspections to ensure that adequate safeguards are being maintained.

Other safeguards such as destroying or returning the file and using the file only for this specific match are not appropriate, because the SSR is given to the States to serve a variety of purposes (e.g., the administration of the State Supplementation and Medicaid programs).

F. Disposition of Records

Printouts of records resulting from the match; i.e., hits, will be disposed of by SSA field office personnel in accordance with the applicable Federal Records Retention Schedule (44 U.S.C. 3303).

G. Other Comments

For those records matched, SSA will take proper action to assure that title XVI payments are adjusted accordingly after providing due process to the individuals concerned. Disclosures are made pursuant to routine uses published for the SSR.

[FR Doc. 84-19333 Filed 7-20-84; 8:45]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Competitive and Modified Competitive Sales of Public Land in Jackson and Klamath Counties, OR

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described lands have been examined, and through land use planning, have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 at no less than fair market value. The following tracts will be offered as competitive sales.

Tract	Legal description	Acres
OR-37195	T. 40 S., R. 8 E., W.M., Sec. 17, SW¼SE¼.	40.00
OR-37199	T. 37 S., R. 4 W., W.M., Sec. 31, lot 4	14.77

The following tracts will be offered as modified competitive sales with bidding limited to adjoining landowners—Richard Troon, Melvin Saul, and Charles Sears. However, if any of the tracts are not sold because the designated bidders failed to exercise their preference rights at the time of sale, the parcels will become available on a sealed bid basis until sold or withdrawn.

Tract	Legal description	Acres
OR-37197	T. 37 S., R. 4 W., W.M., Sec. 31, lot 1	0.78
OR-37198	T. 37 S., R. 4 W., W.M., Sec. 31, lot 3	4.87

The patent, when issued, will be subject to the following reservations to the United States:

1. Ditches and canals.

2. All minerals.

3. All valid, existing rights and reservations of record.

4. A 30' right-of-way on OR-37197 for Jackson County's Kubli Road.

5. A 60' right-of-way on OR-37199 for Jackson County's Kubli Road.

6. A 30' right-of-way on OR-37199 for Josephine County's Kubli Road.

The land is hereby segregated from all appropriations under the public land laws, including the mining laws, until sold or April 14, 1985.

Sealed bids must be received in this office no later than September 18, 1984. Bids for less than fair market value will not be accepted.

DATE AND ADDRESS: The sale offering will be held on September 19, 1984 at 1:00 PM in the Medford District Office, 3040 Biddle Road, Medford, Oregon 97504.

FOR FURTHER INFORMATION CONTACT: Detailed information concernig the sale, terms and conditions, and other details can be obtained by contacting Jan Miller at the above address, or by calling (503) 776-4174.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Medford District Manager at the above address.

Dated: July 13, 1984.

Hugh R. Shera,

District Manager.

[FR Doc. 84-19326 Filed 7-20-84; 8:45 am]

BILLING CODE 4310-33-M

[OR-34785, OR-36609, OR-37054]

Realty Action; Sale Public Land in Malheur County, OR

The following described land has been examined and identified as suitable for disposal by sale under 43 CFR 2750 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value:

WILLIAMETTE MERIDIAN, OREGON

Parcel No.	Leagl description	Acre-age	Value
OR-34758	T. 15 S., R. 46 E.,		
1	Sec. 26, Lot 5, NW¼SW¼ Sec. 27, NW¼NE¼NE¼SE¼.	64.14	$8,000
OR-36609	T. 14 S., R. 41 E.,		
1	Sec. 22, E½SE¼	80	8,000
2	T. 19 S., R. 41 E., Sec. 26, SE½SE½	40	3,200
3	T. 17 S., R. 44 E., Sec. 2, NW¼	160	20,000
4	T. 18 S., R. 45 E., Se. 12, NW¼NW¼	40	4,000
5	T. 16 S., R. 46 E., Se. 23, SE¼SE¼	40	4,000
6	T. 16 S., R. 46 E., Se. 27, S½	320	32,000
7	T. 18 S., R. 46 E., Se. 30, SW¼	160	14,500
8	T. 19 S., R. 46 E., Se. 8, S½SE¼	80	10,000
9	T. 14 S., R. 41 E., Se. 9, W½SE¼	80	10,000
10	T. 14 S., R. 41 E., Se. 34, S½NW¼	80	8,000
OR-37054	T. 21 S., R. 38 E.,		
1	T. S., R. E.,		
OR-37054	T. 21 S., R. 38 E.,		
1	Sec. 19, NW½NE½	40	3,200
"	T. 20 S., R. rw E., Sec. 8, NE¼NW¼	40	2,000

The parcels are difficult and uneconomical to manage as part of the public lands and are not suitable for management by another federal agency. There are no significant resource values which will be affected by this disposal. None of the parcels in OR 36609 have legal access; all of the other parcels do have legal access. The sale is consistent with BLM planning for the subject land and the public interest will be served by offering this land for sale.

Sealed bids are being solicited for each parcel and no oral bidding will take place.

No tract will be sold for less than the appraised fair market value. Designated bidders must submit a sealed bid for at least the appraised fair market value to exercise their right to meet the high sealed bid.

The sale will be held on September 19, 1984, at 10:00 A.M. in the Vale District Office, 100 Oregon Street, Vale, Oregon. At the time, all sealed bids will be opened and the apparent high bidders declared.

All parcels are being offered for sale through competitive, modified competitive, or noncompetitive bidding procedures as follows:

Serial No. OR 34785

Parcel No. 1—Noncompetitive (direct sale)
Ronald G. Bateman

Serial No. OR 36609

Parcel No. 2, 3, 4, 6, 7, 8—Competitive
Parcel No. 1—Modified competitive to designated bidders
(1) Reservoir Land Co.
(2) Davis Land and Livestock
Parcel No. 5—Modified competitive to designated bidders
(1) Christine L. DeHaven
(2) Harry K. Billups
Parcel No. 9—Noncompetitive
Reservoir Land Co.
Parcel No. 10—Noncompetitive
Reservoir Land Co.

Serial No. OR 37054

Parcel No. 1 and 2—Noncompetitive
Malheur County

Modified competitive and noncompetitive bidding procedures are being used to recognize the needs and historical uses of adjoining landowners and users. Preference to users is authorized under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713; 43 CFR 2711.3–2).

Federal law require that individuals be 18 years of age or over and a U.S. citizen, and corporations be subject to the laws of any state of the United States.

Sealed or written bids will be considered only if received by the Bureau of Land Management, P.O. Box 700, Vale, OR 97918, prior to 10:00 A.M. Wednesday, September 19, 1984, in the Vale District Office.

If two or more envelopes containing valid bids for parcels offered for competitive bidding are of the same amount, the determination of which is to be considered the qualifying bid shall be by drawing.

All sealed bids received from designated bidders exercising their right to meet the high bid will be opended and the high bidder declared. If two or more bids of equal amounts are received from the designated bidders, the qualifying bid shall then be determined by drawing, immediately following the opening of the sealed bids. However, if either or both of Parcel No's. 1 and 5, OR 36609, are not sold because the designated bidders failed to exercise their preference rights at the time of the sale, these parcels will become available on a sealed bid basis until sold or withdrawn.

The successful bidder will be required to pay one-fifth the full sale price immediately at the close of the sale and the remainder within 30 days. Failure to submit the full sale price within 30 days shall cancel sale of the specific parcel and the bidder's deposit will be forfeited. All unsuccessful bids will be returned within 30 days of the sale date.

Bid must be made by the principal or his duly qualified agent by sealed bid, must be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management for not less than one-fifth of the amount bid. The sealed envelope must be marked in the lower left-hand corner as follows:

"Public Sale Bid Parcel No.——, Serial No. OR ————, Sale held September 19, 1984".

The terms and conditions applicable to the sale are:

1. The apparent high bidder shall submit the remainder of the full bid price within 30 days from receipt of notice of acceptance. Failure to submit the full bid price within 30 days from receipt of notice of acceptance shall result in sale cancellation of the specific parcel and the deposit shall be forfeited.

2. The BLM may accept or reject any or all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consumation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

3. A reservation to the United States for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

4. Right-of-way will be reserved for two natural gas pipelines (OR 04620 and OR 20112) and a petroleum product line in Parcel 6 OR 36609, and for that portion of Malheur Reservoir (V 01499) found in Parcel 9.

5. A right-of-way wil be reserved for the material site (OR 05019) located in Parcel 2, OR 37054.

6. Two leases (OR 12722 and OR 12723) held by the Malheur County for modified sanitary landfills located in Parcels 1 and 2 of OR 37054, as authorized by the Recreation and Public Purposes Act of 1926, as amended, will be cancelled upon issuance of the patents.

7. The sale is for surface estate only. The patents will contain a reservation to the United States for all minerals.

8. The sale will be subject to all valid existing rights.

Those parcels not sold pursuant to this Notice of Realty Action will continue to be available for sale on a sealed bid basis. All sealed bids for available parcels will be opened at 10:00 a.m. on the first Wednesday of each month and must be received in the Vale Office by 4:00 p.m. the last working day prior to the monthly drawing. Priority will not be given to first filed bids.

This provision does not apply to Parcels 1 and 2, OR 37054. If either or both of these parcels are not purchased by Malheur County, the unsold parcel(s) will be removed from availability for purchase.

Detailed information concerning the sale, including the planning documents, environmental assessment and the record of public involvement, is available for review at the District Office, Bureau of Land Management, P.O. Box 700, Vale, Oregon 97918. For a period of 45 days after the issuance of this notice, the public and interested parties may submit comments to the District Manager at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the congressional committees and delegations pursuant to Pub. L. 97-394, will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of any changes.

Dated of Issue: July 12, 1984.

Fearl M. Parker,

District Manager.

[FR Doc. 84-19325 Filed 7-20-84; 8:45 am]

BILLING CODE 4310-33-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

A.I.D. Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on August 27-28, 1984 at the Pan American Health Organization Building, 525-23rd Street NW., Washington, D.C., Conference Room 'C'. The Committee will discuss recent developments in A.I.D. research policy.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m. each day. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Erven J. Long, Director, Office of Technical Review and Information, Bureau for Science and Technology, is designated at the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Long, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235-8929.

Dated: July 12, 1984.

Erven J. Long,

A.I.D. Representative, Resarch Advisory Committee.

[FR Doc. 84-19350 Filed 7-20-84; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-8 (Sub-4X)]

The Denver and Rio Grande Western Railroad Co.; Abandonment in Chaffee County, CO; Exemption

The Denver and Rio Grande Western Railroad Company (DRGW) has filed a notice of exemption for an abandonment under 49 CFR Part 1152, Subpart F—*Exempt Abandonments.* The line to be abandoned is the Monarch Branch between milepost 215.04 near Salida, CO, to milepost 236.72 near Monarch, CO, in Chaffee County, CO, a total distance of 21.68 miles.

DRGW has certified (1) that no local traffic has moved over the line for at least 2 years and overhead traffic is not moved over the line having been rerouted to alternate lines, and (2) that no formal complaint filed by a user of rail service on the line or a state or local governmental agency acting on behalf of such user regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period preceding the filing of this notice. The Colorado Public Utilities Commission and the Executive Director, State of Colorado, Department of Natural Resources have been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective August 22, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by August 2, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by August 13, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John S. Walker, P.O. Box 5482, Denver, CO 80217.

If the notice of exemption contains false or misleading information, the use of the exemption is void *Ab initio.*

A notice to the parties will be issued if the exemption is conditioned upon environmental or public use conditions.

Decided: July 16, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-19375 Filed 7-20-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 83-26]

Murray Pharmacy Revocation of Registration

On July 22, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Murray Pharmacy (Respondent), 2388 Harrison Boulevard, Ogden, Utah 84401, proposing to revoke Respondent's DEA Certificate of

Registration AM3128039. The proposed action was predicated on the controlled substance-related felony conviction of LaMoine Murray, R.Ph., owner and operator of the Respondent pharmacy on January 13, 1983, in the United States District Court for the District of Utah. On September 12, 1983, Respondent pharmacy requested a hearing.

The hearing in this matter was held in Denver, Colorado on January 25, 1984. Administrative Law Judge Francis L. Young presided. On May 10, 1984, Judge Young issued his opinion and recommended findings of fact, conclusions of law, ruling and decision. No exceptions were filed and on June 5, 1984, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found LaMoine Murray has been the owner and operator of the Respondent pharmacy for about 31 years. During the period September, 1981 through May, 1982, Mr. Murray gave a 26 year old woman controlled substances without prescriptions, sometimes as frequently as once a week. The controlled substances provided included Quaalude, Percodan, Demerol, Valium, benzedrine and codeine phosphate. These are Schedule II and Schedule IV substances. In return for the drugs, the woman engaged in sexual intercourse with Mr. Murray on numerous occasions at the pharmacy and at his home. Mr. Murray indicated to her that he gave controlled substances under similar circumstances to other young women.

In June, 1982, the woman began cooperating with the police. On several occasions she went to the Respondent pharmacy wearing a concealed tape recorder. She also telephoned the pharmacy a few times. These conversations were monitored by the police. During the visits and telephone conversations, Mr. Murray discussed the availability of controlled substances with the woman. At one point Murray told her: "I'm going to get in trouble giving people all these pills."

On September 14, 1982, a DEA Diversion Investigator conducted an audit of Murray Pharmacy. The investigator audited the pharmacy's records of three Schedule II controlled substances: Percodan, Percocet and Percodan-Demi for the period March 24, 1980 to September 14, 1982 and counted the quantities on hand on the latter date. The investigator assumed a starting inventory of zero for each substance at the beginning of the audit period. The audit revealed that Murray Pharmacy could not account for at least 750 Percodan tablets during the audit period. The audit also showed a surplus of 70 tablets of Percodan-Demi. Respondent pharmacy did not keep complete or accurate records of its controlled substances. Many records were not present in the pharmacy and those that were did not always include required information. The actual prescriptions on file lacked information such as patient address or date of dispensing. Mr. Murray had failed to keep a biannual inventory required by 21 CFR 1304.11 *et seq.* and therefore could not account for all the drugs he purchased. No prescriptions were found at Respondent pharmacy in the woman's name.

Subsequently, on January 13, 1983, Mr. Murray pled guilty in the United States District Court for the District of Utah to two counts of omitting material information from required documents in violation of 21 U.S.C. 843(a)(4)(A). DEA has consistently held that the registration of a corporate registrant may be revoked upon a finding that a natural person who is an owner, officer or key employee or who had some responsibility for the operation of the registrant's business, has been convicted of a felony offense. See: *Leonard S. Cohen, t/a Senate Drug Store,* Docket No. 72–5, 38 FR 9522 (1973); *River Forest Pharmacy,* Docket No. 73–6, 38 FR 27417 (1973); *Norman Bridge Drug Co. Inc.,* Docket No. 74–22, 41 FR 3108 (1976); *AG Pharmacy, Inc., d/b/a Berson Pharmacy,* Docket No. 79–12, 45 FR 6868 (1980). Therefore, there is a lawful basis for the revocation of Respondent's DEA Certificate of Registration under 21 U.S.C. 824(a)(2).

The Administrative Law Judge concluded that there is no indication that Mr. Murray accepts the duty imposed on a retail pharmacist for the safe and responsible handling of the dangerous drugs he is permitted to handle. Accordingly, Judge Young recommended that Murray Pharmacy's registration be revoked.

The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. The Administrator is charged with protecting the public health. The purpose of requiring a pharmacy to keep accurate records of its controlled substances is to permit regulatory authorities to ascertain whether or not dangerous drugs are being lawfully handled and dispensed. Failure to keep accurate records, which has been the case with Murray Pharmacy, frustrates this purpose. The Administrator notes that LaMoine Murray posed a tremendous danger to the public health and safety. He provided dangerous drugs in return for sexual favors. Murray Pharmacy's registration must be revoked.

Having concluded that there is a lawful basis for the revocation of the Respondent's registration, and having further concluded that under the facts and circumstances presented in this case the registration should be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM3128039, previously issued to Murray Pharmacy, be, and it hereby, is, revoked, effective August 22, 1984.

Dated: July 16, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84–19369 Filed 7–20–84; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 83–26]

Leonard Pomper, M.D.; Revocation of Registration

On September 2, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to Leonard Pomper, M.D. (Respondent) of 1528 West Chase Avenue, Apt. 2C, Chicago, Illinois, an Order to Show Cause proposing to revoke DEA Certificate of Registration AP1430494 previously issued to Respondent, and to deny his pending application for renewal. The proposed action was predicated upon the Respondent's controlled substance felony conviction on July 1, 1982 in the Circuit Court of Cook County, Illinois. Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in Chicago, Illinois on November 29 and 30, 1983. Administrative Law Judge Francis L. Young presided. On April 18, 1984, Judge Young issued his opinion and recommended findings of fact, conclusions of law, ruling and decision. No exceptions were filed and, on May 14, 1984, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and

conclusions of law as hereinafter set forth.

In later 1978 or early 1979, the Illinois Department of Law Enforcement (DLE) began an investigation into Respondent's prescription-writing practices and the billings he was submitting to the State of Illinois for medical services rendered to public assistance recipients. At the time, Respondent was operating in a clinic called the People's Medical Clinic, 10 South Paulina Street, Chicago, Illinois.

DLE Special Agents, operating undercover, went to see Respondent at the clinic on numerous occasions. Each time, the agents asked Respondent to prescribe certain controlled substances, presenting no legitimate medical need whatsoever. Respondent did not make any physical examination of the agents or take any medical histories. Respondent prescribed various Schedule III, IV, or V controlled substances for the agents. These prescriptions were filled immediately on each occasion at the Clinic's on-site pharmacy, presided over by one "Vito." On each visit the agents presented an Illinois public assistance identity card, furnished to them for the purpose of the investigation. The clinic billed the state for the drugs the agents received. In addition to the controlled substances, the agents were given items such as soap and non-controlled substances which had not been requested. The clinic billed the state for these items also.

During the period January through June, 1980, another operation, the Madison-Seeley Clinic and Pharmacy, 2038 West Madison Avenue, Chicago, Illinois, with Respondent as the referring physician, billed the state in excess of $267,000 for medical supplies and services and for medicines. Dr. Pomper received about $80,000 during this period. Accordingly, the DLE initiated an investigation of this operation in July, 1980. Numerous DLE Special Agents, operating undercover, acquired prescriptions for Schedule III, IV and V controlled substances under similar circumstances from Respondent. The agents used public aid identification and eligibility cards furnished for the purpose of the investigation. There was no meaningful physical examination conducted by Respondent, no medical history was taken, and there was no showing of medical need for the controlled substance. Other unneeded items were also given to the agents. The state was billed for everything. On one occasion, an agent observed persons in the clinic waiting room openly smoking marijuana, drinking cough syrup and buying and selling drugs. The Madison-Seeley Clinic itself was devoid of any medical equipment. Respondent saw and interviewed "patients" while seated at a desk in a hallway.

In January, 1981, DLE agents interviewed eight "patients" whose names appeared on vouchers submitted by Madison-Seeley to the state. They all stated that they had received large quantities of controlled substances and non-controlled medicines and medical supplies, which they did not need, from Respondent and the Madison-Seeley Clinic. They sought the controlled substances because they enjoyed the effects, not for any legitimate medical need.

Respondent has been a patient of Dr. Marvin Ziporyn, a practicing psychiatrist, since December 1980. Dr. Ziporyn, in a letter dated December 17, 1980, stated that he then found that Respondent was schizophrenic.

In 1981, at the request of the state licensing board, Respondent was examined by a psychiatrist, Arthur A. Greenfield, D.O., chosen by the board. Dr. Greenfield then found that the Respondent did not exhibit any evidence of overt psychosis, organic brain syndrome, or any severe psychopathology that would impair his ability to function in his usual and customary activities. Dr. Greenfield found Respondent to be an overly passive and dependent individual who tends to allow more assertive people to take excessive amounts of control in running his daily life. Dr. Greenfield then recommended that, although Respondent be allowed to continue practicing medicine, Respondent should be urged to practice in a group setting—a large clinic or state facility.

In a consent order dated April 3, 1981, it appears that Respondent had voluntarily surrendered his state medical practice license and his state controlled substances license on November 13, 1980, in the face of allegations that he was then unable to prescribe controlled substances with reasonable safety, to provide effective controls against diversion of controlled substances and to practice medicine with reasonable safety. The consent agreement provided that the suspension of his license would remain in effect until such time as Respondent could establish that his medical condition had improved to the extent that he could maintain a minimum level of professional competency.

The Administrative Law Judge found that apparently Respondent's medical condition improved with great rapidity since just four months after the consent order was signed, on August 5, 1981, the Medical Disciplinary Board found Respondent capable of maintaining an acceptable level of professional competence and recommended that Respondent's license be restored to him. His medical practice license was restored on October 22, 1981, subject to a two-year period of probation and on condition that Respondent practice only in a group setting during the probationary period. The Administrator notes this rapid recovery preceded Respondent's conviction by nearly a year.

In July, 1982, Respondent was convicted on his plea of guilty to unlawful distribution and dispensing of controlled substances, and unlawful delivery of controlled substances, in the Circuit Court for Cook County. Respondent did not raise an insanity defense to the criminal charges. Therefore, under 21 U.S.C. 824(a)(2) there is a lawful basis for the revocation of Respondent's registration.

Following his conviction, law enforcement authorities filed a new complaint against Respondent with the state licensing authority seeking to have Respondent's medical practice license revoked or suspended. The Medical Disciplinary Board dismissed the new complaint on the grounds that Respondent's violations of law had resulted from a medical condition now greatly improved and that any new proceeding was barred by principles of *res judicata* and collateral estoppel.

At the administrative hearing in this matter, Dr. Ziporyn, Respondent's psychiatrist, testified that he was still treating Respondent as of the time of the hearing. Dr. Ziporyn testified that he believes that Respondent's schizophrenic condition has been in effect since the early 1960's, but that it was in remission at the time of the hearing. Dr. Ziporyn is of the opinion that Respondent is now capable of making his own decisions, dealing with the pressures of other individuals and of life itself and that he would not be subject now to outside influences. In Dr. Ziporyn's opinion based on his observation of Respondent, Respondent as of the time of the hearing was capable of practicing medicine in a solo setting with a full understanding of the prescribing responsibilities involved with controlled substances.

On cross-examination by the Government however, Dr. Ziporyn testified that the fact that Respondent was a patient at the Illinois State Psychiatric Institute for a year in 1963-1964 showed a very severe problem and indicates that Respondent was extremely ill at the time. Previously,

Respondent had been treated at Mt. Sinai Hospital where he had required ten electroshock treatments. Dr. Ziporyn further testified that during the period in question, due to his mental disability, Respondent did not know that the manner in which he prescribed controlled substances was without therapeutic purpose but that today, after therapy, he would recognize the responsibilities involved.

The Administrative Law Judge stated in his opinion that he has grave doubts about the credibility of, and weight to be given to, the testimony of Dr. Ziporyn that Respondent is now of such a state of mental health that he can be entrusted with a DEA registration. As noted above, Respondent acknowledged in a consent order dated April 3, 1981, that he was unable to prescribe controlled substances with reasonable safety, to provide effective controls against their diversion and to practice medicine with reasonable safety. Judge Young noted in his opinion:

> Curiously, in a medical report dated March 30, 1981—four days *before* Respondent signed this Consent Order—Dr. Ziporyn wrote that he could, "state positively that [Respondent's] rehabilitation is complete and that his potential to continue the proper practice of medicine * * * seems assured. I further believe that Dr. Pomper will continue to be a competent physician and have absolutely no doubts in my mind that he will execute and administrate [sic] wisdom, discretion and caution, clarity, and sound judgment in his future practice. I strongly recommend that Dr. Pompers medical license * * * be restored as soon as possible to complete function * * *." This chronology throws considerable doubt on the value of Dr. Ziporyn's opinions as to Respondent's present and future capabilities. Administrative Law Judge's Opinion p. 13.

Judge Young further finds it incredulous that just four months after the consent order was signed, Respondent's mental condition had improved to the point that Respondent could again deal with dangerous drugs safely and responsibly as a physician. Such a recovery, considering all of the evidence of Respondent's illness since about 1960, would be little short of miraculous.

Judge Young noted that there is no testimony here from physicians who have actually observed Respondent practicing on a day-to-day basis. There is no evidence, other than Dr. Ziporyn's opinion as treating psychiatrist, that Respondent is, in fact, no longer unduly susceptible to personalities stronger than his own. The Administrative Law Judge has recommended revocation of Respondent's registration.

The Administrator adopts the recommended ruling, findings of fact, conclusions of law, opinion and decision of the Administrative Law Judge in their entirety. Respondent was a party to long-continued and large-scale fraud practiced on the State of Illinois medical assistance program. Respondent illegally diverted controlled substances. The Administrator is concerned with the protection of the public health. It was inconsequential that Respondent did not realize that his drug-prescribing practices were wrong or illegal. As a physician, Respondent is charged with informing himself as to the enormous danger and potential for harm that is in his hands by virtue of a license to prescribe and dispense dangerous drugs. The Administrator notes that the State of Illinois is willing to continue to register a person who has shown such disregard for his duties as a physician and who has been convicted of felonies relating to controlled substances. The Administrator, given Respondent's past history, is not so willing. Respondent's registration must be revoked.

Having concluded that there is a lawful basis for the revocation of Respondent's certificate of registration and having further concluded that under the facts and circumstances presented in this case the registration should be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AP1430494, previously issued to Leonard Pomper, M.D., be, and it hereby is, revoked, and any pending applications for renewal of this registration are denied, effective August 22, 1984.

Dated: July 17, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-19368 Filed 7-20-84; 8:45 am]

BILLING CODE 4410-09-M

MERIT SYSTEMS PROTECTION BOARD

Appointment of Members to the Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice of Appointment of Members to the Performance Review Board.

SUMMARY: This notice publishes the names of current Performance Review Board Members as required by 5 U.S.C. 4314(c)(4).

The following persons have been appointed to, and will serve on the Performance Review Board for Senior Executives in the U.S. Merit Systems Protection Board: Harold Kessler, Dr. Samuel Lin, R.J. Payne, Ruth E. Peters and Evangeline Swift.

EFFECTIVE DATE: July 20, 1984.

FOR FURTHER INFORMATION CONTACT: Frederick L. Foley, Director, Office of Personnel, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419 (653-5915).

Dated: July 17, 1984.

For The Board.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 84-19208 Filed 7-20-84; 8:45 am]

BILLING CODE 7400-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250-LA and 50-251-LA; ASLBP No. 84-504-07 LA]

Florida Power and Light Co.; Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Florida Power and Light Company

Turkey Point Nuclear Generating Plant, Units 3 and 4 Facility Operating License Nos. DPR-31 and DPR-41

This Board is being established pursuant to a notice published by the Commission on June 7, 1984 in the **Federal Register** (49 FR 23715-18) entitled, "Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing". The amendments would allow spent fuel pool storage capacity expansion from 621 and 1,404 spaces for each spent fuel pool. The proposed expansion is to be achieved by reracking each spent fuel pool with two discrete regions, within each pool.

The Board is comprised of the following Administrative Judges:

Robert M. Lazo, Chairman, Atomic Safety and Licensing Board Panel,

U.S. Nuclear Regulatory Commission, Washington, D.C. 20555
Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555
Emmeth A. Luebke, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dated at Bethesda, Maryland, this 16th day of July, 1984.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 84-19409 Filed 7-20-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Qualification Program for Safety-Related Equipment; Meeting

The ACRS Subcommittee on Qualification Program for Safety-Related Equipment will hold a meeting on July 30, 1984, Room 1046, 1717 H Street NW, Washington, DC to discuss the process for evaluating equipment qualification programs.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Monday, July 30, 1984—8:30 a.m. Unit the Conclusion of Business

The Subcommittee will discuss with the NRC Staff different aspects of the Equipment Qualification Evaluations now being conducted, including a discussion of equipment qualification outside of containment. RES will discuss their proposed aging research program.

Oral or written statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. 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 ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

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 invited 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 therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Alan Wang (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: July 17, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-19413 Filed 7-20-84 8:45 am]

BILLING CODE 7590-01-M

Candidate Sites for High Level Radioactive Waste Repository; Meeting on SCP Scope/Content

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice, meeting.

SUMMARY: The Nuclear Regulatory Commission (NCR) announces a meeting with the Department of Energy (DOE) to discuss the format and content for the site characterization plan for candidate sites for a high level radioactive waste repository which DOE is required to prepare by the Nuclear Waste Policy Act of 1982.

DATE: The meeting will be held on July 26, 1984, at 9:00 A.M.

ADDRESS: The meeting will be held at the Nuclear Regulatory Commission, Willste Building, Room 110, 7915 Eastern Avenue, Silver Spring, MD 20910.

Status: Open to the public as observers.

FOR FURTHER INFORMATION CONTACT: Seth Coplan, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 427-4728 or FTS 427-4728.

Dated at Silver Spring, Maryland, this 12th day of July 1984.

For the Nuclear Regulatory Commission.

Hubert J. Miller,

Chief, Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 84-19410 Filed 7-20-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 15Aj-1
No. 270-25

Notice is hereby given that pursuant to the paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15Aj-l (17 CFR 240.15Aj-l) under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) and Forms X-15AJ-1 (17 CFR 249.802) and X-15AJ-2 (17 CFR 249.803) thereunder which require registered national securities associations and registered affiliated securities associations to keep their registration statements up to date. To date, there is only one such association. Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

July 12, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-19411 Filed 7-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21149; File No. SR-NYSE-84-23]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Procedures Used by the Exchange To Enhance the Operation of Its Automated Bonds System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 2, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will implement, on a permanent basis, the procedures for using a universal contra party designation ("ABS") to report and compare executions of bond orders matched through the Exchange's Automated Bonds System. These procedures will hereinafter be referred to as the "ABS Enhancements".

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The purpose of the proposed rule change is to adopt the ABS Enhancements on a permanent basis. The ABS Enhancements were originally filed with the Commission in SR-NYSE-82-11 to be tested and implemented on a pilot program basis and are currently scheduled to expire on June 30, 1984. At this time the Exchange is requesting that these procedures be approved on a permanent basis as "stated policies, practices or interpretations" constituting rules of the Exchange under SEC Rule 19b-4.

The ABS Enhancements procedures consist of the use of the universal contra-party designation "ABS" to: (1) Compare transactions effected by matching orders through the Automated Bonds System (hereinafter referred to as "the System"), and (2) automate the submission of trade data entered in the System to comparison.

The procedures impose revisions on the current bond trade comparison practices of member organizations. The introduction of a universal contra: (1) Isolates each party to a trade from direct contact with the contra party; (2) allows the System to submit trade data to comparison automatically to produce a fully compared trade at the end of the trade date (T); and (3) does not allow trade data which will change the terms of the trade known to the System to be submitted to comparison by member organizations after T.

The effect of the ABS Enhancements, therefore, is that no misunderstanding or disagreement regarding trade data entered in the System on T is visible to, or affects, the contra party. There are, thus, no "questioned trades" taken to the Floor for resolution by the contra parties. A disagreement concerning data entered in the System is limited to the entering member (the subscriber) and its customer, and must be resolved by them through clearing house procedures.

The Exchange believes that the ABS Enhancements have furthered its efforts to improve the efficiency of its marketplace by means of automated systems. Just as the universal contra symbols in the Opening Automated Report Service (OARS) and the Designated Order Turnaround (DOT) System, for example, have facilitated the execution, comparison and clearance of securities on the equity trading Floor, the use of the universal contra symbol ABS has resulted in a significant reduction in the incidence of "questioned trades" resulting from errors and omissions in data submitted to comparison from the bond trading Floor. In fact, the ABS Enhancements program, like the System side of OARS and DOT, is now virtually error-free.

(2) *Statutory Basis.* As noted in SR-NYSE-82-11, the ABS Enhancements program is designed to facilitate transactions in debt securities and to provide more efficeint clearance and settlement of these transactions. The ABS Enhancements better enable the Exchange to carry out the purposes of the Securities Exchange Act of 1934 regarding facilitating transactions in securities, promoting efficient executions, and maintaining fair and orderly markets, as stated in section 6(b)(5), and section 11A(a)(1) of the Act.

The ABS Enchancements' objective of prompt and accurate clearance and settlement of transactions through the use of enhanced data processing techniques also advances the purposes of the Act set forth in Section 17A(a).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the ABS Enhancements will impose any burden on compitition not necessary to further the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 13, 1984. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 16, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-19412 Filed 7-20-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Informing Disaster Loan Borrowers of Changes Made in Interest Rates and Loan Limitations by Pub. L. 98-270

Public Law 98-270 made several changes in the Disaster Loan Program of the Small Business Administration. By this notice, the Small Business Administration is informing affected persons, businesses, and organizations of setps taken by the Small Business Administration ("SBA") to implement these changes.

1. For loans made as a result of disasters commencing on or after October 1, 1982, interest rates on balances outstanding on April 18, 1984, the date Pub. L. 98-270 was signed, on business, home, and personal property disaster loans are reduced to 8 percent for borrowers determined by SBA to have credit elsewhere and 4 percent for those determined by SBA not to have credit elsewhere. Monthly payments will not be reduced. The effect is to shorten the repayment period. Borrowers will be notified by SBA to this effect.

2. Eligibility for personal property loans approved on or after October 1, 1983, made as a result of disasters commencing on or after October 1, 1982, is increased to $20,000. Borrowers will be notified by SBA and may request an increase in their disaster loans if their verfied loss exceeded $10,000.

3. Eligibility for loans to Homeowners approved on or after October 1, 1983, made as a result of disaster commencing on or after October 1, 1982, is increased to $100,000. Borrowers will be notified by the SBA and may request an increase in their disaster loans if their verified loss would have exceeded $50,000.

4. The previous limitation of $55,000 for combined personal property and real estate damage is abolished for loans approved on or after October 1, 1983, made as a result of disasters commencing on or after October 1, 1982.

5. Eligibility for business loans approved on or after October 1, 1983, made as a result of disasters commencing on or after October 1, 1982, is increased to 100 percent of uninsured damage, up to $500,000 for each disaster. Borrowers will be notified by the SBA and may request an increase in their disaster loans.

6. The eligibility standard for economic injury disaster loans to agricultural cooperatives is revised as follows: the cooperative must meet SBA size standards for similar agricultural small business concerns, and each member of the board of directors or each member of the governing body must qualify individually as a small business concern. The income or number of employees of any other member shareholder shall not be considered in making the size determination. SBA will accept applications from agricultural cooperatives which meet the revised eligibility standards for Economic Injury Disaster Loans resulting from disasters declared after September 1, 1982. Filing deadline for such applications will be 60 days following the date of publication of this notice, if the filing deadline for Economic Injury Disaster Loans has expired, or where fewer than 60 days remain before expiration of the original filing deadline for Economic Injury Disaster Loans.

7. Owners of agricultural enterprises may be eligible for physical disaster assistance from either the Farmers Home Administration (FmHA) or from the Small Business Administration. The Small Business Act provides that an agricultural enterprise shall not be eligible for physical disaster loan assistance from SBA unless it is ineligible for assistance from FmHA "at substantially similar interest rates." An agricultural enterprise may be ineligible for FmHA disaster assistance because it has not met the FmHA minimum loss requirement, or because of ineligible status (absentee landlord, corporation not primarily engaged in farming, certain aliens, etc.). For applicants determined by SBA to have credit elsewhere, SBA's interest rate is substantially below FmHA's interest rate; for applicants determined by SBA not to have credit elsewhere, SBA's interest rate and FmHA's interest rate (for the first $100,000) are substantially similar. FmHA's interest rate for the next $400,000 for such applicants is not substantially similar to SBA's interest rates.

In order to comply with these provisions of the law SBA will use the following procedures for physical disasters commencing on or after October 1, 1983, which have been declared by the President or the Administrator of SBA:

a. SBA will accept and process applications for loans of more than $100,000 from agricultural enterprises, since SBA's and FmHA's interest rates for such loans are not substantially similar. If during the processing by SBA it becomes apparent that the loan eligibility is less than $100,000, the application will be returned to the applicant.

b. An application to SBA from an agricultural enterprise for a physical disaster loan of less than $100,000 must be accompanied by evidence substantiating:

(1) That the applicant is ineligible for physical disaster assistance from FmHA because of status (absentee landloard, corporation not primarily engaged in farming, certain aliens, etc.); and/or

(2) That the applicant cannot meet FmHA's minimum damage criteria; and/or

(3) That the applicant has been determined by FmHA to have credit elsewhere.

c. Applications to SBA from agricultural enterprises for loans of less than $100,000 which were filed within SBA's filing deadlines before the date of this notice will be processed without the information required by b, above.

Dated: July 16, 1984.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 84-19371 Filed 7-20-84; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Co.; Maximum Annual Cost of Money to Small Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licenses to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective *August 1, 1984,* and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is *13.445%* per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act, as amended by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: July 18, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

FR Doc. 84-19372 Filed 7-20-84; 8:45 am]

BILLING CODE 8025-01-M

[License Application No. 03/03–5171]

Consumers United Capital Corp.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), has been filed by Consumers United Capital Corporation, 2100 M Street, NW., Washington, D.C. 20036, with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1984).

The officers, directors and sole shareholder of the Applicant are as follows:

Robert T. Freeman, Jr., Chairman of the Board, Director, 3001 Veazey Terrace, NW., Washington, D.C. 20008
James P. Gibbons, Jr. President, Treasurer, Director, 6542 Mapledale Court, Falls Church, VA 22021
Brenda McDowell, Vice President, Secretary, Director, 1521 "S" Street, SE., Washington, D.C. 20020
Denis G. Garon, Investment Advisor, Apt. 501, 4200 Cathedral Avenue, NW., Washington, D.C. 20016
Consumers United Insurance Company, Sole shareholder, 2100 M Street, NW., Washington, D.C. 20036

Consumers United Insurance Company is owned by Consumers United Group, Inc. which, in turn, is owned by a profit sharing trust established for the benefit of employees.

The Applicant, a Delaware corporation, has two classes of stock authorized: 15,000 shares of Series B common, $1.00 par value per share, and 15,000 shares of Series A non-voting 3 percent cumulative preferred, $50.00 par value per share. It will begin operations with $1,008,000 of private capital, derived from the sale of 15,000 shares of Series B common stock.

Initially the Applicant will conduct its operations principally in the District of Columbia. It will provide assistance to qualified socially or economically disadvantaged small business concerns in various industries including, but notlimited to, high- and low-technology firms.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Acting Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Washington, D.C.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 18, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–19374 Filed 7–20–84; 8:45 am]

BILLING CODE 8025–01–M

[License No. 03/03–0169]

First Maryland Capital, Inc.; Issuance of a Small Business Investment Company License

On December 15, 1983, a notice was published in the **Federal Register** (48 FR 55792) stating that an application has been filed by First Maryland Capital, Inc., 107 West Jefferson Street, Rockville, Maryland 20850, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)) for a license as a small business investment company.

Interested parties were given until the close of business December 30, 1983, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03–0169 on July 12, 1984, to First Maryland Capital, Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 17, 1984.

Robert C. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–19373 Filed 7–20–84; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Service Station at Yuma, AZ; Closing

Notice is hereby given that on or about July 19, 1984, the Flight Service Station at Yuma, Arizona, will be closed. Services to the general aviation public of Yuma, formerly provided by this office, will be provided by the Flight Service Station in Phoenix, Arizona. This information will be reflected in the FAA Organization Statement the next time it is released.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Los Angeles, CA, on July 9, 1984.

R.L. Devereaux,

Acting Director, Western-Pacific Region.

[FR Doc. 84–19302 Filed 7–20–84; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Orange County, CA.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway widening project in Orange County, California.

FOR FURTHER INFORMATION CONTACT: Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 440–2804.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans) will prepare an Environmental Impact Statement (EIS) on a proposal to widen Interstate 5 (The Santa Ana Freeway), an existing six-lane facility. The limits of the project are between State Route 55 (The Newport Freeway) and State Route 22 (The Garden Grove Freeway). The project is needed to relieve current congestion and to provide capacity for future traffic.

This proposal is a Tier II component of a package of multimodal transportation improvements within the Santa Ana Transportation Corridor (SATC), Orange County, California. A Notice of Intent on the SATC study was published in the **Federal Register** on April 29, 1982. An extensive scoping process was undertaken at that time.

Alternatives being considered for the freeway widening project are:

1. Widen by two lanes using minimum design standards.

2. Widen by two lanes plus two auxiliary lanes using high design standards.

3. Widen by two lanes which would be reserved for high occupancy vehicles.

4. No Project: a "no build" option.

Caltrans has conducted an environmental scoping meeting to solicit input from Federal, State, and local agencies to identify significant environmental issues to be considered in the FIS. As the DFIS is being prepared, Caltrans will conduct public meetings to inform the public of the status of the project.

To ensure that the full range of issues relating to these proposed alternatives are addressed and incorporated into the planning process, your comments are being solicited. Comments and questions concerning this proposed action and the FIS should be directed to the FHWA at the address provided above.

Issued on: July 12, 1984.

D.L. Eyres,

Acting District Engineer, Sacramento, California.

[FR Doc. 84-19318 Filed 7-20-84; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Orange County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Orange County, California.

FOR FURTHER INFORMATION CONTACT: Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 440-2804.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (CALTRANS) and Orange County Environmental Management Agency (OCEMA) will prepare an Environmental Impact Statement (EIS) on a proposal to locate and construct a new high-speed, high capacity, limited access transportation facility. Transportation improvements are needed to serve existing and planned development. This facility (tentatively identified as State Route 73) will begin as an extension of the existing Corona del Mar Freeway (State Route 73) near MacArthur Boulevard (on the boundary between the Cities of Newport Beach and Irvine) and extend southeasterly to join the San Diego Freeway (I-5) between Avery Parkway and Junipero Serra Road near the northerly limit of the City of San Juan Capistrano. Alternatives being considered for the project are:

A. New Highway Alternative

This involves locating and constructing between six to ten general traffic lanes. An estimated 12 proposed interchanges may be included in this alternative. Also included are passing lanes at various locations where the grade approaches 6%, and auxiliary lanes to improve interchange function.

B. Transit/HOV Improvements

In addition to the above, transit/high occupancy vehicle (HOV) lanes, located in the median, will be evaluated, along with Park-and-Ride Facilities at five locations.

C. No Project

This alternative is essentially the "no build" option.

Note.—All other reasonable alternatives including other corridors and possibly various transit options will be considered. UMTA's participation is invited.

Consultation by Orange County with various state and local agencies began in August of 1977. These consultations identified areas of special concern along the proposed route, which were the focus of locally initiated environmental studies. FHWA believes that this early consultation has been extensive and consistent with 40 CFR 1501.7. However, in order to inform potentially affected agencies and the public of FHWA involvement, two Federal scoping meetings will be held in the study corridor in the summer 1984. Once dates and locations are established, appropriate notification will be given.

To ensure that the full range of issues related to this proposed route are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: July 12, 1984.

Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 84-19237 Filed 7-20-84; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 142
Monday, July 23, 1984

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).

CONTENTS

1

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 49, Page No. 28504, Date Published: Thursday, July 12, 1984.

PLACE: Board Room, 6th Floor, 1700 G Street, NW., Washington DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee, (202–377–6970).

CHANGES IN THE MEETING: The Bank Board meeting previously scheduled for Thursday, July 19, 1984, at 2:30 p.m., has been cancelled.

No. 91, July 19, 1984.

J.J. Finn,

Secretary.

[FR Doc. 84-19492 Filed 7-19-84; 3:54 pm]

BILLING CODE 6720-01-M

2

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 2:00 p.m., Friday, September 7, 1984.

PLACE: Board Room, 712 Jackson Place, NW., Washington, D.C. 20006.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Call meeting to order. Check quorum.
2. Adoption of proposed agenda.
3. Approval of minutes of April 9, 1984 meeting.
4. Election of Chairman.
5. Report of Chairman.
6. Report of Executive Secretary.
7. Report of General Counsel.
8. New Business.
9. Set date for next meeting in April, 1985.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary, telephone: 202/395–4831.

Malcolm C. McCormack,

Executive Secretary.

[FR Doc. 84-19437 Filed 7-19-84; 11:37 am]

BILLING CODE 9500-01-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-25]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 28504, July 12, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Thursday, July 12, 1984.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following items were deleted from the agenda:

4. *Opinion and Order:* Administrator v. Zock, Dkt. SE–5777; disposition of Administrator's appeal.
5. *Opinion and Order:* Petition of Eckes, Dkt. SM–3145; disposition of the Administrator's appeal.

The following items were added to the agenda:

4. *Opinion and Order:* Petition of Billings, Dkt. SM–3043; disposition of the Administrator's appeal.
5. *Opinion and Order:* Administrator v. Bracker, Dkt. SE–6004; disposition of the Administrator's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382–6525.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

July 19, 1984.

[FR Doc. 84-19475 Filed 7-19-84; 1:32 pm]

BILLING CODE 7533-01-M

4

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-26]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 29190, July 18, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, July 24, 1984.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was added to the agenda.

3. *Recommendations* to the Federal Aviation Administration regarding the design, placement, and inspection of runway and taxiway signs, and training in crew coordination in ground operations.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382–6525.

H. Ray Smith, Jr.,

Federal Register Liason Officer, July 19, 1984.

[FR Doc. 84-19474 Filed 7-19-84; 1:32 a.m.]

BILLING CODE 7533-01-M

federal register

Monday
July 23, 1984

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources, Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) Constructed After July 23, 1984; Proposed Rule and Notice of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2401-4]

Standards of Performance for New Stationary Sources, Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) Constructed After July 23, 1984

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 new, modified, and reconstructed storage vessels storing volatile organic liquids (VOL). The proposed standards implement section III of the Clean Air Act and are based on the Administrator's determination that emissions from the synthetic organic chemical manufacturing industry and volatile organic liquid storage vessels cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. The intent is to require new, modified, and reconstructed VOL storage vessels to control emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

The facilities covered by the these proposed standards include new petroleum liquid storage vessels of the types for which new source performance standards have already been promulgated. These proposed standards revise the requirements for petroleum liquid storage vessels.

This **Federal Register** notice also includes a revision to the EPA priority list (44 FR 49222, August 17, 1979) expanding the synthetic organic chemical manufacturing industry (SOCMI) category to include VOL storage vessels and handling equipment that are not located at SOCMI plants and also amends the reporting and recordkeeping requirements for petroleum liquid storage vessels covered under 40 CFR Part 60 Subpart Ka.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentations of data, views, or arguments concerning the proposed standards.

DATE: *Comments.* Comments must be received on or before October 2, 1984.

Public Hearing. A public hearing, if requested by August 14, 1984, will be held on September 11, 1984, beginning at 10:00 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by August 14, 1984.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A–130), Attention: Docket Number A–80–51, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460.

Public Hearing. The public hearing, if requested, will be held at ERC Auditorium, Corner of Hwy 54 & Alexander Drive, Research Triangle Park, North Carolina. Persons wishing to present oral testimony should notify Ms. Shelby Journigan, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5578.

Background Information Document. The background information document (BID) for the proposed standards 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 "Volatile Organic Compound Emissions from Volatile Organic Liquid Storage Vessels—Background Information for Proposed Standards," EPA–450/3–81–003a.

Docket. Docket No. A–80–51, containing supporting information used in developing the proposed standards, 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, SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information regarding the rationale for the regulatory aspects of the standards or the requirements of the standards, contact Mr. C. Douglas Bell, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578. For further information regarding the technical aspects of the source category or control technologies, contact Mr. James Durham, Chemicals and Petroleum Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5671.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The proposed standard would apply to each new, modified, or reconstructed storage vessel, regardless of location, with a capacity greater than or equal to 40 cubic meter (m^3) ≅10,000 gallons) storing a volatile organic liquid from which VOC's can be emitted to the atmosphere. The applicability of the proposed standards includes storage vessels containing petroleum liquids.

Standards of performance for new source established under section 111 of the Clean Air reflect:

> . . . application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. [Section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The proposed standard would require that each new, modified, or reconstructed storage vessel, regardless of location, with either a capacity greater than or equal to 151 m^3, storing a VOL with a maximum true vapor pressure greater than or equal to 3.5 kPa (≅0.51 psia) but less than 76.6 kPa ((≅11.1 psia) or with a capacity greater than or equal to 75 m^3, but less than 151 m^3, storing a VOL with a maximum true vapor pressure greater than or equal to 27.6 kPa (4.0 psia) but less than 76.6 kPa (11.1 psia) be equipped with:

1. A fixed roof in conjunction with an internal floating roof equipped with a liquid-mounted primary seal, flexible fabric sleeve seals on pipe columns (if any), slit fabric membranes on sample wells, and gasketed covers; or

2. An external floating roof equipped with a liquid-mounted or mechanical shoe primary seal and a continuous rim-mounted secondary seal, with both seals meeting certain minimum gap requirements; and using gasketed covers; or

3. A closed vent system and a 95 percent effective control device. Equivalent control devices or procedures may be approved by the Administrator after notice and an opportunity for hearing.

The proposed standards would require that each new, modified, or reconstructed storage vessel, regardless of location, with a capacity greater than or equal to 75 m^3, storing a VOL with a maximum true vapor pressure greater than or equal to 76.6 kPa be equipped with a closed vent system and control device.

To determine applicability, the proposed standards would require that the owner or operator of each new, modified, or reconstructed storage vessel with a capacity greater than or equal to 40 m^3 storing a VOL, maintain a record of the capacity of the storage vessel. The proposed standards would also require that the owner or operator of each new, modified, or reconstructed storage vessel either with a capacity greater than or equal to 75 m^3 but less than 151 m^3 storing a VOL with a maximum true vapor pressure greater than or equal to 15.0 kPa but less than 27.6 kPa or with a capacity greater than or equal to 151 m^3 storing a VOL with a maximum true vapor pressure greater than or equal to 1.75 kPa but less than 3.5 kPa, maintain a record of maximum true vapor pressure of the VOL.

The proposed standards for external floating roof vessels are identical to the requirements in the current petroleum liquid storage vessel standard, except that the proposed standards specify the type of primary seal that is to be used (i.e., liquid-mounted or mechanical shoe) and require gasketed covers for roof fittings. The proposed standards for fixed roof vessels have additional requirements that are not in the current petroleum liquid storage vessel NSPS; these include a liquid-mounted primary seal, gasketed fittings, and flexible fabric sleeve seals on pipe columns. The new requirements would not apply retroactively to petroleum liquid storage vessels already covered by Subparts K or Ka; only new, modified, or reconstructed vessels that commence construction after the proposal date of this standard would be subject to the new requirements.

EPA's Office of Solid Waste and Emergency Response (OSWER) is currently developing standards for storage vessels storing hazardous wastes. Some storage vessels could be affected by this NSPS and the hazardous waste storage standards. In such a situation, at a minimum the requirements of the NSPS would have to be met. Any additional requirement of the hazardous waste storage standard would also have to be met.

The owner or operator of each internal floating roof vessel subject to these standards would be required to inspect the internal floating roof and seals to help ensure that the equipment was being operated and maintained properly. The owner or operator would be required to inspect the floating roof and seals prior to filling the vessel with VOL to ensure that there were no holes in the internal floating roof and that there were no holes, tears, or other openings in the seals. Every 12 months thereafter, the owner or operator would be required to visually inspect the internal floating roof and seal from the fixed roof. If there are holes in the internal floating roof, or VOL accumulated on the roof, the owner or operator would have the options of repairing the control equipment within 30 days or of emptying the storage vessel within 30 days. At least once every 10 years, the owner or operator would be required to empty the storage vessel and to inspect the internal floating roof, the primary seal, and the secondary seal. The proposed standards would require that all defects in the control equipment be repaired before the vessel is refilled.

The owner or operator of each external floating roof vessel subject to these standards would be required to inspect the seals prior to filling the vessel with VOL to ensure that there were no holes, tears or other openings in the seal. Seal gap measurements of gaps between the seal and the vessel wall for both primary and secondary seals would be required for external floating roof vessels to ensure that the equipment was being maintained and operated properly. The owner or operator would be required to measure the gaps in both the primary and secondary seals within 60 days of introducting a VOL into the vessel. Every 12 months thereafter, the owner or operator would be required to perform secondary seal gap measurements. At least once every 5 years the owner or operator would perform primary seal gap measurements. Measured gaps that exceed specified limitations must be repaired within 30 days or the storage vessel must be emptied within 30 days.

It is also proposed to amend the reporting and recordkeeping provisions of Subpart Ka to be consistent with this revision (Subpart Kb) and require that reports be made only when the measured gaps exceed the specified limitations. Otherwise, records of gap measurements would be kept by the owner or operator.

The owner or operator of each affected facility equipped with a closed vent system and control device would be required to submit to the Administrator the system design specifications, an operation and maintenance plan, and an inspection plan for the system. The owner or operator would be required to operate, maintain, and inspect the system in accordance with the plans submitted to the Administrator.

Summary of Environmental, Energy, and Economic Impacts

Approximately 6,000 storage vessels would be affected by the proposed standards in the first 5 years. The proposed standards would reduce the national VOC emissions from new, modified, and reconstructed storage vessels by about 31,100 megagrams (Mg) in 1988. Emissions from the VOL storage vessels affected by these proposed standards are projected to be 33,200 Mg in 1988 without these proposed standards but would be only 2,100 Mg in 1988 with these proposed standards. The emission reduction obtained by these proposed standards is above and beyond that obtained by the implementation of other Federal or state regulations that limit emissions from storage vessels (baseline control). Existing regulations require that emissions from vessels with capacities of 151 m^3 or greater storing liquids with vapor pressures of 10.3 kPa or greater, be controlled through the use of either external floating roofs with primary and secondary seals or internal floating roofs. Some states require controls for vessels with smaller capacities and liquids with lower vapor pressures (Chapter 3 of the BID contains the precise regulatory framework). The proposed standards would reducue the national VOC emissions from storage vessels with no adverse impacts on other aspects of the environment. In addition, there would be no adverse energy impacts associated with the implementation of the proposed standards.

The total nationwide capital cost for affected facilities constructed through 1986 to comply with the proposed standards would be approximately $15.6 million. Because implementation of the proposed standards would retain liquids that would otherwise be lost, it would result in a net annualized credit in the fifth year (1988). For this reason, no price increases attributable to implementation of the proposed standards are expected.

To provide perspective on the capital cost that industry will face as a result of these proposed standards, it should be noted that the capital cost of constructing vessels at a new plant is expected to increase by no more than 6 percent. This percentage is the incremental capital cost of the controls compared to the cost of a baseline vessel at the model facilities presented in the BID. The percentage is conservative because it does not include foundation, pipes, pumps, and other items that are necessary for vessel

operation. It also does not include the capital costs associated with other operations at the model facilities, such as process units. This small percentage increase in vessel costs is not expected to impede the construction of new facilities of any type.

Standards of performance have other benefits in addition to achieving reductions in emissions beyond those required by a typical State implementation plan (SIP). The standards provide documentation that reduces uncertainty in case-by-case determinations of best available control technology (BACT) for facilities located in attainment areas, and lowest achievable emission rates (LAER) for facilities located in nonattainment areas. This documentation includes identification and comprehensive analysis of alternative emission control technologies, development of associated costs, an evaluation and verification of applicable emission test methods, and identification of specific emission limits achievable with alternate technologies. Additionally, an economic analysis that reveals the impact of the cost of controls on industry is provided in the BID.

The rulemaking process that implements a performance standard assures adequate technical review and promotes participation of representatives of the industry being considered for regulation, the government, and the public affected by that industry's emissions. The resultant regulation represents 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.

Moreover, the emissions from VOL storage vessels include a wide range of organic compounds, some of which are currently being studied for potential toxicity. The difficulties and time required to determine adverse health effects associated with these chemical emissions, will continue to make chemical-by-chemical control of toxic emissions a costly and uncertain process. Accordingly, an effective NSPS offers benefits beyond those associated with the reduction of VOC as an ozone precursor.

Rationale

Selection of Sources and Pollutants

The EPA priority list (40 CFR 60.16, 44 FR 49222, August 21, 1979) ranks, in order of priority for standards development, various source categories in terms of quantities of nationwide pollutant emissions, the mobility and competitive nature of each source category, and the extent to which each pollutant endangers public health and welfare. The priority list reflects the Administrator's determination that emissions from the listed source categories contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare, and is intended to identify major source categories for which standards of performance are to be promulgated.

The priority list ranked the source category entitled synthetic organic chemical manufacturing industry (SOCMI), including storage and handling equipment, first out of 59 listed source categories. The chemicals covered by the SOCMI source category include those made by chemical and biological synthesis.

There are storage vessels emitting VOC's locataed at plants other than SOCMI plants, such as liquid bulk storage terminals, that store the same or similar liquids as those at SOCMI plants and that can be controlled with the same effectiveness, the same costs (assuming the same vessel size), and the same control technology as storage vessels located at SOCMI plants. It is estimated that annual VOC emissions from SOCMI storage vessels were 24,570 Mg in 1977 as compared to an estimated 13,230 Mg from storage vessels not located at SOCMI plants. The same circumstances hold true for handling equipment, in that handling equipment located at plants other than SOCMI plants handle the same liquids and can be controlled with the same effectiveness, the same costs, and the same control technologies as handling equipment located at SOCMI plants. Also, additional emission reduction could be achieved by including handling equipment not located at SOCMI plants in this source category. Therefore, due to the similarities between VOC emitting storage vessels and handling equipment located at SOCMI plants and VOC emitting storage vessels and handling equipment not located at SOCMI plants, and due to the additional emissions reduction that can be achieved, the Administrator is proposing to expand the SOCMI source category to include VOC emitting storage vessels and handling equipment not located at SOCMI plants. This subcategory consisting of SOCMI storage vessels and handling equipment and non-SOCMI storage vessels and handling equipment is called volatile organic liquid storage vessels and handling equipment. (This **Federal Register** notice includes VOC requirements for VOL storage vessels only.)

The existing SOCMI category is organized within the priority list as follows:

1. Synthetic Organic Chemical Manufacturing Industry (SOCMI)
   a. Unit processes
   b. Storage and handling equipment
   c. Fugitive emission sources
   d. Secondary sources

The SOCMI category is, therefore, revised to include non-SOCMI as well as SOCMI storage vessels and handling equipment as follows:

1. Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Volatile Organic Liquid Storage Vessels and Handling Equipment
   a. SOCMI unit process
   b. Volatile organic liquid (VOL) storage vessels and handling equipment
   c. SOCMI fugitive sources
   d. SOCMI secondary sources

Even though petroleum liquid storage vessels also store volatile organic liquids, the new VOL storage vessel category on the priority list does not include them. This is because petroleum liquid storage vessels were already listed as a category for NSPS development on June 11, 1973 (38 FR 15380). Standards of performance for these vessels were proposed and promulgated (40 CFR Part 60 Subpart K) and subsequently revised (40 CFR Part 60 Subpart Ka). When Subpart Ka was promulgated (April 4, 1980), the Agency stated that there was insufficient data to distinguish between various types of internal floating roofs, (i.e., contact versus noncontact roofs) and that further testing would be conducted to examine emissions from various floating roof designs. Since that time, the American Petroleum Institute (API) has completed a major emissions testing program on internal floating roofs. The results of this program have made it possible to determine the relative performance of different control options as well as the relative importance of the various emission points (i.e., roof versus seal emissions) in an internal floating roof. The API data, therefore, not only provide a basis for evaluating various types of internal floating roofs but also allow for evaluation of potential additional equipment specifications for internal floating roofs not now required by Subpart Ka. Section 111(b)(1)(B) of the Clean Air Act, as amended in 1977, requires the Administrator to, at least every 4 years, review and, if appropriate, revise standards of performance. After evaluating the API data, the Administrator has determined it is appropriate to review and revise the promulgated standards for petroleum liquid storage vessels at this time.

The API test program compared emissions from multicomponent liquids (such as gasoline) and from single component liquids (such as hexane) and found them to be essentially the same. Storage vessels in the petroleum liquid storage vessel category generally store multicomponent liquids, and storage vessels in the VOL storage category generally store single component liquids. Therefore, the API test program is used as the basis for determining control requirements for both categories.

The API test work was used in this revision of Subpart Ka for petroleum liquid storage vessels. The API test work was also used as the basis for selecting BDT for the other storage vessels in the VOL storage category. (The selection of BDT for both categories is discussed later in this preamble.) After determining BDT for both categories it was found that the control equipment requirements were the same for vessels storing petroleum liquids and vessels storing other VOL's. Therefore, the Administrator has decided that these two categories of storage vessels should be combined into one NSPS, rather than having two NSPS's with the same requirements. Consequently, the proposed standards would apply to petroleum liquid storage vessels and VOL storage vessels. (**Note.**—since petroleum liquids are in fact volatile organic liquids, the actual standards refer only to volatile organic liquids with the intention of also including petroleum liquids.)

The annual growth rate of the storage vessel population is expected to be approximately 3 percent through 1988. Between 1983 and 1988, new storage vessels could cause an increase in nationwide VOC emissions of 33,210 Mg. Because VOC is the only criteria pollutant emitted from this source category, the proposed standards do not include particulate matter, nitrogen oxides, sulfur dioxide, carbon monoxide, or lead. It is estimated that total VOC emissions from storage vessels were 714,280 Mg in 1977 or about 3 percent of the national total.

Selection of Affected Facilities

Facilities affected by the proposed standards are storage vessels that contain organic liquids from which VOC's can be emitted to the atmosphere. A "VOC" is defined as any organic compound that participates in atmospheric photochemical reactions. An organic compound is considered to be photochemically reactive unless the Administrator has determined otherwise. Examples of liquids that would be affected by the proposed standards are hexane, acetone, and benzene.

The promulgated standards for petroleum liquid storage vessels specifically exempted vessels with a capacity less than 420,000 gallons and storing petroleum (crude oil) and condensate prior to custody transfer (production vessels). The emission controls that are applicable to the storage vessels included in the standards being proposed are not applicable to production vessels. Therefore, it was decided to also exempt production vessels from these proposed standards.

Storage vessels are also used to store VOL's at coke oven by-product plants. The applicable control techniques for storage vessels at coke oven by-products are different than the ones considered for the storage equipment covered by the standards being proposed. This is a function of the uniqueness of coking and by-product processes. Therefore, the Agency determined that a separate standard for vessels at coke oven by-product facilities is appropriate and that such vessels should not be covered by these standards.

Vessels storing gasoline exist at small distribution centers, referred to as bulk plants. As a result of State regulations, many bulk plants control fixed-roof working losses and tank truck loading losses through a vapor balance system. It would not be possible to equip vessels at bulk plants with the controls that would be required by these proposed standards and to continue the vapor balance system. Therefore, it was decided to exempt bulk plants that are part of the vapor balance system from these proposed standards.

A variety of vessel types are used to store organic liquids. One such type of vessel is a pressure vessel. Pressure vessels are designed to withstand large internal pressures. They are generally used for storing highly volatile and/or toxic materials and are constructed in various sizes and shapes, depending on the operating pressure. Noded spheroid and hemispheroid shapes are generally used for low pressure storage and are operated at pressures up to about 204 kPa (≅30 psia); horizontal cylinder and spheroid designs are typically used for high pressure storage (up to 1,827 kPa). Because high pressure vessels operating above 204.9 kPa are operated in a closed system at the pressure of the stored material, they have no emissions to the atmosphere. Therefore, these vessels are exempt from the proposed standards.

In the proposed standards each individual storage vessel is designated as the affected facility. This designation assures that new vessels are brought under the coverage of these standards when they are installed. No cost, environmental, or other factors were identified that would support a broader definition of the affected facility.

The components of storage vessels were examined to determine the parts that together constitute the affected facility. The vessel shell, fixed roof (if any), hatches (if any), floating roof (if any), vessel bottom, seal system (if any), and pressure-vacuum valve (if any) comprise the portion of the vessel in direct contact with liquid or vapor. Because of this, it was decided to include all of these components in the affected facility. It was decided not to include frames or other auxiliary supports and housings because they are not directly involved in the containment of liquid or vapor. Therefore, if construction of a new storage vessel is commenced after the proposal date using, in whole or in part, frames or other auxiliary supports from a storage vessel constructed prior to today's date, the storage vessel will be considered a new source. Similarly, in calculating the fixed capital cost of replacing components at an existing facility to determine if a reconstruction has occurred as defined by § 60.15, the fixed capital cost of the frame or other auxiliary equipment will not be included.

The Administrator decided to further distinguish among types and sizes of vessels within the source category. Storage vessels with capacities less than either 151 m^3 (≅40,000 gallons) or that store liquids with a maximum true vapor pressure of less than 3.5 kPa (0.5 psia) would not be required to control VOC emissions under these proposed standards, except if the capacity of the vessel is greater than or equal to 75 m^3 (≅20,000 gallons) and the stored liquid has a maximum true vapor pressure of 27.6 kPa (≅4.00 psia) or greater. Rationale for this is presented later in the section entitled Selection of Vessel Capacity and Vapor Pressure Exemption Points. To determine applicability under these proposed standards, monitoring is required of organic liquids that are stored in affected facilities containing organic liquids either with a maximum true vapor pressure greater than or equal to 1.75 kPa (0.25 psia) for capacities greater than or equal to 151 m^3 (≅40,000 gallons) or a maximum true vapor pressure greater than or equal to 15.0 kPa (2.2 psia) for capacities greater than or equal to 75 m^3 (≅20,000 gallons). This requirement is explained in the

section entitled Selection of Monitoring of Operations Requirements.

In summation, each storage vessel either with a capacity greater than or equal to 75 cubic meters but less than 151 cubic meters that stores an organic liquid that can produce VOC vapors with a maximum true vapor pressure greater than or equal to 15.0 kPa or with a capacity greater than or equal to 151 cubic meters that stores an organic liquid that can produce VOC vapors with a maximum true vapor pressure greater than or equal to 27.6 kPa, would be an affected facility under these proposed standards, unless: (a) The vessel contains crude oil or condensate prior to custody transfer and has a volume less than 1,590 m^3 (420,000 gallons); or (b) the vessel containing the organic liquid is associated with a coke oven by-product facility; or (c) the vessel is a pressure vessel, designed to operate as a closed system at pressures of 204.9 kPa or greater; or (d) the vessel is located at a bulk plant that is part of the vapor balance system.

Selection of the Basis for the Proposed Standards

In examining candidate BDT's for new storage vessels, the types of vessels that could be constructed—fixed roof vessels and external floating roof vessels—were considered separately.

The API test program, which was discussed earlier, measured emissions from fixed roof vessels equipped with internal floating roofs to control emissions. For vessels equipped with an internal floating roof, there are three primary sources of emissions. First, there can be VOC emissions from the seams or joints of the internal floating roof. Second, VOC can be emitted through the space between the internal floating roof and the vessel wall. Third, VOC can be emitted through the fittings or openings (e.g., hatches, column wells, and sample wells) on the internal floating roof. Using the API test data, the Agency has evaluated the relative effectiveness of various control equipment for each of these emission sources.

The API test program tested bolted and welded internal floating roof decks. Bolted roofs are constructed of sheets or panels that are mechanically joined or fastened together. The data show that the seams where the sheets are joined together are emission points. A bolted internal floating roof may float directly in contact with the liquid surface (contact roof) or may be supported by pontoons several centimeters above the liquid surface (noncontact roof). Welded roofs are constructed of steel sections welded together. Welded roofs have no seams and, therefore, no deck seam emissions. Welded roofs are always the contact type.

The API test program tested several seals used for reducing emissions from the space between the internal floating roof and the vessel wall. This space is sealed off by a primary seal. In some cases a second seal, above the primary seal, may also be used. In this case, the upper seal is referred to as the secondary seal.

There are three basic designs for primary seals: (1) Vapor-mounted; (2) liquid-mounted; and (3) mechanical shoe seals. Vapor-mounted primary seals are not in contact with the liquid surface, and this allows for a vapor space between the underside of the seal and the liquid surface. One type of vapor-mounted seal is a resilient foam-filled seal. A resilient foam-filled seal is a tough fabric band filled with a resilient foam log. The resiliency of the foam log permits the seal to adapt itself to some imperfections in vessel dimensions or in the vessel shell. Another type of vapor-mounted seal is an elastomeric wiper.

A liquid-mounted seal is in direct contact with liquid. These seals are similar in construction to resilient foam-filled seals. These seals may also be filled with a liquid in place of foam.

A mechanical shoe seal is characterized by a metallic sheet known as the "shoe," which is held against the vessel wall. A flexible coated fabric (the "envelope") is suspended from the shoe to the floating roof to form a cover over the space between the roof and vessel wall.

As previously mentioned, rim-mounted secondary seals can be installed over any of the above primary seal types. Rim-mounted secondary seals are always vapor mounted.

The data show that installing a secondary seal over the primary seal will reduce emissions from the seal area. The data also show that the installation of a liquid-mounted primary seal rather than a vapor-mounted primary seal will reduce emissions from the seal area. No data on emissions from mechanical shoe seals in internal floating roof vessels are available.

There are numerous fittings that penetrate the internal floating roof deck. Some typical fittings are: (1) Hatches in the deck; (2) ladder penetration or wells; and (3) column wells. Columns may support the fixed roof above the internal floating roof. These columns may be built up (structural shapes with irregular cross sections) or pipe columns (cricular cross sections). Fittings can be a source of emissions and are typically covered. Gasketing, and where possible, bolting the covers, reduces emissions from fittings. Emissions from gasketed or ungasketed column well covers may be reduced by using flexible fabric sleeve seals to seal off the deck penetration. These seals may only be used with pipe columns.

Fundamentally, the available data show that constructing a new fixed roof vessel with an internal floating roof instead of a fixed roof only is effective in reducing emissions. The API data also show that emissions from the internal floating roof vessel could be further reduced by using: (1) Liquid-mounted primary seals rather than vapor-mounted primary seals; (2) gasketed fittings; (3) pipe columns equipped with flexible fabric sleeve seals rather than built-up columns with sliding covers (gasketed or ungasketed); (4) continuous rim-mounted secondary seals; and (5) welded rather than bolted decks. All of these control options were considered in selecting BDT. These controls are described more fully in the BID.

Industry also conducted extensive testing on external floating roof vessels. These vessels have the same emission sources as the internal floating roofs except that all external floating roofs are welded; therefore, there are no seam emissions. Using this data, the Agency has evaluated the relative effectiveness of various control equipment for each of these emission sources.

The data for external floating roofs show the comparative emissions reduction of several types of seal systems. The data show that emissions from a new external floating roof vessel with vapor-mounted primary seals only could be reduced by installing continuous rim-mounted secondary seals. Emissions from this primary and secondary seal combination could be further reduced through the use of a liquid-mounted primary seal (in lieu of the vapor-mounted primary seal) with a continuous rim-mounted secondary seal. In addition, the data show that a mechanical shoe primary seal in conjunction with a continuous rim-mounted secondary seal is as effective as a liquid-mounted primary seal with a continuous secondary seal. In the analysis, however, cost impact numbers are presented only for the liquid-mounted seal because it costs less than a mechanical shoe seal. In selecting BDT, all of these control options were considered.

The costs of the storage vessel control techniques are small relative to the capital and operating costs of the process units where the vessels are located. As a consequence, none of these control techniques impact the ability of an owner or operator to raise

capital nor do they measurably impact product prices. The economic analysis concluded that no unreasonable adverse economic impacts would occur as a result of using any of the control techniques investigated. Therefore, the Agency selected BDT based primarily on a comparison of incremental costs and emission reductions associated with each alternative control technique. Incremental costs and emission reductions are calculated by taking the difference between the emissions and annualized costs of one control option and the next less stringent control option. The control options considered were arranged in order of increasing cost effectiveness. In selecting BDT, the Agency selected control techniques that achieve the most emission reduction with reasonable incremental control costs per megagram of emission reduction (incremental cost effectiveness). The basis of selecting BDT for each type of storage vessel is discussed in detail below.

New Fixed Roof Vessel

New fixed roof vessels can be built to include internal floating roofs. The control options for fixed roof vessels and their associated cost appear in Table 1. Internal floating roofs are already required for many vessels by the NSPS for petroleum liquid storage vessels, which requires, as the minimum level of control for fixed roof vessels greater than 151 m^3 (40,000 gallons) storing a liquid with a true vapor pressure of 10.3 kPa (1.5 psia), the installation of internal floating roofs with vapor-mounted primary seals. The cost effectiveness of this control option on the model fixed roof vessel is about $40 per Mg. The second level of control that can be applied is the use of a liquid-mounted primary seal rather than a vapor-mounted primary seal. This results in a savings rather than a cost. The next step is to control fitting losses by gasketing covers and by the use of pipe columns with sleeve seals. The incremental cost of controlled fittings over uncontrolled fittings is about zero. The costs of equipping an internal floating roof with a liquid-mounted primary seal and controlled roof fittings are considered reasonable, and therefore, these controls were selected as BDT for new fixed roof storage vessels.

TABLE 1.—CONTROL OPTIONS FOR NEW STORAGE VESSELS

Vessel types	Control technique [1]	Incremental cost effectiveness—$/Mg
I. Fixed roof vessel storing liquids with vapor pressures <76.6 kPa.	*Internal roof/vapor-mounted primary seal*	41
	Liquid-mounted primary seal [2]	Credit
	Gasket fittings [3, 4]	=0
	Secondary seals	23,400
	Welded deck seams	77,900
II. External roof with vapor-mounted primary seal; storing liquids with vapor pressures <76.6 kPa.	Secondary seal	Credit.
	Liquid-mounted primary seal, or mechanical shoe seal; with secondary seal.	Credit
III. Vessels storing high pressure liquids (>76.6 kPa)	*Closed vent system and control device*	[5] 63

[1] Control techniques selected as BDT are italicized.
[2] A mechanical shoe seal is also allowed in place of a liquid-mounted primary seal.
[3] Uncontrolled assumes: (1) Access hatch, with ungasketed, unbolted cover; (2) automatic gauge float well, with ungasketed, unbolted cover; (3) built-up column wells, with ungasketed sliding cover; (4) ladder well, with ungasketed sliding cover; (5) adjustable roof legs; (6) sample well with slit fabric (10% open area); (7) 1-inch diameter stub drains; and (8) vacuum breaker with, gasketed weighted mechanical actuation.
[4] Control consists of (1) access hatch, with gasketed, bolted cover; (2) automatic gauge float well, with gasketed, bolted cover; (3) built-up column wells, with gasketed sliding covers; (4) ladder well, with gasketed sliding cover; (5) adjustable roof legs; (6) sample well with slit fabric (10% open area); (7) 1-inch diameter stub drain; and (8) vacuum breaker, with gasketed weighted mechanical actuation.
[5] These controls are also required by the current NSPS and by typical SIP's.

In some instances it may not be possible to equip an internal floating roof with a liquid-mounted primary seal. The corrosive or solvent properties of some liquids are such that they will destroy the polymeric fabric that encapsulates the seal. Owners or operators of such affected facilities could comply with the proposed standards by installing a closed vent system and control device. However, the cost effectiveness of requiring this would be unreasonably high. Therefore, the EPA examined other seal technologies.

Mechanical shoe primary seals can be used in a wide variety of liquids with solvent and corrosive properties. The portions of the seal that are normally metallic may be constructed of, or coated with, materials that will be compatible with the stored liquid. There are no emissions test data on the performance of mechanical shoe seals on internal floating roof vessels. But tests on external floating roof vessels storing petroleum liquids have demonstrated that the emission reduction capability of mechanical shoe seals is slightly less than that of liquid-mounted seals, but greater than that of vapor-mounted seals.

Mechanical shoe seals are more costly than liquid-mounted seals, and extensive modifications to the design of an internal floating roof (particularly noncontact internal floating roofs) may be necessary to equip an internal floating roof with a mechanical shoe seal. Because of the higher cost, it is unlikely that an allowance for mechanical shoe seals would result in these seals being installed in internal floating roof vessels unless liquid-mounted seals cannot be used. Because of the wide variety of liquids that may be stored in affected facilities and the variations of seal material, it is not possible to develop a list of instances in which mechanical shoe seals would be allowed in place in liquid-mounted seals. Therefore, mechanical shoe seals were also selected as BDT for new fixed roof storage vessels.

There are still other control options to be considered. The next control option to consider is the addition of a secondary seal over the liquid-mounted primary seal. The incremental cost effectiveness of this for the model vessel in Table 1 would be about $23,400 per Mg. This was judged to be unreasonable, and secondary seals were rejected as BDT. Since the cost effectiveness of installing a secondary seal over a primary seal is independent of vessel diameter and would not vary with vessel size, secondary seals were not selected as BDT for vessels larger than the model vessel because the incremental cost effectiveness would still be unreasonable. The Agency then examined the incremental cost effectiveness of adding the secondary seal for liquids that have higher vapor pressures. Increasing the vapor pressure of the stored liquid from 6.8 kPa to 38 kPa (≈5 psia is a vapor pressure typical of motor gasoline, which is the most commonly stored petroleum liquid) would decrease the incremental cost effectiveness from about $23,400 per Mg to about $4,550 per Mg. This was also judged to be unreasonable. Supported by these analyses, the cost effectiveness of secondary seals was considered unreasonable, and on this basis, they were rejected as BDT for all vessel sizes and liquid vapor pressures.

Another control option would be to control deck seam emissions by requiring welded decks. The incremental cost effectiveness of this for the model vessel in Table 1 would be about $78,000 per Mg. This was judged to be unreasonable, and welded deck seams were rejected as BDT. Increasing the vessel diameter from 10 meters to 30

meters and increasing the stored liquid vapor pressure from 6.8 kPa to 38 kPa, would decrease the incremental cost effectiveness from $78,000 per Mg to $8,800 per Mg in the model vessel. This was still considered unreasonable, and this control option was again rejected as BDT for all vessel sizes and liquid vapor pressures.

As the vapor pressure of a stored liquid increases to atmospheric pressure the liquid boils. The control technologies selected as BDT are not appropriate to boiling liquids. There are no test data on internal floating roof vessels storing liquids with vapor pressures higher than 47 kPa; therefore, there is some uncertainty in the effectiveness of the controls as the vapor pressure increases to the boiling point (101 kPa). The current petroleum liquid storage vessel NSPS and typical state implementation plans (SIP's) require a closed vent system and control device for vessels storing liquids that have vapor pressures greater than or equal to 76.6 kPa (11.1 psia). Because liquids with vapor pressures greater than 76.6 kPa may reach the boiling point on high temperature days, and because the BDT control technologies previously selected are inappropriate for boiling liquids, the Agency decided that BDT for vessels storing such liquids should be a closed vent system and control device rather than an internal floating roof with a liquid-mouthed primary seal and controlled fittings. Liquids with vapor pressures less than 76.6 kPa are not likely to reach the boiling point on high temperature days, and the internal floating roof with a liquid-mouthed primary seal and controlled fittings is appropriate in these cases.

New External Floating Roof Vessel

Table 1 presents the control options for new external floating roof vessels and their associated costs. New external floating roof vessels with vapor-mounted primary seals only, could be built as external floating roof vessels equipped with vapor-mounted primary seals and continuous secondary seals. This is the minimum required by the NSPS for petroleum liquid storage vessels, and as such, this level of control is already required for many vessels. This level of control results in a savings rather than a cost. The next control option considered is a liquid-mounted primary seal with a continuous secondary seal rather than the vapor-mounted primary seal with a continuous secondary seal. The incremental cost effectiveness of requiring this control option over the base case (vapor-mounted primary seal with a secondary seal) is a credit. A mechanical shoe primary seal with a continuous secondary seal has similar costs and achieves emission reductions similar to the liquid-mounted primary seal in conjunction with a secondary seal. The next option is control of the roof fittings as required for internal floating roof vessels. It is not possible from the data available for external floating roofs to quantify the emissions from uncontrolled roof fittings. In the EPA's judgment, the effectiveness cost of controlling fitting emissions from external floating roofs is substantially the same as for internal floating roofs for two reasons. First, the costs of gasket material are small; thus, the variability in the numbers of types of fittings between types of vessels would not incur a significant differential in total gasket costs. In addition, some of the types of fittings that would require control on external floating roof vessels are essentially the same as those on internal floating roof vessels. These factors cause the costs of controlling fittings to be very nearly the same. Secondly, emission tests confirm that fitting emissions are independent of wind speed; the anticipated emissions from either type of vessel are, therefore, approximately equal, and subsequently, the cost effectiveness in each case will also be approximately equal. There are no additional control options that will achieve more emission reduction than those options already considered. Therefore, BDT for new external floating roofs is a liquid-mounted primary seal with a continuous rim-mounted secondary seal or a mechanical shoe primary seal with a continuous rim-mounted secondary seal and controlled roof fittings.

As previously explained when discussing internal floating roof vessels, both the cost and emissions of seal systems are directly proportional to the diameter of the vessel. Therefore, as the vessel diameter increases, the cost effectiveness of BDT will remain constant and would still be reasonable. As the vapor pressure of the stored liquid increase, the emissions reduction increases, and therefore, the product recovery credit obtained by BDT controls grows even larger. Therefore, BDT still results in a credit, not a cost, and it is reasonable to require BDT for larger vessels and vessels storing liquids up to 76.6 kPa.

However, as noted before for fixed roof vessels (and for the same reasons), the floating roof and seal system controls that comprise BDT are not appropriate for high pressure liquids. BDT for vessels storing liquids with a vapor pressure greater than or equal to 76.6 kPa is a closed vent system and control device. It should be noted that vessels storing these high pressure liquids would not be built as external floating roof vessels. External floating roof vessels are not enclosed and, therefore, have no vents. Rather than constructing an external floating roof vessel, an owner or operator wishing to store a high pressure liquid would construct a fixted roof vessel with a closed vent system and control device attached. Therefore, the BDT controls for high pressure liquids have been separated in Table 1 from the floating roof and seal system BDT controls.

The equipment selected as BDT for external floating roof vessels has a calculated emissions rate that is lower than the equipment selected as BDT control for fixed roof vessels. However, the cost effectiveness of building the model vessel as a BDT external floating roof vessel rather than an internal floating roof vessel with a liquid-mounted primary seal and controlled fittings is estimated to be $11,700 per Mg. This was judged to be unreasonable. Therefore, the Agency rejected the requirement that all storage vessels be equipped with external floating roofs.

Environmental, Economic, Nonair Quality, and Energy Impacts of BDT

The emission reduction due to the implementation of BDT is estimated to be 31,100 Mg in the fifth year of implementation (1988). In the calculation of these impacts it was assumed that 80 percent of the new external floating roof vessels that would have been affected facilities under the current NSPS for petroleum liquids storage vessels would have been equipped with mechanical shoe seals and not vapor-mounted primary seals. This ratio is based on a 1977 distribution of shoe seals to resilient seals. The major portion of the emission reduction (≈20,000 Mg) is obtained by building new floating roof vessels (internal and external) in place of fixed roof vessels. Most of the remaining emission reduction is obtained by requiring liquid-mounted primary seals rather than vapor-mounted primary seals on new internal and external floating roof vessels.

The fifth year capital and annualized cost of implementing BDT are estimated to be $15.6 million and a credit, respectively. These costs are judged to be reasonable. There are no adverse nonair quality or energy impacts associated with the floating roof and seal control techniques selected as BDT. Therefore, after considering the impacts of BDT on vessels storing liquids with

vapor pressures less than 76.6 kPa, the internal floating roof, liquid-mounted primary seal and controlled fittings, or the external floating roof with a liquid-mounted or mechanical shoe seal, and continuous secondary seal and controlled fittings, continued to be selected as BDT.

There are no impacts attributable to the requirement that vessels storing high pressure liquids be equipped with closed vent systems and control devices. The current NSPS for petroleum liquid storage vessels and typical SIP's require closed vent systems and control devices for vessels storing high pressure liquids. Therefore, no impacts (emission reduction, costs, energy, and nonair quality) were attributed to the proposed standards as a result of the requirements on vessels storing high pressure liquids (less than or equal to 76.6 kPa).

Selection of Format for the Proposed Standards

Section 111 of the Clean Air Act requires an emission standard whenever it is feasible. Section 111(h) states that "if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof . . ." The term "not feasible" is applicable if the emissions cannot be captured and vented through a vent or stack designed for that purpose, or if the application of a measurement methodology is not practicable because of technological or economic limitations.

Determining compliance with an emission standard for storage vessels would require the measurement of emissions from each storage vessel; therefore, the emission would have to be vented in a manner that would allow the measurement of pollutant concentration and flow rates. Internal and external floating roof storage vessels do not typically have a conveyance design to capture the emissions or a stack or vent through which the emissions pass to the atmosphere.

Internal floating-roof vessels are typically vented to minimize the possibility of hydrocarbons accumulating in concentrations approaching the flammable range. As ambient wind flows over the exterior of the vessel, air will flow into the enclosed space between the fixed and floating roofs through some of the shell vents and out of the enclosed space through others. Any VOC vapors that have evaporated from exposed portions of the liquid surface or that have been contained by the deck or seal system will be swept out of the enclosed space.

Equipping each storage vessel with a capture and stack system would require that the vessel vents be sealed and that the emissions be transported to a measurement system. In most cases, the closure of the vessel vents would require the vessel to be blanketed with inert gas to prevent the creation of explosive or flammable mixtures in the vessel or measurement system. This would certainly be economically impracticable, especially considering that the sole purpose of the system would be for emissions testing. For this reason, the Administrator concluded that establishing an emission standard is not feasible for internal floating roof storage vessels.

As previously stated, external floating roof vessels are open to the atmosphere in that they have no fixed roof. Because of this, it is technoligically impossible to equip these vessels with a closed vent system. It is possible to equip these vessels with fixed roofs. If this is done, the vessel would be an internal floating roof vessel, and the rationale for not establishing an emission standard for internal floating roof vessels would still hold. Therefore, the Administrator concluded that establishing an emission standard for external floating roof vessels is infeasible.

The possibility of establishing a "design, equipment, work practice, or operational standard, or combination thereof" was then examined. The equipment that comprises BDT for vessels storing affected liquids with vapor pressures less than 76.6 kPa consists of certain equipment and design requirements. This equipment is an internal floating roof with a liquid-mounted primary seal and controlled fittings, or an external floating roof with a liquid-mounted or mechanical shoe primary seal, a continuous rim-mounted secondary seal, and controlled fittings. Operational and work practice requirements, which consist of inspection and repair requirements, are necessary to ensure the continued integrity of the control equipment. Therefore, the Administrator concluded that the format of the standards for these vessels should include a combination of a design, equipment, work practice, and operational standards.

A vapor control system consists of two distinct parts: (1) A closed vent system and (2) a control device. The closed vent system collects VOC vapors that have been vented from the storage vessel and transfers them to a control device that then processes the VOC vapors by either recovering them as product or disposing of them. The EPA considered an emission standard for storage vessels that are controlled with closed vent systems and control devices or disposal systems. The first possibility that was considered was a mass emission limitation.

Closed vent systems and control devices are generally used in conjunction only with fixed roof vessels. Fixed roof vessel mass emissions vary considerably as a function of vessel capacity, vapor pressure of the stored liquid, the molecular weight of the stored liquid, and the utilization rate of the storage vessel. Because of the wide variation in the amount of VOC vapors being emitted from storage vessels, a mass emission limit cannot be selected that would be achievable on a worst-case basis (i.e., large vessel capacity, high vapor pressure, and high utilization rate), and at the same time would not allow the construction of closed vent systems and control devices that are less effective than BDT. On this basis, the Administrator rejected any type of mass emission format for this section of the proposed standards.

The possibility of establishing reduction efficiency emission standards for vessels controlled by closed vent systems and control devices or disposal systems was then examined. Emissions from storage vessels are variable and are often at low rates that are too low to measure. When liquid is entering a vessel, the liquid surface rises, forcing vapors above the liquid surface out of the vessel. While this is occurring, the vapor flow rate and the emissions are large. When liquid is exiting the vessel, the liquid surface falls, and the resulting pressure differential sucks air or a blanketing material into the vessel. During these operations, vapor flows into the storage vessel resulting in no atmospheric emissions. When the liquid level is held constant, pressure differentials resulting from diurnal temperature variations expel vapors at very low flow rates at intermittent times during the cycle.

Certain components of uncontrolled emissions have been measured in very specialized tests conducted by the EPA and industry. Total emissions have not been measured, however, and to do so would require that the operation of the vessel be strictly controlled during the testing period. Because of methodology problems, it may not be possible to measure both the flow rate and the concentration simultaneously. This would cast doubt on the accuracy of the measurement. For these reasons, it was concluded that it was impracticable to

measure the emissions existing the storage vessel. For the same reasons, it would be impracticable to measure the emissions captured by the closed vent system or entering the control device. Therefore, it was concluded that reduction efficiency standards are not feasible for closed vent systems and control devices.

Because reduction efficiency cannot be measured practically, it is infeasible to establish an emission standard requiring a reduction efficiency. A design standard requiring a reduction efficiency design specification, however, is feasible. The possibility of establishing a "design, equipment, work practice, or operational standard, or combination thereof" was, therefore, examined. A reduction efficiency design standard has the advantage in that it accounts for the wide variation in emission and flow rates being vented from the vessel, and it would require the use of BDT closed vent systems and control devices on all vessels equipped with these controls. Operational requirements, which consist, among other things, of inspection, repair, and work practice requirements, are necessary to ensure the proper operation and integrity of control equipment meeting a reduction efficiency design standard. Therefore, the Administrator concluded that the format of the standards for storage vessels equipped with closed vent systems and control devices should include a combination of a design, equipment, work practice, and operational standard.

Selection of Equipment Specifications

Closed vent systems and control devices were selected as BDT for vessels storing high pressure liquids (>76.6 kPa). In specifying the efficiency for the control system, EPA notes that some control devices such as incineration are capable of achieving a 98 percent emission reduction. However, there are a number of other control technologies, such as condensers, that have not demonstrated this level of efficiency and that have other benefits. Although there are no data to demonstrate exactly what efficiencies can be achieved in a continuous manner on an industry wide basis, it is believed that a level of 95 percent would allow the use of these alternate control technologies. Therefore, the costs and benefits of 98 percent control versus 95 percent control were examined.

Recovery devices such as adsorbers and condensers generate recovery credits. Available data show that the capital cost of a 95 percent efficient condenser is less than 50 percent of the cost of a 98 percent efficient incinerator and that the annualized operating cost, without product recovery credits, may be only 30 percent of the annualized operating cost of a 98 percent efficient incinerator. The incremental cost effectiveness of a 98 percent effective incinerator over a 95 percent effective condenser is estimated to be about $25,000 per Mg. On this basis, and because of the costs and the energy requirements associated with higher levels of control, the EPA elected not to revise the 95 percent control level selected by the current NSPS. Therefore, the efficiency specified for closed vent systems and control devices is 95 percent.

The closed vent system must be designed so as to be capable of collecting all VOC vapors and gases discharged from the storage vessel. The control device must be designed to reduce the VOC emissions discharged into it at an efficiency of at least 95 percent by weight and must be operated at the design specifications to achieve this emissions reduction.

Mechanical shoe primary seals are allowed for external floating roof vessels storing liquids with vapor pressures less than 76.6 kPa. If the lower end of the shoe does not extend into the liquid, the seal will be, in effect, a vapor-mounted seal. Therefore, the standards specify that the lower end of the seal will extend into the liquid. To continuously hold the envelope above the liquid, the other end must extend at least 61 cm (24 in.) above the liquid surface. If there are holes or tears on the envelope, the seal will not be an effective control device. Therefore, the standards specify that there will be no holes or tears in the envelope.

Selection of Equivalent Equipment

Equivalent control devices or procedures may be approved by the Administrator after notice and an opportunity for hearing, if the equipment or procedure is demonstrated to be equivalent in reducing emissions to the equipment required by the proposed standards. Equivalence to the controls specified as BDT could be demonstrated by a number of methods including: (1) An actual emissions test that uses a full-size or scale-model storage vessel that accurately collects and measures all VOC emissions from the storage vessel, or (2) an engineering evaluation as approved by the Administrator.

One system that the Administrator has already determined to be equivalent to the floating roof and seal systems specified as BDT for vessels storing liquids with vapor pressures less than 76.6 kPa, is the control system specified for storage vessels with vapor pressures greater than or equal to 76.6 kPa, i.e., a closed vent system combined with a 95 percent efficient (by weight) control device.

The emissions test data also show that, on an internal floating roof, a vapor-mounted primary seal in conjunction with a continuous secondary seal has lower emissions than a liquid-mounted primary seal only. Therefore, the Agency decided that internal floating roofs equipped with a vapor-mounted primary seal and a continuous secondary seal are equivalent to internal floating roofs equipped with a liquid-mounted primary seal only.

Selection of Vessel Capacity and Vapor Pressure Exemption Points (Cutoffs)

Section 111(b)(2) of the Clean Air Act gives the Administrator the authority to distinguish among classes, types, and sizes of sources within a source category. The emission reduction obtained by an internal floating roof with a liquid-mounted primary seal and controlled fittings or by an external floating roof with a liquid-mounted primary seal, secondary seal, and controlled fittings decreases with decreasing vessel size and vapor pressure. Furthermore, the costs of the control equipment is independent of liquid vapor pressure. However, as vessel size decreases, the costs of control do not decrease in proportion to the decrease in emission reduction, i.e., the decrease in emission reduction is smaller than the decrease in cost. As a result, the cost effectiveness of BDT increases rapidly as the capacity of the storage vessel decreases. The same trend is also true of liquid vapor pressure. As liquid vapor pressure decreases, BDT becomes increasingly less cost effective. Recognizing these relationships of control costs versus tank size and stored liquid vapor pressure, various combinations of tank size and vapor pressure were analyzed to determine if there is some point at which the costs of control become unreasonably high.

As part of this analysis, the Agency examined the cost effectiveness of equipping an individual tank with BDT controls. Small capacity vessels (less than 1,000 gallons) are used at research laboratories, retail outlets, and other small facilities. The control technology required by the proposed standard is not applicable to vessels of this small size. The amount of VOC emissions from this type of facility is generally negligible. Also, BDT (internal and external floating roofs) controls are not typically

available in small vessel volumes and diameters. Because external floating roof vessels are typically not constructed with volumes less than 130,000 gallons (490 m^3), in examining the cost effectiveness of controlling vessels with volumes less than 40,000 gallons (151 m^3), it was assumed that these vessels would be built as fixed roof vessels, not external floating roof vessels. The current petroleum liquids NSPS as well as typical SIP's have volume and vapor pressure cutoffs of 40,000 gallons and 1.5 psia (10.3 kPa), respectively. The cost effectiveness of equipping a 40,000 gallon fixed roof vessel storing a liquid with a vapor pressure of 1.5 psia with BDT is $450 per Mg. This was judged to be reasonable, and the EPA decided that emissions from such vessels should be controlled.

The Agency then focused on the cost effectiveness of lowering the cutoff volume or vapor pressure from 40,000 gallons and 1.5 psia. The available data indicate that lowering the vapor pressure cutoffs provides more nationwide emission reduction than does lowering the volume cutoff. Therefore, it was decided to examine the cost effectiveness of first lowering the vapor pressure cutoff. Vapor pressures of 1.0 psia (6.9 kPa), 0.5 psia (3.5 kPa), and 0.25 psia (1.75 kPa) were examined. A cost effectiveness of requiring controls for an individual vessel with a volume of 40,000 gallons storing a liquid with a true vapor pressure of 0.5 psia is about $1,900 per Mg, assuming a recovery credit of $360 per Mg. This value is representative of very low priced liquid chemicals and has been used in the cost analysis of most of this standard. However, the value of the chemicals between 0.5 psia and 1.0 psia typically is much greater than $360 per Mg. The average value of chemicals in this vapor pressure range is $695 per Mg. Using this more realistic average value for chemicals yields a cost effectiveness of about $1,400 per Mg, rather than $1,900 per Mg, for a 40,000 gallon tank.

The cost per ton for control decreases rapidly as the vapor pressure, or tank volume, or both increase. Thus, the control of tanks with larger, more typical volumes (on the order of 160,000 gallons) in this vapor pressure range would result in a net annual credit rather than a cost. Excluding petroleum liquids (such as crude oil and gasoline), the average cost of controlling liquids with vapor pressures between 0.5 and 1.0 psia, in tanks greater than or equal to 40,000 gallons, is $240 per Mg (assuming a recovery credit of $360 per Mg). Petroleum liquids are typically stored in tanks larger than 200,000 gallons, for which the standards will lead to savings rather than additional costs. Taking these factors into account, it is reasonable to control all tanks at least 40,000 gallons in size storing liquids with vapor pressures of at least 0.5 psia.

The Agency then examined the cost effectiveness of requiring controls at vapor pressures lower than 0.5 psia. The cost effectiveness of requiring controls on an individual vessel with a volume of 40,000 gallons storing a liquid with a vapor pressure of 0.25 psia is about $3,000 per Mg. This was judged to be unreasonable, and as a result the Agency decided that controls would not be required at vapor pressures less than 0.5 kPa.

Next, the cost effectiveness of lowering the volume cutoff from the tentative value of 40,000 gallons while holding the vapor pressure constant at 0.5 psia was examined. The cost effectiveness of controlling an individual vessel with a volume of 20,000 gallons storing a liquid with a true vapor pressure of 0.5 psia is about $3,200 per Mg. This was judged unreasonable, and therefore, it was decided not to require controls at volumes less than 40,000 gallons for vessels storing liquids with vapor pressures less than 0.5 psia. Thus, the volume and vapor pressure levels of 40,000 gallons (151 m^3) and 0.5 psia (3.5 kPa), respectively were selected as one component of the final volume vapor pressure cutoffs.

The preceding analysis did not address the possibility of controlling emissions from small vessels (20,000 gallons) that store gasoline or other highly volatile liquids. A 20,000 gallon uncontrolled fixed roof tank storing gasoline may have twice the uncontrolled emissions of a 40,000 gallon tank storing a liquid with a true vapor pressure of 0.5 psia, and the emission reduction obtained by BDT may also be twice as great. Gasoline has a vapor pressure of about 4 psia or greater depending on grade and storage temperature. The cost effectiveness of equipping a 20,000 gallon tank storing a 4.0 psia liquid is about $140 per Mg.

Selecting this cutoff would reduce emissions from small vessels storing gasoline and other highly volatile liquids at a cost effectiveness that is judged to be reasonable. However, there is very little known about vessels between 20,000 and 40,000 gallons storing liquids with vapor pressures less than 4.0 psia. The Agency would have to have more information concerning the location of these vessels and the liquids being stored before a cutoff less than 4.0 psia could be established. Consequently, storage vessels of a size 40,000 gallons or greater and storing liquids with a vapor pressure of 0.5 psia or greater are required to comply with the proposed standards. Also, storage vessels of a size 20,000 gallons or greater and storing a liquid with a vapor pressure of 4.0 psia or greater are required to comply with the proposed standards.

Modification/Reconstruction Considerations

As specified in section 111 of the Clean Air Act (CAA), standards of performance affect not only those facilities constructed after the date of proposal but also facilities that have been modified or reconstructed after the date of proposal. This section describes the conditions under which an existing facility becomes subject to the standards of performance.

"Modification" is defined in section 111(a)(4) of the CAA as "any physical change in, or change in the operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." Few, if any, changes in the physical configuration of the storage vessels that would increase emissions are anticipated. An operational change that would increase emissions is a changing of the stored liquid from a VOC non-emitting liquid to a VOC emitting liquid.

Section 60.14(e) of the General Provisions to Part 60 lists several changes that are not considered modifications. Among these is the use of a raw material, if prior to the date of proposal of the standard, the existing facility was designed to accommodate that alternative use. This exemption applies to changing of liquids in storage vessels. A change of liquids, therefore, does not constitute a modification. Thus, few, if any modifications of storage vessels are expected.

Under the reconstruction provisions (40 CFR 60.15), an existing facility may become an affected facility if the fixed capital cost of new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable, entirely new facility. It is expected that only under catastrophic circumstances (e.g., total destruction of the storage vessel by fire or explosion, catastrophic collapse of a fixed roof, or collapse of an external floating roof) would a facility become subject to the reconstruction provisions.

Selection of Inspection, Reporting, and Recordkeeping Requirements

Section 111(h) of the Clean Air Act states that if the Administrator prescribes an equipment standard for the control of an air pollutant, he shall "include as part of such standard such requirements as will assure the proper operation and maintenance of any element of . . . equipment." For clarity, the inspection, reporting, and recordkeeping requirements will be discussed for each type of BDT controls in sequence.

Internal Floating Roof Vessels

After the vessel is filled, it will be impossible to accurately ascertain the condition of the primary seal. Additionally, most repairs cannot be performed on an internal floating roof that is in service. Therefore, the proposed standards would require that the owner or operator inspect and report the condition of the internal floating roof, seals, and other required equipment before placing the storage vessel in service. During this initial internal inspection, the owner or operator would inspect for defects on the internal floating roof and for holes, tears, or other openings in the primary seal or seal fabric, including the envelope (if any). Because the condition of seal gaps when the roof is resting on supports is not necessarily predictive of the seal gaps when the roof is floating, no initial seal gap measurement is required for the seals on internal floating roof vessels.

The report containing the results of the initial inspection would also specify the exact type of controls used, including seal type, and gasketing material, as well as certifying that internal floating roof, seal system and fittings meet the specifications of BDT and are free of defects.

Because internal floating roofs and seals can fail, resulting in an increase in emissions, it was decided to require that each storage vessel be inspected periodically and that any failures be repaired.

Control equipment failures such as the sinking or hanging up of an internal floating roof, detachment of the seal from the deck (in whole or in part), holes in the seal fabric or envelope, and no liquid in a liquid-filled seal, are major failures of the control equipment that would be visible during a visual inspection of the seal from the fixed roof, and inspection for these is required. Visual inspection from the fixed roof is not time consuming (estimated to be less than 1 labor hour per inspection, including preparation, in a typical case).

Seal gap measurements are an excellent measure of the ability of the seal system to reduce emissions from the annular space between the internal floating roof and the vessel wall. However, it is hazardous to enter internal floating roof vessels while they are in service, and the vessel would have to be entered to measure seal gaps. Additionally, unlike external floating roofs, many internal floating roofs are not completely rigid structures. Thus, the placement of workers on the deck to measure the gaps may change the gaps that would be measured. On this basis, the Administrator decided not to require periodic gap measurements for internal floating roof vessels.

In considering the frequency at which roof sinkings and hang-ups, seal detachment, and holes or tears in the seal fabric should be inspected, the Administrator balanced the frequency of failures (low), against the cost of visual inspection (small) and the potential benefit obtained by detecting and repairing the failure (varying). Industry experience indicates that the expected frequency of major failures would be measured in years rather than months. Consequently, inspections as frequently as quarterly would be unnecessarily frequent for detection of major failures. Since it is necessary to detect only major failures during the visual inspection and since these occur infrequently, visual inspections are, therefore, required on an annual basis.

If during the annual visual inspection, the owner or operator finds that the floating roof has sunk; that liquid has accumulated on the floating roof; that there are holes or tears in the seal; that the seal is detached; or that the seal is no longer operating as designed (e.g., liquid-filled seal has no liquid); these failures would have to be repaired. In order to repair these failures, any liquid in the storage vessel may have to be removed, and the storage vessel must be degassed. Once this is completed, there would be no additional emissions due to control equipment failure. For this reason, there is no rationale for a limit on the length of time allowed for repairing control equipment failures. However, it is reasonable to place a time constraint on the length of time liquid would be allowed to remain in the unrepaired storage vessel. The Administrator considered requiring that the liquid be removed immediately after a failure is detected. However, not all facilities could be expected to have extra storage capacity for the displaced liquid. A survey of facilities indicated that most facilities could empty a storage vessel having equipment in need of repair within 30 days. As a result, the Administrator determined that if a failure is detected during an annual visual inspection, it is reasonable to require that the owner or operator of a storage vessel repair the failed equipment or empty the storage vessel within 30 days. Consequently, this is a requirement in the proposed standards.

Records of each inspection would be kept. These recordkeeping provisions are not burdensome (less than 1 labor-hour per vessel per year) and are an important method of determining compliance with the proposed standards. Each such record would identify the vessel, contain the date the vessel was inspected and the results of the inspection. No periodic reporting of annual inspections is required.

However, if a failure is detected, a report is required. The report would have to identify the storage vessel that did not meet the requirements of the proposed standards and the reasons it did not fulfill the requirements. In addition, the report would have to describe the steps necessary to bring the storage vessel into compliance with the proposed standards. An extension of the 30-day repair or refill requirement may be requested from the Administrator in a report demonstrating that alternate storage capacity is unavailable and specifying a schedule that assures that the control equipment will be repaired or the vessel will be emptied as soon as possible.

Some failures of the seal system may not be detectable during the visual inspection from the fixed roof. Holes and tears are most likely to develop on the portions of the seal not visible from the fixed roof. Additionally, visibility is limited by lighting and distance problems during the inspection from the fixed roof. Because an internal inspection may detect failures that would otherwise go undetected, there are advantages to requiring that the vessel be emptied and degassed, and an internal inspection of the controls be performed. Inspection of the control equipment from both the underside and topside of the internal floating roof can be performed when the vessel is emptied and degassed.

The EPA then examined the frequency at which inspections should be required. The controls required on fixed roof vessels have a very low failure rate and are expected to last many years when installed properly. Data indicate that vessels are generally degassed on the average of once every 10 years for inspection as a typical practice. Therefore, if owners or operators were

required to perform internal inspections on their vessels at least once every 10 years, this requirement would, on the average, cause no additional degassings of the vessel, and hence no additional emissions. Consequently, since there are advantages to performing internal inspections on an internal floating roof storage vessel and since they are inspected routinely on the average of every 10 years, the proposed standards require an internal inspection of each internal floating roof storage vessel at least once every 10 years. If a vessel is emptied and degassed to repair a failure detected by an annual visual inspection, an internal inspection must be performed. This inspection will be substituted for the 10-year inspection, and another internal inspection will not be required for another 10 years. This requirement will result in one degassing where two would have occurred otherwise.

To afford the Administrator the opportunity to have an observer present to ascertain the condition of the control equipment before the vessel is refilled with VOL, the proposed standards require that the owner or operator submit written notification of the data of refill 30 days in advance. This is reasonable when the internal inspection takes place as scheduled in the tenth year.

However, there are instances in which the internal inspection may take place early. An unplanned plant shutdown or other event may provide the owner or operator a convenient time to inspect, and if necessary repair. To require that the vessel remain empty for possibly 30 days prior to refill in these situations may deter owners and operators from inspecting the control equipment. This is because in many cases, requiring the vessel to remain empty may require that the plant be shutdown for the 30 days. The costs of this would be so punitive as that owners or operators would elect not to empty and degas.

However, the inspection and repair of control equipment whenever possible is desirable. To alleviate the burden of the 30-day notice of refill in those unscheduled cases, the proposed standards allow for a shorter notification period. If the internal inspection is performed prior to the tenth year, the owner and operator shall notify the Administrator at least 7 days prior to refill. Notification shall be made by telephone followed by written documentation demonstrating why 30 days notice could not have been given. Alternatively, this notification, including the written documentation may be made in writing and sent by express mail.

The EPA feels that this 7 day period will not be punitive since it generally takes 7 to 10 days to prepare the vessel for the refill inspection; i.e., empty, vent, clean, inspect, and repair. However, the EPA requests comments on the 7 day period; are there particular circumstances under which the 7 day period may cause hardship in the industry, and what is the frequency of such circumstances.

The results of each internal inspection shall be recorded. The record shall identify the storage vessel, the date the inspection was performed, the condition of the control equipment (deck, seal, gaskets), list any repairs made to the control equipment and certify that the control equipment met the specifications of BDT prior to refilling the vessel with VOL. No periodic reporting of the internal inspection is necessary.

However, if a control equipment failure is detected, a report is required. The report would identify the storage vessel that did not meet the requirements of the proposed standards and the reasons it did not fulfill the requirements. In addition, the report would have to describe the steps necessary to bring the vessel into compliance with the proposed standards.

External Floating Roof Vessels

The seal system of an external floating roof vessel may fail, and gaps may develop between the primary or secondary seal and the vessel wall. The primary seal (in particular the underside) will not be visible once the vessel is placed in service. Therefore, to ensure that the seals are in good operating condition, the proposed standards require the owner or operator to initially inspect the controls (seal system) prior to placing the vessel in service.

During this initial internal inspection, the owner or operator would inspect for holes, tears, or other openings in the primary seal or seal fabric including the envelop (if any) and holes, tears, or openings in the secondary seal. Because the condition of seal gaps when the roof is resting on supports is not necessarily predictive of the seal gaps when the roof is floting, no seal gap measurement is required prior to placing the vessel in service.

The results of the initial inspection will be submitted to the Administrator in a report, along with a description of the exact type of controls, including seal type, as well as a certification that the seal system is free of defects.

As stated previously, seal gap measurements are an excellent measure of the performance of the seal system. Thus, seal gap measurements constitute a "performance test" that will ensure that the seals are operating properly. Such measurements are required by the current NSPS for petroleum liquid storage vessels (Subpart Ka), and they have been adopted in this revision. The owner or operator would be required to measure the gaps in both the primary and secondary seals within 60 days of introducing VOL into the storage vessel and would be required to submit the results in a written report to the Administrator.

Gaps in the seals may develop over time as the seal system is exposed to the elements and abrades against the vessel wall. An examination of the available data shows that 98 percent of the liquid-mounted primary seals and 96 percent of the mechanical shoe primary seals would be expected to be within the gap limitations allowed by these proposed standards. Also, some gap measurement techniques require that the secondary seal be pulled back during the measurement process, resulting in increased emissions during the measurement. In evaluating the frequency with which these measurements should be performed, the Agency balance the expected low incidence of failures against the possible increases in emissions and concluded that the 5-year interval between primary seal gap measurements required by Subpart Ka is sufficient to detect those failures that do occur. Therefore, the Administrator selected 5 years as the frequency of measurements for primary seal gaps.

Secondary seals can also develop gaps, which will increase emissions. from the seal area. The available data show that about 95 percent of the secondary seal would be within the gap limitation specified by these proposed standards. While the failure rate of secondary seals is expected to be similar to primary seals, there is free access to the secondary seal, and the measurement of secondary seal gaps would not result in increased emissions during the measurement process. Also, the presence of an adequately functioning secondary seal is fundamental in reducing seal emissions. Therefore, it was concluded that secondary seal measurements should be made more frequently than primary seal gap measurements. The selected interval, once per year, is based on the free access to the seal and its importance as a control device. In the event that the measured gaps exceed the specified limitations, the owner or operator must repair the secondary seal

so that it conforms to the specified gap limitations.

While typically it will not be necessary to empty the storage vessel to make repairs, in some cases it may be necessary to do so. The Administrator decided that the allowable period of repair (or emptying) should be the same as that for internal floating roof vessels, i.e., 30 days. As with internal floating roof vessels, an extension of the 30 day repair or refill requirement may be requested.

Subpart Ka currently requires the owner or operator to submit a report within 60 days of performing each gap measurement. The Agency has determined that if the measured gaps in the primary or seconary seal do not exceed the specified limitations, a record of the measurement is sufficient and that reports are unnecessary. Therefore, these proposed standards, and the proposed amendment to Subpart Ka, require only records for each gap measurement be kept by the owner or operator. Each record shall contain the date of measurement, the raw data obtained in the measurement, and the results.

In the event the measured gaps exceed those specified, a report would be required. The report would have to identify each storage vessel that did not meet the requirements of the proposed standards and the reason it did not fulfill the requirements. In addition, the report would have to describe the steps necessary to bring the storage vessel into compliance with the proposed standards.

In the event it is necessary to empy and degas the vessel to effect repairs, the owner or operator must provide 30 days notice to the Administrator prior to refill. Again, as with internal floating roof vessels, the owner or operator must provide 7 days notice prior to refill. Notification shall be made by telephone followed by written documentation demonstrating why 30 days notice could not have been given. Alternatively, this notification, including the written documentation may be made in writing and sent by express mail.

Closed Vent Systems and Control Devices

To enable the EPA to determine compliance with the requirements for the closed vent system and control device, the proposed standards require the owner or operator to submit plans and specifications for the system to the EPA as an attachment to the notification required by § 60.7(a)(1). If the facility is exempt from § 60.7(a)(1), the submittal shall be made as an attachment to the notification required by § 60.7(a)(2).

Engineering design calculations on the efficiency of the closed vent system and control device are to be included in the submittal. The design information would contain documentation demonstrating that the control device being used achieves the required control efficiency during reasonably expected maximum loading conditions. This documentation is to include a description of the gas stream that enters the control device, including flow and vapor content under varying liquid level conditions (dynamic and static), and the manufacturer's design specifications for the control device. If the control device or the closed vent capture system receives vapors, gases or liquids, other than fuels, from sources that are not designated sources under this subpart, the efficiency demonstration is to include consideration of all vapors, gases and liquids received by the closed vent capture system and control device.

Closed vent systems and vapor control devices are also subject to failures or improper operations and, therefore, require periodic inspection. Examples of failures or improper operation include insufficient combustion temperature in the thermal oxidation unit, allowing a carbon bed to become saturated with organics prior to desorbing and compressor failures. Many, but not all, failures can be detected by regular inspection of operational parameters. Therefore, the proposed standards would require the owner or operator to submit, along with the design specifications of the closed vent system and control device, an operating plan. The operating plan would contain a description of the parameter or parameters to be monitored to ensure that the control device is operated in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters). The owner or operator would be required to operate and monitor the parameters of the closed vent system and control device in accordance with the operating plan. The Administrator will review and approve or disapprove the parameters to be monitored. Because of the wide variation in types of systems, the following discussion on the information to be submitted should be considered general guidance except where otherwise noted.

For thermal oxidizers the design information should include the autoignition temperature of the VOC vapors, the combustion temperature, residence time at the combustion temperature and flow rate. To ensure proper operation, components such as compressors or blowers should be routinely inspected, and the combustion temperature should be routinely monitored.

The specifications that will allow two types of thermal oxidation devices to reduce VOC vapors by 98 percent, and would therefore meet the 95 percent requirement of these standards, are known. Recent tests have demonstrated smokeless steam-assisted, air-assisted and nonassisted flares can achieve 98 percent control over a broad range of vapor types 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 less than 18 m/sec. Monitoring provisions for flares are provided in the regulation. An enclosed combustion device with a minimum residence time of 0.75 seconds and a minimum temperature of 816°C will also provide 98 percent control. Documentation that these conditions exist is sufficient to meet the requirements of these standards.

Design information submitted for carbon adsorbers could include the affinity of the VOC vapors for carbon, the amount of carbon in each bed, the number of beds, the humidity of the feed gases, the temperature of the feed gases, and flow rate. Operating information should include desorption schedule, steam pressure or temperature, and the amount of steam used (for vacuum desorption pressure drop should be included). Components such as blowers should be routinely inspected.

Design information for condensers should include the final temperature of the VOC vapors, type of condenser and flow rate. To ensure proper operation, items such as compressors and pumps could be inspected on a routine basis, and temperature and refrigerant (if any) levels should also be monitored.

It is possible that the information required to be reported by this NSPS could also be required by regulations of Superfund. In such a situation, the report required by the Superfund regulations could be substituted for the report or reports required by this NSPS.

Selection of Monitoring of Operations Requirements

Without information on the capacity of the storage vessel, there is no way to determine whether the vessel may be subject to the controls required by these proposed standards. Therefore, the proposed standards require that the owner or operator of each storage vessel with a capacity greater than or equal to 40 m^3 keep a record of the height, diameter, and capacity of each such

vessel. These records may consist of purchase orders or other information that is routinely kept.

Without information on the maximum vapor pressure of the stored liquid, there is no way to determine whether a storage vessel with a capacity greater than 75 m^3 is subject to the controls required by these proposed standards. To determine applicability of these proposed standards, the owner or operator would be required to maintain a record of the liquid stored, the period of storage, and the maximum true vapor pressure of the liquid during the respective period of storage. If an owner or operator routinely keeps such records, no special record need be kept for the purposes of the proposed standards.

Because true vapor pressure of the stored liquid is a function of storage temperature, it is expected that if applicability of these standards were based on the instantaneous true vapor pressure of the stored liquid, some vessels could be unaffected during the cooler seasons but could be affected during the summer months or during short excursions from normal operating temperatures, while other liquids could remain unaffected year round.

Facilities that are affected only under unusual conditions could cause industry difficulties in planning inspections and in determining applicability. It was decided, therefore, to base applicability on the maximum true vapor pressure of the stored liquid. It was further decided that the maximum true vapor pressure should be calculated (a) for vessels operated at controlled temperatures that differ from ambient temperatures, using the highest expected calendar-month average of the storage temperature, and (b) for vessels operated at ambient temperatures, using the local maximum monthly average ambient temperature as reported by the National Weather Service.

Because temperature variations or process changes result in vapor pressure changes of the stored liquid, it was decided that the owner or operator of each affected facility should keep a record of the maximum true vapor pressure at some point less than the point at which controls are required: 3.5 kPa for capacities greater than or equal to 151 m^3 and 27.6 kPa for capacities greater than or equal to 75 m^3 but less than 151 m^3. These vapor pressures should be high enough so that records would not be kept on liquids that could not, under reasonable circumstances, reach the maximum true vapor pressure cutoffs, but low enough so that records would be kept on most liquids that could reach the maximum true vapor pressure cutoffs. After consideration, it was decided that recordkeeping would be required for liquids with a maximum true vapor pressure than or equal to 1.75 kPa for capacities greater than or equal to 151 m^3 and 15.0 kPa for capacities greater than or equal to 75 m^3 but less than 151 m^3.

In developing the reporting requirements in the proposed standards, consideration was given to including this information in annual reports. It was decided that the inclusion of this information would be unnecessarily burdensome. Therefore, the proposed standards would not require the owner or operator to report on vapor pressure but would require the owner or operator to maintain a record of the maximum true vapor pressure for any liquid with a vapor pressure greater than or equal to 1.75 kPa (for capacities greater than or equal to 151 m^3) and 15.0 kPa (for capacities greater than or equal to 75 m^3 but less than 151 m^3). For vessels containing liquids that are normally maintained below 3.5 kPa or 27.6 kPa for the respective capacity ranges, a notification to the Administrator is required when the maximum true vapor pressure exceeds 3.5 kPa or 27.6 kPa, respectively. For refined petroleum products the vapor pressure may be obtained from procedures specified in API Bulletin 2517. For other compounds the vapor pressure may be obtained from standard texts or measured as described in ASTM Method D–2879–75. The owner or operator also would be allowed to use other appropriate means to make the determination as approved by the Administrator. Comment is invited on the method of vapor pressure calculation and the point at which records shall be kept.

Impacts of Reporting Requirements

The Paperwork Reduction Act (PRA) of 1980 (Pub. L. 96–511) requires that the Office of Management and Budget (OMB) approve reporting and recordkeeping requirements that qualify as an "information collection request" (ICR). The EPA also uses 2-year periods in its impact analysis procedures for estimating the labor-hour burden of reporting and recordkeeping requirements.

During the first 2 years that the proposed standards would be in effect, the average annual industry-wide burden of the reporting and recordkeeping requirements associated with the proposed standards would be 26,100 person-hours, based on an average of 1,250 respondents per year.

Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact the 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 with the EPA 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 in this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the 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 in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review, excluding interagency review materials [section 307(d)(7)(A)].

Miscellaneous

As prescribed by Section 111, establishment of standards of performance for volatile organic liquid storage vessels are preceded by the Administrator's determination that VOC emissions from the synthetic organic chemical manufacturing industry and volatile organic liquid storage vessels contribute significantly to air pollution which may be reasonably 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. The Administrator will welcome comments on all aspects of the proposed regulations, including the technological issues and the inspection program.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. 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 reporting requirements.

The information provisions associated with this proposed rule (§§ 60.7, 60.8, 60.114(b), and 60.115(b)) will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB—marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection provisions.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment are considered in the formulation of the proposed standards to ensure that the proposed standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the background information document.

Under Executive Order 12291, the EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency 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." Because the recommended control equipment results in the retention of affected liquids that would otherwise be lost, the net annualized cost through the first 5 years of implementation including depreciation and interest, is projected to be a credit or savings rather than a cost. [These costs (savings) do not include lost opportunity costs (i.e., the profit or return on investment that would be derived by investing in other than air pollution control equipment)]. No increase in the price of VOC emitting liquids attributable to implementation of these proposed standards is expected. The Agency has therefore concluded that this regulation is not a "major rule" under Executive Order 12291.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from the OMB to the EPA and the EPA response to those comments are included in Docket Number A–80–51. The docket is available for public inspection of the EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

Regulatory Flexibility Analysis Certification

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because, in general, small businesses do not own the type of facility affected by these proposed standards. The maximum capital and annualized costs likely to be experienced by a small business are estimated to be $6,300 and $500 per affected facility, respectively. If a small business did own an affected facility, it is unlikely that any adverse economic impacts would occur as a result of these regulations because both the capital and annualized costs are small.

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, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

(42 U.S.C. 7411, Clean Air Act 111)

Dated: July 10, 1984.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

For the reasons set out in the preamble, it is proposed that 40 CFR Part 60 be amended as set forth below.

1. Section 60.16 of Subpart A is amended by revising the first entry in the list to read as follows:

§ 60.16 Priority list.

1. Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Volatile Organic Liquid Storage Vessels and Handling Equipment
(a) SOCMI unit processes
(b) Volatile organic liquid (VOL) storage vessels and handling equipment
(c) SOCMI fugitive sources
(d) SOCMI secondary sources

* * * * *

2. Section 60.17 of Subpart A is amended by revising paragraph (a)(13), adding paragraph (a)(41), and revising paragraph (c)(1) as follows:

§ 60.17 Incorporation by reference.

(a) * * *

(13) ASTM–D–323–82, Test Method for Vapor Pressure of Petroleum Products (Reid Method), for §§ 60.111(1), 60.111a(g), and 60.111b(f).

* * * * *

(41) ASTM–2879–75, Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature by Isoteniscope, for §§ 60.111b(e)(3) and 60.116b(e)(ii).

* * * * *

(c) * * *

(1) API Publication 2517, Evaporation Loss from External Floating Roof Tanks, Second Edition, February 1980, for §§ 60.111(i), 60.111a(f), 60.111b(e)(1) and 60.116b(e)(i).

* * * * *

3. The heading for Subpart K is revised to read as follows:

Subpart K—Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973 and Prior to May 19, 1978

4. The heading for Subpart Ka is revised to read as follows:

Subpart Ka—Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984

5. In § 60.113a of Subpart Ka, the introductory text of (a)(1)(i) is revised and (a)(1)(i) (D) and (E) are added to read as follows:

§ 60.113a Testing and Procedures.

(a) * * *

(1) * * *

(i) Determine the gap areas and maximum gap widths between the primary seal and the tank wall, and the secondary seal and the tank wall according to the following frequency:

* * * * *

(D) Keep records of each gap measurement at the plant for a period of at least 2 years following the date of measurement. Each record shall identify the vessel on which the measurement was performed, and shall contain the date of the seal gap measurement, the raw data obtained in the measurement process required by paragraph (a)(1)(ii) of this section and the calculation required by paragraph (a)(1)(iii) of this section.

(E) If either the results of each seal gap calculated in paragraph (a)(1)(iii) of this section or each measured maximum seal gap; exceed the limitations specified by § 60.112a of this subpart, a report shall be furnished to the Administrator within 60 days of the date of measurements. The report shall identify the vessel and list each reason why the vessel did not meet the specifications of § 60.112a. The report shall also describe the actions necessary to bring the storage vessel into compliance with the specifications of § 60.112a.

* * * * *

6. Add Subpart Kb as follows:

Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984

Sec.

Authority: Secs. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)), and additional authority as noted below.

Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984

§ 60.110b Applicability and designation of affected facility.

(a) Except as provided below, the affected facility to which this subpart applies is each storage vessel with a capacity greater than or equal to 40 cubic meters (m^3) that is used to store volatile organic liquids (VOL's) for which construction, reconstruction, or modifications is commenced after July 23, 1984.

(b) Except for paragraphs (a) and (b) of § 60.116b, storage vessels with design capacity less than 75 m^3 are exempt from the provisions of this subpart.

(c) Except for paragraph (b) in § 60.116b, vessels either with a capacity greater than or equal to 151 m^3 storing a liquid with a maximum true vapor pressure less than 1.75 kPa or with a capacity greater than or equal to 75 m^3 but less than 151 m^3 storing a liquid with a maximum true vapor pressure less than 15.0 kPa are exempt from the provisions of this subpart.

(d) This subpart does not apply to the following:

(1) Vessels at coke oven by-product plants.

(2) Pressure vessels designed to operate in excess of 204.9 kPa and without emissions to the atmosphere.

(3) Vessels permanently attached to mobile vehicles such as trucks, railcars, barges, or ships.

(4) Vessels with a design capacity less than or equal to 1,589.874 m^3 used for petroleum or condensate stored, processed, or treated prior to custody transfer.

(5) Vessels located at bulk gasoline plants controlled by a vapor balance system.

§ 60.111b Definitions.

Terms used in this subpart are defined in the Act, in Subpart A of this part, or in this subpart as follows:

(a) "Bulk gasoline plant" means any gasoline distribution facility which has a gasoline throughput less than or equal to 75,700 liters per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State or local law, and discoverable by the Administrator and any other person.

(b) "Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions.

(c) "Custody transfer" means the transfer of produced petroleum and/or condensate, after processing and/or treating in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation.

(d) "Fill" means the introduction of VOL into a storage vessel but not necessarily to complete capacity.

(e) "Maximum true vapor pressure" means the equilibrium partial pressure exerted by the stored liquid at the greatest expected calendar-month average of the liquid storage temperature for liquids stored above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum Institute Bulletin 2517, Evaporation Loss from External Floating Roof Tanks (incorporated by reference—see § 60.17); or

(2) As obtained from standard reference texts; or

(3) As determined by ASTM Method D–2879–75 (incorporated by reference—see § 60.17);

(4) Any other method approved by the Administrator.

(f) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and nonvolatile non-viscous petroleum liquids except liquified petroleum gases, as determined by ASTM–D–323–82 (incorporated by reference—see § 60.17).

(g) "Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

(h) "Storage vessel" means each tank, reservoir, or container used for the storage of volatile organic liquids but does not include:

(1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors; or

(2) Subsurface caverns or porous rock reservoirs.

(i) "Vapor balance system" means a VOC vapor control system which returns vapors displaced from a receiving vessel to the vessel being unloaded such that:

(1) Hatches are not to be opened at any time during loading operations;

(2) There are no leaks in pressure vacuum relief valves and hatch covers, nor in either vessel, nor in associated vapor return lines during loading or unloading operations; and

(3) Pressure relief valves on vessels are to be set to release at the highest possible pressure consistent with State or local fire codes or the National Fire Prevention Association guidelines.

(j) "Volatile organic liquid (VOL)" means any organic liquid which can emit volatile organic compounds into the atmosphere.

§ 60.112b Standard for volatile organic compounds (VOC).

(a) The owner or operator of each storage vessel either with a design capacity greater than or equal to 151 m^3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 3.5 kPa but less than 76.6 kPa or with a design capacity greater than or equal to 75 m^3 but less than 151 m^3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 27.6 kPa but less than 76.6 kPa, shall equip each storage vessel with one of the following:

(1) A fixed roof in combination with an internal floating roof meeting the following specifications:

(i) The internal floating roof shall rest or float on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel that has a fixed roof. The internal floating roof shall be floating on the liquid surface at all times, except during initial fill and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, and refilling shall be continuous and shall be accomplished as rapidly as possible.

(ii) Each internal floating roof shall be equipped with one of the following closure devices between the wall of the storage vessel and the edge of the internal floating roof:

(A) A foam- or liquid-filled seal mounted in contact with the liquid (liquid-mounted seal), or

(B) Two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof; the lower seal may be vapor-mounted, but both must be continuous, or

(C) A mechanical shoe seal.

(iii) Each opening in the internal floating roof except for automatic bleeder vents and the rim space vents is to provide a projection below the liquid surface.

(iv) Each opening in the internal floating roof except for column wells, automatic bleeder vents, rim space vents, and stub drains is to be equipped with a cover or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. The cover or lid shall be equipped with a gasket. Covers on each access hatch and automatic gauge float well shall be bolted except when they are in use.

(v) Automatic bleeder vents shall be equipped with a gasket and are to be closed at all times except when the internal floating roof is floating.

(vi) Rim space vents shall be equipped with a gasket and are to be set to open only when the internal floating roof is not floating or at the manufacturer's recommended setting.

(vii) Each penetration of the internal floating roof for the purpose of sampling shall be a sample well. The sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(viii) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal.

(2) An external floating roof. An external floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a vessel with no fixed roof. Each external floating roof must meet the following specifications:

(i) Each external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge. The closure device is to consist of two seals, one above the other. The lower seal is referred to as the primary seal and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be either a metallic shoe seal or a liquid-mounted seal. A liquid-mounted seal means a form or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continously around the circumference of the tank. Except as provided in § 60.113b(b)(4) the seal shall completely cover the space between the floating roof and tank wall. A metallic shoe seal is a metal sheet held vertically against the wall of the storage vessel except as provided in § 60.113(b)(4) by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(B) The secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion except as allowed in § 60.113b(b)(4).

(ii) Except for automatic bleeder vents and rim space vents, each opening in the roof shall provide a projection below the liquid surface. Except for automatic bleeder vents, rim space vents, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the roof leg supports. Rim vents are to be set to open when the roof is being floated off the roof legs supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents are to be gasketed. Each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(iii) The roof shall be floating on the liquid at all times (i.e., off the roof leg supports) except during initial fill until the roof is lifted off leg supports and when the tank is completely emptied and subsequently refilled. The process of emptying and refilling when the roof is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible.

(3) A closed vent system and control, device meeting the following specifications:

(i) The closed vent system shall be designed to collect all VOC vapors and gases discharged from the storage vessel and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined in Part 60, Subpart VV, § 60.485(b).

(ii) The control device shall be designed and operated to reduce inlet VOC emissions by 95 percent or greater. If a flare is used as the control device, it shall meet the following specifications:

(A) The flare shall either be steam-assisted, air-assisted or non-assisted and shall be designed and operated with no visible emissions as determined by the methods specified in § 60.113b(d)(1), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours, and shall be operated with a flame present at all times as determined by the methods specified in § 60.113b(d)(2).

(B) Steam-assisted or air-assisted flares shall be used only when the net heating value of the gas to be combusted is 11.2 MJ/scm (300 Btu/scf) or greater. Non-assisted flares shall be used only when the net heating value of the gas to be combusted is 7.45 MJ/scm or greater. The net heating value of the gas being combusted shall be determined by the methods specified in § 60.113b(d)(3).

(C) Steam-assisted and non-assisted flares shall be designed for and operated with an exit velocity of less than 18 m/sec (60 ft/sec) as determined by the methods specified in § 60.113b(d)(4).

(D) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity V_{max}, as determined by the methods specified in § 60.113b(d)(5).

(4) A system equivalent to those described in paragraphs (a)(1), (a)(2), or (a)(3) of this section as provided in § 60.114b of this subpart.

(b) The owner or operator of each storage vessel with a design capacity greater than or equal to 75 m^3 which contains a VOL that, as stored, has a maximum true vapor pressure greater than or equal to 76.6 kPa shall equip each storage vessel with one of the following:

(1) A closed vent system and control device as specified in § 60.112b(a)(3).

(2) A system equivalent to that described in paragraph (b)(1) as provided in § 60.114b of this subpart.

§ 60.113b Testing and procedures.

The owner or operator of each storage vessel as specified in § 60.112b(a) shall meet the requirements of paragraphs (a), (b), or (c) of this section. The applicable paragraph for a particular storage vessel depends on the control equipment installed to meet the requirements of § 60.112b.

(a) After installing the control equipment required to meet § 60.112b(a)(1) (permanently affixed roof and internal floating roof) each owner or operator shall:

(1) Visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service), prior to filling the storage vessel with VOL. If there are holes, tears or other openings in the primary seal, the secondary seal, or the seal fabric, or defects in the internal floating roof, or both, the owner or operator shall repair the items before filling the storage vessel.

(2) Visually inspect the internal floating roof and the primary seal or the secondary seal (if one is in service) through manholes and roof hatches on the fixed roof at least once every 12 months after initial fill. If the internal floating roof is not resting on the surface of the VOL inside the storage vessel, or there is liquid accumulated on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the storage vessel from service within 30 days. If a failure that is detected during inspections required in this paragraph cannot be repaired within 30 days and if the vessel cannot be emptied within 30 days, an extension of the 30-day repair or refill requirement of this section may be requested from the Administrator in the inspection report required in § 60.115b(a)(3). Such extension request must include a demonstration of unavailability of alternate storage capacity and a specification of a schedule that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(3) Visually inspect the internal floating roof, the primary seal, the secondary seal (if one is in service), gaskets, slotted membranes (if any), and sleeve seals (if any) each time the storage vessel is emptied and degassed. If the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before refilling the storage vessel with VOL. In no event shall inspections conducted in accordance with this provision occur at intervals greater than 10 years.

(4) Notify the Administrator in writing after performing the inspections required by paragraphs (a)(1) and (a)(3) of this section at least 30 days prior to the filling or refilling of each storage vessel to afford the Administrator the opportunity to inspect the storage vessel prior to refilling. If the inspection required by paragraph (a)(3) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the tank, the owner or operator shall notify the Administrator at least 7 days prior to the refilling of the storage vessel. Notification shall be made by telphone followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification, including the written documentation may be made in writing and sent by express mail.

(b) After installing the control equipment required to meet § 60.112b(a)(2) (external floating roof) the owner or operator shall:

(1) Determine the gap areas and maximum gap widths between the primary seal and the wall of the storage vessel, and the secondary seal and the wall of the storage vessel according to the following frequency.

(i) Measurements of gaps between the tank wall and the primary seal (seal gaps) shall be performed within 60 days of the initial fill with VOL and at least once every 5 years thereafter.

(ii) Measurements of gaps between the tank wall and the secondary seal shall be performed within 60 days of the initial fill with VOL and at least once per year thereafter.

(iii) If any source ceases to store VOL for a period of 1 year or more, subsequent introduction of VOL into the vessel shall be considered an initial fill for the purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(2) Determine gap widths and areas in the primary and secondary seals individually by the following procedures:

(i) Measure seal gaps, if any, at one or more floating roof levels when the roof is floating off the roof leg supports.

(ii) Measure seal gaps around the entire circumference of the tank in each place where a ⅛" diameter uniform probe passes freely (without forcing or binding against seal) between the seal and the wall of the storage vessel and measure the circumferential distance of each such location.

(iii) The total surface area of each gap described in paragraph (b)(2)(ii) of this section shall be determined by using probes of various widths to measure acurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(3) Add the gap surface area of each gap location for the primary seal and the secondary seal individually and divide the sum for each seal by the nominal diameter of the tank and compare each ratio to the respective standards in paragraph (b)(4) of this section.

(4) Make necessary repairs or empty the storage vessel within 30 days of identification in any inspection for seals not meeting the requirements listed in (b)(4) (i) and (ii) of this section:

(i) The accumulated area of gaps between the tank wall and the metallic shoe seal or the liquid-mounted seal shall not exceed 212 cm^2 per meter of tank diameter (10.0 $in.^2$ per foot of tank diameter) and the width of any portion of any gap shall not exceed 3.81 cm (1½ in.).

(A) One end of the metallic shoe is to extend into the stored liquid and the other end is to extend a minimum vertical distance of 61 cm (24 in.) above the stored liquid surface.

(B) There are to be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(ii) The secondary seal is to meet the following requirements:

(A) The secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the tank wall except as provided in paragraph (b)(2)(iii) of this section.

(B) The accumulated area of gaps between the tank wall and the secondary seal shall not exceed 21.2 cm^2 per meter of tank diameter (1.0 $in.^2$ per foot of tank diameter) and the width of any portion of any gap shall not exceed 1.27 cm (½ in.).

(C) There are to be no holes, tears or other openings in the seal or seal fabric.

(iii) If a failure that is detected during inspections required in paragraph (b)(1) of § 60.113b cannot be repaired within 30 days and if the vessel cannot be emptied within 30 days, an extension of the 30-day repair or refill requirement of this sction may be requested from the

Administrator in the inspection report required in § 60.115b(b)(4). Such extension request must include a demonstration of unavailability of alternate storage capacity and a specification of a schedule that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(5) Notify the Administrator 30 days in advance of any gap measurements required by paragraph (b)(1) of this section to afford the Administrator the opportunity to have an observer present.

(6) Visually inspect the external floating roof, the primary seal, secondary seal, and fittings each time the vessel is emptied and degassed.

(i) If the external floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before filling or refilling the storage vessel with VOL.

(ii) For all the inspections required by paragraph (b)(6) of this section, the owner or operator shall notify the Administrator in writing at least 30 days prior to the filling or refilling of each storage vessel to afford the Administrator the opportunity to inspect the storage vessel prior to refilling. If the inspection required by paragraph (b)(6) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the tank, the owner or operator shall notify the Administrator at least 7 days prior to the refilling of the storage vessel. Notification shall be made by telephone followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification, including the written documentation may be made in writing and sent by express mail.

(c) The owner or operator of each source that is equipped with a closed vent system and control device as required in § 60.112b(a)(3) or (b)(2) (other than a flare) shall meet the following requirements.

(1) Submit for approval by the Administrator as an attachment to the notification required by § 60.7(a)(1) or, if the facility is exempt from § 60.7(a)(1), as an attachment to the notification required by § 60.7(a)(2), an operating plan containing the information listed below.

(i) Documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions. This documentation is to include a description of the gas stream which enters the control device, including flow and VOC content under varying liquid level conditions (dynamic and static) and manufacturer's design specifications for the control device. If the control device or the closed vent capture system receives vapors, gases or liquids, other than fuels, from sources that are not designated sources under this subpart, the efficiency demonstration is to include consideration of all vapors, gases, and liquids received by the closed vent capture system and control device. If an enclosed combustion device with a minimum residence time of 0.75 seconds and a minimum temperature of 816°C is used to meet the 95 percent requirement, documentation that those conditions will exist is sufficient to meet the requirements of this paragraph.

(ii) A description of the parameter or parameters to be monitored to ensure that the control device will be operated in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters).

(2) Operate the closed vent system and control device and monitor the parameters of the closed vent system and control device in accordance with the operating plan submitted to the Administrator in accordance with paragraph (c)(1) of this section, unless the plan was modified by the Administrator during the review process. In this case, the modified plan applies.

(d) The owner or operator of each source that is equipped with a closed vent system and a flare to meet the requirements in § 60.121(c), shall meet the following requirements:

(1) EPA reference Method 22 shall be used to determine the compliance of flares with the visible emission provisions of this subpart.

(2) The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(3) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\left(\sum_{i=1}^{n} C_i H_i\right)$$

where

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20°.

$$K = \text{Constant, } 1.740 \times 10^{7}\left(\frac{1}{\text{ppm}}\right)\left(\frac{\text{g mole}}{\text{scm}}\right)\left(\frac{\text{MJ}}{\text{kcal}}\right),$$

where

$$\text{standard temperature for}\left(\frac{\text{g mole}}{\text{scm}}\right) \text{ is } 20°\text{C}.$$

C_i = Concentration of sample component i, as measured by EPA Reference Method 18.

H_i = Net heat of combustion of sample component i, kcal/g mole. The heats of combustion may be determined using ASTM D2382–76, if published values are not available or cannot be calculated.

(4) The actual exit velocity of a flare shall be determined by dividing the volumetric flowrate (in units of standard temperature and pressure), as determined by reference Method 2, 2A, 2C, or 2D, as appropriate, by the unobstructed (free) cross sectional area of the flare tip.

(5) The maximum permitted velocity, V_{max}, for air assisted flares shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084(H_T)$$

V_{max} = Maximum permitted velocity, m/sec.

8.706 = Constant.

0.7084 = Constant.

H_T = The net heating value is determined in paragraph (g)(4).

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.114b Equivalent equipment and procedures.

(a) Upon written application from any person, the Administrator may approve the use of equipment or procedures that have been demonstrated to the Administrator's satisfaction to be equivalent, in terms of reducing VOC emissions to the atmosphere, to those prescribed for compliance with § 60.112b of this subpart.

(b) Determination of equivalence to the specified equipment required in § 60.112b will be evaluated using the following information to be included in the written application to the Administrator:

(1) By an actual emissions test which uses a full-sized or scale-model storage vessel that accurately collects and measures all VOC emissions from a given control device and which accurately simulates wind and accounts for other emission variables such as temperature and barometric pressure.

(2) By an engineering evaluation which the Administrator determines is an accurate method of determining equivalence.

(c) The Administrator may condition the approval of equivalency on requirements that may be necessary to ensure operation and maintenance to achieve the same emissions reduction as specified in § 60.112b.

(d) The Administrator will publish a notice of preliminary determination in the **Federal Register** and provide the opportunity for public hearing. After notice and opportunity for public hearing, the Administrator will determine the equivalance of the alternative means of emission limitation and will publish the final determination in the **Federal Register.**

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.115b Reporting and recordkeeping requirements.

The owner or operator of each storage vessel as specified in § 60.112b(a) shall keep records and furnish reports as required by paragraphs (a), (b), or (c) of this section depending upon the control equipment installed to meet the requirements of § 60.112b. The owner or operator shall keep copies of all reports and records required by this section, except for the record required by paragraph (c)(1)(i), for at least 2 years. The record required by paragraph (c)(1)(i) will be kept for the life of the control equipment.

(a) After installing control equipment in accordance with § 60.112b(a)(1) (fixed roof and internal floating roof), meet the following requirements.

(1) Furnish the Administrator with a report that describes the control equipment, and certifies that the control equipment meets the specifications of § 60.112b(a)(1) and § 60.113b(a)(1). This report shall be an attachment to the notification required by § 60.7(a)(3).

(2) Keep a record of each inspection performed as required by § 60.113b (a)(1), (a)(2), and (a)(3). Each record shall identify the storage vessel on which the inspection was performed, and shall contain the date the vessel was inspected, and the observed condition of each component of the control equipment (seals, internal floating roof, and fittings).

(3) If during the annual visual inspection, required by § 60.113b(a)(2), any of the conditions described in § 60.113b(a)(2) are detected, a report shall be furnished to the Administrator. Each report shall identify the storage vessel, the nature of the defects, and the date the storage vessel was emptied or the nature of and date the repair was made.

(4) After each inspection required by § 60.113b(a)(3) that finds holes or tears in the seal or seal fabric, or defects in the internal floating roof, or other control equipment defects listed in § 60.113b(a)(B)(ii), a report shall be furnished to the Administrator. The report shall identify the storage vessel and the reason it did not meet the specifications of § 60.112b (a)(1) or § 60.113b(a)(3) and list each repair made.

(b) After installing control equipment in accordance with § 61.112b(a)(2) (external floating roof), meet the following requirements.

(1) Furnish the Administrator with a report that describes the control equipment and certifies that the control equipment meets the specifications of § 60.112b(a)(2) and § 60.113b (b)(2), (b)(3), and (b)(4). This report shall be an attachment to the notification required by § 60.7(a)(3).

(2) Within 60 days of performing the seal gap measurements required by § 60.113b(b)(1), furnish the Administrator with a report that contains:

(i) The date of measurement.

(ii) The raw data obtained in the measurement.

(iii) The calculations described in § 60.113b (b)(2) and (b)(3).

(3) Keep a record of each gap measurement performed as required by § 60.113b(b). Each record shall identify the storage vessel in which the measurement was performed and shall contain:

(i) The date of measurement.

(ii) The raw data obtained in the measurement.

(iii) The calculations described in § 60.113b (b)(2) and (b)(3).

(4) After each seal gap measurement that detects gaps exceeding the limitations specified by § 60.113(b)(4), submit a report to the Administrator. The report will identify the vessel and contain the information specified in paragraph (b)(2) of this section, and the date the vessel was emptied or the repairs made and date of repair.

(c) After installing control equipment in accordance with § 60.112b(a)(3) or (b)(1) (closed vent system and control device), meet the following requirements.

(1) The following records shall be kept.

(i) A copy of the operating plan.

(ii) A record of the measured values of the parameters monitored in accordance with § 60.113(c)(2).

(2) After installing a flare to comply with § 60.112b, a report containing the measurements required by § 60.113b(d)(1), (2), (3), (4), and (5) shall be furnished to the Administrator.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.116b Monitoring of operations.

(a) The owner or operator shall keep copies of all records required by this section, except for the record required by paragraph (b) of this section, for at least 2 years. The record required by paragraph (b) of this section, will be kept for the life of the source.

(b) The owner or operator of each storage vessel as specified in § 60.110b(a) shall keep readily accessible records showing the dimension of the storage vessel and an analysis showing the capacity of the storage vessel. Each storage vessel with a design capacity less than 75 m^3 is subject to no provision of this subpart other than those required by this paragraph.

(c) Except as provided in paragraph (f) of this section, the owner or operator of each storage vessel either with a design capacity greater than or equal to 151 m^3 storing a liquid with a maximum true vapor pressure greater than or equal to 1.75 kPa or with a design capacity greater than or equal to 75 m^3 but less that 151 m^3 storing a liquid with a maximum true vapor pressure greater than or equal to 15.0 kPa, shall maintain a record of the VOL stored, the period of storage, and the maximum true vapor pressure of that VOL during the respective storage period.

(d) Except as provided in paragraph (f) of this section, the owner or operator

of each storage vessel either with a design capacity greater than or equal to 151 m^3 storing a liquid with a maximum true vapor pressure that is normally less than 3.5 kPa or with a design capacity greater than or equal to 75 m^3 but less than 151 m^3 storing a liquid with a maximum true vapor pressure that is normally less than 27.6 kPa, shall notify the Administrator when the maximum true vapor pressure of the liquid exceeds the respective maximum true vapor pressure values for each volume range.

(e) Available data on the storage temperature may be used to determine the maximum true vapor pressure as determined below.

(1) For vessels operated above or below ambient temperatures, the maximum true vapor pressure is calculated based upon the highest expected calendar-month average of the storage temperature. For vessels operated at ambient temperatures, the maximum true vapor pressure is calculated based upon the maximum local monthly average ambient temperature as reported by the National Weather Service.

(2) For crude oil or refined petroleum products the vapor pressure may be obtained by the following:

(i) Available data on the Reid vapor pressure and the maximum expected storage temperature of the stored product may be used to determine the maximum true vapor pressure from nomographs contained in API Bulletin 2517 (incorporated by reference—see § 60.17), unless the Administrator specifically requests that the liquid be sample, the actual storage temperature determined, and the Reid vapor pressure determined from the sample(s).

(ii) The true vapor pressure of each type of crude oil with a Reid vapor pressure less than 13.8 kPa (2.0 psia) or whose physical properties preclude determination by the recommended method is to be determined from available data and recorded if the estimated maximum true vapor pressure is greater than 1.75 kPa.

(3) For other liquids, the vapor pressure:

(i) May be obtained from standard reference texts, or

(ii) Determined by ASTM Method D2879–75 (incorporated by reference—see § 60.17); or

(iii) As measured by an appropriate method as approved by the Administrator; or

(iv) As calculated by an appropriate method as approved by the Administrator.

(f) The owner or operator of each vessel equipped with a closed vent system and control device meeting the specifications of § 60.112b is exempt from the requirements of paragraphs (c) and (d) of this section.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

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Part III

Environmental Protection Agency

40 CFR Part 123

National Pollutant Discharge Elimination System; Noncompliance and Program Reporting; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[OW-FRL-2567-3]

National Pollutant Discharge Elimination System; Noncompliance and Program Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise program reporting requirements for the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Clean Water Act (CWA). The program requirements are for quarterly noncompliance reports (QNCR) on major dischargers which are prepared by EPA Regions and NPDES States. The primary reason for proposing this change in the QNCR is to establish a consistent basis for reporting noncompliance. The changes should produce a more accurate and meaningful assessment of permit noncompliance by major dischargers within each State.

DATES: Comments on the proposed regulations must be received September 6, 1984.

EPA anticipates that the 45-day public notice and comment period will provide ample opportunity for public input.

ADDRESSEE: Interested persons should submit written comments on this proposal to: Edward S. Bender, Compliance Branch, Enforcement Division (EN-338), Office of Water Enforcement and Permits, EPA, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward S. Bender, Compliance Branch, Enforcement Division (EN-338), Office of Water Enforcement and Permits, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-475-8331.

SUPPLEMENTARY INFORMATION

I. Background

On June 7, 1979, EPA promulgated final regulations for the National Pollutant Discharge Elimination System (NPDES) permit program (44 FR 32854 40 CFR Parts 122-124) of the CWA. Section 122.23 of that regulation contained requirements for Quarterly Noncompliance Reports (QNCR) to be prepared and submitted by States approved to administer the NPDES program and by EPA regions for States not yet approved. These regulations were a revision to previous QNCR requirements. Section 122.23 was retained in substantially the same form in the Consolidated Permit Regulations promulgated May 19, 1980 (45 FR 33290; § 122.18), and the deconsolidated NPDES regulations promulgated April 1, 1983 (48 FR 14146; § 123.45).

Under the current regulations, the Director must submit quarterly reports of noncompliance with permit conditions by major dischargers. The narrative report called the Quarterly Noncompliance Report includes the following: Failure to complete construction elements of a compliance schedule, modifications to compliance schedules, failure to provide reports, submission of deficient reports, and noncompliance with other permit requirements, such as effluent limitations and pretreatment requirements. Generally, only noncompliance which is not corrected within a specified period (30 to 90 days) must be reported. Other instances of noncompliance are summarized for major dischargers in a quarterly statistical summary.

The QNCR is used by EPA Regions and the States to track the progress and evaluate the effectiveness of NPDES compliance and enforcement activities. The QNCR is also used to compile routine statistics. The QNCR is used solely for reporting purposes and in no way affects either what constitutes a violation of permit conditions or whether EPA or the States will take an enforcement action.

Experience with the existing regulations has shown that States and Regions have interpreted the existing requirements for reporting instances of noncompliance (§ 123.45(a)(2)) in different ways. This has caused inconsistent noncompliance reporting. In recognition of this inconsistency, EPA Headquarters charged the compliance managers from the EPA Regions to develop a consensus set of criteria for permit violations which were of primary concern. The resulting criteria were then reviewed and discussed by the compliance managers in States having NPDES authority and with the Compliance Task Force of the Association of State and Interstate Water Pollution Control Administrators. These criteria for instances of noncompliance which must be reported in the QNCR are contained in Appendix A. As a result of this agreement and discussion, EPA believes that the proposed rule will result in more consistent reporting.

The existing rule also contains a requirement for a Quarterly Statistical Summary of all other instances of noncompliance by major permittees not reported in the QNCR (§ 123.45(a)(2)(vi)). Most Regions and States believe that the existing requirement is too broad to be useful. The proposed rule would modify this requirement to be an aggregate report of all instances of noteworthy noncompliance. EPA will study various options for defining noteworthy noncompliance during the comment period.

II. Proposed Rule

The Agency is proposing to modify requirements in § 123.45(a) of the NPDES regulations for quarterly program reporting by States and EPA Regions of instances of noncompliance with permit conditions by major dischargers. The modifications include: (1) Deletion of language which is no longer needed because of the deconsolidation of the NPDES regulations (April 1, 1983) and (2) modifications to the requirements for reporting instances of noncompliance.

A. Administrative Changes

As explained earlier, on April 1, 1983 EPA deconsolidated the consolidated permit regulations (CPR). In the CPR, EPA had intended to encourage consolidated permitting by, among other means, adopting procedures for consolidated processing and reporting of multiple permits for a single facility. As EPA acknowledged in the preamble to the deconsolidated rule, the intended benefits of consolidated permitting were not as extensive as had been expected. In the case of consolidated processing and reporting of multiple permits, EPA recognized that this had been very rare, often because the inherently different activities of the regulated facilities, results in different permit requirements and reporting burdens. The April 1, 1983 rule only modified the regulations to physically deconsolidate them and made no substantive changes. One express purpose of the deconsolidation was to facilitate later substantive revisions to the regulation consistent with the Agency's analysis of problems associated with consolidated permitting and permit regulations. In today's rule EPA is proposing two minor substantive changes to eliminate consolidated reporting, consistent with the goals of deconsolidation.

Section 123.45(a)(1)(ii) states, "For facilities or activities with permits under more than one program, provide an additional listing combining information on noncompliance for each such facility." EPA proposes to delete this sentence.

Section 123.45(a)(1)(iv)(B) states, "When a permittee has noncompliance of more than one kind *under a single program*, combine the information

. . . ." EPA proposes to delete the underlined phrase "under a single program."

B. Instances of Noncompliance To Be Reported

The existing requirements for quarterly reporting of noncompliance are subject to varying interpretation, and, therefore, are ineffective in achieving their intended purpose. EPA proposes to modify the regulations to incorporate specific criteria that establish a consistent basis for evaluating noncompliance in quarterly reports. The proposed version would also eliminate unnecessary and inappropriate reporting requirements.

The proposed rule and the criteria in Appendix A will allow the Director (an approved NPDES State Agency Head or EPA Regional Administrator or unapproved States) to prepare the QNCR automatically, using Discharge Monitoring Report (DMR) data, permit conditions, enforcement actions, and other data which are entered into the Permit Compliance System (PCS, the automated NPDES data base). The PCS-generated QNCR will save resources and provide an incentive for maintaining and updating PCS. This method of preparing and reviewing the QNCRs improves the reliability of the data in PCS and provides a common source for compliance data.

The proposal would divide instances of noncompliance by major permittees into two categories. Category I noncompliance must be reported in the QNCR. The States would have the flexibility to add other instances of noncompliance to the QNCR.

1. Category I Noncompliance

Category I noncompliance includes the following:

a. *Violations of Requirements from Previous Enforcement Orders.* When an NPDES enforcement action against a facility in noncompliance consists of a judicial decree, administrative order, or other equivalent legal action, that facility's compliance with the decree, order, or other action should be closely monitored. Violations of these provisions could constitute contempt of court or require additional legal action to obtain an injunction, penalties or other remedies. Therefore, the proposal would require States and Regions to include in the QNCR failure to meet the requirements imposed through such enforcement actions except for compliance schedules. In many cases, an administrative order will contain a reasonable schedule requiring full compliance with permit terms and conditions at the end of a specific time period. Violations of compliance schedules contained in section 309(a)(5)(A) enforcement orders must be reported based on the criteria for compliance schedule violations discussed below, because they are used in lieu of permit compliance schedules.

In order to assure that enforcement orders are closely monitored, EPA proposes that a permittee must be shown on the QNCR until the order has been met in full. If the permittee is in compliance with the order, the compliance status shall be considered Resolved Pending (abbreviated as "RP" in the QNCR), which means the permittee is in compliance with the schedule in the order using the criteria in Appendix A, but has not come into full compliance with final permit conditions.

Each order to which the permittee is subject should be listed separately with an appropriate docket number and the date that the order became effective. EPA believes that this procedure will provide additional incentive to the permittee to meet the orders and give notice to the public of additional monitoring, construction, and reporting requirements placed on the permittee. This requirement should not cause a significant change in reporting burden. EPA invites comment or questions on this proposal.

b. *Compliance Schedule Violations.* Schedules containing major milestones (e.g., construction of treatment facilities or development of approvable pretreatment programs) are included in many permits and administrative orders as a means of tracking a permittee's progress toward compliance with final effluent limitations and other requirements. The existing regulation requires reporting of compliance schedule violations if they are not corrected within 30 days. The proposal would distinguish between two classes of compliance schedule violations and would use different criteria for each to determine whether a facility's noncompliance with a schedule must be reported.

The first class consists of major publicly owned treatment works (POTW) that have obtained Federal construction grants to fund design and construction of treatment facilities. It may be possible for a permittee to meet the conditions of its federal construction grant, and not be in full compliance with additional requirements. For these facilities, whether or not a compliance schedule violation relating to construction must be reported will depend on a review of their progress in the construction grant process (including planning, design, and construction). In some cases this will require coordination between the State and EPA. If that examination shows that progress is not acceptable, the POTW noncompliance would be reported to how long the permittee was in noncompliance. Acceptable progress means that the permittee has met applicable grant requirements and is not responsible for delays in the grant process which result in violations of any applicable compliance or permit schedule. EPA invites comments on whether other criteria for evaluating compliance schedule violations for Federally-funded POTWs are more appropriate.

All other permittees subject to QNCR reporting (major municipals, major non-municipals, and major Federal facilities) are included in the second class. For these facilities, only those violations of compliance schedules which are not resolved (returned to compliance with applicable schedule requirements) within 90 days would be included on the QNCR. The change from the current 30 day criterion to 90 days is proposed because delays of less than 90 days for interim requirements can frequently be recovered in other parts of the compliance schedule. In addition, 30 days is insufficient for adequate review and verification of the violation.

c. *Violations of Permit Effluent Limits.* Under the existing regulations, any violation of permit effluent limitations must be reported on the QNCR if the permittee has not returned to compliance within 45 days from the date reporting of compliance was due under the permit, or if the violation would constitute a pattern of noncompliance. Based upon experience, EPA has concluded that focusing on patterns of noncompliance at individual facilities provides a better measure of permittee performance than data on violations exceeding 45 days. However, the existing regulation does not precisely define "pattern of noncompliance." We are proposing new criteria for reporting effluent limitation violations that concentrate on these patterns and clearly delineate the instances of noncompliance to be reported. Single event violations will only be reported if they have the potential to cause or actually cause adverse environmental effects or pose a human health hazard. Examples are discussed in Appendix A.

In general, inclusion in the QNCR of permittee noncompliance with permit effluent limitations depends on the magnitude and/or duration of the violation. Under the proposal, effluent limitation violations will be reported on a pollutant-by-pollutant and outfall-by-

outfall basis in accordance with EPA criteria shown in Appendix A.

d. *Violations of Permit Reporting Requirements.* Permittees are required to submit regular reports of self-monitoring data which EPA and the States use to assess compliance with permit limitations. Timely submission of accurate reports is essential to compliance efforts. Therefore, the proposal would continue to require the Director to report permittee failure to submit self-monitoring or compliance schedule reports. These violations would have to be reported if the permittee does not provide a complete report within 60 days of the due date, instead of the 30 days in the existing regulation. EPA experience has shown that reports which are delinquent by 30 days are often received within 60 days of the due date. As a result, regulatory agencies generally take action only after reports are delinquent by 60 days. The proposal would change the regulation to reflect this practice.

As in the existing regulation, the proposed regulation requires the Director to include in the QNCR the names of permittees that provide reports that are so deficient as to be useless or cause misunderstanding.

2. Other Noncompliance

EPA believes that an approved State should be able to add other instance(s) or noncompliance at its discretion that do not conform to the criteria in the regulation and Appendix A. If a State adds such instance(s) to its QNCR, the word "discretionary" should be noted in the remarks column.

3. Proposals for Additional Reporting

A. EPA is also considering adding a second tier of mandatory narrative reporting for effluent violations. This proposed tier would include permittees who violated the same monthly average permit limit by any amount, twice in a six month period. This report would be a supplement to the QNCR and provide additional instances of violations which may be of cocern for reporting purposes. It is roughly estimated that such a report would increase the number of permittees reported by name by 20 percent or more. EPA invites comments on the concept of a second tier of narrative reporting, the resource burden and the criterion for the second tier report.

B. The existing regulation includes a Quarterly Statistical Summary which is intended to reflect other instances of noncompliance by major permittees which are not reported on the QNCR. EPA believes that this list is too broad to be useful. Therefore, we are proposing to change this requirement to be a summary of the total number of major permittees with instances of "noteworthy" noncompliance. EPA is currently considering several alternative criteria to identify "noteworthy" violations for purposes of compiling the statistical summary. All Category I noncompliance would be included in the summary plus noncompliance meeting one of the following alternative criteria for exceeding monthly average effluent limitations. The alternative criteria are as follows:

(1) Any violation of a monthly average effluent limit during the reporting quarter;

(2) Any violation of a monthly average effluent limit which exceeds the technical review criteria (see Appendix A) during the reporting quarter; and

(3) Two violations of the same monthly average effluent limit in a six month period (i.e., the reporting quarter and the previous quarter).

(4) Two violations of the same monthly average effluent limit in a twelve month period (i.e., the reporting quarter and the three previous quarters).

EPA will evaluate each of these criteria in relation to permittee Discharge Monitoring Reports from several States. This information and public comments on the alternatives will be considerd in choosing the appropriate criterion to define noteworthy noncompliance.

III. Purpose of Noncompliance Reporting

The Agency would like to make clear that the QNCR is intended to be used solely to track and evaluate the effectiveness of compliance and enforcement activities. The proposal effects only reporting requirements. The proposal has no impact upon what is considered a violation, or on whether or what kind of enforcement action will be taken in a given case. There is no change to the authority of EPA, the State, or any citizen to initiate an enforcement action against any permittee in violation of any permit condition.

The proposed approach to reporting noncompliance is not related to permit enforcement or the permittee's obligation to comply or to report instances of violation to the State or EPA.

IV. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. It does not satisfy any of the criteria specified in section (b) of the Executive Order and, as such, does not constitute a major rulemaking. This regulation was submitted to the Office of Management and Budget for review.

V. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to Mr. Richard Odas, Office of Management and Budget, Office of Information and Regulatory Affairs New Executive Office Building (Room 3228), 26 Jackson Place, NW., Washington, D.C. 20503. The final rule will respond to any OMB or public comments on the information collection requirements.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess analysis is required, however, where the head of the Agency cetifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's proposed amendment to the regulations will have no effect upon small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b) that these proposed amendments, if issued in final form, will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—land, Reporting and record keeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: July 13, 1984.

Alvin L. Alm,

Acting Administrator.

PART 123—STATE PROGRAM REQUIREMENTS

Section 123.45 is proposed to be amended by revising the introductory text, and paragraph (a) to read as follows:

§ 123.45 Noncompliance and Program Reporting by the Director.

The Director shall prepare quarterly and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit

any reports required under this section to the Regional Administrator and the EPA Region in turn shall submit the State report to EPA Headquarters. When EPA is the permit-issuing authority, the Regional Administrator shall submit any report required under this section to EPA Headquarters.

(a) *Quarterly reports.* The Director shall submit quarterly narrative reports for major permittees as follows:

(1) *Format.* The report shall use the following format:

(i) Provide a separate list of NPDES permittees which shall be subcategorized as non-POTWs, POTWs, and Federal permittees;

(ii) Alphabetize each list by permittee name. When two or more permittees have the same name, the lowest permit number shall be entered first.

(iii) For each entry on the list, include the following information in the following order:

(A) Name, location, and permit number of the noncomplying permittee.

(B) A brief description and date of each instance of noncompliance for the permittee. Instances of noncompliance may include one or more of the kinds set forth in paragraph (a)(2) of this section. When a permittee has noncompliance of more than one kind, combine the information into a single entry for each such permittee.

(C) The date(s) and a brief description of the action(s) taken by the Director to ensure compliance.

(D) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) *Instances of noncompliance by major dischargers to be reported.* (i) Instances of Category I noncompliance (described in Appendix A) by major dischargers shall be reported in successive reports until the noncompliance is reported as resolved (i.e., the permittee is no longer violating the permit conditions reported as noncompliance on the QNCR). Once noncompliance is reported as resolved in the QNCR, it need not appear in subsequent reports.

(A) All permittees which violate Category I criteria must be listed on the QNCR for the reporting period the violation occurred, even if the violation is resolved during the reporting period.

(B) All permittees with valid enforcement orders (i.e., administrative and judicial orders and consent decrees) for previous instances of noncompliance must be listed on the QNCR until the orders have been satisfied in full and the permittee is in compliance with permit conditions. If the permittee is in compliance with the enforcement order (as defined in Appendix A), the compliance status shall be reported as resolved pending, but the permittee will continue to be listed on the QNCR.

(ii) *Category I noncompliance.* The following instances of noncompliance by major dischargers are Category I noncompliers:

(A) Violations of previous administrative or judicial enforcement orders, except for schedule violations which shall be reported in accordance with paragraph (a)(2)(ii)(B) of this section;

(B) Violations of compliance schedules, including portions of CWA section 309(a)(5)(A) orders which pertain to compliance schedules, where:

(*1*) A POTW funded under Title II of CWA is not making acceptable progress towards compliance (as defined in Appendix A), and

(*2*) Any other permittee has violated its schedule and not returned to compliance with the schedule within 90 days from the date of the violation;

(C) Violations of certain permit effluent limits in accordance with Appendix A "Criteria for Noncompliance Reporting in the NPDES Program".

(D) Failure to complete or provide compliance schedule or monitoring reports. When the permittee has failed to complete or provide a report required in a permit (e.g., a compliance schedule progress report, pretreatment report, or a monitoring report) and the permittee has not submitted the complete report within 60 days from the due date specified in the permit.

(E) When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(iii) *All other.* Summary information shall be reported quarterly on the number of major permittees with instances of noteworthy noncompliance with their permit requirements, including those otherwise reported under this paragraph (a).

* * * * *

Appendix A—Criteria for Noncompliance Reporting in the NPDES Program

This appendix describes the criteria for reporting violations of NPDES permit conditions in the quarterly noncompliance report (QNCR) as specified under § 123.45(a)(2). The revised QNCR reporting requirements will be used as part of the administrative procedure for screening NPDES self-monitoring data and other data to report instances of noncompliance which are of major concern to the EPA and State regulatory agency.

It is important to note that any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which the permittee is strictly liable. The requirement that certain instances of noncompliance be reported in the QNCR is for State and EPA reporting purposes only. An agency's decision as to what enforcement action, if any, should be taken in such cases, must be based on an analysis of all facts and relevant legal provisions involved in any particular case.

The categories of noncompliance to be reported are: violations of requirements resulting from previous enforcement orders, violations of compliance schedules, violations of permit effluent limits, and violations of permit reporting requirements.

I. Violations of Previous Enforcement Orders

Violation of a requirement imposed in an enforcement action such as judicial decree or administrative order, except as noted under II, must be reported on the QNCR.

II. Violations of Compliance Schedules

Schedule violations, including portions of 309(a)(5)(A) orders which pertain to compliance schedules (including pretreatment), should be reported on the QNCR for both POTWs and non-POTWs. Assessing the status of compliance on non-POTWs is a relatively straightforward matter because there are few variables involved in their construction program than for POTWs. For those POTWs which rely upon the Federal construction grants process to assist in funding, the entire grant process (including planning, design, and construction) must be reviewed to determine if the POTW is making acceptable or unacceptable progress. If a POTW is making unacceptable progress, its noncompliance must be reported. Acceptable progress means that the grantee has met applicable grant requirements and is not responsible for delays in the grant process which result in violations of any applicable compliance of permit schedule. For POTWs not in the Federal grants process and non-POTWs, schedule violations which have not been resolved (returned to compliance with schedule requirements) within 90 days must be reported on the QNCR.

III. Violations of Permit Effluent Limits

Cases in which violation of permit effluent limits must be reported depend upon the magnitude and/or duration of the violation. Effluent violation should be evaluated on a parameter-by-parameter and outfall-by-outfall basis. Three subcategories have been created for effluent violation, as follows:

a. Effluent Criteria for Single Events and Short-Term Limits

Single event violations (i.e., of daily maximum limits) and short term violations (i.e., of seven-day averages) are discretionary with respect to their inclusion on the QNCR. However, any permit violation shall be reported which has the potential to cause or has actually caused adverse environmental effects, (e.g., fish kills, oil sheens) or poses a human health hazard (e.g., spills of carcinogenic, radioactive, or mutagenic

substances). This also includes any unauthorized discharge or bypass which causes an adverse water quality impact or indirect discharge which interferes with a POTW's treatment system. The Director also may consider whether to include on the QNCR violations detected during compliance inspections by using a single event criterion.

b. Effluent Criteria for the Magnitude and Duration of Monthly Average Permit Limits

A determination of whether violations of monthly average limitations must be reported is based on exceeding the product of the Technical Review Criteria (TRC) (magnitude) times the effluent limit for a specified time period (duration). TRC's are for two groups:

Group I—Inorganic and Oxygen Demanding Pollutants (such as BOD, COD, TSS nutrients): TRC=1.4

Group II—Toxic Pollutants (such as heavy metals, cyanide, and organics): TRC=1.2

The duration is evaluated for consecutive six month periods. For all permittees, exceedance of the TRC for the monthly average for any two months in a six-month period must be reported.

c. Effluent Criteria for Chronic Violations

In some cases, a permittee will constantly violate the monthly average permit limit but not exceed the TRC. These chronic violations would be reported on the QNCR if the monthly average permit limits were exceeded in any four months in a six-month period.

IV. Violations of Permit Reporting Requirements

The Director must report on the QNCR any permittee failure to submit monitoring or compliance schedule reports if the permittee does not provide the report within 60 days of the due date. The Director must also include permittees that provide reports that are so deficient to be useless or cause misunderstanding.

Group I—Inorganic and Oxygen Demanding Pollutants TRC=1.4

Oxygen Demand

Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demands
Other

Solids

Total Suspended Solids (Residues)
Total Dissolved Solids (Residues)
Other

Nutrients

Phosphorus Compounds
Nitrogen Compounds
Other

Detergents and Oils

MBAS
NTA
Oil and Grease
Other detergents or algicides

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Haradness
Other Minerals

Metals

Aluminum
Cobalt
Iron
Vanadium

Group II—Toxic Pollutants TRC=1.2

Heavy Metals (All Forms)

Antimony
Arsenic
Beryllium
Cadmium
Chromium
Copper
Lead
Nickel
Mercury
Selenium
Silver
Thallium
Zinc

Inorganic

Cyanide
Total Residual Chlorine.

All organics except those specifically listed in Group I. The criteria for fecal coliform violations are discretionary.

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Monday
July 23, 1984

Part IV

Department of the Interior

Minerals Management Service
Outer Continental Shelf, Diapir Field;
Notices

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Diapir Field
Oil and Gas Lease Sale 87

1. Authority. This Notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR 256).

2. Filing of Bids. Sealed bids will be received by the Regional Manager (RM), Alaska Outer Continental Shelf (OCS) Region, Minerals Management Service (MMS), 620 East 10th Avenue, Anchorage, Alaska 99501. Bids may be delivered in person to the above address during normal business hours (8:00 a.m. to 4:00 p.m., Alaska Standard Time (A.S.T.)), until the Bid Submission Deadline at 10:00 a.m., A.S.T., August 21, 1984. Hereinafter, all times cited in this Notice refer to Alaska Standard Time (A.S.T.) unless otherwise stated. Bids will not be accepted on August 22, 1984, the day of Bid Opening. Delivery by mail should be addressed to P.O. Box 101159, Anchorage, Alaska 99510 and must be received by the Bid Submission Deadline. Bids received by the RM later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RM prior to 10:00 a.m., August 21, 1984. Bids may not be withdrawn unless written withdrawal is received by the RM prior to 8:30 a.m., August 22, 1984. Bid Opening Time will be 9:00 a.m., August 22, 1984, at the William A. Egan Civic Convention Center, 555 West 5th Avenue, Anchorage, Alaska 99501. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 49 FR 12767, on March 30, 1984.

3. Method of Bidding. Tract numbers will not be used. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease Sale 87--Diapir Field; (insert Official Protraction Diagram number(s); Official Protraction Diagram name(s), if applicable, and block number(s)), not to be opened until 9:00 a.m., A.S.T., August 22, 1984," must be submitted for each block or prescribed bidding unit bid upon. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 87--Diapir Field, NR 5-1, Dease Inlet, Block 336, not to be opened until 9:00 a.m., A.S.T., August 22, 1984." For those blocks which must be bid on together as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear in the label on the sealed envelope. Block numbers appearing with a letter symbol as defined in paragraph 12(b) must be identified on the bid and the bid envelope with the letter symbol. For example, "Sealed Bid for Oil and Gas Lease Sale 87--Diapir Field, NR 6-3, Beechey Point, Blocks 659 D, 660 D, 617 D (NR 6-4), not to be opened until 9:00 a.m., A.S.T., August 22, 1984." A suggested bid form appears in 30 CFR 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portions of a block or bidding unit will be considered. Partnerships also need to submit or have on file in the Alaska Regional Office a list of signatories authorized to bind the partnership. All documents must be executed in conformance with signatory authorizations on file. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point; e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of $371 or more per hectare or fraction thereof. All leases awarded from this sale will provide for a yearly rental payment of $8 per hectare or fraction thereof. All leases will provide for a minimum royalty of $8 per hectare or fraction thereof. The bidding systems to be utilized for this sale apply to blocks or bidding units as described in paragraph 12. The following bidding systems will be used:

(a) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on the following blocks and bidding units offered must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent. Dease Inlet, NR 5-1, whole and partial blocks: 1011, 1012. NR 5-2, whole and partial blocks: 886-889, 929, 930, 932-934, 969, 973-978. Teshekpuk, NR 5-3, split block: 43; bidding unit blocks: 44 D, 1 D (NR 5-4), 2 D West (NR 5-4). Harrison Bay, NR 5-4, whole and partial blocks: 4, 5, 8-11, 54-57, 97-103, 191-194, 197, 230, 232, 238, 241, 242, 275, 276, 286, 319, 320, 366, 367, 410-412, 455; split blocks: 274, 364, 365, 374, 375, 409 D, 414, 453 D, 454, 456, 497 D; bidding unit blocks: 2 D East, 46 D, 47 D, 48 D; 228, 229, 273; 288, 332, 376, 241 (NR 6-3), 285 (NR 6-3), 329 (NR 6-3), 373 (NR 6-3); 318, 362; 363, 407; 363 D, 364 D, 365 D; 409, 453; 407 D, 408 D; 373 D, 374 D West, 416 D, 417 D; 374 D East, 375 D, 376 D, 373 D (NR 6-3), 374 D West (NR 6-3); 452 D, 496 D; 416, 417; 454 D, 498 D, 499 D; 457, 458; 498, 499, 500. Beechey Point, NR 6-3, whole and partial blocks: 382-385, 426-431; split blocks: 377, 378, 379, 523, 524; bidding unit blocks: 374, 375, 376; 374 D East, 375 D West; 375 D East, 376 D West; 376 D East, 377 D; 378 D, 379 D, 422 D, 423 D, 424 D West; 424 D East, 425 D, 469 D, 470 D West; 469, 470; 478, 522; 613 D, 614 D, 615 D; 613, 614; 615, 659; 659 D, 660 D, 617 D (NR 6-4). Flaxman Island, NR 6-4, split block: 617.

(b) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the remaining blocks and bidding units offered in this sale must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

(c) Blocks Affected by the Jurisdictional Dispute: The following blocks are affected by the jurisdictional dispute between the United States and Canada (see paragraph 16 "Jurisdiction"): NR 7-4, blocks 705-707, 749-754, 793-798, 837-842, 881-886, 925-929, 969-973; NR 7-6, blocks 1-4, 45-48, 89-91, 133-135, 177-179, 221-222, 265-266, 309.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982) and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See paragraph 14 "Information to Lessees," subparagraph (n).

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid will be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to the issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount stated in paragraph 4. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, or other applicable regulations may be returned to the person submitting that bid by the RM and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

For this lease sale, the MMS will utilize procedures for the electronic funds transfer (EFT) payment of four-fifths of the cash bonus bid and the first year's annual rental for each lease issued. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment by EFT utilizing the Federal Reserve Communications System and the Treasury Financial Communications System, payable to the Department of the Interior--MMS.

The RM will provide detailed instructions on making the EFT payments when bidders are qualified to submit bids at the sale. Bidders are referred to the final rule (30 CFR 218.155) which appeared in the Federal Register on March 8, 1984, at 49 FR 8602.

11. Official Protraction Diagrams (OPD). Blocks or portions of blocks offered for lease may be located on the following OPD's which may be purchased for $2.00 each from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the first address stated in paragraph 2 of this Notice. Supplemental Official OCS block diagrams depicting portions of blocks offered for lease may also be purchased from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, for $25.00 per set.

Outer Continental Shelf Official Protraction Diagrams.

NR 5-1, Dease Inlet	(approved June 3, 1976)
NR 5-2 -	(approved May 5, 1976)
NR 5-3, Teshekpuk	(approved June 3, 1976)
NR 5-4, Harrison Bay	(approved May 13, 1982)
NR 6-1 -	(approved June 3, 1976)
NR 6-3, Beechey Point	(approved April 23, 1984)
NR 6-4, Flaxman Island	(approved November 10, 1983)
NR 7-3, Barter Island	(approved October 26, 1979)
NR 7-4 -	(approved January 22, 1984)
NR 7-5, Demarcation Point	(approved November 10, 1983)
NR 7-6 -	(approved January 22, 1984)

12. Description of the Areas Offered for Bids.

(a) Categories of blocks listed under OPD's:

The lease sale area offered for bids is listed by OPD. Three categories of blocks appear under each OPD listed: (1) whole or partial blocks, (2) split blocks, and (3) blocks which comprise bidding units.

Whole or partial blocks fall entirely under the jurisdiction of the Federal Government. Each block must be bid on separately. Hectares for whole or partial blocks listed in this paragraph may be found on the appropriate OPD.

Split blocks are blocks divided into two or more portions. This occurs where the 3-geographical-mile line intersects a block or where a jurisdictional dispute exists between the Federal and State Governments. Each split block must be bid on separately.

Bidding units are a combination of portions of adjacent blocks. The entire bidding unit is listed under the OPD where the first partial block is located. When part of the bidding unit is located on a second adjacent OPD, the appropriate OPD number will be listed (i.e., 617 (NR 6-4)). All parts of a bidding unit must be bid on together.

(b) The letter symbol "D" appearing next to block numbers identifies a block or portion of a block where a jurisdictional dispute between the Federal and State Governments is pending as part of a court suit.

Blocks or portions of blocks in this Notice are identified as disputed because they are affected by the issues set out in United States of America v. State of Alaska, United States Supreme Court, No. 84, Original. Nothing in this Notice shall affect or prejudice the legal position of the United States in United States of America v. State of Alaska.

(c) The following blocks or portions of blocks are offered for bids:

Official Protraction Diagram NR 5-1, Dease Inlet (approved June 3, 1976)

(1) WHOLE and PARTIAL BLOCKS:

336-347	510-524	686-704	859-879
380-392	554-568	732-748	914-921
423-436	598-612	778-792	959-965
466-480	642-657	824-836	1004-1008
			1011
			1012

(2) SPLIT BLOCKS:

Blocks	Hectares	Blocks	Hectares
730	557.56	912	441.64
731	1842.88	913	2221.69
777	1657.20	957	753.28
823	2209.74	958	2303.76
867	509.23	1002	855.30
868	2127.41	1003	2028.77

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
775	69.90	
776	709.29	779.19
821	0.12	
822	884.73	884.85

Official Protraction Diagram NR 5-2 (approved May 5, 1976)

(1) WHOLE and PARTIAL BLOCKS:

705-717	838-859	929	938-947
749-761	886-889	930	969
794-815	891-903	932-934	973-978
			982-991

Official Protraction Diagram NR 5-3, Teshekpuk (approved June 3, 1976)

(1) WHOLE and PARTIAL BLOCKS:

38-41

(2) SPLIT BLOCKS:

Blocks	Hectares
37	2117.29
42	1807.33
43	1239.55
44	1335.06

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
35	66.47	
36	1015.63	1082.10
44 D	167.01	
1 D (NR 5-4)	271.87	
2 D West (NR 5-4)	0.02	438.90
81	122.73	
82	717.39	
83	516.08	
84	745.93	2102.13
85	687.95	
86	13.94	701.89

Official Protraction Diagram NR 5-4, Harrison Bay (approved May 13, 1982)

(1) WHOLE and PARTIAL BLOCKS:

4	148-155	241	320
5	191-194	242	331
8-11	197	275	366
16-23	199	276	367
54-57	230	286	410-412
60-67	232	287	455
97-111	238	319	

(2) SPLIT BLOCKS:

Blocks	Hectares	Blocks	Hectares
274	2213.92	414	2298.51
364	1789.98	453 D	1955.36
365	2248.21	454	2150.27
374	1379.59	456	2300.82
375	1006.34	497 D	2017.01
409 D	1428.03		

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
2 D East	4.47	
46 D	56.25	
47 D	426.86	
48 D	16.11	503.69
228	44.91	
229	1833.68	
273	357.06	2235.65
288	131.64	
332	245.58	
376	117.06	
241 (NR 6-3)	24.45	
285 (NR 6-3)	131.64	
329 (NR 6-3)	245.58	
373 (NR 6-3)	112.98	1008.93
318	959.44	
362	7.32	966.76
363	1613.25	
407	18.54	1631.79

Blocks	Hectares	Total Hectares
363 D	31.26	
364 D	514.02	
365 D	55.79	601.07
409	875.97	
453	348.64	1224.61
407 D	170.52	
408 D	1752.23	1922.75
373 D	13.11	
374 D West	0.01	
416 D	41.47	
417 D	425.80	480.39
374 D East	4.51	
375 D	529.42	
376 D	100.75	
373 D (NR 6-3)	61.05	
374 D West (NR 6-3)	68.61	764.34
452 D	884.91	
496 D	1165.09	2050.00
416	1764.04	
417	413.25	2177.29
454 D	153.73	
498 D	1486.38	
499 D	38.38	1678.49
457	1170.40	
458	90.65	1261.05
498	221.94	
499	747.66	
500	303.74	1273.34

Official Protraction Diagram NR 6-1 (approved June 3, 1976)

(1) WHOLE and PARTIAL BLOCKS:

814-824	902-916	990-1007
858-871	946-961	

Official Protraction Diagram NR 6-3, Beechey Point (approved April 23, 1984)

(1) WHOLE and PARTIAL BLOCKS:

22-41	242-246	337-352	525-528
66-87	249-264	382-396	570-572
110-132	286-291	426-440	616
154-176	294-308	479-484	
198-220	330-334		

(2) SPLIT BLOCKS:

Blocks	Hectares	Blocks	Hectares
377	1162.52	523	952.96
378	1850.24	524	2188.12
379	2303.91	660	972.04

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
374	762.86	
375	639.56	
376	682.57	2084.99
374 D East	12.23	
375 D West	100.22	112.45
375 D East	0.14	
376 D West	0.01	0.15
376 D East	1.63	
377 D	13.10	14.73
378 D	21.62	
379 D	0.09	
422 D	4.99	
423 D	89.87	
424 D West	28.68	145.25
424 D East	16.39	
425 D	66.69	
469 D	436.69	
470 D West	149.44	669.21
469	152.20	
470	1096.95	1249.15
478	1731.54	
522	12.25	1743.79

Blocks	Hectares	Total Hectares
568	279.82	
569	1665.97	1945.79
613 D	2.64	
614 D	557.96	
615 D	332.89	893.49
613	2.34	
614	720.29	722.63
615	1957.14	
659	44.20	2001.34
659 D	1115.39	
660 D	957.07	
617 D (NR 6-4)	88.55	2161.01

Official Protraction Diagram NR 6-4, Flaxman Island (approved November 10, 1983)

(1) WHOLE and PARTIAL BLOCKS:

89	265-280	485-507	712-728
90	309-326	529-551	759-772
133-139	353-372	573-595	804-815
177-185	397-419	618-639	850-857
221-233	441-463	665-684	897-899

(2) SPLIT BLOCKS:

Blocks	Hectares	Blocks	Hectares
617	2112.45	816	1474.16
663	1747.74	849	2178.12
664	2282.30	858	2281.97
711	2233.32	895	1954.64
757	1607.57	896	2233.03
758	2303.85	900	2111.69
802	453.75	942	2262.78
803	1886.07	943	2172.05
		944	204.90

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
420	473.37	
464	567.22	
397 (NR 7-3)	473.37	
441 (NR 7-3)	587.22	2121.18

Blocks	Hectares	Total Hectares
508	701.04	
485 (NR 7-3)	701.04	1402.08
552	814.83	
529 (NR 7-3)	814.83	1629.66
596	928.59	
573 (NR 7-3)	928.59	1857.18
640	1042.32	
617 (NR 7-3)	1042.32	2084.64
661	127.93	
662	990.45	1118.38
847	114.46	
848	1411.84	1526.30
859	1354.97	
860	349.76	1704.73
893	277.24	
894	1739.99	2017.23
901	1397.93	
902	399.76	1797.69
940	127.45	
941	1352.76	1480.21
986	200.80	
987	506.13	706.93

Official Protraction Diagram NR 7-3, Barter Island (approved October 26, 1979)

(1) WHOLE and PARTIAL BLOCKS:

398	530-545	705-728	892-904
399	574-590	749-772	938-948
442-451	618-635	801-816	983-992
486-500	661-684	847-860	

(2) SPLIT BLOCKS:

Blocks	Hectares	Blocks	Hectares
793	1021.86	890	605.10
794	1378.70	891	1888.63

Blocks	Hectares	Blocks	Hectares
795	991.11	937	2301.43
800	1884.18	981	1055.81
846	2300.29	982	2289.62

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
796	355.17	
797	864.10	
798	588.25	
799	393.44	2200.96
844	84.26	
845	1407.51	1491.77
935	29.42	
936	1246.64	1276.06

Official Protraction Diagram NR 7-4 (approved January 22, 1984)

(1) WHOLE and PARTIAL BLOCKS:

705-707	793-798	881-885
749-754	837-841	925-928
		969-972

(2) SPLIT BLOCKS:

None

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
842	696.41	
886	31.83	728.24
929	1042.95	
973	143.37	1186.32

Official Protraction Diagram NR 7-5, Demarcation Point (approved November 10, 1983)

(1) WHOLE and PARTIAL BLOCKS:

17-25	107-113	199-201
62-69	153-157	243-245

(2) SPLIT BLOCKS:

Blocks	Hectares	Blocks	Hectares
15	873.03	106	1841.59
16	2290.09	152	1938.60
60	778.58	198	2294.62
61	2230.18	242	998.89
105	469.01	289	1524.32

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
150	50.86	
151	811.50	862.36
196	37.74	
197	1170.84	1208.58
286	0.05	
287	392.30	
288	810.94	1203.29

Official Protraction Diagram NR 7-6 (approved January 22, 1984)

(1) WHOLE and PARTIAL BLOCKS:

1-3	133	221
45-47	134	222
89	177	
90	178	

(2) SPLIT BLOCKS:

None

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
4	1327.49	
48	335.09	1662.58
91	1612.00	
135	616.45	
179	10.78	2239.23
265	1864.75	
266	11.11	
309	143.47	2019.33

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms of 10 years. Leases will be issued on Form MMS-2005 (August 1982). Copies of the lease form are available from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the first address stated in paragraph 2.

(b) Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale.

Stipulation No. 1--Protection of Cultural Resources

(a) "Cultural resource" means any site, structure, or object of historic or prehistoric archeological significance. "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Supervisor, Field Operations (RSFO), believes a cultural resource may exist in the lease area, the RSFO will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RSFO, to determine the potential existence of any cultural resource that may be affected by operations. The report, prepared by an archeologist and geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent cultural and environmental information. The lessee shall submit this report to the RSFO for review.

(2) If the evidence suggests that a cultural resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the cultural resource may be; or

(ii) Establish to the satisfaction of the RSFO that a cultural resource does not exist or will not be adversely affected by operations. This shall be done by further archeological investigation, conducted by an archeologist and geophysicist, using survey equipment and techniques deemed necessary by the RSFO. A report on the investigation shall be submitted to the RSFO for review.

(3) If the RSFO determines that a cultural resource is likely to be present on the lease and may be adversely affected by operations, he will notify the lessee immediately. The lessee shall take no action that may adversely affect the cultural resource until the RSFO has told the lessee how to protect it.

(c) If the lessee discovers any cultural resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RSFO. The lessee shall make every reasonable effort to preserve the cultural resource until the RSFO has told the lessee how to protect it.

Stipulation No. 2--Orientation Program

The lessee shall include in any exploration and development plans submitted under 30 CFR 250.34 a proposed orientation program for all personnel involved in exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) for review and approval by the Regional Supervisor, Field Operations. The program shall be designed in sufficient depth to inform individuals working on the project of specific types of environmental, social, and cultural concerns which relate to the adjacent area. The program shall be formulated by qualified instructors experienced in each pertinent field of study and shall employ effective methods to ensure that personnel are informed of archeological, geological, and biological resources including fisheries, bird colonies, and sea mammal haulout areas, and to ensure that personnel understand the importance of avoidance and nonharassment of wildlife resources. The program shall be designed to increase the sensitivity and understanding of personnel to community values, customs, and lifestyles in areas in which such personnel will be operating. The orientation program shall also include information concerning subsistence activities in order to reduce potential conflicts.

The program shall be attended at least once a year by all personnel involved in on-site exploration or development activities (including personnel of the lessee's agents, contractors, and subcontractors) and all supervisory and managerial personnel involved in lease activities of the lessee and its agents, contractors, and subcontractors.

Stipulation No. 3--Protection of Biological Resources

If biological populations or habitats which may require additional protection are identified by the Regional Supervisor, Field Operations (RSFO), on any blocks in the leasing area, the RSFO may require the lessee to conduct biological surveys to determine the extent and composition of biological populations or habitats which might require additional protective measures. The RSFO will give written notification to the lessee of his decision to require such surveys.

Based on any surveys which the RSFO may require of the lessee, or other information available to the RSFO on special biological resources, the RSFO may require the lessee to: (1) relocate the site of the proposed operations; (2) establish to the satisfaction of the RSFO, on the basis of a site-specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist; (3) operate during those periods of time that do not adversely affect the biological resources as established by the RSFO; and/or (4) modify operations to ensure that significant biological populations or habitats deserving protection are not adversely affected.

If any area of biological significance should be discovered during the conduct of any operations on the leased area, the lessee shall report immediately such findings to the RSFO and make every reasonable effort to preserve and protect the biological resource from damage until the RSFO has given the lessee directions with respect to its protection.

The lessee will submit all data obtained in the course of such surveys to the RSFO, with the locational information for drilling or other activity. The lessee may take no action that might affect the biological populations or habitats surveyed until the RSFO provides written directions to the lessee with regard to permissible actions.

Stipulation No. 4--Seasonal Drilling Restriction for Protection of Bowhead Whales from Potential Effects of Oil Spills

Exploratory drilling, testing and other downhole exploratory activities will be prohibited during the spring bowhead whale migration period generally from April 15 through June 15 in the western blocks. Exploratory drilling, testing and other downhole exploratory activities will be prohibited during the fall migration period generally from August 1 through October 31 in the eastern blocks and generally from September 1 through October 31 in the western blocks. The precise dates will be set each season by the Regional Supervisor, Field Operations (RSFO) based on available information concerning the presence of bowhead whales in the area. The RSFO may determine that continued operations are necessary to prevent a loss of well control or to ensure human safety. This stipulation will remain in effect until termination or modification by the Department of the Interior, after conferring with the State of Alaska, the North Slope Borough, and in consultation with the National Marine Fisheries Service. This stipulation applies to the following blocks for the dates indicated:

Western Blocks - Spring
April 15 to June 15

Official Protraction Diagram	Blocks Included
NR 5-1	336-347, 380-392, 423-436, 466-480, 510-524, 554-568, 598-612, 642-657, 686-688, 691-704, 730-732, 737-748, 775-776, 783-792, 828-836, 873-879, 920, 921, and 965.

Western Blocks - Fall
September 1 to October 31

Official Protraction Diagram	Blocks Included
NR 5-1	336-347, 380-392, 423-436, 466-480, 510-524, 554-568, 598-612, 642-657, 686-704, 730-748, 775-792, 821-836, 867-879, 912-921, 957-965, 1002-1008, 1011-1012.

705-717, 749-761, 794-815, 838-859, 886-889, 891-903, 929-930, 932-934, 938-947, 969, 973-978, 982-991.

35-44, 81-86.

1, 2, 4-5, 8-11, 16-23, 46-48, 54-57, 60-67, 97-111, 148-155, 191-194, 197, 199, 228-230, 232, 238, 241-242, 273-276, 286-288, 318-320, 331-332, 362-367, 373-376, 407-412, 414, 416-417, 452-459, 496-500.

814-824, 858-871, 902-916, 946-961, 990-1007.

22-41, 66-87, 110-132, 154-176, 198-220, 241-246, 249-264, 285-291, 294-308, 329-334, 337-352, 373-379, 382-396, 422-440, 469-470, 478-484, 522-528, 568-572, 613-616, 659-660.

89-90, 133-139, 177-184, 221-228, 265-272, 309-316, 353-360, 397-404, 441-448, 485-492, 529-536, 573-580, 617-624, 661-668, 711-712.

Eastern Blocks - Fall
August 1 to October 31

Blocks
Included

185, 229-233, 273-280, 317-326, 361-372, 405-420, 449-464, 493-508, 537-552, 581-596, 625-640, 669-684, 713-728, 757-772, 802-816, 847-860, 893-902, 940-944, 986 and 987.

397-399, 441-451, 485-500, 529-545, 573-590, 617-635, 661-684, 705-728, 749-772, 793-816, 844-860, 890-904, 935-948, 981-992.

705-707, 749-754, 793-798, 837-842, 881-886, 925-929, 969-973.

15-25, 60-69, 105-113, 150-157, 196-201, 242-245, 287-289.

1-4, 45-48, 89-91, 133-135, 177-179, 221-222, 265-266, 309.

Stipulation No. 5--Transportation of Hydrocarbon Products

Pipelines will be required: (a) if pipeline rights-of-way can be determined and obtained; (b) if laying such pipelines is technologically feasible and environmentally preferable; and (c) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the Regional Technical Working Group for assessment and management of transportation of OCS oil and gas with participation of Federal, State, and local governments and the industry.

All pipelines, including both flow lines and gathering lines for oil and gas, shall be designed and constructed to provide for adequate protection from water currents, storms and ice scouring, permafrost, subfreezing conditions, and other hazards as determined on a case-by-case basis.

Following the development of sufficient pipeline capacity, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Regional Supervisor, Field Operations.

Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels, pursuant to the Ports and Waterways Safety Act of 1972 as amended (33 U.S.C. 1221 et. seq.).

Stipulation No. 6--Oil Spill Cleanup Capability

Exploratory drilling and other downhole activities below a predetermined threshold depth, with the exception of testing through casing, are prohibited in broken ice conditions unless the lessee demonstrates to the Regional Supervisor, Field Operations (RSFO), the theoretical and physical capability to detect, contain, clean up and dispose of spilled oil in broken ice. The adequacy of such oil spill response capability will be determined within the context of the review of the oil spill contingency plans. The adequacy of these plans will be determined by the RSFO prior to approval of exploration and development and production plans. Concurrence of the State of Alaska in the adequacy of oil spill contingency plans must be obtained to the extent required by section 307(c)(3) of the Coastal Zone Management Act.

Stipulation No. 7--Discharges of Produced Waters, Drilling Muds, and Cuttings

Discharges of produced waters into open or ice-covered marine waters of less than 10 meters in depth is prohibited. Discharges of produced waters into

waters greater than 10 meters in depth are subject to a case-by-case review of the local environmental factors and consistency with the conditions of a development/production phase general National Pollutant Discharge Elimination System (NPDES) permit for the sale area.

Discharges of drilling muds and/or cuttings during the exploration and development/production phases are subject to the conditions of NPDES permits issued by the Environmental Protection Agency.

Stipulation No. 8. This stipulation applies to the following blocks or portions of blocks referred to in this Notice as disputed: NR 5-3, Teshekpuk, block 44; NR 5-4, Harrison Bay, blocks 1, 2, 46-48, 363-365, 373-376, 407-409, 416, 417, 452-454, 496-499; NR 6-3, Beechey Point, blocks 373-379, 422-425, 469, 470, 613-615, 659, 660; NR 6-4, Flaxman Island, block 617.

This lease is subject to the "Agreement between the United States of America and the State of Alaska Pursuant to Section 7 of the Outer Continental Shelf Lands Act and Alaska Statutes 38.05.137 for the Leasing of Disputed Blocks in Federal Outer Continental Shelf Oil and Gas Lease Sale 87" (commonly referred to as the "Agreement"), and the lessee hereby consents to every term of that Agreement. Nothing in that Agreement or this Notice shall affect or prejudice the legal position of the United States in United States of America v. State of Alaska, United States Supreme Court No. 84, Original. Copies of the Agreement are available from the Regional Manager at the first address in paragraph 2.

Any loss incurred or sustained by the lessee as a result of obtaining validation and recognition of this lease pursuant to the "Agreement," and in particular any loss incurred or sustained by the lessee as a result of conforming this lease with any and all provisions of all applicable laws of the party prevailing in United States of America v. State of Alaska, United States Supreme Court No. 84, Original, shall be borne exclusively by the lessee.

No taxes payable to the State of Alaska will be required to be paid with respect to this lease until such time as ownership of or jurisdiction over the lands subject to this lease is resolved. In the event that the lands subject to this lease or any portion of them are judicially determined to be State lands, the lessee shall pay to the State a sum equivalent to the State taxes which would have been imposed under Alaska law if the lands, or portion thereof determined to be State lands, had been undisputed State lands from the date the lease was executed, plus interest at the annual legal rate of interest provided under Alaska law accruing from the date the taxes would have become due under Alaska law. Such payment shall be in lieu of, and in satisfaction of, the actual State taxes.

Stipulation No. 9. This stipulation applies to the following blocks or portions of blocks referred to in this Notice as disputed: NR 5-3, Teshekpuk, block 44; NR 5-4, Harrison Bay, blocks 1, 2, 46-48, 363-365, 373-376, 407-409, 416, 417, 452-454, 496-499; NR 6-3, Beechey Point, blocks 373-379, 422-425, 469, 470, 613-615, 659, 660; NR 6-4, Flaxman Island, block 617.

This lease is subject to the "Agreement Regarding Unitization for the Outer Continental Shelf Oil and Gas Lease Sale 87 between the United States of America and the State of Alaska" and the lessee is bound by the terms of that Agreement. Copies of the Agreement are available from the Regional Manager at the first address in paragraph 2.

14. Information to Lessees

(a) Information on Bird and Marine Mammal Protection. Lessees are advised that during the conduct of all activities related to leases issued as a result of this lease sale, the lessee and its agents, contractors, and subcontractors will be subject to, inter alia, the provisions of the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and International Treaties. Activities may require coordination with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) pursuant to 16 U.S.C. 1371(a)(5).

Lessees and their contractors should be aware that disturbance of wildlife could be determined to constitute harm or harassment and thereby be in violation of existing laws. With respect to endangered species, disturbance could be determined to constitute a "taking" in violation of the Endangered Species Act. Violations under these acts and treaties must be reported to the NMFS or the FWS, as appropriate. Behavioral disturbance of most birds and mammals found in or near the Diapir Field would be unlikely if marine vessels and aircraft maintained at least a 1-mile distance from observed wildlife or known wildlife concentration areas such as bird colonies or marine mammal concentrations. Therefore, it is recommended that aircraft or vessels operated by lessees maintain at least a 1-mile distance from observed wildlife or known wildlife concentrations.

To reduce potential effects to bowhead whales from noise and disturbance associated with vessel, aircraft, and dredging activities, lessees are encouraged to reduce, minimize, or reroute marine vessel and/or aircraft operations to and from the leasehold by helicopters, fixed-wing aircraft, tugs, barges, supply ships, hovercraft, or other self-propelled surface vessels when bowhead whales are likely to be in the area (generally during the period April 15 through June 15 and August 1 through October 31). Information on general locations of bowhead whales will be provided by a bowhead whale monitoring program.

For protection of bowhead whales throughout the proposed lease sale area, operators of fixed-wing aircraft or helicopters should maintain a 1,500-foot altitude when in transit over the leasing area generally during the period April 15 through June 15 and August 1 through October 31.

Human safety will take precedence at all times over these provisions.

(b) Information on Bowhead Whales and Noise Disturbance. Lessees are advised that the Regional Supervisor, Field Operations (RSFO), has the authority to limit or suspend any noise-producing operations, including geophysical surveys, on a lease whenever endangered bowhead whales are near enough to be subject to noise disturbance from offshore oil and gas activities

which would be likely to result in a "taking" of the species. Under the Endangered Species Act, the term "take" has been defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The RSFO's authority to limit or suspend operations is not limited to the time period of restricted drilling activities or to the leases subject to the seasonal drilling restriction. A Notice to Lessees has been issued to specify performance standards before any preliminary activities may be conducted on a lease.

Bowhead whales will be monitored by the Government, the lessee, or both to determine their locations relative to operational sites as they migrate through or adjacent to the sale area. If it is determined that whales are present, the RSFO shall take actions necessary, including ordering operators to cease operations or activities, to assure that whales will not be adversely affected so that a "taking" will occur due to noise from Outer Continental Shelf (OCS) operations. Cessation of such operations will continue until it is determined that the whales are outside the probable zone of influence.

(c) Information on Areas of Special Biological and Cultural Sensitivity. Lessees are notified that adequate oil spill contingency plans are required under Alaska OCS Order No. 7 (also referenced as an oil spill containment and cleanup plan under 30 CFR 250.34) prior to approval of exploration or development and production plans by the Minerals Management Service (MMS). Lessees are advised that the lead system off Point Barrow, the Plover Islands, the Boulder Patch, and the Camden Bay area (especially the Nuvugag and Kaninniivik hunting sites), the Canning River Delta, and the Barter Island-Demarcation Point area, are identified as areas of special biological and cultural sensitivity. Alaska OCS Order No. 7 (issued in accordance with 30 CFR 250.43) requires that oil spill contingency plans contain provisions for identifying and protecting these areas. Lessees should be aware that the Alaska Regional Response Team does not at this time consider dispersants to be a first line of defense against oil spills. Use of dispersants may be an inappropriate defense in the vicinity of or upcurrent of the Boulder Patch.

(d) Information on Oil Spill Cleanup Capability. Approval of oil spill contingency plans will require information on the capability to detect, contain, clean up, and dispose of spilled oil in accordance with Best Available and Safest Technology requirements as determined by the Regional Supervisor, Field Operations.

(e) Information on Subsistence Whaling and Other Subsistence Activities. Federal and State policies recognize subsistence as a priority use of wildlife resources. Lessees are therefore advised that operations should be conducted so as to avoid unnecessary interference with subsistence harvests.

Lessees are advised that the following areas are used extensively by whaling crews from the villages of Barrow, Nuiqsut, or Kaktovik. Conflicts with these crews and related activities should be avoided during the following active whaling periods.

April to June: Barrow whalers use lead systems off Point Barrow and west of Barrow in the Chukchi Sea.

August to October: Kaktovik/Nuiqsut hunters use the area circumscribed from Anderson Point in Camden Bay to a point 30 kilometers north of Barter Island to Humphrey Point east of Barter Island. Occasional use may extend from Thetis Island to Flaxman Island seaward of the barrier islands.

September to October: Barrow hunters use the area circumscribed by a western boundary extending approximately 15 kilometers west of Barrow, a northern boundary 50 kilometers north of Barrow, then southeastward to a point about 50 kilometers off Cooper Island, with an eastern boundary on the east side of Dease Inlet. Occasional use may extend eastward as far as Cape Halkett.

Lessees are encouraged to consult with local village and regional organizations, including the Alaska Eskimo Whaling Commission and local whaling captains, to develop a program of exploration and development that minimizes disturbance of these critically significant Inupiat activities.

(f) Information on the Arctic Peregrine Falcon. Lessees are advised that the Arctic Peregrine Falcon (Falco peregrinus tundrius) is officially listed as an endangered species by the U.S. Department of the Interior. It is protected by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et. seq.). This act provides, in part, that "it is unlawful for any person subject to the jurisdiction of the United States to. . . take any such [listed] species. . . ." The term "take" has been defined in that act to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." It has been determined that there is a potential for conflict in this region between the onshore and aerial support of OCS exploration and development activities and the Arctic Peregrine Falcon. No such conflict is anticipated if onshore support facilities are located within the corporate limits of Barrow or Kotzebue, the immediate vicinity of Cape Lisburne, or within the existing facility at Prudhoe Bay, and aerial support flight paths are 1,500 feet above ground level except over the aforementioned areas.

The FWS reviews exploration plans submitted by lessees to the MMS. Lessees are advised that if, as a result of this review, it is determined that onshore support facilities or aerial support flight paths are planned for areas other than those four listed above, an illegal taking of the Arctic Peregrine Falcon may result. Lessees are further advised that the FWS has determined that the following actions would prevent such illegal taking.

(1) Annual surveys of habitat suitable for nesting Arctic Peregrine Falcons for all onshore areas (except as exempted above) which will be used in support of offshore exploration, production, or development activities (including gravel mining and aircraft flight corridors) and any documented nesting site not surveyed in any given year shall receive the full protection afforded to sites known or suspected to be occupied. Specific details of each survey should be coordinated through the FWS Endangered Species staff in Anchorage.

(2) Within 1-mile of nest sites: aircraft may be required to maintain minimum altitudes of 1,500 feet above nest level from April 15 through August 31; all ground level activity may be prohibited from April 15 through August 31, except on existing thoroughfares; and habitat alterations or the construction of permanent facilities may be prohibited.

(3) Within 2 miles of nest sites: activities having high noise levels, including but not limited to gravel mining and its associated activities, may be prohibited from April 15 through August 31, and permanent facilities having high noise levels, sustained human activities, or altering limited, high quality habitat (e.g., ponds, lakes, wetlands, and riparian habitats), including but not limited to airfields and supply bases, may be prohibited.

(4) Within 15 miles of nest sites: alteration of limited, high quality habitat which could detrimentally and significantly reduce prey availability (in particular ponds, lakes, wetlands, and riparian habitats) may be prohibited; and use of pesticides shall be prohibited--the only exception may be the limited, non-aerial application of approved non-persistent insecticides at supply bases.

Human safety would take precedence at all times over distances indicated herein for avoidance or disturbance of wildlife. Further, these restrictions may not be appropriate under all circumstances and in all situations, and exceptions may be granted on a case-by-case basis. It is anticipated that affected operators and lessees will establish regular communication with the FWS Endangered Species staff in Anchorage.

(g) Information on Beaufort Sea Biological Task Force. In the enforcement of the Protection of Biological Resources stipulation, the RSFO will receive recommendations from the Beaufort Sea Biological Task Force (BTF) as formed for Diapir Field Sale 71 composed of designated representatives of the MMS, the FWS, the NMFS, and the Environmental Protection Agency. Representatives from the State of Alaska and the North Slope Borough (NSB) are encouraged to participate in the proceedings of the BTF. The RSFO will consult with the BTF on the conduct of biological surveys by lessees, on the appropriate course of action after surveys have been conducted, and on the biological aspects of the lessee's proposed activities.

(h) Information on Coastal Zone Management. Lessees are advised that the State of Alaska Coastal Management Program (CMP) and the NSB district draft CMP, when implemented, may contain policies which may be relevant to activities associated with leases resulting from this sale. The NSB CMP may have specific policies related to energy facility siting, areas with particul. geologic hazards, subsistence uses, habitats, transportation uses, and areas which have historic or prehistoric resources. Lessees are encouraged to use previously disturbed sites for onshore support facilities. The NSB has expressed a preference that onshore staging areas for exploratory activities be located at previously disturbed sites (such as Cape Simpson, Camp Lonely, Cape Halkett, Oliktok, Camden Bay, etc.), many of which are controlled by

native corporations. The State of Alaska may require such siting through their review of exploration plans pursuant to section 307(c)(3) of the Coastal Zone Management Act. Early consultation and coordination with the NSB and State agencies involved in coastal management review is encouraged. Agencies which would be appropriate to contact include, but are not limited to, the NSB, the Alaska Division of Governmental Coordination, and Alaska Departments of Natural Resources, Community and Regional Affairs, Fish and Game, and Environmental Conservation.

(i) Information on Fairway Designation. The blocks offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes which may be established, among other reasons, for the purpose of protecting maritime commerce. Lessees are advised that the United States may designate necessary fairways through leased areas pursuant to the Ports and Waterways Safety Act of 1972 as amended (33 U.S.C. 1221 et seq.).

(j) Information on Seabed Installations. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

(k) Information on Offshore Pipelines. Lessees are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Lessees should consult both Departments for regulations applicable to offshore pipelines.

(l) Information on Sand and Gravel Resources. Easements for the use of sand and gravel on oil and gas leases may be granted by the Secretary of the Interior. The appropriate vehicle for this is exploration plans and development and production plans. These easements may extend across block boundaries to any leasehold covered by a plan. Such plans may apply to more than one lease held by a lessee or by a group of lessees acting under a unitization, pooling, or drilling agreement.

Where sand and gravel sources exist on blocks not leased for oil and gas or not appropriately included in an exploration plan or development and production plan, the rights to use sand and gravel from these blocks can be obtained only through competitive leasing under section 8(k) of the OCS Lands Act, as amended.

On blocks where the oil and gas lessee and the sand and gravel lessee are not the same, the correlative rights of the holder of an easement to use sand and gravel in connection with an oil and gas lease and the lessee of the sand and gravel itself have yet to be determined.

(m) Information on Unitization. Lessees are also advised that in accordance with section 16 of each lease the lessor may require a lessee to operate under a unit, pooling or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances

where one or more reservoirs underlie two or more leases. Lesses are further advised that unitization will be required in accordance with the "Agreement Regarding Unitization for the Outer Continental Shelf Oil and Gas Lease Sale 87 between the United States of America and the State of Alaska", where one or more reservoirs underlie lands under Federal jurisdiction and lands under State jurisdiction or disputed lands.

(n) Information on Affirmative Action Requirements. Revisions of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) have been deferred, pending review of regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should those changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005 August 1982) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulation requirements will be deemed to be part of the affirmative action forms.

(o) Information on Exploration Plan Submissions. Lessees are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the MMS either an exploration plan or a general statement of exploration intentions prior to the end of the ninth lease year.

(p) Collecting Information on Ice. Under the provisions of Alaska OCS Order No. 2, Section 2.1.4, ice information will be collected by the lessee as specified by the Regional Supervisor, Field Operations, in consultation with the State of Alaska when operating in multi-year pack ice. Where such information is not readily available and is deemed necessary for conduct of production operations, the lessee will be required to collect and report information such as:

(1) Continual monitoring of meteorological events in the vicinity of platforms or drilling structures (e.g., wind speed and direction).

(2) Ice movement, ice dynamics, and the degree of ice ridging around offshore drilling platforms or structures.

(3) Internal ice stress and ice pressures against a drilling structure or platform.

(4) Structural response of a drilling platform to local ice conditions.

The data to be collected will be specified on a case-by-case basis dependent upon structure type, location, bathymetry, etc. In the case of fixed structures such as artificial islands, these data will include, pursuant to Alaska OCS Order No. 8, a summary list of all data that have a bearing on design, installation and operation of the structure, as well as derived

loads such as icing. The plans submitted will include lessee provisions for monitoring these parameters and reconciling any discrepancies between design assumptions and subsequent observations.

(q) Information on the Hiring of Alaska Residents. Lessees are encouraged to hire Alaska residents to perform work done by and for them within the State of Alaska. Lessees are advised that there is considerable local interest in employment associated with petroleum exploration, development, and production activities. Lessees are encouraged, through affirmative action programs or otherwise, to provide opportunities to local individuals and organizations. Lessees are also advised that employment of local individuals and organizations may be one method of mitigating certain local social and economic impacts.

(r) Information on Mitigating Socioeconomic Effects. Lessees are advised that exploration, development, and production activities may directly and indirectly have significant social and economic impacts on local individuals and communities. Lessees are encouraged to consult with local individuals, organizations, and governments, including local coastal districts, to identify direct and indirect social and economic impacts of exploration, development, and production activities prior to undertaking those activities. Lessees are encouraged to consult with and enter into agreements with local individuals, organizations, and governments to compensate for direct and indirect social and economic impacts of exploration, development and production activities. Lessees are advised that this may include, among others, support to or provision of local community recreation facilities, mental health, drug and alcohol treatment services and facilities, or community safety services and capital improvement projects.

(s) Information on Shallow Hazards. Lessees are advised that certain oceanographic and geologic conditions and processes exist that are potentially hazardous to offshore oil and gas operations. Ice gouging, wave and current reworking, and over-ice flooding affect the seabed in the sale area and could lead to damage to pipelines and other seafloor installations.

In nearshore areas, wave and current reworking processes exist, indicated by sediment infilling ice gouges and redistributed sediment. In the vicinity of grounded ice ridges, there are indications of frequent high current velocities, including strong intermittent bottom currents in addition to active ice gouging. Over-ice flooding and associated sea floor scouring exist off the river mouths including the Colville River. Over-ice flooding may extend out approximately to the 7-meter isobath.

In addition, shallow faults (some active), shallow gas deposits, unconsolidated sediments, subsea permafrost, natural gas hydrates, and active slumping and sliding exist in the sale area. Moderate shallow earthquake potential exists in the eastern part of the sale area.

Emplacement on the seafloor of any man-made structure or facility for the exploration, production, storage, or transportation of oil and gas will not be allowed on those portions of any block or bidding unit which may

be subject to the above mentioned hazards, unless or until the lessee has demonstrated to the satisfaction of the RSFO that the potential hazard does not exist or that structures can be safely designed to withstand such hazards at the proposed location of the structure.

(t) Information on Transportation, Siting and Location of Oil Loading Facilities. The Department of the Interior will consult with the State regarding the method of transportation and the siting and location of oil transfer, storage, and loading facilities to be utilized by lessees during production on their leases. The MMS anticipates that the State will also review development and production plans and pipeline right-of-way applications for consistency with the State of Alaska's Coastal Management Program pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act. The State also advises that as required by section 307(c)(3)(B), the State specifically reserves the right to disagree with the lessee's certification of consistency for the lessee's plans for development and production or pipeline right-of-way applications, or to recommend inclusion of stipulations that will ensure that the transportation, storage, and loading of produced oil is consistent with the State's coastal management program.

(u) Information on Section 8(g) Agreement. Lessees are advised that the Department of the Interior and the State of Alaska have not yet reached an agreement as contemplated in section 8(g) of the OCS Lands Act (43 U.S.C. 1331, et seq.) for all blocks identified as subject to section 8(g) of the OCS Lands Act within 3 miles of the seaward boundary of Alaska. If such an agreement is reached, it may require that lessees holding leases subject to section 8(g) join a unit agreement with lessees on Alaskan blocks or, if the State land is unleased, with the State of Alaska.

(v) Information on Bowhead Whale Study. This ITL applies only to the following blocks: NR 7-3, Barter Island, blocks 444-451, 488-500, 532-545, 576-590, 620-635, 664-684, 708-728, 752-772, 796-816, 844-860, 890-904, 935-948, 981-992; NR 7-4, blocks 705-707, 749-754, 793-798, 837-842, 881-886, 925-929, 969-973; NR 7-5, Demarcation Point, 15-25, 60-69, 105-113, 150-157, 196-201, 242-245, 286-289; NR 7-6, 1-4, 45-48, 89-91, 133-135, 177-179, 221, 222, 265, 266, and 309.

It is the understanding of the MMS that the State of Alaska will consider information obtained from the study entitled, "Food Organisms of Bowhead Whales in the Eastern Beaufort Sea" when evaluating whether exploration and development plans are consistent with the Alaska Coastal Management Program, including the possibility of alternative mitigating measures which would provide for consistency. This study will entail two years of field observations beginning in the summer/fall of 1985. A letter on 1985 field observations and results will be available in late October 1985. The final report for the 1985 field observations will be available in March 1986. The second year of field observations will be in the summer/fall of 1986. A draft final report for the entire study will be available in January 1987 and the final report in March 1987. Two other relevant studies are being conducted by the MMS which may also be used by the State, in the same manner, in its review of exploration and development plans. "Aerial Surveys of Endangered Whales in the Beaufort, Eastern Chukchi and Northern Bering Seas" will provide

information as it becomes available on whale distribution and occurrence during spring/summer/fall. This is an ongoing study since 1979 with funding anticipated through 1988 and annual reports due each June for the previous field season beginning in 1985. "Prediction of Site-specific Interaction of Acoustic Stimuli and Endangered Whales as Related to Drilling Activities During Exploration and Development of the Diapir Field Lease Offering Area" will involve field observations in the summer/fall of 1985 and 1986 with the annual final reports due in June of the year following the field work period. The primary focus of this research will be the effect of noise produced by drilling and artificial island construction on bowhead whales.

MMS will consider the best available information, including any preliminary reports on these studies, when reviewing exploration and development plans, and permits under section 11. Based on the best information now available, it appears to the Department that exploration can proceed safely on these blocks, subject to the strict controls provided by the lease stipulations and MMS's operating regulations. Numerous studies have already been conducted on whales in the Beaufort Sea which provide adequate data to formulate mitigating measures to guard against jeopardy to the bowhead whale in accordance with the biological opinion issued by the National Marine Fisheries Service.

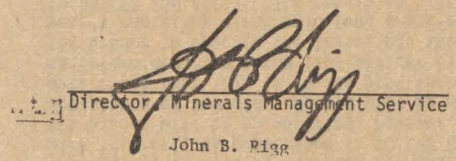
15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Alaska OCS Orders, and any other applicable OCS Order. Final Alaska OCS Orders were published in the Federal Register at 47 FR 47180, on October 22, 1982.

16. Jurisdiction. The United States claims exclusive maritime resource jurisdiction over the area offered. Canada claims such jurisdiction over a portion of the area. Blocks in the area of differing claims are listed in paragraph 4(c) of this Notice. Nothing in this Notice shall affect or prejudice in any manner the position of the United States with respect to the nature or extent of the internal waters of the territorial sea, of the high seas, or of sovereign rights or jurisdiction for any purpose whatsoever.

For any block or bidding unit in the area of U.S.-Canada difference the procedure for bid acceptance will be different from procedures otherwise identified in this Notice. After the MMS completes its bid adequacy review, it will notify bidders of the results of this review. If a bid is found inadequate, it will be rejected and the bidder's deposit will be returned with interest, as prescribed in 30 CFR 218.155. If a bid is found adequate, the bidder will be so notified; however, this notification will not constitute acceptance of the bid. No bid will be accepted until the United States determines that this is in its best interest to do so. At such time as it is so determined, the authorized officer will promptly accept the bid and require the bidder to execute the lease, pay the remaining 4/5th bonus and the first year's rental by electronic fund transfer (EFT), and file a bond as prescribed in 30 CFR 256.47(f). The remaining 4/5th bonus and the first year's rental

must be made by EFT using the procedures described in paragraph 10. The Federal Reserve Bank of New York must receive the EFT payment no later than noon, Eastern Standard Time, on the eleventh business day after receipt of the notice of bid acceptance. The term "business day" is defined as a day on which the Alaska Regional Office is open for business.

At such time as the United States may determine that it will not be in its best interest to accept a bid, MMS shall reject such bids within the area of U.S.-Canada difference and refund the deposit with interest. Interest will accrue and be paid in accordance with 30 CFR 218.155. In any event, if the authorized officer does not accept the bid within 5 years after the date on which bids are opened, the bidder may elect, by notice delivered to the United States within 60 days after expiration of the 5-year period, to withdraw the bid. If the bid is withdrawn, the deposit and accrued interest will then be refunded promptly to the bidder. Authority for the procedure in this paragraph is in 30 CFR 218.155, 256.46(b), and 256.47(e)(2). Except as set forth in this paragraph, the procedures for submitting bids and awarding leases are the same as for all other blocks or bidding units offered in this sale.



Director, Minerals Management Service

John B. Rigg

Approved:

Secretary of the Interior

William Clark

JUL 18 1984

Date

[FR Doc. 84-19421 Filed 7-20-84; 8:45 am]
BILLING CODE 4310-MR-C

UNITED STATES
DEPARTMENT OF THE INTERIOR
Minerals Management Service

Outer Continental Shelf
Diapir Field
Notice of Leasing Systems, Sale 87

Section 8(a)(8)(43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the blocks to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding Systems to be Used. In the Outer Continental Shelf (OCS) Sale 87, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16 2/3-percent royalty on 131 blocks and (b) bonus bidding with a fixed 12 1/2-percent royalty on all remaining unleased blocks.

a. Bonus Bidding with a 16 2/3-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain blocks proposed for the Diapir Field (Sale 87) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased Federal and State blocks were considered to enhance orderly development of each field.

b. Generally, blocks in deeper water and blocks less accessible to existing facilities were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system follow. Note, the letter designation, D, following a block number indicates a disputed block as defined in the Diapir Field, Oil and Gas Lease Sale 87, Notice of Sale.

1. Bonus Bidding with a 16 2/3-Percent Royalty

Official Protraction Diagram NR 5-1, Dease Inlet

(1) WHOLE and PARTIAL BLOCKS:

1011, 1012

Official Protraction Diagram NR 5-2

(1) WHOLE and PARTIAL BLOCKS:

886-889, 929, 930, 932-934, 969, 973-978

Official Protraction Diagram NR 5-3, Teshekpuk

(1) SPLIT BLOCK:

43

(2) BIDDING UNIT BLOCKS:

44D
1D (NR 5-4)
2D West (NR 5-4)

Official Protraction Diagram NR 5-4, Harrison Bay

(1) WHOLE and PARTIAL BLOCKS:

4, 5, 8-11, 54-57, 97-103, 191-194, 197, 230, 232, 238, 241, 242, 275, 276, 286, 319, 320, 366, 367, 410-412, 455

(2) SPLIT BLOCKS:

274, 364, 365, 374, 375, 409D, 414, 453D, 454, 456, 497D

(3) BIDDING UNIT BLOCKS:

2D East
46D
47D
48D

228
229
273

288
332
376
241 (NR 6-3)
285 (NR 6-3)
329 (NR 6-3)
373 (NR 6-3)

318
362

363
407

363D
364D
365D

409
453

407D
408D

373D
374D West
416D
417D

374D East
375D
376D
373D (NR 6-3)
374D West (NR 6-3)

452D
496D

416
417

454D
498D
499D

457
458

498
499
500

Official Protraction Diagram NR 6-3, Beechy Point

(1) WHOLE and PARTIAL BLOCKS:

382-385, 426-431

(2) SPLIT BLOCKS:

377, 378, 379, 523, 524

(3) BIDDING UNIT BLOCKS:

374
375
376

374D East
375D West

375D East
376D West

376D East
377D

378D
379D
422D
423D
424D West

424D East
425D
469D
470D West

469
470

478
522

613D
614D
615D

613
614

615
659

659D
660D
617D (NR 6-4)

Official Protraction Diagram NR 6-4, Flaxman Island

(1) SPLIT BLOCK:

617

2. Bonus Bidding with a 12 1/2-Percent Royalty

All remaining unleased blocks.

Acting Director, Minerals Management Service
John B. Rigg
JUL 18 1984

Approved:

Secretary of the Interior
William Clark

[FR Doc. 84-19422 Filed 7-20-84; 8:45 am]
BILLING CODE 4310-MR-C

federal register

Monday
July 23, 1984

Part V

Department of Education

34 CFR Parts 706, 707, and 708
Regional Educational Laboratories and Research and Development Centers Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 706, 707, and 708

Regional Educational Laboratories and Research and Development Centers Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the Regional Educational Laboratories and Research and Development Centers Program. These regulations implement section 405 (e) and (f) of the General Education Provisions Act (GEPA), as amended. These final regulations are being issued so that the Department of Education may make laboratory and center awards for planning and institutional operations.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 706.21, 706.22, 707.32, 708.31, and 708.32. These sections will become effective following the Education Department's submission and the Office of Management and Budget's (OMB's) approval of reporting requirements contained in those sections under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Donald R. Fischer, National Institute of Education, 1200 19th Street NW., Room 645–E, Washington, D.C. 20208. Telephone: (202) 254–7180.

SUPPLEMENTARY INFORMATION:

Background

The National Institute of Education (NIE) supports regional educational laboratories and research and development centers in accordance with section 405(f) of the General Education Provision Act (GEPA), as amended, 20 U.S.C. 1221 *et seq.* The current awards for the existing laboratories and centers, with the exception of the Educational Technology Center, are scheduled to expire during 1985. Through committee report language, the Congress has indicated its desire that NIE conduct open competitions for future laboratory and center awards. See the Conference Report accompanying the Omnibus Reconciliation Act of 1981, Pub. L. 97–35 (H.R. Rep. No. 208, 97th Cong., 1st Sess. at pp. 729–730 (1981)), and the Senate Report accompanying the Urgent Supplemental Appropriations Act of 1982, Pub. L. 97–216 (S. Rep. No. 402, 97th Cong., 2d Sess. at p. 58 (1982)).

Regional educational laboratories are intended to help improve education by identifying and helping to meet educational research and development needs in specified regions of the country and by promoting the use in the regions of research and development results from sources inside and outside the region. NIE currently sponsors seven laboratories.

Research and development centers provide national research leadership in educational problem areas that are of national importance. Center research is typically long-term and multi-disciplinary. NIE currently sponsors ten centers.

Significant Differences Between the NPRM and These Final Regulations

On March 26, 1984, the Secretary published in the **Federal Register** the Notice of Proposed Rulemaking (NPRM) for the Regional Educational Laboratories and Research and Development Centers Program (49 FR 11600). During the period allowed for public comments in response to the proposed regulations, comments and questions were received from 211 persons. In addition, 34 commenters submitted late comments.

The provisions of these final regulations are substantially the same as those of the NPRM. However, after careful consideration of the public comment on the proposed regulations, the Secretary has made some changes.

The addition of a priority on guidance and counseling and a priority on international education are the sole changes in § 706.12, which lists the priorities that the Secretary may select for particular laboratory or center competitions.

Section 707.11 describes the service regions of laboratories. The Preamble to the NPRM presented three proposed alternatives for laboratory regions. Following considerable public comment on these proposed alternatives, the Secretary selected the second proposed alternative with some adjustments. These adjustments are as follows: Including Puerto Rico and the Virgin Islands in region (1) rather than in region (4), including Ohio in region (5) rather than in region (3), including Louisiana in region (6) rather than in region (4), and adding the Northern Mariana Islands to region (10). Proposed § 707.11(c) has been modified to permit the Secretary, for each competition for a laboratory award, to select one or more regions to be served by the laboratory.

Sections 707.31 and 707.32 in the NPRM identified the points assigned to selection criteria for laboratory planning awards and laboratory awards for institutional operations respectively. In both sections of the NRPM, all but 15 of the 100 possible points were assigned to specific criteria. In these final regulations, the Secretary has assigned 10 of the 15 points originally reserved in the proposed regulations. In § 707.31 the number of points assigned to the criterion on quality of key personnel has been increased from 10 to 20. In § 707.32 the number of points assigned to the criterion on plan of operation has been increased from 20 to 25, and the number of points assigned to the criterion on quality of key personnel has been increased from 15 to 20. The Secretary assigns the remaining 5 reserved points to the criterion on budget and cost effectiveness when a competition for grants is announced. When a competition for contracts is announced, the Secretary also announces how the 5 points will be assigned.

Proposed § 707.41 described five post-award requirements that grantees or contractors receiving a laboratory award for institutional operations must meet. In light of public comment and further consideration in the Department, the first post-award requirement (proposed § 707.41(a)), that the grantee or contractor be incorporated as a nonprofit organization, was removed. In addition, the second post-award requirement (proposed § 707.41(b)) has been changed to make the proposed governing board of a laboratory accountable to NIE for (a) insuring that the laboratory satisfies the terms and conditions of the award and (b) reflecting a balanced representation of States and constituences in the region. Finally, in response to public comment, a post-award requirement has been added to the final regulations requiring the recipient of a laboratory award for institutional operations to collaborate with centers and other laboratories to carry out more effectively significant portions of the terms and conditions of the award.

Sections 708.31 and 708.32 of the NPRM identified points assigned to selection criteria for center planning awards and center awards for institutional operations, respectively. In both cases, all but 15 points were assigned to stated criteria. The same number of points has been reserved in both sections of the final regulations. However, in response to public comment, some changes have been made in the number of points assigned in specific criteria in the final regulations. In § 707.31 the number of points assigned to the criterion on

quality of key personnel has been increased from 10 to 15, and the number of points assigned to the criterion on institutional capacity has been decreased from 20 to 15. In § 708.32 the number of points for the criterion on quality of key personnel has been increased from 15 to 20, and the number of points for the criterion on institutional capacity has been decreased from 25 to 20.

Proposed § 708.41 described two post-award requirements that grantees and contractors receiving a center award for institutional operations must meet. In response to public comments, an additional post-award requirement has been added that requires the recipient of a center award for institutional operations to collaborate with laboratories and other centers to carry out more effectively significant portions of the terms and conditions of the award.

Comments and Responses

A summary of the major substantive comments received and the Secretary's responses to those comments can be found in the Appendix to these final regulations.

Paperwork Reduction Act of 1980

Information collection requirements contained in these regulations (§ 707.31) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned an OMB control number. This control number appears as a citation following the appropriate section. Information collection requirements contained in these regulations at §§ 706.21, 706.22, 707.32, 708.31, and 708.32 will become effective after the Education Department's submission and OMB's approval.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 706, 707, and 708

Colleges and universities, Education, Educational research, Grant programs—education, Local educational agencies, Nonprofit organizations, Reporting and recordkeeping requirements, State educational agencies.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Number 84.117, Educational Research and Development)

Dated: July 18, 1984.

T. H. Bell,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding new Parts 706, 707, and 708:

1. The Secretary adds a new Part 706 to read as follows:

PART 706—REGIONAL EDUCATIONAL LABORATORIES AND RESEARCH AND DEVELOPMENT CENTERS PROGRAM: GENERAL PROVISIONS

Subpart A—General

Sec.

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program?

Subpart C—How Does One Apply for an Award?

Subpart D—How Does the Secretary Make an Award?

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

Authority: Sec. 405 (e) and (f) of the General Education Provisions Act, as amended (20 U.S.C. 1221e (e) and (f)).

Subpart A—General

§ 706.1 What is the Regional Educational Laboratories and Research and Development Centers Program?

This program establishes regional educational laboratories and research and development centers to plan or conduct educational research and development, and related activities.

(20 U.S.C. 1221e (e) and (f))

§ 706.2 What parties are eligible to apply for an award under this program?

(a) The Secretary may make awards for institutional operations to—

(1) Regional educational laboratories established by public agencies or private nonprofit organizations; and

(2) Research and development centers established by institutions of higher education or by interstate agencies established by compact which operate subsidiary bodies established to conduct postsecondary educational research and development.

(20 U.S.C. 1221e(f))

(b) The Secretary may make awards for the planning of a laboratory or center to public or private organizations, institutions, agencies or individuals.

(20 U.S.C. 1221e(e))

§ 706.3 What types of awards does the Secretary make under this program?

The Secretary may award grants and contracts under this program.

(20 U.S.C. 1221e (e) and (f); 3474; 31 U.S.C. 6305)

§ 706.4 What regulations apply to this program?

(a) *Grants.* The following regulations apply to grants under this program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 706 and in 34 CFR Parts 707 and 708.

(b) *Contracts.* The following regulations apply to contracts under this program:

(1) Chapter 1 of Title 48 of the Code of Federal Regulations.

(2) The regulations in this Part 706 and in 34 CFR Parts 707 and 708.

(20 U.S.C. 1221e (e) and (f); 3474)

§ 706.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant
Application
Award
Contract
Department
EDGAR
GEPA
Grant
Nonprofit
Private
Public
Secretary
State

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Center" means an educational research and development center funded under section 405(f) of GEPA.

"Educational research and development" means all research and related functions, including, but not limited to, basic and applied research, development, demonstration, dissemination, evaluation, policy studies, implementation, and technical assistance.

"Institute" means the National Institute of Education.

"Institution of higher education" means an institution of higher education as defined in section 1201 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141)

"Institutional operations" means the activities of a laboratory or center conducted under a long-term plan approved by the Institute.

"Laboratory" means a regional educational laboratory funded under this program.

"Mission" means the long-range goal or goals of a laboratory or center.

"Planning" means activities related to the planning of a laboratory or center.

(20 U.S.C. 1221e (e) and (f); 3474)

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program?

§ 706.11 For what purposes does the Secretary make an award under this program?

The Secretary makes awards under this program for the purpose of planning or institutional operations or both.

(20 U.S.C. 1221e (e) and (f)

§ 706.12 What priorities does the Secretary establish for this program?

For each competition, the Secretary may select one or more funding priorities by choosing from the following individual priorities or combinations of these:

(a) Learning.

(b) Teaching.

(c) Educational technology.

(d) Instructional processes and materials, including textbooks and computer software for instruction.

(e) Preparation and training of educational personnel.

(f) Organization and management of schools, including effective school administration and leadership.

(g) Evaluation and school indicators, including testing and measurement.

(h) Governance of education, including school board policies and practices

(i) Educational finance.

(j) Dissemination and knowledge utilization in education.

(k) Change and improvement processes in education.

(l) Student achievement and educational standards, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate.

(m) Home, family, and community influences in education.

(n) Education, work, and careers.

(o) Desegregation, busing, and their impact on educational equity and excellence.

(p) Guidance and counseling.

(q) International education.

(r) English literacy, including reading, writing, and language skills.

(s) Mathematics.

(t) Science.

(u) Foreign languages.

(v) Preschool education.

(w) Elementary education.

(x) Secondary education.

(y) Adolescent education.

(z) Postsecondary education.

(aa) Adult and continuing education.

(bb) Education of special populations, including the educationally disadvantaged, the handicapped, and the academically gifted and talented.

Note—EDGAR establishes the methods for applying priorities. See 34 CFR 75.105 (annual priorities).

(20 U.S.C. 1221e (e) and (f); 3474)

Subpart C—How Does One Apply for an Award?

§ 706.21 What assurances must an applicant or offeror make?

In its application or proposal, an applicant or offeror for an award for institutional operations shall make assurances that the laboratory or center involved will—

(a) Be responsible for the conduct of the research and development activities;

(b) Prepare a long-range plan relating to the conduct of such research and development activities;

(c) Insure that information developed as a result of such research and development activities, including new educational methods, practices, techniques, and products, be disseminated;

(d) Provide technical assistance to appropriate educational agencies and institutions; and

(e) To the extent practicable, provide training for individuals, emphasizing training opportunities for women and members of minority groups, in the use of new educational methods, practices, techniques, and products developed in connection with such activities.

(20 U.S.C. 1221e(f))

§ 706.22 What information is needed for a multi-year project for institutional operations?

In addition to the information required in 34 CFR 75.117 and in 48 CFR Chapter 1, an application or proposal for a multi-year project for institutional operations must contain a mission statement for the proposed institution as a whole. The mission statement must describe goals and objectives and discuss how they relate to the specific activities described in the application or proposal.

(20 U.S.C. 1221e(f); 3474)

Subpart D—How does the Secretary Make an Award?

§ 706.31 How does the Secretary evaluate an application or a proposal?

(a) For each competition the Secretary uses the applicable selection criteria in §§ 707.31, 707.32, 708.31, or 708.32 to evaluate applications and proposals for new awards under this program.

(b) The maximum score for all the criteria in each section is 100 points, including any reserved points to be distributed in accordance with paragraphs (d) and (e) of this section.

(c) Subject to paragraphs (d) and (e) of this section, the maximum possible score for each criterion is indicated in parentheses with the criterion.

(d) For any competition for laboratory awards, the Secretary distributes 5 points as follows:

(1) In the case of competitions for laboratory grants, the Secretary assigns the 5 points to the criterion on budget and cost effectiveness in the applicable section (§§ 707.31 and 707.32).

(2) In the case of competitions for laboratory contracts, the Secretary assigns the 5 points to one or more of the criteria described in the applicable section (§§ 707.31 and 707.32).

(e) In the case of competitions for center awards, the Secretary assigns 15 points to one or more of the criteria described in the applicable section (§§ 708.31 and 708.32).

(f) The Secretary announces how reserved points are assigned, in the case of a competition for grants, in a notice published in the **Federal Register**, or, in the case of a competition for contracts, in a request for proposals published in the *Commerce Business Daily*.

(20 U.S.C. 1221e (e) and (f); 3474)

§ 706.32 What procedures and standards may the Secretary use to determine which applications for grants for institutional operations will be selected for funding?

(a) To determine which applications will be selected for funding for grants for institutional operations, the Secretary may use the following procedures:

(1) After following the procedures in 34 CFR 75.216 and 75.217 (a) through (c), the Secretary uses the standards in 34 CFR 75.217(d) to select applications for further consideration. The Secretary returns an application not selected to the applicant with an explanation of why that application was not selected for further consideration.

(2) The Secretary may conduct site visits to all of the applicants selected for further consideration. The Secretary conducts these site visits to obtain further information on both the activities described in the applications and the capability of the applicants to perform the work.

(3)(i) After site visits are completed, the Secretary conducts written or oral discussions on the work to be performed, the cost of the work, and other relevant topics with all applicants selected for further consideration.

(ii) The Secretary discusses with each applicant the ambiguities, uncertainties, or deficiencies, if any, in its application. The Secretary gives each applicant a reasonable opportunity to support, clarify, correct, improve, or otherwise revise its application. In discussions with an applicant, the Secretary does not identify areas in which another applicant has apparently received a higher evaluation, or otherwise provide information which could give the applicant a competitive advantage over other applicants. The Secretary may require more than one round of discussions with all the applicants. In deciding on the type, duration, and extent of the discussions, the Secretary considers the time available, the expense and administrative limitations, and the size and significance of the grants to be awarded.

(iii) The Secretary advises each applicant that—

(A) Discussions are being conducted;

(B) Applicants are required to submit a final application; and

(C) The final application, including any revisions, must be submitted by a deadline that applies to all of the applicants.

(4) The Secretary may, in accordance with the procedures in 34 CFR 75.217 (a) through (c), conduct a review of all final applications submitted under paragraph (a)(3) of this section.

(b) In making grants under this section, the Secretary may consider the relationship between the technical merit of an application and its cost in comparison to other applications.

(20 U.S.C. 1221e(f); 3474)

§ 706.33 What additional standards may the Secretary use to select an application or a proposal for a planning award?

(a) *Grants.* In making grants for planning, the Secretary may consider—

(1) The relationship between the technical merit of an application and its cost in comparison to other applications; and

(2) The extent to which funding an application would contribute to a collection of laboratory and center planning awards that is both diverse and balanced and that addresses the most significant problems of American education.

(b) *Contracts.* In awarding contracts for planning, the Secretary may consider the extent to which a proposal contributes to a collection of laboratory and center planning awards that is diverse and balanced and that addresses the most significant problems of American education.

(20 U.S.C. 1221e(e); 3474)

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

§ 706.41 What requirements must be met by a grantee or contractor?

A grantee or contractor receiving a laboratory award for institutional operations shall meet the post-award requirements described in § 707.41; a grantee or contractor receiving a center award for institutional operations shall meet the post-award requirements described in § 708.41.

(20 U.S.C. 1221e(f); 3474)

2. The Secretary adds a new Part 707 to read as follows:

Part 707—REGIONAL EDUCATIONAL LABORATORIES

Subpart A—General

Sec.

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program?

Subpart C—How Does One Apply for an Award? [Reserved]

Subpart D—How Does the Secretary Make an Award?

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

Authority: Sec. 405 (e) and (f) of the General Education Provisions Act, as amended (20 U.S.C. 1221e (e) and (f)).

Subpart A—General

§ 707.1 What regulations apply to this program?

The regulations in this part and the regulations in 34 CFR Part 706 apply to awards for regional educational laboratories.

(20 U.S.C. 3474)

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program?

§ 707.11 What geographic regions do the laboratories serve?

(a) The laboratories established under this program serve the following geographic regions:

(1) Connecticut, Maine, Massachusetts, New Hampshire, New

York, Puerto Rico, Rhode Island, Vermont, Virgin Islands.

(2) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania.

(3) Kentucky, Tennessee, Virginia, West Virginia.

(4) Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina.

(5) Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, Wisconsin.

(6) Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

(7) Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Wyoming.

(8) Arizona, California, Nevada, Utah.

(9) Alaska, Idaho, Montana, Oregon, Washington.

(10) American Samoa, Guam, Hawaii, Northern Mariana Islands, Trust Territory of the Pacific Islands.

(b) For each competition for a laboratory award, the Secretary announces which one or more of the geographic regions designated in § 707.11(a) will be served.

(c) In the event that funding of a particular laboratory under this program is discontinued, the Secretary may arrange for the continuation of laboratory services to all States.

(20 U.S.C. 1221e(e) and (f); 3474)

Subpart C—How Does One Apply for an Award? [Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 707.31 What are the selection criteria for laboratory awards for planning?

The Secretary uses the following criteria to evaluate applications and proposals for laboratory awards for planning:

(a) *Understanding of the educational settings and issues in the region.* (25 points)

(1) The Secretary reviews each application or proposal for information that shows the extent to which the applicant or offeror understands the educational settings and issues in the region.

(2) The Secretary looks for information that shows—

(i) Knowledge of the strengths and needs of the educational systems—public and private, elementary, secondary, and postsecondary—in the region;

(ii) An understanding of significant trends expected to influence education in the region over the next half decade;

(iii) Knowledge of the capabilities of existing organizations that provide research, dissemination, training, and assistance to educational agencies in the region and how a laboratory can complement their work; and

(iv) An understanding of the barriers and challenges facing a laboratory in the region and ways of overcoming them.

(b) *Organizational ability to conduct planning and design tasks.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the organizational ability of the applicant or offeror to conduct the required planning and design tasks.

(2) The Secretary looks for information that shows—

(i) Successful experience in planning or conducting multi-State activities related to educational research and development; and

(ii) Existing relationships in the region giving the applicant or offeror access to important regional groups of clients and contributing to cooperative planning activities.

(c) *Plan of operation.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant or offeror plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant or offeror will address the problems of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethinic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(d) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the key personnel the applicant or offeror plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant or offeror, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant or offeror provides.

(e) *Budget and cost effectiveness.* (0 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(3) In a grant competition, this criterion is assigned at least 5 points.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See EDGAR, § 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows that the applicant or offeror plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant or offeror plans to use are adequate; and

(ii) The equipment and supplies that the applicant or offeror plans to use are adequate.

(20 U.S.C. 1221e (e) and (f); 3474)

(Approved by the Office of Management and Budget under control number 1850–0549)

§ 707.32 What are the selection criteria for laboratory awards for institutional operations?

The Secretary uses the following criteria to evaluate applications and proposals for laboratory awards for institutional operations:

(a) *Understanding of and responsiveness to regional needs.* (10 points)

(1) The Secretary reviews each application or proposal for information that shows the applicant's or offeror's understanding of and responsiveness to the needs of the region.

(2) The Secretary looks for information that shows—

(i) An understanding of current and projected educational conditions and needs in the region;

(ii) Adequate mechanisms and procedures for assessing the educational research and development needs and capabilities of the region and for determining laboratory priorities; and

(iii) An analysis of strategic options and a plan for responding to regional needs.

(b) *Strength of relationships with the region.* (15 points)

(1) The Secretary reviews each application or proposal for information that shows the strength of the applicant's or offeror's relationships with the region to be served.

(2) The Secretary looks for information that shows—

(i) Plans for a governing board whose composition reflects regional interests and constituencies;

(ii) Plans for a governing board designed to take an active role in setting policy;

(iii) Plans for a governance structure that provides the organizational autonomy necessary for neutrality, balance, and equity in the selection of clients and the delivery of services;

(iv) The quality, extent, and feasibility of proposed collaborative relationships with appropriate organizations, such as—

(A) Public education agencies at State, intermediate, and local levels;

(B) Educational research and development agencies;

(C) Organizations providing assistance in the use of research outcomes;

(D) Clearinghouses;

(E) Professional associations;

(F) Institutions of higher education;

(G) Community-based organizations;

(H) Business and industry; and

(v) Successful prior work and commitments for future work with such organizations.

(c) *Institutional capacity.* (15 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the applicant or offeror to sustain a long-term, high-quality, and coherent program of research and services.

(2) The Secretary looks for information that shows—

(i) Adequate organizational mechanisms and procedures for managing work internally and in collaboration with other institutions;

(ii) Adequate procedures for quality control and self-evaluation; and

(iii) Adequate plans for effecting improvement in organizational performance and staff development during the project period.

(d) *Plan of operation.* (25 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant or offeror plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant or offeror will address the problems of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly;

(vi) A logical relationship between proposed activities and statements of regional needs and priorities;

(vii) Coherence of work within and among program activities;

(viii) The extent to which the proposed activities complement related efforts inside and outside the region;

(ix) The anticipated contribution of the work to educational improvement; and

(x) Appropriate provisions for sequencing and pacing work activities.

(e) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the key personnel the applicant or offeror plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant of offeror, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of th project, as well as other information that the applicant or offeror provides.

(f) *Budget and cost effectiveness.* (0 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(3) In a grant competition, this criterion is assigned at least 5 points.

(g) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See EDGAR, § 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(h) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows that the applicant or offeror plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant or offeror plans to use are adequate; and

(ii) The equipment and supplies that the applicant or offeror plans to use are adequate.

(20 U.S.C. 1221e (e) and (f); 3474)

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

§ 707.41 What requirements must be met by a grantee or contractor?

A grantee or contractor receiving a laboratory grant or contract for institutional operations shall meet the following post-award requirements. The grantee or contractor shall—

(a) Establish a governing board that—

(1) Is accountable to NIE for insuring that the laboratory satisfies the terms and conditions of the award; and

(2) Reflects a balanced representation of the States in the region, as well as the interests and concerns of regional constituencies.

(b) Facilitate communication among educational agencies and individuals in the region;

(c) Identify concerns and priorities through regionally representative governing and advisory structures and activities that help regional clients define their needs;

(d) Conduct applied research, development, and related activities to address regional needs;

(e) Promote the use in the region of research and development results from all sources inside and outside the region, including the laboratory; and

(f) Collaborate with centers and other laboratories in order to carry out more effectively significant portions of the terms and conditions of the award.

(20 U.S.C. 1221e(f))

3. The Secretary adds a new Part 708 to read as follows:

PART 708—RESEARCH AND DEVELOPMENT CENTERS

Subpart A—General

Sec.

708.1 What regulations apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program? [Reserved]

Subpart C—How Does One Apply for an Award? [Reserved]

Subpart D—How Does the Secretary Make an Award?

708.31 What are the selection criteria for center awards for planning?

708.32 What are the selection criteria for center awards for institutional operations?

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

708.41 What requirements must be met by a grantee or contractor?

Authority: Sec. 405 (e) and (f) of the General Education Provisions Act, as amended (20 U.S.C. 1221e (e) and (f)).

Subpart A—General

§ 708.1 What regulations apply to this program?

The regulations in this part and the regulations in 34 CFR Part 706 apply to awards for research and development centers.

(20 U.S.C. 3474)

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program? [Reserved]

Subpart C—How Does One Apply for an Award? [Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 708.31 What are the selection criteria for center awards for planning?

The Secretary uses the following criteria to evaluate applications and proposals for center awards for planning:

(a) *Mission and strategy.* (25 points)

(1) The Secretary reviews each application or proposal for information that shows the extent to which the applicant or offeror understands the state of knowledge and practice with respect to the problem area and priorities of the center for which the applicant is applying or the offeror is proposing.

(2) The Secretary looks for information that shows—

(i) Understanding of the mission of the proposed center;

(ii) Knowledge of relevant research and theory;

(iii) Knowledge of relevant problems in educational practice;

(iv) Familiarity with relevant strategies of research, development and dissemination; and

(v) Familiarity with strategies for relating to other organizations in educational research, development, and practice.

(b) *Institutional capacity.* (15 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the applicant or offeror to sustain a long-term, high-quality, and coherent program of research, development, and dissemination.

(2) The Secretary looks for information that shows—

(i) Strong support from the applicant or offeror, demonstrating the existence of appropriate organizational structures and a commitment to provide the services of appropriate faculty or staff members from the applicant's or offeror's organization;

(ii) Inclusion of an appropriate mixture of scholarly and practitioner backgrounds in the project staff of the applicant or offeror; and

(iii) The past successes of the applicant or offeror in collaborating with other individuals and organizations to conduct educational research and devlopment.

(c) *Plan of operation.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant or offeror plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant or offeror will address the problems of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the key personnel the applicant or offeror plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant or offeror, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been

traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant or offeror provides.

(e) *Budget and cost effectiveness.* (0 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(3) In a grant competition, this criterion is assigned at least 5 points.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See EDGAR, § 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows that the applicant or offeror plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant or offeror plans to use are adequate; and

(ii) The equipment and supplies that the applicant or offeror plans to use are adequate.

(20 U.S.C. 1221e (e) and (f); 3474)

§ 708.32 What are the selection criteria for center awards for institutional operations?

The Secretary uses the following criteria to evaluate applications and proposals for center awards for institutional operations:

(a) *Mission and strategy.* (15 points)

(1) The Secretary reviews each application or proposal for information that shows the extent to which the applicant or offeror understands the state of knowledge and practice in the problem area of the center's mission.

(2) The Secretary looks for information that shows—

(i) Understanding of the mission of the proposed center;

(ii) A program of work that will contribute to the development of relevant theory;

(iii) Potential of the proposed project to advance practice in significant ways;

(iv) The applicant's or offeror's awareness of the problems of special populations with respect to the mission of the proposed center;

(v) A selection of strategies of research, development, and dissemination that are likely to be effective;

(vi) Establishment of effective working relations with other organizations in educational research, development, and practice; and

(vii) Promising long-range plans for developing an appropriate and coherent program of educational research, development, and dissemination.

(b) *Institutional capacity.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the applicant or offeror to sustain a long-term, high-quality, and coherent program of research, development, and dissemination.

(2) The Secretary looks for information that shows—

(i) Strong support from the applicant or offeror, demonstrating the existence of appropriate organizational structures and a commitment to provide the services of appropriate faculty or staff members from the applicant's or efferor's organization;

(ii) Inclusion of an appropriate mixture of scholarly and practitioner backgrounds in the project staff of the applicant or offeror;

(iii) The past successes of the applicant or offeror in collaborating with other individuals and organizations to conduct educational research and development.

(iv) Structure and governance arrangements likely to provide appropriate direction, quality control, and cost-effective management; and

(v) Plans for effecting improvement in organizational performance and staff development during the period of award.

(c) *Plan of operation.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) a clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant or offeror plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant or offeror will address the problems of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(d) *Quality of key personnel.* (20 points)

(1) The Secretary review each application or proposal for information that shows the qualifications of the key personnel the applicant or offeror plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant or offeror, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant or offeror provides.

(e) *Budget and cost effectiveness.* (0 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(3) In a grant competition, this criterion is assigned at least 5 points.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See EDGAR. § 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows that the applicant or offeror plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant or offeror plans to use are adequate; and

(ii) The equipment and supplies that the applicant or offeror plans to use are adequate.

(20 U.S.C. 1221e (e) and (f); 3474)

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

§ 708.41 What requirements must be met by a grantee or contractor?

A grantee or contractor receiving a center grant or contract for institutional operations shall meet the following post-award requirements. The grantee or contractor shall—

(a) Provide national research leadership with respect to the mission of its center;

(b) Establish and maintain a nationally representative advisory panel; and

(c) Collaborate with laboratories and other centers in order to carry out more effectively significant portions of the terms and conditions of the award.

(20 U.S.C. 1221e(f))

Appendix—Summary of Comments and Responses

Editorial Note.—The following appendix will not appear in the Code of Federal Regulations.

The following is a summary of the public comments received on the proposed regulations published in the **Federal Register** on March 26, 1984 (49 FR 11600), and the Secretary's responses to those comments including any changes. The comments, responses, and changes are organized in the same order as the referenced sections in these final regulations.

Section 706.2 What parties are eligible to apply for an award under this program?

Comment. Several commenters suggested changing the eligibility requirements for applying for an award. One suggested making small organizations, especially small businesses, eligible. Another suggested that applicants or offerors should be required to consult with State educational agencies in order to be eligible. Still another commenter asked specifically whether a center, which has historically received an award from NIE under this program, would continue to be eligible under § 706.2(a)(1). The particular center was originally a subsidiary body of an interstate agency which was established by compact. The interstate agency, of which the center is no longer a part, established and operated this subsidiary body in order to conduct postsecondary research and development.

Response. No change has been made. Section 405(f) of the General Education Provisions Act (GEPA) establishes the kinds of organizations eligible for laboratory and center awards for institutional operations. These final regulations have incorporated only the eligibility provisions of GEPA and do not broaden or narrow those provisions. With respect to the continuing eligibility of a laboratory or center that currently receives funding under this program, such institutions must continue to meet all statutory and regulatory requirements if they are to continue to be eligible for awards.

With respect to the specific center described above, this center *was established* in accordance with the provisions of section 405(f) of GEPA and § 706.2(a)(2) of the final regulations, and consistent with the legislative history of section 405(f), it has continued to be eligible to receive funding pursuant to section 405(f).

Section 706.3 What types of awards does the Secretary make under this program?

Comment. Several commenters suggested that a grant is more appropriate for center awards and a contract more appropriate for laboratory awards, and that the final regulations should indicate specifically in which competitions each award instrument will be used.

Response. No change has been made. In the past, laboratories have received grants at some times and contracts at others. Centers have traditionally received grants, but in exceptional circumstances a contract has been used. The purposes of the competition for a specific laboratory or center may dictate that one kind of funding instrument be use rather than another. The general purposes determining the selection of an award instrument are described in the Federal Grants and Cooperative Agreements Act of 1977, 41 U.S.C. 501 *et seq.* In order to insure that the specific activities of a laboratory or center are guided by the most appropriate funding instrument, this provision has been retained. The choice of funding instrument to be used is identified either in a notice published in the **Federal Register**, in the case of grants, or in a request for proposals (RFP) published in Commerce Business Daily, in the case of contracts.

Section 706.5 What definitions apply to this program?

Comment. A commenter asked why a definition of "institution of higher education" was used that is different than the definition used in the Higher Education Act.

Response. A change has been made. The definition of "institution of higher education" in § 706.5 has been changed to make it consistent with the definition in section 1201 of the Higher Education Act of 1965, as amended. This will insure a consistent use of terminology in Department programs.

Comment. One commenter suggested that the definition of "planning" is self-explanatory and should be deleted.

Response. No change has been made. While the function of planning may be self-explanatory, the term "planning" is defined in these regulations to indicate that, with respect to a planning award made under these regulations, planning must relate to a specific laboratory or center.

Section 706.11 For what purposes does the Secretary make an award under this program?

Comment. One commenter asked whether receiving a planning award is a prerequisite for receiving an award for institutional operations. Another commenter suggested that all competitors should be required to submit a planning proposal and that only recipients of planning awards be allowed to compete in a competition for laboratory awards for institutional operations.

Response. No change has been made. An applicant or offeror is not required to apply for or receive a planning award as a prerequisite for applying for an award for institutional operations.

Competitions for planning awards and awards for institutional operations are separate, have different eligibility requirements as described in § 706.2, and have different purposes. The purpose of making planning awards is not, as suggested by one commenter, to provide an elimination round, which could be conducted under § 706.32(a), in competitions for awards for institutional operations. On the contrary, the purpose of planning grants is to assist recipients with the planning which must necessarily precede the submission of applications or proposals for awards for institutional operations. Because not all applicants for awards for operations would need such assistance, requiring them to compete would create an unnecessary burden, as well as limit the amount of planning assistance available to others. Furthermore, the purpose of planning contracts is to procure for NIE information needed to conduct competitions for awards for institutional operations. This purpose would not be served by permitting only recipients of planning contracts to apply for institutional awards.

Comment. A commenter suggested that procedures describing the transition between laboratory planning activities and operational activities sponsored by NIE should be included under Subpart E of Part 707.

Response. No change has been made. If needed, a discussion of the transition between planning activities and operational activities will be included in the information package describing each competition.

Section 706.12 What priorities does the Secretary establish for this program?

Several commenters registered their support for selected priorities in proposed § 706.12 (a) through (z), while others voiced their opposition. In addition, several commenters suggested that priorities be modified or added to the list. Commenters expressed some general concerns about priorities as well as specific recommendations regarding their use for laboratory and center awards. These various comments may be summarized as follows.

Comment. With regard to the use of priorities for center awards, several commenters endorsed proposed priorities (e) (preparation and training of educational personnel), (g) (evaluation and school indicators), (l) (student achievement and educational standards), (p) (literacy), (q) (mathematics), (r) (science), (s) (foreign languages), and (z) (education of special populations).

Several commenters voiced their opposition to proposed priorities (d) (instructional processes and materials), (g) (evaluation and school indicators), (i) (school finance), (j) (dissemination and knowledge utilization), (k) (change and improvement processes in education), and (w) (adolescent education). In general, these priorities were opposed either because they were considered to be of lesser importance or because they were seen as inappropriate for Federal funding or involvement.

Several commenters recommended that modifications of certain proposed priorities be made. These modifications included adding Hispanics, students speaking English as a second languge, minorities and females to (z) (education of special populations), and adding library services to (j) (dissemination and knowledge utilization). Some of these recommended modifications involved combining proposed or recommended priorities, such as education of the adult mentally handicapped; the general learning needs of Afro-Americans; and postsecondary education in relation to teaching, computer literacy, or remedial education.

Several commenters recommended additions to the list of proposed priorities. These included guidance and counseling; discipline; educational efficiency and productivity; international education; history, social studies, and social science education; arts education; physical and mental health education; rural education, urban education, and suburban education; economic literacy; health education; private enterprise in education; local educational agency-university collaboration; and medicine and medical education.

Response. A change has been made. Two priorities have been added. Guidance and counseling is a new priority (p), and international education, which is described in NIE's authorizing legislation, is a new priority (q), and the priorities following in sequence have been renumbered accordingly (from (r) through (bb)). Other suggested additions have not been made because they are implied under already proposed priorities (discipline under (f), (l), and (m); educational efficiency and productivity under (c), (f), and (k); private enterprise in education under (n)); because they are more appropriately sponsored by other units of the Department or other agencies of the Federal Government (history, social studies, and social sciences; arts education; physical and mental health education; economic literacy; health education; medicine and medical education); or because they are not deemed to be as significant as proposed priorities (local educational agency-university collaboration; rural education, urban education, and suburban education).

Proposed priorities which were opposed by several commenters have been retained in the final regulations because each represents a significant need and plays a crucial role in current and future efforts to attain the highest level of excellence in American education and contribute to the well-being of the Nation both domestically and internationally.

No modifications of priorities listed in the proposed regulations have been made. The priority on the education of special populations implicitly includes Hispanics, females, Afro-Americans, and other unnamed groups that are educationally disadvantaged. Priority (j) implicitly includes library services as well as other forms of dissemination and knowledge utilization.

Comment. With regard to the use of priorities for laboratory awards, commenters differed in their concerns. Several commenters questioned the use of priorities for laboratory awards, noting that laboratories should address regionally defined needs, not national ones. Other commenters were opposed to the Federal Government's selecting priorities for State and local communities and expressed particular alarm over Federal priorities touching on curriculum and software development, educational technology, change and improvement processes, and adolescent education. For most of these respondents, academic subject areas, student achievement, and educational standards were more acceptable priorities.

Response. No change has been made. For the reasons stated in the previous response to comments on priorities to be used for center activities, the Secretary has made only two changes in § 706.12, adding as priorities (p) guidance and counseling and (q) international education. In the case of competitions for laboratory awards, the great majority of activities described in an application or proposal will constitute a response to regionally defined needs. The Secretary may also encourage or require an applicant or offeror to describe in its application or proposal specific activities based on one or more priorities or combinations of priorities of national significance. However, the Secretary intends to encourage, rather than require, laboratories to conduct a very small number of activities related to specific priorities of this kind, and announces those priorities in a notice published in the **Federal Register** or in a

request for proposals published in the *Commerce Business Daily.*

Section 706.21 What assurances must an applicant or offeror make?

Comment. Several commenters suggested adding to or modifying the stated assurances. Several commenters called for a stronger dissemination responsibility for centers. One commenter questioned whether a change in assurance (e) was meant to extend the requirement that training be provided for women and minorities beyond the required training described in section 405(f) of GEPA. Another commenter suggested that such training should also include training in general research and development techniques, not just in new procedures.

Response. A change has been made. All assurances in § 706.21 have been phrased exactly as they are stated in section 405(f) of GEPA and in no way limit or go beyond the provisions of the law. The Secretary did not intend to make training for women and minorities a universal requirement by deleting the introductory words of this assurance as stated in the law, i.e., ". . . to extent practicable, ..."

Section 706.31 How does the Secretary evaluate an application or a proposal?

Comment. Several commenters suggested that the Secretary reconsider the use of reserved points for evaluation criteria.

Response. A change has been made. In the case of laboratory awards for planning and institutional operations, the Secretary reserves 5, rather than the proposed 15, points in these final regulations.

In the case of center awards for planning and institutional operations, however, no change has been made: the Secretary reserves 15 points as originally proposed. With respect to certain priorities, a long and fruitful tradition of research, development, and disciplined inquiry has yielded many notable improvements in American education, and a significant number of institutions and organizations have contributed to those improvements. With respect to other priorities, often of more recent appearance as areas of study, relatively little research and development have been conducted, and few organizations may exist with the capacity to conduct it. Therefore, in order to allow for this variation, the Secretary reserves 15 points in order to achieve an appropriate balance of points for the evaluation of applications and proposals for specific center awards.

Section 706.32 What procedures and standards may the Secretary use to determine which applications for grants for institutional operations will be selected for funding?

Comment. A commenter asked why this section refers only to grants.

Response. No change has been made. Section 706.32 supplements the Department's grant regulations as codified in § 75.217 of the Education Department General Administrative Regulations (EDGAR). In the case of contracts, the same procedures and standards described for grants in this section may be used in competitions for contracts under the provisions of the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, without adding supplementary provisions to these program regulations.

Comment. Several commenters suggested that the regulations should describe the eligibility requirements for selecting peer reviewers, the exact number of reviewers to be used for site visits, and the method of appointment.

Response. No change has been made. Section 75.217 of EDGAR establishes how reviewers are selected and used.

Comment. Several commenters recommended that a minimum of five reviewers be used to evaluate applications and proposals, and some of these commenters suggested that no Federal employees be used as reviewers.

Response. No change has been made. Section 75.217 of EDGAR requires a minimum of three reviewers, but does not place an upper limit on the number. EDGAR procedures are used throughout the Department to insure a fair and appropriate representation of Federal and non-Federal employees serving on the panel of experts. Although the Secretary has placed a major emphasis on the use of peer review in the evaluation of laboratory and center applications and proposals, the Secretary may assign non-Federal peer reviewers to the panel of experts and increase to five or more the number of reviewers on the panel when the Secretary deems it appropriate.

Comment. A commenter suggested that § 706.32 should describe both the procedures for dealing with disputes stemming from award decisions and details on how reviewers perform their work as a panel of experts.

Response. No change has been made. Under EDGAR, applicants have no rights of appeal following a denial of discretionary grant assistance; FAR discusses the rights of protest available to offerors seeking a contract. Section 75.217 of EDGAR describes the role of reviewers who are members of a panel of experts.

Comment. A commenter suggested that an additional standard be added that takes into account the ability of an applicant to attract funds from sources other than the Department of Education.

Response. No change has been made. Section 706.33(a)(1) of the final regulations permits the Secretary to consider the relationship between the technical merit of an application and its cost in comparison to other applications.

Comment. Several commenters asked that specific funding amounts and information on how they are determined be included in the regulations, in addition to the procedures and standards used to select applications or proposals for funding.

Response. No change has been made. Information on the amount of funding available is provided in both the application notice and the information package when a competition is announced.

Comment. Several commenters suggested that site visits be required rather than permitted as a procedure in the evaluation of applications or proposals for awards for institutional operations.

Response. No change has been made. Budgetary constraints and other unforeseen circumstances may render site visits difficult, if not impossible, to conduct on every occasion. However, § 706.32(a)(2) permits the Secretary to conduct site visits if the Secretary so chooses.

Comment. One commenter suggested that, in reference to the review of final applications described in § 706.32(a)(4), the phrase stating that the Secretary "may . . . conduct a review" be changed to read that the Secretary "shall . . . conduct a review."

Response. A change has been made. "May * * * conduct" has been changed to "conducts" to indicate that where final applications are submitted, a review will be conducted in accordance with the described procedures.

Comment. Several commenters asked why the Secretary, rather than NIE, will make awards.

Response. No change has been made. The term "Secretary" is defined in § 77.1 of EDGAR to include not only the Secretary but also "an official or employee of the Department acting for the Secretary under a delegation of authority." Because the Secretary has delegated the authority to make laboratory and center awards to the Director of NIE, the term "Secretary" as used in § 706.32 includes both the

Secretary, who has residual authority, and the Director of NIE.

Section 706.33 What additional standards may the Secretary use to select an application or proposal for a planning award?

Comment. Several commenters asked the rationale for § 706.33(a)(2), which permits the Secretary to consider, in making planning awards, the extent to which funding a particular application would contribute to a collection of awards that is diverse and balanced and that addresses the most significant problems of American education.

Response. No change has been made. This standard allows the Secretary to select awardees in such a way that no single planning approach, strategy, or philosophy predominates among the applications or proposals that are selected for an award, so that diversity and balance are achieved.

General Comments Related to Part 706

Comment. Several commenters expressed concern that the rights of students and their parents with regard to students as the subjects of research and testing be protected in the laboratory and center activities funded by NIE.

Response. No change has been made. Section 75.681 (protection of human research subjects) of EDGAR protects these rights.

Comment. One commenter suggested that two phases of competition for laboratory and center awards for institutional operations should be held. In the first phase, competitions would be held to select grantees or contractors for awards for institutional operations. In the second phase, competitions would be held on priority topics selected by the Secretary to achieve a balanced and diverse array of work and would be limited to grantees or contractors receiving funds under a laboratory or center award for institutional operations.

Response. No change has been made. Given current educational needs in the Nation and the immediate necessity to hold competitions to plan for and operate laboratories and centers, the Secretary does not make any provision in these final regulations at this time for holding targeted competitions limited to grantees or contractors receiving funds under a laboratory or center award for institutional operations.

Comment. One commenter stated that when Congress requested NIE to hold competitions for future laboratory awards, Congress did not intend for existing laboratories to compete against each other. The commenter notes that such competition would occur in the West, where two laboratories currently serve California and Nevada.

Response. No change has been made. Congress has not indicated to NIE that competitions should be structured so as to insure that no existing laboratory would be competing for a future laboratory award without competing against another existing laboratory. Indeed, no provision in these final regulations prevents any eligible party from competing for a laboratory award in any one or more designated regions.

Comment. Several commenters suggested that the use of the term "project" in referring to laboratory or center awards in the proposed regulations is misleading, that these institutions are considerably more than a project.

Response. Although the Secretary considers awards for institutional operations to be institutional in nature, EDGAR uses the term "project" to refer to a single award made by the Department, and this term has been retained in these regulations to insure the use of consistent terminology across Departmental programs. The Secretary intends each laboratory and center to conduct a variety of activities, each of which may be part of one or more larger programs. The use of the term "project" in no way diminishes the importance and magnitude of the several significant activities of these institutional projects.

Comment. One commenter suggested that the Secretary's certification in the proposed regulations that those regulations will not have a significant economic impact on a substantial number of small entities is not valid. The commenter asserts that these regulations will have a substantial economic impact on each of the 16,000 school districts in the Nation as well as on the limited number of small entities that may participate in the program.

Response. No change has been made. The commenter presents no evidence or justification for the assertion that these regulations will produce a significant economic impact both on all school districts and on participants in the program. Further, although part of the impact of these regulations may be educational improvement in school districts, the Secretary does not view these regulations as having a significant *economic* impact on school districts.

Section 707.11 What geographic regions do the laboratories serve?

Comment. A commenter suggested keeping the laboratory regions currently being served by incumbent laboratories. Several commenters favored the first proposed alternative for laboratory regions as described in the proposed regulations, several favored the second, and several favored the third. Others requested that various States be included in one region rather than in another.

Response. A change has been made. The Secretary has selected the second proposed alternative for laboratory regions, as described in the Preamble to the NPRM, with some adjustments, because this alternative offers the greatest prospects for the successful collaboration of States seeking educational excellence. These adjustments involve four States and can be summarized as follows. Puerto Rico and the Virgin Islands are included in region (1) rather than in region (4). Ohio is included in region (5) rather than in region (3). Louisiana is included in region (6) rather than in region (4). The Northern Mariana Islands are added to region (10). Finally, in response to comments from the Pacific Basin suggesting that the Pacific Basin be affiliated with the Northwest region for the near term, proposed § 707.11(c) has been modified to permit the Secretary, for each competition for a laboratory award, to select one or more regions to be served by the laboratory.

Comment. A commenter suggested that a provision be made for a national laboratory having expertise in a specific area.

Response. No change has been made. Section 405(f) of GEPA explicitly states that laboratories are regional only.

Comment. A commenter favored a Mid-Atlantic region comprising the District of Columbia, Delaware, Maryland, New Jersey, and Pennsylvania, as described in the first and second proposed alternatives, but indicated that more NIE funds should be available for the laboratory serving that 5-State region than the funds now available for the laboratory currently serving the 3-State region of Delaware, New Jersey, and Pennsylvania.

Response. No change has been made. Because funds are made available through yearly appropriations, the amount of funding available for particular awards cannot be described in these regulations. With respect to particular grants, this information is announced in an application notice. With respect to contracts, it is the Federal Government's policy not to disclose this information.

Comment. Several commenters suggested that the region currently served by the Mid-continent Regional Educational Laboratory (McREL) be retained.

Response. No change has been made. Region (7), which corresponds to the region currently served by McREL, remains unchanged.

Comment. With respect to region (3) (Appalachia), several commenters favored the existing 7-State region that includes Alabama, Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia and that is served by the Appalachian Educational Laboratory. Several commenters favored a 5-State Appalachian region that includes Kentucky, Ohio, Tennessee, Virginia, and West Virginia. Finally, several commenters favored an Appalachian region that excludes Ohio.

Response. A change has been made. Region (3)—as designated in § 706.11 of the final regulations—includes Kentucky, Tennessee, Virginia, and West Virginia. After careful consideration of public comment, the Secretary has determined that, with respect to characteristics relevant to the provision of laboratory services, the State of Ohio is more closely akin to the States in region (5). Ohio is a predominantly industrialized State whose industrial base and workforce make its educational needs more similar to those of Michigan, Illinois, and other States in the region than to the needs of the States in region (3). Accordingly, the Secretary has included Ohio in region (5) rather than in region (3).

Comment. With respect to region (5) (the Midwest), several commenters favored a 7-State region that includes Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin. A commenter suggested including Iowa and Minnesota with the Great Plains States.

Response. A change has been made. As explained in the response to the above comment, region (5), as described in the second proposed alternative, has been adjusted to include Ohio.

Comment. One commenter favored a Mountain State region that includes Arizona, Colorado, New Mexico, Utah, and Wyoming.

Response. No change has been made. The Secretary does not consider this configuration of States to be as cohesive and strong a grouping as those configurations described in the second proposed alternative.

Comment. With respect to region (1) (the Northeast), several commenters favored the 7-State region described in the second proposed alternative that includes Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. Nevertheless, several members of this group of commenters, as well as several other commenters, also expressed support for a Northeast region that includes the Caribbean States of Puerto Rico and the Virgin Islands. One commenter discussing the Caribbean noted that this was a second preference and was supported only if first preference for a separate region in the Caribbean was not feasible at this time. Several commenters favored a New England region in the Northeast that includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, and excludes New York. Finally, several commenters suggested that New York, as a result of its large population, could be justified as constituting a region of its own.

Response. A change has been made. Puerto Rico and the Virgin Islands have been added to region (1) to create a 9-State region encompassing both the Northeast and the Caribbean Basin, which includes the six New England States, New York, Puerto Rico, and the Virgin Islands. The Secretary does not consider a region comprising only New York to be desirable because the benefits of collaboration with other States in the region would be absent and because costs for a single-State region would be prohibitive. Moreover, New York shares many significant characteristics with the New England States, making its inclusion with those States both sensible and desirable. For similar reasons, the Secretary does not consider a spearate region for the two States in the Caribbean to be either feasible or desirable. The migration of significant numbers of Puerto Ricans to New York as well as currently established cultural links between Puerto Rico and areas of New York argue strongly for adding the two States of the Caribbean to the Northeast region.

Comment. With respect to regions (9) (the Northwest) and (10) (the Pacific Basin), as described in the second proposed alternative, several commenters suggested that the region currently served by the Northwest Regional Educational Laboratory and composed of Alaska, American Samoa, Guam, Hawaii, Idaho, Montana, the Northern Mariana Islands, Oregon, the Trust Territory of the Pacific Islands, and Washington be retained. Several commenters expressed concern that all the States in the Pacific Basin, including American Samoa, Guam, Hawaii, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, receive laboratory services; that the individual parts of the Trust Territory always be served, whatever changes may occur in their status; and that the Northern Mariana Islands should be added to the second proposed alternative. Moreover, some commenters suggested that the Pacific Basin States should be either a separate service region affiliated with the laboratory in the Northwest region or continue to be part of the Northwest region while keeping the option of becoming a separate region at some future time.

Response. A change has been made. First, the Northern Mariana Islands, which were inadvertently omitted from region (10) in the second proposed alternative, are included in region (10) in these final regulations. However, no change has been made in the composition of regions (9) (the Northwest) and (10) (the Pacific Basin) as described in the second proposed alternative. These final regulations provide separate regions for the States of the Northwest, including Alaska, Idaho, Montana, Oregon, and Washington (region (9)), and the States of the Pacific Basin, including American Samoa, Guam, Hawaii, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (region (10)). In each region, the included States share geographic and cultural characteristics which their status as a separate region recognizes.

In FY 1983 and FY 1984 Congress expressed concern that the unique educational needs of the Pacific Basin were not being met. In Committee Reports, Congress has requested that NIE take steps to ensure that the needs of the Pacific Basin would be met through a satellite arrangement with the Northwest region. After carefully considering the public comment from significant interested parties in the Pacific Basin, the Secretary intends to make an award to provide laboratory services to the Pacific Basin region which takes into account both the special needs and circumstances of that region and the traditional ties that the Pacific Basin States have maintained with educational organizations and others in the Northwest. For this purpose, proposed § 707.11(c) has been modified to permit the Secretary, for each competition for a laboratory award, to select one or more regions to be served by the laboratory. This will permit the Secretary to make an award for a single laboratory to serve both region (9) (the Northwest) and region (10) (the Pacific Basin).

No special provision is made to insure that the component parts of the Trust Territory of the Pacific Islands are guaranteed laboratory services under any future legal status which they might attain. Nevertheless, laboratory services are provided under this program to each

State as defined in § 77.1 (definitions) of EDGAR.

Comment. With respect to region (4) (the Southeast), one commenter favored the first alternative presented in the proposed regulations, while several commenters favored the second proposed alternative. Another commenter favored the third proposed alternative to create more regions serving fewer States each. In addition, one commenter suggested a 12-State region but expressed concern that the inclusion of Puerto Rico and the Virgin Islands in the Southeast would be inconsistent with the nature of that region.

Response. A change has been made. Three States have been deleted from region (4). For the reasons explained in responses to the above comment, Puerto Rico and the Virgin Islands have been included in region (1) rather than in region (4). Louisiana has been included in region (6) rather than in region (4) for the reasons explained below.

Comment. With respect to region (6) (the Southwest), several commenters favored the first proposed alternative, which is a 4-State region that includes Arkansas, Louisiana, Oklahoma, and Texas; several commenters favored a 4-State region that includes Arkansas, New Mexico, Oklahoma, and Texas (second proposed alternative in NPRM); and several commenters favored a 5-State region that includes Arkansas, Louisiana, New Mexico, Oklahoma, and Texas, and that coincides with the region currently served by the Southwest Educational Development Laboratory.

Response. A change has been made. Louisiana has been added to region (6) as described in the second proposed alternative to create a 5-State region. After reviewing the public comments, the Secretary has determined that, for purposes of laboratory services, Louisiana's economic and cultural characteristics make Louisiana more similar to those of the Southwestern States than to those of the Southeastern States.

Comment. With respect to region (8) (the West), several commenters suggested that the regions currently served by the two laboratories located in California be retained and that States be permitted to receive services from more than one laboratory, provided that service boundaries do not overlap. The two regions suggested are, first, northern California, northern Nevada, and Utah and, second, southern California, southern Nevada, and Arizona. Commenters made the following points: no overlap of boundaries currently exists; joint powers agreements, not NIE, created the regions; both incumbent laboratories have traditionally provided valuable services; and the two existing regions would suffer a net loss in research and development resources if they were combined. On the other hand, a commenter suggested that these four States should form only one region (described in the second proposed alternative).

Response. No change has been made. In order to avoid unnecessary duplication of costs and allow for equitable representation of States on laboratory governing boards, the Secretary has assigned each State to only one region. The States in region (8) are, therefore, those described in the second proposed alternative.

Comment. One commenter suggested that, if the Secretary discontinues funding to a laboratory, the NIE should provide interim funds only to an organization that meets the definition of a laboratory.

Response. No change has been made. The Secretary reserves the right to determine the appropriate means to serve best the interim needs of a region. Although one option for providing interim services to a region would be through an organization that meets the definition of a laboratory, such as a laboratory serving a contiguous region, other options are available. For instance, the Southeast currently receives laboratory-type services, under section 405(e) of GEPA, from an organization established by a consortium of chief State school officers.

Section 707.31 What are the selection criteria for laboratory awards for planning?

Comment. Several commenters suggested that too few points were assigned to the criterion on quality of key personnel and that the point distribution across all the criteria produced a bias in favor of incumbent laboratories.

Response. A change has been made. The Secretary has assigned 10 of the 15 points reserved in the proposed regulations. The number of points for the criterion on quality of key personnel has been increased from 10 to 20. Of the total of 100 possible points, the Secretary has reserved 5 points in the final regulations. In the case of a competition for grants, the Secretary assigns the 5 points to the criterion on budget and cost effectiveness. In the case of a competition for contracts, the Secretary announces how these 5 points will be assigned.

Comment. A commenter recommended that the criterion on an applicant's or offeror's evaluation plan be included under the criterion on plan of operation.

Response. No change has been made. Although they are best planned together, the purpose of an evaluation plan is substantively different from the purposes of a plan for achieving the objectives of the program, and for this reason, each of these two criteria remains a separate criterion. Furthermore, each of these criteria is a general selection criterion included in EDGAR and is incorporated verbatim in these regulations for the purpose of achieving consistency in the evaluation of applications under various discretionary grants programs of the Department. Similarly, these two criteria remain separate criteria in § 707.32.

Section 707.32 What are the selection criteria for laboratory awards for institutional operations?

Comment. Several commenters suggested that the selection criteria for laboratory awards for institutional operations give an advantage to incumbent laboratories. More specifically, several commenters suggested that to many points are assigned to both the criterion on institutional capacity and the criterion on strength of relationships with the region, and that too few points are assigned to the criterion on quality of key personnel.

Response. A change has been made. The Secretary has assigned 10 of the 15 points reserved in the proposed regulations. The number of points for the criterion on plan of operation has been increased from 20 to 25, and the number of points for the criterion on quality of key personnel has been increased from 15 to 20. Of the total of 100 possible points, the Secretary has reserved 5 points in the final regulations. In the case of a competition for grants, the Secretary assigns the 5 points to the criterion on budget and cost effectiveness. In the case of a competition for contracts, the Secretary announces how these 5 points will be assigned. In addition, a further change has been made in response to public concern about a potential advantage for incumbent laboratories. The first three sub-criteria in § 707.32(b)(2) were not meant to imply that a recipient of a laboratory award had to have a pre-existing governing board and structure. To avoid any misunderstanding, these three sub-criteria are each now introduced with the words "Plans for. . . ."

Comment. One commenter suggested that the criterion on quality of key personnel in § 707.32(d) be changed to

indicate explicity that key personnel are full-time employees.

Response. No change has been made. Although in most cases key personnel are full-time employees of a laboratory, § 75.203 of EDGAR imposes no such requirement on key personnel, and neither do these program regulations, which supplement and are consistent with the provisions of EDGAR.

Comment. Several commenters suggested that research is a critical component of the activities of a laboratory and is not adequately reflected in the selection criteria described in § 707.32. Commenters suggested adding a criterion to evaluate information which shows the extent to which the offeror understands the state of knowledge and practice with respect to the problems and priorities of the region to be served, including knowledge of relevant research and theory; knowledge of relevant problems in educational practice; demonstrated experience in conducting research, development, and dissemination; demonstrated experience in relating to other organizations in educational research, development, and practice; and others.

Response. No change has been made. The extent of the applicant's or offeror's understanding of research and practice in relation to the needs of the region is adequately measured by the criterion on plan of operation (§ 707.32(d)), and in particular by several sub-criteria, including the design of the project, the relation between proposed activities and regional needs, and the contribution of the work to educational improvement. The applicant's or offeror's capacity to conduct research, development, and dissemination, while maintaining ties and collaborating with other similar organizations, is adequately covered by the criterion on institutional capacity (§ 707.32(c)), which takes into account organizational mechanisms and procedures for managing work both internally and in collaboration with other institutions. Although § 707.32(c) focuses on institutional capacity rather than on demonstrated experience, this criterion is adequate for evaluating the ability of the applicant or offeror to conduct, both internally and in collaboration with other organizations, laboratory activities that are informed by research, theory, and practice.

Section 707.41 What requirements must be met by a grantee or contractor?

Comment. Several commenters recommended that a grantee or contractor receiving a laboratory grant or contract for institutional operations should not be required, as a post-award condition, to be incorporated as a nonprofit organization. The commenters argued that many public agencies could not meet this requirement and, therefore, would not be able to receive laboratory awards.

Response. A change has been made. The Secretary has deleted this post-award requirement from § 707.42(a) in order not to restrict indirectly eligibility for laboratory awards.

Comment. Several comments expressed concern about the post-award requirement that requires a board of directors to be subject to no higher governing board and be representative of the varied educational constituencies of the region (proposed § 707.41(b)). Some commenters suggested that this requirement influences indirectly the eligibility requirements for laboratory awards for institutional operations because many institutions of higher education would have difficulty meeting this requirement.

Response. A change has been made. The language of this post-award requirement has been modified in order to clarify its purpose, which is to require a governing board that is accountable to NIE for satisfying the terms and conditions of the award and that reflects a balanced representation of States and constituencies in the region. This provision was modified to insure that the governing board of a laboratory understands that, by law, that governing board, not another body, must be accountable to NIE for fulfilling the terms and conditions of the award. Because NIE is responsible for managing public monies and insuring that they are lawfully expended, NIE, and no other entity, must determine when the terms and conditions of a laboratory award are being met and when they are not being met. In a case where NIE determines that the terms and conditions of the award are not being met, and the governing board does not make changes to comply with the terms and conditions of the award, NIE may terminate funding. The Secretary does not use this authority to direct or influence the activities or agenda of a laboratory that is fulfilling the terms and conditions of the award. Nor does the Secretary use this provision to require any prior approval by NIE of the specific individuals serving on the governing board, or to deprive the governing board of the independence and autonomy to function as the responsible party for the laboratory.

Comment. Several commenters suggested that the composition of laboratory governing boards should be specified in the regulations. One commenter recommended that chief State school officers be guaranteed a seat. Another commenter recommended that minorities be represented on laboratory governing boards.

Response. No change has been made. The Secretary has required, as a post-award condition under § 707.41(a)(2) of the final regulations, that a laboratory governing board reflect "a balanced representation of the States in the region, as well as the interests and concerns of regional constituencies." Furthermore, the Secretary evaluates an application or proposal for a laboratory on the basis of information showing "plans for a governing board whose composition reflects regional interests and constituencies." See § 707.32(b)(2)(i). The Secretary believes that, subject to these requirements, each applicant or offeror can best determine the composition of its governing board.

Comment. Several commenters recommended that dissemination should play a greater role in the activities of laboratories than is reflected in the proposed regulations.

Reponse. No change has been made. Post-award requirements in § 707.41 (c) and (f) for grantees and contactors receiving laboratory awards for institutional operations are specifically designed to emphasize dissemination and knowledge use as major functions of laboratories. Section 707.41(c) requires grantees and contractors to identify concerns and priorities through regionally representative governing and advisory structures and activities that help regional clients define their needs. Section 707.41(f) requires grantees and contractors to promote the use in the region of research and development results from all sources inside and outside the region, including the laboratory. In addition, § 706.21 of the final regulations requires an applicant or offeror for an award for institutional operations to make assurances that the laboratory or center will disseminate information develop as a result of research and development activitives, including new educational methods, practices, techniques, and products.

Comment. Several commenters suggested that laboratories and centers be required, in addition to their individual activities, to collaborate as a group.

Response. A change has been made. An additional post-award requirement has been added to § 707.41 for laboratories and to § 708.41 for centers that requires both types of organizations to collaborate in order to carry out more effectively the terms and conditions of the award. Such collaboration was contemplated by the statutory scheme of

section 405(f) of GEPA, which assumes laboratories and centers to be not a collection of unrelated organizations but rather a program of mutually reinforcing organizations with some major activities in common, as reflected in the assurances described both in § 706.21 of these regulations and in the statute.

Section 708.31 What are the selection criteria for center awards for planning?

Comment. With respect to the selection criteria for awards for institutional operations in §§ 708.31 and 708.32, one commenter suggested that the criterion on evaluation plan be subsumed under the criterion on plan of operation and that the criterion on adequacy of resources be subsumed under the criterion on institutional capacity.

Response. No change has been made. These criteria are substantively different and, therefore, each remains a separate criterion. Furthermore, each of these criteria is a general selection criterion included in EDGAR and is incorporated verbatim in these regulations in order to achieve consistency in the evaluation of applications under the various discretionary grants programs of the Department.

Comment. Several commenters suggested that more points be assigned to the criterion on quality of key personnel because the quality of the staff is so crucial to the successful planning of a center.

Response. A change has been. The number of points for the criterion on quality of key personnel has been increased from 10 to 15; the number of points for the criterion on institutional capacity has been decreased from 20 to 15.

Section 708.32 What are the selection criteria for center awards for institutional operations?

Comment. Several commenters suggested that more points be assigned to the criterion on quality of key personnel because the quality of staff contributes so greatly to the success of a center.

Response. A change has been made. The number of points for the criterion on quality of key personnel has been increased from 15 to 20; the number of points for the criterion on institutional capacity has been decreased from 25 to 20.

Comment. One commenter suggested that the criterion on institutional capacity in § 708.32(b) implies that an applicant or offeror for a center award for institutional operations must be a single-campus institution. The commenter supports this notion and recommends that it be made explicit in the final regulations.

Response. No change has been made. Section 405(f) of GEPA does not require centers to be located on a single campus. Moreover, the commenter presents no evidence or justification for this suggestion, and the Secretary does not deem it suitable to place such a restriction on applicants or offerors for a center award for institutional operations.

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federal register

Monday
July 23, 1984

Part VI

Department of Education

Regional Education Laboratories and Research and Development Centers Program; Application Notice for the Transmittal of Applications for Planning Grants for Regional Educational Laboratories

DEPARTMENT OF EDUCATION

National Institute of Education

Regional Educational Laboratories and Research and Development Centers Program

AGENCY: Department of Education.

ACTION: Application notice for the transmittal of applications for planning grants for regional educational laboratories

The Secretary of Education (the Secretary) announces competitions, under the Regional Educational Laboratories and Research and Development Centers Program, for grants to plan for eigh regional educational laboratories (laboratories). Authority for these planning grants is contained in section 405(e) of the General Education Provisions Act (GEPA), as amended (20 U.S.C. 1221e(e)).

Closing Dates for the Transmittal of Applications

Applications for planning grants must be mailed or hand delivered by September 26, 1984. Applications sent by mail must be addressed to the National Institute of Education, Proposal Clearinghouse, Room 619, Brown Building, 1200 19th Street, NW., Washington, D.C. 20208.

An applicant must show one of the following as proof of mailing:

(a) A legibly dated U.S. Postal Service postmark.

(b) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(c) A dated shipping label, invoice, or receipt from a commercial carrier.

(d) Any proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept the following as proof of mailing:

(1) A private metered postmark.

(2) A mailing receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not always provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application delivered by hand must be taken to the National Institute of Education, Proposal Clearinghouse, Room 619, Brown Building, 1200 19th Street, NW., Washington, D.C.

The Proposal Clearinghouse will accept an application delivered by hand between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time), daily except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:00 p.m. on the closing date mentioned above.

Program Information

The National Institute of Education (NIE) currently supports seven (7) regional educational laboratories in accordance with section 405(f) of GEPA. The existing laboratories are the remaining organizations of a nationwide network of twenty laboratories established by the U.S. Office of Education in the mid-1960s.

The current awards for the existing laboratories are scheduled to expire during 1985. Through committee report language, the Congress has indicated its desire that NIE conduct open competitions for future laboratory awards. See the Conference Report accompanying the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35 (H.R. Rep. No. 208, 97th Cong., 1st Sess. at pp. 729-730 (1981)) and the Senate Report accompanying the Urgent Supplemental Appropriations Act of 1982, Pub. L. 97-216 (S. Rep. No. 402, 97th Cong., 2nd Sess. at p. 58 (1982)).

Regional educational laboratories are intended to improve education by identifying and helping to meet educational research and development needs in specified regions of the country and by promoting the use in the regions of research and development results from all sources. These competitions for planning grants are part of a comprehensive process for establishing competitively-funded laboratories nationwide. The Secretary previously made several planning awards for a Midwestern laboratory and is currently conducting a competition for a grant to assist the institutional operations of a laboratory in the Midwestern Region (region 5). With respect to the other nine regions, the Secretary will announce, through the issuance of formal Requests for Proposals, competitions for five-year contracts for laboratory institutional operations.

Applicants for planning grants are invited to propose a range of planning activities, such as the following: Collect and analyze information about the region; review the research and other literature; consult with appropriate groups in the region; and design specific laboratory structures, functions, strategies or programs. The grant information package will contain additional information about activities for the planning award.

As described in § 707.11 of the final regulations, the laboratories will be required to serve designated geographic regions. Laboratory regions have been established as follows:

1. *Northeastern Region*: Connecticut, Massachusetts, Maine, New Hampshire, New York, Puerto Rico, Rhode Island, Vermont and Virgin Islands
2. *Mid-Atlantic Region*: Delaware, District of Columbia, Maryland, New Jersey and Pennsylvania
3. *Appalachian Region*: Kentucky, Tennessee, Virginia and West Virginia
4. *Southeastern Region:* Alabama, Florida, Georgia, Mississippi, North Carolina and South Carolina
5. *Midwestern Region*: Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio and Wisconsin
6. *Southwestern Region*: Arkansas, Louisiana, New Mexico, Oklahoma and Texas
7. *Central Region*: Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota and Wyoming
8. *Western Region*: Arizona, California, Nevada and Utah
9. *Northwestern Region*: Alaska, Idaho, Montana, Oregon and Washington
10. *Pacific Basin Region*: American Samoa, Guam, Hawaii, Northern Mariana Islands and Trust Territory of the Pacific Islands

In the competitions announced in this notice, the Secretary will award grants to assist laboratory planning in all the regions except the Midwestern Region (region 5). The Secretary previously announced a competition for a grant to assist laboratory institutional operations in the Midwestern Region. (49 FR 22524, May 30, 1984.)

In accordance with 34 CFR 707.11(b), each planning grant will assist the recipient to plan for a single laboratory to serve a single region, except that grants will be made to assist in planning for a single laboratory to serve both the Northwestern Region (region 9) and the Pacific Basin Region (region 10). Therefore, applicants for planning grants in the Northwestern Region and the Pacific Basin Region must describe planning activities covering both regions.

After careful consideration of comments received from interested parties, and in response to Committee Reports accompanying NIE's fiscal year 1984 appropriation, the Secretary has determined that a single laboratory can

best serve both the Northwestern and the Pacific Basin Regions. The Secretary's determination is based on his assessment of the special needs and circumstances of the Pacific Basin, including the need to maintain the traditional ties that have been established between educators in the Pacific Basin and educational organizations and others in the Northwest. Largely in cooperation with educational organizations and others in the Northwest, educational in the Pacific Basin have been engaged in long-range planning to develop, within the Pacific Basin, a capacity to operate an educational laboratory of its own. Because this planning has not been completed, the Secretary anticipates that the laboratory that serves the Northwestern and the Pacific Basin Regions will be in the Northwest but will operate a satellite office in the Pacific Basin under the five-year institutional operations contract.

Eligible Applicants

Public or private organizations, institutions, agencies or individuals are eligible to receive planning grants. A consortium of eligible agencies and organizations may also apply for a planning grant, but a single entity must be designated as the recipient of the award, in accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.129. Participation or non-participation in the competitions for a laboratory planning grant in no way affects eligibility to submit a proposal in any subsequent competition for a contract to operate a regional educational laboratory.

Selection Criteria

In evaluating applications the Secretary will use the selection criteria for laboratory planning awards contained in § 707.31 of the final regulations. The maximum number of possible points for all selection criteria is 100, distributed as follows:

(a) *Understanding of the educational settings and issues in the region.* (25 points maximum)

(b) *Organizational ability to conduct planning and design tasks.* (20 points maximum)

(c) *Plan of operation.* (20 points maximum)

(d) *Quality of key personnel.* (20 points maximum)

(e) *Budget and cost effectiveness.* (5 points maximum)

(f) *Evaluation plan.* (5 points maximum)

(g) *Adequacy of Resources.* (5 points maximum)

Procedures to be followed in selecting applications for planning grants are found in sections 34 CFR 75.216 and 75.217.

Length of Awards

The project period for planning grants will be approximately four months and will begin on or about December 4, 1984.

Available Funds

The Secretary estimates that up to three planning grants, not in excess of $25,000 each, will be awarded to assist planning for each of the eight laboratories as described in this notice. This estimate assumes that applications of satisfactory quality will be received. Moreover, this estimate does not bind the Department of Education either to the stated numbers or amounts of awards, unless the those amounts are otherwise specified by statute or regulations.

Application Forms

Grant information packages, including application forms, may be obtained by contracting Dr. John Coulson, National Institute of Education, Stop 24, 1200 19th Street, NW., Washington, D.C. 20208, telephone: (202) 254–5654.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the grant information package. However, the grant information package is intended only to aid applicants in applying for assistance. Nothing in the grant information package is intended to impose any requirement with respect to paperwork, the content of applications, reporting, or grantee performance beyond those imposed under the statute and regulations.

The Secretary strongly urges that the technical or narrative portion of application not exceed fifty (50) single-spaced pages in length, and that the entire application not exceed sixty-five (65) single-spaced pages.

In order to acquaint prospective applicants with the nature of the application process and to answer questions regarding the application notice and the grant information package, an information conference will be held August 10, 1984. 1:00 p.m. to 4:00 p.m., in Room 1130 (Horace Mann Learning Center), 400 Maryland Avenue, SW,, (FOB 6), Washington, D.C.

For more information, contact Raymond F. Wormwood, Acting Chief, Contracts and Grants Management. Telephone: (202) 254–5080. *Potential applicants who are unable to attend the information conference are invited to contact NIE for a written report of the conference.* (Approved OMB Number 1850–0549.)

Applicable Regulations

Regulations applicable to this program include the following:

(a) Final regulations governing laboratory awards under the Regional Educational Laboratories and Research and Development Centers Program (34 CFR Parts 706 and 707). Final regulations covering this program are published in this issue of the **Federal Register.**

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Raymond F. Wormwood, National Institute of Education, 1200 19th Street, NW., Washington, D.C. 20208. Telephone: (202) 254–5080.

(Sec. 405(e) of the General Education Provisions Act, 20 U.S.C. 1221e(e))

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research and Development)

Dated: July 18, 1984.

T.H. Bell,

Secretary of Education

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Federal Register

Vol. 49, No. 142

Monday, July 23, 1984

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Daily Federal Register

General information, index, and finding aids	523-5227
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Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

27119-27292.....2
27293-27486.....3
27487-27728.....5
27729-27918.....6
27919-28036.....9
28037-28228.....10
28229-28386.....11
28387-28536.....12
28537-28690.....13
28691-28814.....16
28815-29050.....17
29051-29208.....18
29209-29356.....19
29357-29550.....20
29551-29766.....23

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
1.....27910, 28252
2.....27910, 28252
7.....27910, 28252
8.....27910, 28252
9.....27910, 28252
10.....27910, 28252
15.....27910, 28252
18.....27910, 28252
20.....27910, 28252
21.....27910, 28252

3 CFR

Administrative Orders:
Presidential Determinations:
No. 84-8 of May 29, 1984.....28815
No. 84-11 of June 12, 1984.....28817
No. 84-12 of June 18, 1984.....28819
Executive Orders:
12473 (Amended by E.O. 12484).....28825
12484.....28825
12485.....28827
Memorandums:
July 11, 1984.....28821
Proclamations:
5215.....27119
5216.....27729
5217.....27919
5218.....28229
5219.....28231
5220.....28387
5221.....28537
5222.....28823
5223.....29051

5 CFR

300.....29209
335.....29209
351.....29209
430.....29209
431.....29209
451.....29209
531.....29209
532.....28347, 29209
534.....28389
540.....29209
550.....27470
551.....29209
771.....29209
792.....27921
2502.....28233
2504.....28235
Proposed Rules:
771.....28721

7 CFR

2.....29053
28.....27731, 28389
29.....27466
68.....27731
278.....28391
279.....28391
301.....27478, 29551
354.....27487
402.....29559
405.....28037
434.....27121
435.....28037
438.....27125
446.....27129
658.....27716
724.....27133, 29563
725.....27133, 29563
726.....27133, 29563
760.....29564
800.....28539
908.....27293, 28037, 28829
910.....27918, 28539, 29357
911.....28038
916.....28540
917.....28540
923.....27135
924.....27731
932.....29209
1421.....29564
1464.....27133
1772.....28236, 28393
1922.....28236
1980.....28039
Proposed Rules:
Ch. IX.....27524, 28408
Ch. X.....27769
251.....27159
319.....29395
411.....27949
419.....28061
422.....27950
434.....27160
436.....27950
437.....27951
446.....27162
449.....28066
907.....29071
908.....29071
910.....28566
946.....28070
967.....28070
1004.....29100
1007.....29613
1033.....28721
1036.....28408
1139.....28855
1098.....29613
1736.....29617
1772.....27952, 28071

8 CFR

100.....27136

103.....28396
205.....29566
238.....27136, 27732
Proposed Rules:
239.....29104
245.....29618

9 CFR

3.....27922
50.....28039, 28040
92.....27136, 27922
309.....27732
310.....27732
318.....27732
327.....29567
381.....29567
Proposed Rules:
308.....28252
318.....28252
320.....28252
327.....28252
381.....28252

10 CFR

30.....27923
33.....27923
34.....27923
35.....27923
40.....27923
50.....27733, 27736
1045.....27737
Proposed Rules:
9.....28072
50.....27769, 28409

12 CFR

4.....27293
7.....28237
26.....28041
212.....28041
217.....28238, 28691
220.....27295
303.....28541
304.....27487, 29053
330.....27294
348.....28041
531.....29210
545.....29357
561.....27294
563.....27295
563f.....28041
564.....27294
571.....27295
572a.....28691
615.....29211
711.....28041
Proposed Rules:
Ch. I.....28566
325.....29399
611.....29404
704.....29619

13 CFR

120.....28044
121.....27924, 27925
140.....27138
Proposed Rules:
120.....27162
136.....27164

14 CFR

39.....28396, 28692, 29054
71.....27299, 27740, 27741, 27927, 28239, 29362
95.....27299
97.....27742, 29211
103.....29354
298.....28239
Proposed Rules:
21.....29408
25.....29410
39.....28252
71.....27772, 29105
73.....29411
91.....29412
93.....27323

16 CFR

13.....27928, 27930, 29568, 29574
305.....27142
703.....28397
1205.....28240
1401.....28693
Proposed Rules:
13.....27773, 29413
703.....28411

17 CFR

5.....27933
202.....27306
211.....29574
230.....27306, 28044
239.....28044
240.....27306, 28044
249.....28044
250.....27306, 27307
256.....27307
256a.....27307
257.....27307
260.....28044
269.....28044
270.....27306, 29362
274.....29362
275.....27306
Proposed Rules:
1.....27775
145.....27776
150.....28253
240.....27172

18 CFR

2.....27934
4.....29369
12.....29369
154.....27935
271.....27934, 27935
375.....29369
385.....29055
Proposed Rules:
803.....28412

19 CFR

4.....28695
6.....28695
10.....28695
18.....28695
19.....28695
24.....28695, 28700
101.....27142, 28695
103.....28695
141.....28695
144.....28695
148.....28695
151.....29372
177.....28695
Proposed Rules:
18.....28855
24.....28855
101.....27172
112.....28855
141.....27954, 28855
144.....28855
146.....28855
171.....28883
172.....28883
175.....28884
177.....28885, 28886
191.....28855

20 CFR

404.....28546

21 CFR

5.....27315, 27489
74.....27744
101.....28547
102.....28241
155.....28398
173.....28548, 28830
175.....29575
177.....29576, 29577
178.....29579
193.....29056
201.....27936
310.....27936
436.....27489
520.....28549, 29056, 29374
556.....27315, 29057
558.....27315, 27936, 29057
1316.....28700
Proposed Rules:
101.....29242
102.....28412
161.....28413
510.....27543

22 CFR

42.....29374
303.....28701
Proposed Rules:
305.....28255

23 CFR

635.....28549

24 CFR

207.....27489
215.....29580
255.....27489
236.....29580
882.....29213
886.....29580
888.....27658
913.....28705
Proposed Rules:
Ch. VIII.....28413
201.....27553
590.....27572
970.....28414

25 CFR

249.....27937
Proposed Rules:
177.....29244

26 CFR

1.....27317, 29594
30.....28706
31.....28706
Proposed Rules:
1.....28739

27 CFR

1.....29594
4.....29594
7.....29594
13.....29594
18.....29594
19.....29594
21.....29594
47.....29594
55.....29594
70.....29594
71.....29594
72.....29594
170.....29594
178.....29594
179.....29594
194.....29594
195.....29594
196.....29594
197.....29594
200.....29594
211.....29594
213.....29594
231.....29594
240.....29594
245.....29594
250.....29594
251.....29594
252.....29594
270.....29594
275.....29594
285.....29594
290.....29594
295.....29594
296.....29594
Proposed Rules:
4.....28417
9.....28257, 28260

28 CFR

0.....29595
16.....27143, 29595

29 CFR

1917.....28550
2619.....28551
Proposed Rules:
1907.....28739
1910.....28739, 29105
1935.....28739
1936.....28739
2520.....27954

30 CFR

773.....27493
870.....27493
901.....27500
914.....28044
915.....28707
916.....28707
934.....29214
935.....27505
938.....27318
942.....27506
Proposed Rules:
913.....27324
920.....27582, 28741
931.....28742
942.....27325
946.....28743
948.....28418

31 CFR

408.....28552
500.....27144
515.....27144

Proposed Rules:

10.....27326
51.....27777

32 CFR

199.....29216
505.....28399

33 CFR

100.....27744–27746, 28056, 28400–28404, 29216, 29217
110.....27320
117.....27747, 28404
165.....27320, 27939, 28405, 29218

Proposed Rules:

Ch. I.....27786
100.....28418
110.....28419
166.....28074

34 CFR

307.....28360
309.....28350
315.....28020
318.....28370
326.....28380
614.....29018
624.....28520
628.....28520
706.....29746
707.....29746
708.....29746

Proposed Rules:

75.....28264
76.....28264
200.....28264
298.....28212, 28264
668.....28264

36 CFR

7.....29374
223.....28241

Proposed Rules:

9.....29415

38 CFR

21.....29058
3.....28241
36.....28242

Proposed Rules:

3.....28267
21.....27954
36.....28887

39 CFR

Proposed Rules:

10.....28571

40 CFR

1.....27942
52.....27507, 27748–27750, 27943, 27944, 28243, 28406, 28553, 29218, 29597
60.....28554, 28556, 28708, 28715
61.....28556, 28708, 28715
65.....28559
81.....27752, 27944, 28243, 29221
124.....27508
125.....28560
146.....29375
147.....28057
261.....27751
271.....28245, 29377
300.....29192
403.....28058
439.....27145
461.....27946
712.....27946
761.....28154, 28172, 28193, 29066

Proposed Rules:

50.....29248
52.....27583, 27584, 27787, 27954, 29108, 29620, 29622
60.....29698
65.....28268, 28271
81.....28888, 29623
122.....29245
123.....28273, 29720
180.....29110–29114
228.....28744
261.....29418
264.....28274, 29625
270.....29524
271.....27585, 28074, 28076
421.....29625
761.....28203, 29625

41 CFR

Ch. 60.....27946
Ch. 201.....27509
60–999.....27946
101–47.....29221

Proposed Rules:

34–30.....28264
101–45.....27955
101–47.....28420

42 CFR

405.....27172, 29379

Proposed Rules:

405.....27422, 28889, 29026
431.....29026
433.....29026
456.....29026
466.....29026
473.....29041

43 CFR

2710.....29012
5000.....28560

Public Land Orders:

6512 (Corrected by Public Land Order 6553).....29600
6535.....28407
6550.....29599
6551.....29599
6552.....29600
6553.....29600
6554.....29600
6555.....29601

44 CFR

64.....29379, 29381
65.....28831, 28832
67.....28833

Proposed Rules:

67.....27956, 28890–28893

45 CFR

96.....27145
1629.....28716

46 CFR

502.....27753

Proposed Rules:

Ch. I.....28893
67.....28744, 29249
147.....29601
147A.....29601
502.....29602

47 CFR

Ch. I.....27754, 28835
2.....27146
13.....29067
22.....29382
68.....27763
73.....27146, 27320, 27321, 27509, 27947, 28844, 29067, 29385–29393, 29602–29605
74.....27147, 29067
76.....27152
81.....29222

Proposed Rules:

Ch. I.....27792
1.....27179
2.....27179
15.....27179
21.....27179
22.....27179, 27792
23.....27179
25.....28275
68.....27179
73.....27179, 27328–27331, 27796, 27956–27960, 28077, 29418–29428
76.....27179
81.....27179
83.....27179
90.....27179
94.....27179
95.....27179

48 CFR

Ch. 5.....29605
Ch. 15.....28246
Ch. 22.....28847
1527.....29222
1552.....29222

Proposed Rules:

15.....28421
31.....28571

49 CFR

387.....27288
571.....28962
821.....28246
1002.....27154
1039.....27321, 28718
1043.....27767
1300.....28718

Proposed Rules:

171.....27180
173.....27180
175.....27180
218.....27797
225.....27797
571.....27181
1039.....27333
1048.....28572
1103.....28276
1160.....27182
1165.....27182

50 CFR

17.....27510, 28562, 29232, 29234
20.....29238
267.....27514
611.....27155, 27322, 27518
630.....27521
638.....29607
652.....27156, 28720
658.....28059
663.....27518
672.....27322, 27521, 28853
674.....27522, 29611
675.....27322
681.....29612

Proposed Rules:

17.....27183, 28572, 28580, 28583, 29629, 29632
20.....28026, 29635
23.....29635
32.....27334, 28079
628.....28276
642.....28080
661.....28422
662.....27797
663.....28283
669.....29637
676.....29250

LIST OF PUBLIC LAWS

Last List July 20, 1984

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H.R. 3169 / Pub. L. 98–370

Renewable Energy Industry Development Act of 1983 (July 18, 1984; 98 Stat. 1211) Price: $1.50

H.R. 5713 / Pub. L. 98–371

Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1985 (July 18, 1984; 98 Stat. 1213) Price: $3.00

CFR CHECKLIST

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4	12.00	Jan. 1, 1984
5 Parts:		
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7 Parts:		
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46–51	12.00	Jan. 1, 1984
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700–899	13.00	Jan. 1, 1984
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1000–1059	12.00	Jan. 1, 1984
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1900–1944	14.00	Jan. 1, 1984
1945–End	13.00	Jan. 1, 1984
8	7.00	Jan. 1, 1984
9 Parts:		
1–199	13.00	Jan. 1, 1984
200–End	9.50	Jan. 1, 1984
10 Parts:		
0–199	14.00	Jan. 1, 1984
200–399	12.00	Jan. 1, 1984
400–499	12.00	Jan. 1, 1984
500–End	13.00	Jan. 1, 1984
11	5.50	July 1, 1983
12 Parts:		
1–199	9.00	Jan. 1, 1984
*200–299	14.00	Jan. 1, 1984
300–499	9.50	Jan. 1, 1984
500–End	14.00	Jan. 1, 1984
13	13.00	Jan. 1, 1984
14 Parts:		
1–59	13.00	Jan. 1, 1984
60–139	13.00	Jan. 1, 1984
140–199	7.00	Jan. 1, 1984
200–1199	13.00	Jan. 1, 1984
1200–End	7.50	Jan. 1, 1984
15 Parts:		
0–299	7.00	Jan. 1, 1984
300–399	13.00	Jan. 1, 1984
400–End	12.00	Jan. 1, 1984

Title	Price	Revision Date
16 Parts:		
0–149	9.00	Jan. 1, 1984
150–999	9.50	Jan. 1, 1984
1000–End	13.00	Jan. 1, 1984
17 Parts:		
1–239	8.00	Apr. 1, 1983
240–End	7.00	Apr. 1, 1983
18 Parts:		
1–149	7.00	Apr. 1, 1983
150–399	8.00	Apr. 1, 1983
400–End	6.50	Apr. 1, 1984
19	8.50	Apr. 1, 1983
20 Parts:		
1–399	7.50	Apr. 1, 1984
400–499	7.00	Apr. 1, 1983
*500–End	14.00	Apr. 1, 1984
21 Parts:		
1–99	9.00	Apr. 1, 1984
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*170–199	12.00	Apr. 1, 1984
*200–299	4.25	Apr. 1, 1984
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600–799	6.00	Apr. 1, 1984
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24 Parts:		
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800–1699	6.50	Apr. 1, 1983
1700–End	6.00	Apr. 1, 1983
25	8.00	Apr. 1, 1983
26 Parts:		
*§§ 1.0–1.169	14.50	Apr. 1, 1984
§§ 1.170–1.300	10.00	Apr. 1, 1984
§§ 1.301–1.400	7.50	Apr. 1, 1984
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§§ 1.501–1.640	12.00	Apr. 1, 1984
§§ 1.641–1.850	12.00	Apr. 1, 1984
§§ 1.851–1.1200	8.00	Apr. 1, 1983
§§ 1.1201–End	17.00	Apr. 1, 1984
2–29	7.00	Apr. 1, 1983
30–39	6.00	Apr. 1, 1983
40–299	14.00	Apr. 1, 1984
*300–499	9.50	Apr. 1, 1984
500–599	8.00	[1] Apr. 1, 1980
600–End	5.50	Apr. 1, 1984
27 Parts:		
1–199	6.50	Apr. 1, 1983
200–End	6.50	Apr. 1, 1983
28	7.00	July 1, 1983
29 Parts:		
0–99	8.00	July 1, 1983
100–499	5.50	July 1, 1983
500–899	8.00	July 1, 1983
900–1899	5.50	July 1, 1983
1900–1910	8.50	July 1, 1983
1911–1919	4.50	July 1, 1983
1920–End	8.00	July 1, 1983
30 Parts:		
0–199	7.00	July 1, 1983
200–699	5.50	Oct. 1, 1983
700–End	13.00	Oct. 1, 1983
31 Parts:		
0–199	6.00	July 1, 1983
200–End	6.50	July 1, 1983

Title	Price	Revision Date
32 Parts:		
1-39, Vol. I	8.50	July 1, 1983
1-39, Vol. II	13.00	July 1, 1983
1-39, Vol. III	9.00	July 1, 1983
40-189	6.50	July 1, 1983
190-399	13.00	July 1, 1983
400-699	12.00	July 1, 1983
700-799	7.50	July 1, 1983
800-999	6.50	July 1, 1983
1000-End	6.00	July 1, 1983
33 Parts:		
1-199	14.00	July 1, 1983
200-End	7.00	July 1, 1983
34 Parts:		
1-299	13.00	July 1, 1983
300-399	6.00	July 1, 1983
400-End	15.00	July 1, 1983
35	5.50	July 1, 1983
36 Parts:		
1-199	6.50	July 1, 1983
200-End	12.00	July 1, 1983
37	6.00	July 1, 1983
38 Parts:		
0-17	7.00	July 1, 1983
18-End	6.50	July 1, 1983
39	7.50	July 1, 1983
40 Parts:		
0-51	7.50	July 1, 1983
52	14.00	July 1, 1983
53-80	14.00	July 1, 1983
81-99	7.50	July 1, 1983
100-149	6.00	July 1, 1983
150-189	6.50	July 1, 1983
190-399	7.00	July 1, 1983
400-424	6.50	July 1, 1983
425-End	13.00	July 1, 1983
41 Chapters:		
1, 1-1 to 1-10	7.00	July 1, 1983
1, 1-11 to Appendix, 2 (2 Reserved)	6.50	July 1, 1983
3-6	7.00	July 1, 1983
7	5.00	July 1, 1983
8	4.75	July 1, 1983
9	7.00	July 1, 1983
10-17	6.50	July 1, 1983
18, Vol. I, Parts 1-5	6.50	July 1, 1983
18, Vol. II, Parts 6-19	7.00	July 1, 1983
18, Vol. III, Parts 20-52	6.50	July 1, 1983
19-100	7.00	July 1, 1983
101	14.00	July 1, 1983
102-End	6.50	July 1, 1983

Title	Price	Revision Date
42 Parts:		
1-60	12.00	Oct. 1, 1983
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400-End	17.00	Oct. 1, 1983
43 Parts:		
1-999	9.00	Oct. 1, 1983
1000-3999	14.00	Oct. 1, 1983
4000-End	7.50	Oct. 1, 1983
44	12.00	Oct. 1, 1983
45 Parts:		
1-199	9.00	Oct. 1, 1983
200-499	6.00	Oct. 1, 1983
500-1199	12.00	Oct. 1, 1983
1200-End	9.00	Oct. 1, 1983
46 Parts:		
1-40	9.00	Oct. 1, 1983
41-69	9.00	Oct. 1, 1983
70-89	5.00	Oct. 1, 1983
90-139	9.00	Oct. 1, 1983
140-155	8.00	Oct. 1, 1983
156-165	9.00	Oct. 1, 1983
166-199	7.00	Oct. 1, 1983
200-399	12.00	Oct. 1, 1983
400-End	7.00	Oct. 1, 1983
47 Parts:		
0-19	12.00	Oct. 1, 1983
20-69	14.00	Oct. 1, 1983
70-79	13.00	Oct. 1, 1983
80-End	13.00	Oct. 1, 1983
48	1.50	[2] Sept. 19, 1983
49 Parts:		
1-99	7.00	Oct. 1, 1983
100-177	14.00	Nov. 1, 1983
178-199	13.00	Nov. 1, 1983
200-399	12.00	Oct. 1, 1983
400-999	13.00	Oct. 1, 1983
1000-1199	12.00	Oct. 1, 1983
1200-1299	12.00	Oct. 1, 1983
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50 Parts:		
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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1983. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

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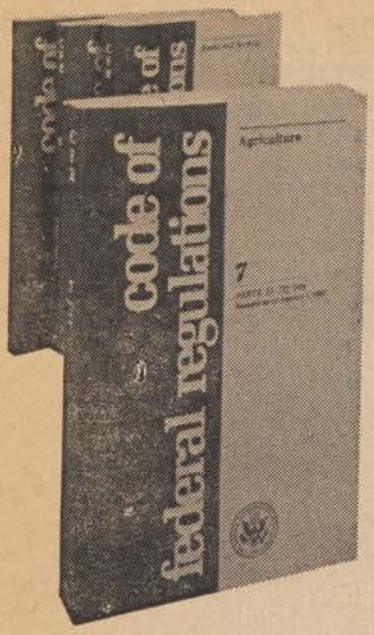

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