AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

8-7-84
Vol. 49 No. 153
Pages 31389-31658

federal register

Tuesday
August 7, 1984

Selected Subjects

Administrative Practice and Procedure
Equal Employment Opportunity Commission

Air Carriers
Civil Aeronautics Board

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Brokers
Commodity Futures Trading Commission

Classified Information
Information Security Oversight Office

Community Development Block Grants
Housing and Urban Development Department

Electronic Funds Transfers
Fiscal Service

Elementary and Secondary Education
Education Department

Endangered and Threatened Species
Fish and Wildlife Service

Equal Employment Opportunity
Equal Employment Opportunity Commission

Fisheries
National Oceanic and Atmospheric Administration

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for six months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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

Government and Property Management
General Services Administration

Grant Programs—Energy
Energy Department

Handicapped
Housing and Urban Development Department

Hazardous Waste
Environmental Protection Agency

Hunting
Fish and Wildlife Service

Indians—Lands
Land Management Bureau

Intergovernmental Relations
Land Management Bureau

Loan Programs
National Oceanic and Atmospheric Administration

Low and Moderate Income Housing
Housing and Urban Development Department

Marine Safety
Coast Guard

Marketing Agreements
Agricultural Marketing Service

Mortgage Insurance
Housing and Urban Development Department

Public Housing
Housing and Urban Development Department

Seals and Insignia
Forest Service

Security Measures
Defense Department

Trade Practices
Federal Trade Commission

Trademarks
Patent and Trademark Office

Water Pollution Control
Environmental Protection Agency

Contents

Federal Register
Vol. 49, No. 153
Tuesday, August 7, 1984

Agricultural Marketing Service
RULES
31389 Cherries grown in Michigan et al.
31389 Oranges (Valencia) grown in Arizona and California
Potato research and promotion plan:
31390 Expenses and rate of assessment; correction

Agriculture Department
See also Agricultural Marketing Service; Federal Grain Inspection Service; Forest Service; Packers and Stockyards Administration; Soil Conservation Service.
NOTICES
Grants; availability, etc.:
31652 Competitive research grants program

Civil Aeronautics Board
PROPOSED RULES
Air carriers:
31436 Computer reservation systems; display of connecting flights
NOTICES
Hearings, etc.:
31478 Airwest International
31478 South Pacific Island Airways, Inc.
31525 Meetings; Sunshine Act

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
31478 Nebraska; schedule change

Coast Guard
PROPOSED RULES
Regattas and marine parades:
31459 South Bay Marathon

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office.
NOTICES
31478 Agency information collection activities under OMB review

Commodity Futures Trading Commission
PROPOSED RULES
Contract market enforcement:
31442 Floor broker registration requirements
NOTICES
Contract market proposals:
31480 Chicago Board of Trade; natural gas

Consumer Product Safety Commission
NOTICES
31525 Meetings; Sunshine Act (2 documents)

Copyright Office, Library of Congress
NOTICES
31513 Microfilming of documents received in Copyright Office; policy decision

Defense Department
See also Engineers Corps.
PROPOSED RULES
Security:
31455 Industrial personnel security clearance program
NOTICES
31528 Handicapped persons; uniform Federal accessibility standards

Economic Regulatory Administration
NOTICES
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
31481 Sacramento Municipal Utility District

Education Department
RULES
Elementary and secondary education:
31628 Areas affected by Federal activities, etc.: assistance for local educational agencies (impact aid program); local contribution rates; interim

Employment and Training Administration
NOTICES
Adjustment assistance:
31506 Dana Corp.
31506 Gulf & Western Industries, Inc., et al.

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.
RULES
31390 Financial assistance; technical amendments
NOTICES
Grant awards:
31481 Studsvik Energiteknik, A.B.
Meetings:
31481 National Petroleum Council

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
31480 John H. Kerr Reservoir, NC and VA

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
31413 Illinois
31415 New Hampshire
31416 Tennessee
Hazardous waste program authorizations:
31417 Georgia
PROPOSED RULES
Water pollution control:
31462 National pollutant discharge elimination system, etc.; water quality variances

Equal Employment Opportunity Commission
RULES
31411 Equal Pay Act; procedures

31410 Procedural regulations; written interpretations or opinions

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
31433 Piper
31434 Control zones
34135 Prohibited areas; Energy Department nuclear facilities; reopening of comment period
NOTICES
Advisory circulars; availability, etc.:
31522 Airplanes, small and helicopters; plastic foam and metallic mesh installation in fuel tanks
31522 Gasoline, aviation and automotive; use of alternate grades
Environmental statements; availability, etc.:
31522 New General Aviation Reliever Airport, Fremont, CA
Meetings:
31523 Regulatory Negotiation Advisory Committee

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
31492 South Dakota; correction

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
31482 American Electric Power Service Corp.
31483 Arizona Public Service Co.
31483 Iowa-Illinois Gas & Electric Co. (2 documents)
31484 Pacific Power & Light Co.
31484 Union Electric Co.

Federal Grain Inspection Service
PROPOSED RULES
Grain standards:
31432 Triticale; correction

Federal Reserve System
NOTICES
31492 Agency information collection activities under OMB review
Bank holding company applications, etc.:
31493 B.M.J. Financial Corp. et al.
31493 Firstbank Holding Co. of Colorado et al.
31493 First Moore Bancshares, Inc.
31494 J.P. Morgan & Co., Inc.
Federal Open Market Committee:
31494 Domestic policy directives
31525 Meetings; Sunshine Act (2 documents)

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
31440 Commodore Business Machines, Inc.

Fiscal Service
PROPOSED RULES
31450 Electronic funds transfer; direct deposit payments other than check; clarification, etc.
31454 Surety companies doing business with United States; financial guidelines for qualification

Fish and Wildlife Service
RULES
Endangered and threatened species:
31418 Johnston's frankenia
Migratory bird hunting:
31421 Seasons, limits, and shooting hours; establishment, etc.

Food and Drug Administration
RULES
Biological products:
31394 Allergenic products; source material criteria; correction
PROPOSED RULES
Animal drugs, feeds, and related products:
31444 Sulfamethazine, sulfaquinoxaline, sulfamerazine, etc.; interim marketing termination; data submission requirements; correction
NOTICES
Medical devices; premarket approval:
31494 Hydracon Corp.
Meetings:
31494 Bacterial vaccines and preventive measures for diseases

Forest Service
RULES
31413 Property management; Mount St. Helens National Volcanic Monument symbol

General Services Administration
RULES
Property management:
31625 Accessibility standards; accommodations for physically handicapped
NOTICES
31528 Handicapped persons; uniform Federal accessibility standards

Health and Human Services Department
See Food and Drug Administration; National Institutes of Health.

Hearings and Appeals Office, Energy Department
NOTICES
Remedial orders:
31491, 31492 Objections filed (2 documents)
31484-31489 Special refund procedures; implementation and inquiry (3 documents)

Historic Preservation, Advisory Council
NOTICES
31477 Cultural values in project review under Section 106 of National Historic Preservation Act; guidelines; inquiry

Housing and Urban Development Department
RULES
31620 Accessibility standards for design, construction, and alteration of publicly owned residential structures
Low income housing:
31395 Housing assistance payments (Section 8); new construction and substantial rehabilitation; occupancy by eligible tenants

Public and Indian housing:
31399 PHA-owned or leased projects; maintenance and operation; tenant allowances for utilities
PROPOSED RULES
Community development block grants:
31446 Secretary's fund-insular areas
Mortgage and loan insurance programs:
31444 Mutual mortgage insurance and rehabilitation loans; issue date of debentures
NOTICES
31528 Handicapped persons; uniform Federal accessibility standards
Mortgage and loan insurance programs:
31499 Debenture interest rates
31499 Multifamily projects; transfer of physical assets; notification of review procedures and possible effect of Tax Reform Act of 1984
Senior Executive Service:
31498 Performance Review Board; membership

Information Security Oversight Office
RULES
National security information program:
31412 Standard forms

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office.

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Scientific articles; duty free entry:
31479 Cincinnati Art Museum
31479 Oklahoma State University
31479 Solar Energy Research Institute

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
31505 Octoraro Railway Inc. et al.
Railroad services abandonment:
31505 Chesapeake & Ohio Railway Co.

Labor Department
See Employment and Training Administration; Pension and Welfare Benefit Programs Office

Land Management Bureau
PROPOSED RULES
31475 Alaska native selections; chargeability of submerged lands
31473 Financial assistance, local governments; payment in lieu of taxes
NOTICES
Alaska native claims selection:
31500 Tozitna, Ltd.
Conveyance and opening of public lands:
31501 Oregon
Exchange of public lands for private land:
31500 Montana
Oil and gas leases:
31503 Montana
Sale of public lands:
31503 Montana

Library of Congress
See Copyright Office, Library of Congress.

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
31503 Mark Producing
Outer Continental Shelf operations:
31638 Gulf of Alaska/Cool. Inlet; lease sale

National Aeronautics and Space Administration
NOTICES
Patent licenses, exclusive:
31513 Karyon Scientific, Inc.
31513 Perceptive Systems, Inc.
31514 Smith, Steve
31514 Wyle Laboratories

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
31523 Lafer S.A.

National Institutes of Health
NOTICES
Meetings:
31496–31498 National Cancer Institute (4 documents)
31498 National Institute of General Medical Sciences
31497 National Institute on Aging
31497 Research Grants Division study sections

National Oceanic and Atmospheric Administration
RULES
Financial aid to fisheries:
31657 Loan fund procedures, available loans and open season for applications
Fishery conservation and management:
31430 Atlantic surf clam and ocean quahog; correction
31427 Coral and coral reefs of Gulf of Mexico and South Atlantic; correction
31430 Ocean salmon off coasts of Washington, Oregon, and California
31431 Pacific Coast groundfish; correction

National Park Service
NOTICES
31504 Cape Cod National Seashore; leasing two historic properties; inquiry, etc.
Historic Places National Register; pending nominations:
31504 Georgia et al.

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities, domestic licensing:
31432 Environmental qualification of electric equipment; extension of time
NOTICES
Applications, etc.:
31514 Commonwealth Edison Co.
31514 Consumers Power Co.

Overseas Private Investment Corporation
NOTICES
31526 Meetings; Sunshine Act

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Committees; establishment, renewals, terminations, etc.:
31515 Economic Forecasting Advisory Committee
31516 State Agency Advisory Committee

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
31477 Mike's Livestock Auction, CA
31477 Turlock Livestock Auction Yard, CA, et al.

Patent and Trademark Office
PROPOSED RULES
Trademark cases:
31460 Automated search system fees

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
31507 Dr. Steven Misencik, Inc., et al.

Personnel Management Office
NOTICES
Employability of individuals with certain physical and medical conditions; policy guidance:
31515 Diabetes mellitus

Postal Rate Commission
NOTICES
31526 Meetings; Sunshine Act

Postal Service
NOTICES
31528 Handicapped persons; uniform Federal accessibility standards

Securities and Exchange Commission
NOTICES
31517 Agency information collection activities under OMB review
Hearings, etc.:
31520 Forest City Investment Partners I Limited Partnership et al.
Self-regulatory organizations; proposed rule changes:
31519 American Stock Exchange, Inc.
31517 National Association of Securities Dealers, Inc.
31519 Pacific Stock Exchange, Inc.

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
31478 Saltville Critical Area Treatment RC&D Measure, VA

Surface Mining Reclamation and Enforcement Office
RULES
Abandoned mine land reclamation program:
31412 Fee payment responsibility; clarification
PROPOSED RULES
Permanent program submission; various States:
31448 Illinois; reopening and extension of comment period

Tennessee Valley Authority
NOTICES
31520 Agency information collection activities under OMB review

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
31479 China

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration.

Treasury Department
See Fiscal Service.

Veterans Administration
NOTICES
Meetings:
31523 Health-Related Effects of Herbicides Advisory Committee

---

Separate Parts in This Issue

Part II
31528 General Services Administration, Department of Defense, Department of Housing and Urban Development, and Postal Service

Part III
31620 Department of Housing and Urban Development

Part IV
31625 General Services Administration

Part V
31628 Department of Education; Office of Elementary and Secondary Education

Part VI
31638 Department of the Interior, Minerals Management Service

Part VII
31652 Department of Agriculture, Office of the Secretary

Part VIII
31657 Department of Commerce, National Oceanic and Atmospheric Administration

---

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.

7 CFR
908.....31389
930.....31389
1207.....31390
Proposed Rules:
810.....31432

10 CFR
600.....31390
Proposed Rules:
50.....31432

14 CFR
Proposed Rules:
39.....31433
71.....31434
73.....31435
225.....31436

16 CFR
Proposed Rules:
13.....31440

17 CFR
Proposed Rules:
1.....31442

21 CFR
680.....31394
Proposed Rules:
510.....31444

24 CFR
40.....31620
880.....31395
881.....31395
883.....31395
884.....31395
886.....31395
965.....31399
Proposed Rules:
203.....31444
570.....31446

29 CFR
1601.....31410
1621.....31411

30 CFR
870.....31412
Proposed Rules:
913.....31448

31 CFR
Proposed Rules:
210.....31450
223.....31454

32 CFR
2003.....31412
Proposed Rules:
155.....31455

33 CFR
Proposed Rules:
100.....31459

34 CFR
222.....31626

36 CFR
264.....31413

37 CFR
Proposed Rules:
2.....31460

40 CFR
52 (3 documents).....31413–31416
271.....31417
Proposed Rules:
124.....31462
125.....31462

41 CFR
101–19.....31625

43 CFR
Proposed Rules:
1880.....31473
2650.....31475

50 CFR
17.....31418
20.....31421
250.....31657
638.....31427
652.....31430
661.....31430
663.....31431

Rules and Regulations

Federal Register
Vol. 49, No. 153
Tuesday, August 7, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 338]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 338 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period August 10–16, 1984. This regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 338 (§ 908.638) becomes effective August 10, 1984.

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

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. 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.

This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The regulation is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

The regulation is consistent with the marketing policy for 1983–84. The marketing policy was recommended by the committee following discussion at a public meeting on February 14, 1984. The committee met again publicly on July 31, 1984, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges. The committee reports the demand for Valencia oranges continues to improve.

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

List of Subjects in 7 CFR Part 908

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

PART 908—[AMENDED]

Section 908.638 is added as follows:

§ 908.638 Valencia Orange Regulation 338.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period August 10, 1984, through August 16, 1984, are established as follows:

(a) District 1: Unlimited cartons;

(b) District 2: 350,000 cartons;

(c) District 3: Unlimited cartons.

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

Dated August 2, 1984.

Thomas R. Clark,

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

[FR Doc. 84-20896 Filed 8-6-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia and Maryland; Amendment of Certain Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture issued an interim rule amending § 930.101, § 930.102, § 930.103, and § 930.104 issued under M.O. 930. The rule was published in the **Federal Register** (49 FR 24510, June 14, 1984) and became effective June 14, 1984. The interim rule specified alternate means by which growers of tart cherries may obtain diversion credit in lieu of placing such cherries in a reserve pool; revised the diversion fee schedule applicable to the supervision of the diversion of restricted percentage cherries; and specified additional requirements for cherries placed into a reserve pool. These changes were necessary to facilitate procedures governing the processing of diverted cherries and to clarify requirements for cherries placed into a reserve pool. The rule provided for public comment through June 29, 1984. One comment was received during the period provided, suggesting two minor changes. The regulation is continued in effect as previously issued with the two exceptions adopted.

EFFECTIVE DATE: August 7, 1984, except § 930.101(b) which is not effective until OMB approval has been obtained.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. 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.

This final rule is issued under Marketing Order No. 930 (7 CFR Part 930), regulating the handling of tart cherries grown in eight states. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). It is hereby found that this action will tend to effectuate the declared policy of the Act.

The interim rule provided for public comment through June 29, 1984. Only one comment was received. That comment, from the Cherry Administrative Board, recommended two additional revisions. One suggested revision in § 930.101, extends until September 15 of each year, the deadline for applying for export diversion credit. Because of the contracting problems inherent in exporting, the July 8 application date would be impractical with regard to such diversions. The other revision suggested by the Board is an editorial change in § 930.103. These additional revisions are hereby accepted. Therefore, the regulation is continued in effect as previously issued with the exceptions noted.

It is further found that it is impracticable and contrary to the public interest to engage in further public rulemaking procedures and to postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act and because the changes are minor in nature and the application date change relieves a restriction for all growers. Interested persons were given an opportunity to submit comments on the regulation.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping provisions that are included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

List of Subjects in 7 CFR Part 930

Marketing agreements and orders, Cherries

PART 930—[AMENDED]

Therefore, the interim rule published June 14, 1984 (49 FR 24510) is confirmed as final. The regulations are further amended as follows:

1. Section 930.101 Diversion Application, is amended by revising paragraph (b) to read:

§ 930.101 Diversion Application.

* * * * *

(b) Each producer who elects to divert cherries into an outlet, as the Board, with the approval of the Secretary may designate as specified in § 930.56, shall prior to such diversion submit to the Board at its office, or such other location as may be specified by the Board, on forms provided by the Board, an application to divert cherries as required by § 930.56(a)(1). Applications for diversion by export shall be filed with the Board not later than September 15 of the current fiscal year. Applications for all other forms of diversion shall be filed with the Board not later than July 8 of the current fiscal year: *Provided,* That such applications for growers who will harvest cherries prior to July 8 of any fiscal year shall be filed on such earlier date as may be specified by the Board or, if not so specified, prior to harvest of such cherries.

* * * * *

2. Section 930.103 Diversion, is revised to read as follows:

§ 930.103 Diversion.

Diversion shall be accomplished by: Processing restricted percentage cherries into juice or juice concentrate by pressing such cherries fresh or freezing them unpitted; Processing restricted percentage cherries into dried products; or Leaving restricted percentage cherries unharvested: *Provided,* That such cherries shall remain on the tree until final inspection and shall not be removed from the premises other than by record approval: *Provided Further,* That unless an alternate method of tree selection is requested by an applicant and is approved by the Board, the trees involved with non-harvest shall be designated on a random basis by the Board through its authorized representatives. Diversion may also be accomplished by exporting restricted percentage cherries to foreign countries other than Canada or Japan.

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

Dated: August 1, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84–20759 Filed 8–6–84; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1207

Potato Research and Promotion Plan; Issuance of Amendment Regarding Assessment; Public Representation and USDA Reimbursement of Administrative Expenses; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This corrects FR Doc. 84–13343 on page 20805 of the **Federal Register** of May 17, 1984, by inserting the word "initially" before "be entitled to at least one member." in the last sentence of § 1207.320(b). The word "initially" was inadvertently dropped in the rulemaking proceedings. Restoring it to the plan will clarify the membership provisions of the Potato Board.

FOR FURTHER INFORMATION CONTACT: Kurt Kimmel, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447–2681.

SUPPLEMENTARY INFORMATION: In FR Doc. 84–13343 on page 20805 in the **Federal Register** of May 17, 1984, paragraph (b) of § 1207.320 is corrected by inserting the word "initially" as follows:

§ 1207.320 Establishment and membership.

* * * * *

(b) Producer membership upon the Board shall be determined on the basis of the potato production reported in the latest Crop Production Annual Summary Report issued by the Crop Reporting Board, U.S. Department of Agriculture. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, for each five million hundredweight of such production, or major fraction thereof, produced within each State, such State shall be entitled to one member. However, each State shall initially be entitled to at least one member.

* * * * *

(Title III of Pub. L. 91–670; 84 Stat. 2041; 7 U.S.C. 2611–2627; as amended)

Dated: August 2, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–20895 Filed 8–6–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

10 CFR Part 600

Financial Assistance Rules

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The final rule being issued today makes technical amendments to the Department of Energy (DOE) Assistance Regulations, 10 CFR Part 600, Subpart C (July 8, 1980) and DOE Financial Assistance Rules, 10 CFR Part 600, Subparts A, B, and C, (October 5, 1982). These amendments are necessary because 10 CFR Part 600 incorporates by reference several provisions of the Federal Procurement Regulations (FPR) and the Department of Energy Procurement Regulations (DOE–PR). The FPR was superseded by the Federal Acquisition Regulation (FAR) and the DOE–PR was superseded by the Department of Energy Acquisition Regulations (DEAR) on April 1, 1984. This rulemaking changes all applicable FPR and DOE–PR references in the DOE Financial Assistance Rules and DOE Assistance Regulations to FAR and DEAR references.

EFFECTIVE DATE: August 7, 1984.

FOR FURTHER INFORMATION CONTACT:

Cherlyn Seckinger, Business and Financial Policy Branch, (MA–421.2), Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252–8173

Paul Sherry, Office of the Assistant General Counsel for Procurement and Financial Incentives, (GC–43), Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252–1526

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Description of Changes
III. Review Under Executive Order 12291
IV. Review Under the Regulatory Flexibility Act
V. Review Under the National Environmental Policy Act
VI. List of Subjects in 10 CFR Part 600

I. Background

On September 19, 1983, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration jointly published the Federal Acquisition Regulation (FAR) as a final rule (48 FR 42102). The FAR replaced the Federal Procurement Regulations (FPR), effective April 1, 1984.

The Department of Energy Acquisition Regulations (DEAR), which implement and supplement the FAR, were published as a final rule (49 FR 11922, March 28, 1984). The DEAR replaced the Department of Energy Procurement Regulations (DOE-PR) effective April 1, 1984, except for the Patent provisions of the DOE-PR.

The Department of Energy (DOE) Financial Assistance Rules (47 FR 44076, October 5, 1982) and Assistance Regulations (45 FR 46044, July 8, 1980) incorporate by reference certain FPR and DOE-PR provisions. This rule-making conforms the DOE Financial Assistance Rules and Assistance Regulations by replacing all applicable references to the superseded FPR and DOE-PR with reference to the appropriate provisions of the FAR and DEAR except as follows:

Patents—Cooperative Agreements to small business firms and domestic nonprofit organizations as defined in the Office of Management and Budget (OMB) Circular A–124 will continue to be covered by the DOE Financial Assistance Rules, 10 CFR Part 600.118(b). Agreements to other than small business firms and domestic nonprofit organizations are covered by the Patent provisions of the DOE-PR, 41 CFR Part 9–9, including 9–9.107–5(a) as amended by 48 CFR 927.300, pending Departmental rule-making in this area.

Any cooperative agreement solicitation issued on/or after the effective date of this rule and any new, continuation or renewal cooperative agreement award with a beginning date on/or after the effective date of this rule shall be subject to these amendments. For any cooperative agreement awarded prior to the effective date of this rule, the parties, by mutual agreement, may agree to incorporate the changes contained in this rule.

Section 501(c)(1) of the DOE Organization Act (Pub. L. 95–91; 42 U.S.C. 7191) provides that if DOE determines that no substantial legal or factual issue exists as to a rule, and determines that the amendment is unlikely to have a substantial impact on the Nation's economy or on large numbers of individuals or businesses, that rule may be promulgated in accordance with the Administrative Procedure Act.

DOE has determined that there are no substantial issues of law or fact in this amendment because it reflects only changes in DOE's procedural rule.

Under the Administrative Procedure Act, notice and comment are not required for "rule of agency . . . procedures." (Section 553(b)(A)) DOE has determined that prior notice and comment with respect to this rule are not required because the rule is a procedural rule.

In § 600.6(a)(3) the citations to 41 CFR 9–4.57 and 9–4.58 are changed to 48 CFR 917.72 and 917.73 respectively.

In § 600.103(b)(5) the citation to 41 CFR Subpart 1–15.2 (Federal Procurement Regulations) as modified by 41 CFR 9–15.2 (DOE Procurement Regulations) is changed to 48 CFR 31.2 (Federal Acquisition Regulation) as modified by 48 CFR 931.2 (DOE Acquisition Regulations).

In § 600.118(b)(3) the citation to 41 CFR 9–9.202 is changed to 48 CFR 952.227, and the citation to 41 CFR 9–9.201 in the Rights in Technical Data (Short Form) clause is changed to DEAR 927.401.

In § 600.233(b) the citation to 41 CFR 9–4.57 is changed to 48 CFR 917.72.

In § 600.234(a)(2) the citation to 41 CFR 9–4.58 is changed to 48 CFR 917.73 and the references to the DOE Assistance Regulations (DOE-AR) and the DOE Procurement Regulations (DOE-PR) are changed to the DOE Financial Assistance Rules (DOE-FAR) and the DOE Acquisition Regulations (DEAR).

In § 600.290(b)(1) the citations FPR, 41 CFR Chapter 1 and DOE-PR, 41 CFR Chapter 9 are changed to FAR, 48 CFR Chapter 1 and DEAR, 48 CFR Chapter 9 respectively.

In § 600.290 (b)(2) and (b)(3) references to the FPR and DOE-PR are changed to FAR and DEAR.

In§ 600.290(b)(4) the reference to patents, data, and copyright regulations as set forth in 41 CFR Part 9–9 is updated to include 48 CFR Part 927 and 10 CFR Part 600.118(b)(1).

In § 600.290(b)(4)(ii) the citations to 41 CFR 9–9.202–3(e)(2), 41 CFR 9–9.202–3(c) and 41 CFR 9–9.202–3 are changed to 48 CFR 952.227–75, CFR 952.227–73, and 48 CFR 927.402–3 (e)(2) and (e)(3) respectively.

In § 600.290 (b)(4)(iii) and (b)(4)(iv) the references to 41 CFR Part 9–9 are updated to include 48 CFR 952.227 and 10 CFR Part 600.118.

In § 600.290(b)(5) the citation to 41 CFR is changed to 48 CFR.

In § 600.290(b)(6) the references to the FPR and DOE-PR are changed to the FAR and DEAR.

For the purpose of clarity, the listing of contract clauses cited in § 600.29 (c), (d), and (e) of the Assistance Regulations (10 CFR Part 600, Subpart C, July 8, 1980) as amended by the Financial Assistance Rules (10 CFR Part 600, October 5, 1982) is being republished. The citations to the FPR and DOE–PR are updated to the FAR and DEAR except for "Patents" clauses for other than small business firms and domestic non-profit organizations. The DOE–PR citations are still applicable in those instances. The Patents Rights clause of § 600.118(b)(1) is applicable to

awards to small business firms and domestic non-profit organizations. The following clauses are omitted from this rulemaking because they are not contained in the FAR or the DEAR:

600.290(e)(19) Notice Regarding Late Delivery
600.290(e)(22) Disposition of Material
600.290(e)(33) Reports of Work
600.290(e)(35) Standards of Work

III. Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (46 FR 13193, February 17, 1981), this final rule has been reviewed by OMB. DOE has concluded that this is not a "major rule" because its promulgation 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 regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic or export markets.

IV. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354). DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no final regulatory flexibility analysis has been prepared.

V. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rulemaking clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. et seq. (1976)); the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and the DOE guidelines (45 FR 20694, March 28, 1980) and, therefore, does not require an environmental impact statement pursuant to NEPA.

List of Subjects in 10 CFR Part 600

Adinistrative practice and procedure, Grant programs/energy, Cooperative agreements/energy, Patents, Data, Copyrights.

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599, (42 U.S.C. 7254 and 7256); Pub. L. 95–224, 92 Stat. 3 (41 U.S.C. 501).

Issued in Washington, D.C., July 26, 1984.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 600—FINANCIAL ASSISTANCE RULES

For the reasons set out in the preamble, 10 CFR Part 600 is amended as follows:

1. Section 600.6 is amended by revising paragraph (a)(3) to read as follows:

§ 600.6. Discretionary Awards.

(a) * * *

(3) Applications submitted in response to a Program Opportunity Notice or a Program Research and Development Announcement (see 48 CFR 917.72 and 917.73) if, after an application is selected for award, DOE determines that a grant or cooperative agreement is the appropriate award instrument.

* * * * *

2. Section 600.103 is amended by revising paragraph (b)(5) to read as follows:

§ 600.103. Cost determinations.

* * * * *

(b) * * *

(5) 48 CFR 31.2 (Federal Acquisition Regulation) as modified by 48 CFR 931.2 (DOE Acquisition Regulations) for grants to for-profit organizations (other than for-profit hospitals) including corporations, partnerships, and sole proprietorships.

* * * * *

3. Section 600.118 is amended by revising paragraph (b)(3) to read as follows:

§ 600.118. Patents, data, and copyrights.

* * * * *

(b) * * *

(3) *Rights in Technical Data (Short Form).* This clause shall apply to all grants other than those having as a purpose the conduct of a conference, symposium, or training. However, this clause does not provide protection for proprietary data. If proprietary data may be utilized under a grant, other appropriate technical data clauses (as provided in 48 CFR 952.227) may be included in the award.

Rights in Technical Data (Short Form)

(a) *Definitions.* The definitions of terms set forth in DEAR 927.401 apply to the extent these terms are used herein.

(b) *Allocation of rights.* (1) The Government shall have:

(i) Unlimited rights in technical data first produced or specifically used in the performance of this grant.

(ii) The right of the Contracting Officer or his representatives to inspect at all reasonable times up to three years after final payment under this grant all technical data first produced or specifically used in the grant (for which inspection the grantee or its contractor or subgrantee shall afford proper facilities to DOE), and

(iii) The right to have any technical data first produced or specifically used in the performance of this grant delivered to the Government as the Contracting Officer may from time-to-time direct during the progress of the work, or in any event as the Contracting Officer shall direct upon completion or termination of this grant.

(2) The grantee shall have: The right to use for its private purposes, subject to patent, security or other provisions of this grant, technical data it first produces in the performance of this grant provided the date requirements of this grant have been met as of the date of the private use of such data. The grantee agrees that the to extent it receives or is give access to proprietary data or other technical, business of financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the grantee shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authority by prior written approval of the Contracting Officer.

(c) *Copyrighted material.* (1) The grantee agrees to and does hereby grant to the Government and to others acting on its behalf:

(i) A royalty-free, nonexclusive, irrevocable, world-wide license for Governmental purposes to reproduce, distribute, display, and perform all copyrightable material first produced or composed in the performance of this grant by the grantee, its employees or any individual or concern specifically employed or assigned to originate and prepare such material and to prepare derivative works based thereon.

(ii) A license as aforesaid under any and all copyrighted or copyrightable work not first produced or composed by the grantee in the performance of this grant but which is incorporated in the material furnished under the grant, provided that such license shall be only to the extent the grantee now has, or prior to completion or close-out of the grant, may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The grantee agrees that it will not knowingly include any material copyrighted by others in any written or copyrightable material furnished or delivered under this grant without a

license as provided for in paragraph (c)(1)(ii) of this section, or without the consent of the copyright owner, unless it obtains specific written approval of the Contracting Officer for the inclusion of such copyright material.

* * * * *

4. Section 600.233 is amended by revising paragraph (b) to read as follows:

§ 600.233 Program Opportunity Notice (PON).

* * * * *

(b) A PON is a unique form of solicitation used by DOE in accelerating the demonstration of the technical feasibility and commercial application of potentially beneficial nonnuclear energy sources and utilization technologies. The Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577 (as amended) section 6, authorized the Department to accelerate commercial application of new energy technologies and to provide Federal assistance for participation in demonstration projects. Section 6d(1) of the Act required the Agency to promulgate regulations to provide a procedure for selection of proposals for projects authorized under this section of the Act and the PON implements a portion of this requirement. (See 48 CFR 917.72)

* * * * *

5. Section 600.234 is amended by revising paragraph (a)(2) to read as follows:

§ 600.234 Program Research and Development Announcement (PRDA).

(a) * * *

(2) As a result of a PRDA, a procurement contract, grant, or cooperative agreement may be awarded. If the intended relationship is expected to be a procurement contract, DEAR 917.73 shall be followed. If the intended relationship is expected to be a financial assistance instrument, the DOE Financial Assistance Rules (DOE–FAR) shall be followed. Specifically, this section will apply if the intended relationship is expected to be a Cooperative Agreement. In any event, any public notice, solicitation, request for applications or proposals, should indicate whether the intended relationship will be one of procurement or assistance and state that the applicable DEAR will govern if a procurement contract is entered into and that the DOE–FAR will govern if a financial assistance instrument is utilized.

* * * * *

6. Section 600.290 is amended by revising paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (c)(1)–(24), (d)(1)–(13), and (e)(1)–(37) to read as follows:

§ 600.290 General and Special Provisions.

* * * * *

(b) *General and Special Provisions.* (1) In Federal procurement, the Government's need to acquire goods and services at fair value has led to highly developed procurement procedures. The operational rules for guiding DOE procurement transactions are contained in the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1 and the Department of Energy Acquisition Regulations (DEAR), 48 CFR Chapter 9. These regulations contain a panoply of standard, optional, and special provisions which spell out rights and obligations of the parties in detail. Although these regulations are not applicable pe se to Cooperative Agreements, some of the provisions contained in these regulations provide a reference point for negotiating Cooperative Agreement terms conditions. Use of these provisions, modified as appropriate, should insure that the agreement reached by the parties in considered in the light of the experience gained in interpretation of these provisions based on established legal precedent in the procurement field. Hopefully, by avoiding many of the problems that have arisen in the procurement field, the parties will be able to negotiate an agreement that reflects the true nature of the Cooperative Agreement.

(2) Some FAR and DEAR provisions express basic federal policies that are equally applicable to procurement contracts and Cooperative Agreements. These provisions are contained in paragraph (c) of this section and constitute mandatory General Provisions for Cooperative Agreements under this regulation for certain classes of participants.

(3) Many other provisions in the FAR and DEAR are normally suitable for Cooperative Agreements and should be utilized unless the context of the specific Agreement being negotiated calls for different provisions. These provisions are specified in paragraph (d) of this section. Finally, many of the provisions in the FAR and DEAR might be appropriate and as a minimum, should be considered by DOE and the participant to insure the issues raised by the provisions have been considered. These provisions are contained in paragraph (e) of this section. The provisions contained in paragraphs (d) and (e) constitute the Special Provisions of the Cooperative Agreement along with any provisions negotiated between the parties. When used, the Special Provisions in paragraphs (d) and (e) of this section should be modified to reflect the intent of the parties to the Cooperative Agreement. For example, the Government's rights of termination and change under paragraphs (d)(2) and (e)(20) of this section (which could constitute separate Article(s) in the Cooperative Agreement Schedule) are clearly appropriate where the Government bears all the costs but when there is an undertaking on a cooperative basis, the Participant who has a direct financial interest should have a voice regarding termination, and/or changes (recognizing DOE may need to retain final decision authority in these areas). In the area of liability and indemnifications, provisions in the Cooperative Agreement should reflect the hazards, and risks, and respective responsibilities of the Government and the participant, especially in regard to liability to third parties.

(4) Cooperative Agreements entered into pursuant to this part are subject to the patents, data, and copyright regulations set forth in 41 CFR Part 9–9, 48 CFR 927, and 10 CFR Part 600.118(b)(1), as appropriate. For cooperative agreements, the terms "grant," "grantee," and "subgrant" in the Patent Rights clause of § 600.118(b)(1) shall be substituted to include "cooperative agreement," "participant," and "subagreement" respectively.

(i) The long form Patent Rights clause of 41 CFR 9–9.107–5(a) shall be used in all Cooperative Agreements with other than domestic small business firms or nonprofit organizations having as a purpose the conduct of research, development or demonstration work, except where a waiver is granted or in agreements for which the short form patent rights clause of 41 CFR 9–9.107–6 is appropriate. In such agreements with domestic small business firms or nonprofit organizations, the patent rights clause of § 600.118(b)(1) shall be used.

(ii) The Rights in Technical Data Clause (long form) of 48 CFR Part 952. 227–75 shall be used in all Cooperative Agreements having as a purpose the conduct of research, development, or demonstration work, or in any other agreement where techncial data are expected to be first produced under the Agreement, where technical data are specified to be delivered in the Agreement, or where the Agreement contains the Additional Technical Data Requirements clause of 48 CFR 952.227–73. As more fully explained in the discussion contained in 48 CFR 927.402–3 (e)(2) and (e)(3), optional paragraph (g) "Limited Rights in Proprietary Data" of

Alternate I of the Rights in Techncial Data (long form) clause shall be used where DOE may have a need for delivery of proprietary data under the Agreement; optional paragraph (h) "Contractor Licensing" of Alternate II shall be used where licensing of proprietary data is necessary for the achievement of DOE's objectives relating to the purpose of the Agreement;

(iii) The other clauses relating to patents and technical data for Cooperative Agreements listed in paragraphs (c), (d), and (e) of this section are set forth in 41 CFR Part 9–9, 48 CFR Part 952.227, and 10 CFR Part 600.118(b) (1).

(iv) Any modifications of the provisions of 41 CFR Part 9–9, 48 CFR Part 952.227, or 10 CFR Part 600.118(b)(1) shall be obtained from the DOE Assistant General Counsel for Patents.

(5) The citations in paragraphs (c), (d), and (e) of this section are all 48 CFR unless indicated otherwise.

(6) The provisions of paragraphs (c), (d), and (e) of this section will be utilized under the conditions set forth in the cited FAR or DEAR. For example, if for particular provisions there is a $100,000 threshold for applicability, the provisions should not be used below that threshold. [Note: Any applicable threshold means cost of the total project, including DOE and participant share and any later phases of the same project that may receive DOE support]. The provisions must always be revised to change "contract" to "Cooperative Agreement" or "agreement," and "contractor" to "participant." The use of the term "subcontractor" in any of the provisions means contractor to the participant and all tiers of subcontractor thereunder unless the conditions for use of a provision as set forth in the FAR or DEAR provide otherwise.

(c) * * *

(1) Order of Precedence 952.215–18.

(2) Definitions 952.202–1.

(3) Inspection 52.246–9.

(4) Examination of Records by Comptroller General 10 CFR 600.25.

(5) Convict Labor 52.222–3.

(6) Officials Not to Benefit 52.203–1.

(7) Covenant Against Contingent Fees 52.203–5.

(8) Notice and Assistance Regarding Patent and Copyright Infringement 41 CFR 9–9.104.

(9) Competition in Subcontracting 52.244–5.

(10) Audit 52.215–2.

(11) Clean Air and Water 10 CFR 600.12.

(12) Preference for U.S. Flag Carriers 10 CFR 600.12.

(13) Use of U.S. Flag Commercial Vessels 10 CFR 600.12.

(14) Permits and Responsibilities 52.236–7.

(15) Reporting of Royalties 41 CFR 9–9.110.

(16) Authorization and Consent 41 CFR 9–9.102–2.

(17) Nondiscrimination in Federally Assisted Programs 10 CFR Part 1040.

(18) Rights in Technical Data (Long Form) 952.227–75, unless the Rights in Technical Data (Short Form) 952.227–77 is applicable.

(19) Contract Work Hours and Safety Standards Act 52.222–4.

(20) Patent Rights 41 CFR 9–9.107–5(a), or, for domestic small firms and domestic nonprofit organizations as defined in Pub. L. 96–517, the Patent Rights Clause of §600.118(b)(1).

(21) Flood Insurance 10 CFR 600.12.

(22) Utilization of Labor Surplus Area Concerns 52.220–3.

(23) Labor Surplus Area Subcontracting Program 52.220–4.

(24) Disputes 10 CFR 600.26.

(d) * * *

(1) Subcontracts 52.244–2.

(2) Termination for Convenience of the Government 52.249–1–6.

(3) Government Property 952.245–5.

(4) Patent Indemnity 41 CFR 9–9.103–3(b).

(5) Limitation of Costs 52.232–20.

(6) Limitation of Funds 52.232–22.

(7) Allowable Cost and Payment 952.216–7.

(8) Buy American Act 52.225–3 or 52.225–5.

(9) Price Reduction for Defective Cost or Pricing Data 52.215–22.

(10) Subcontractor Cost or Pricing Data 52.215–24.

(11) Additional Technical Data Requirements 952.227–73.

(12) Utilization of Small Business Concerns and Small Disadvantaged Business Concerns 52.219–8.

(1) 3 Utilization of Women-Owned Business Concerns 52.219–13.

(e) * * *

(1) Payment for Overtime Premiums 52.222–2.

(2) Affirmative Action for Special Disabled and Vietnam Era Veterans 52.222–35.

(3) Cost Reimbursement Type Research and Development Clauses for Contracts Involving Construction, FPR Temporary Regulation 70, (June 28, 1983).

(4) Excusable Delays 52.249–14.

(5) Negotiated Overhead Rates 52.216–7.

(6) Notice to Government of Labor Disputes 52.222–1.

(7) Make or Buy Program 52.215–21.

(8) Advance Payments 10 CFR 600.283(b)(4).

(9) Workmen's Compensation Insurance 52.228–3.

(10) Required Source for Jewel Bearings 52.208(1).

(11) Government Supply Sources 52.251–1.

(12) Interest 52.232–17.

(13) Balance of Payments Program 52.225–7.

(14) Care of Laboratory Animals 10 CFR 600.12.

(15) Cost Accounting Standards 52.230–3.

(16) Alterations in Contract 52.252–4.

(17) Approval of Contract 52.204–1.

(18) Date of Incurrence of Cost 952.231–70.

(19) Changes 52.243–2.

(20) Key Personnel 952.235–70.

(21) Insurance—Liability to Third Parties 52.228–7.

(22) Printing 952.208–70.

(23) Federal Reports Act 10 CFR 600.12.

(24) Foreign Travel 952.247–70.

(25) Security Requirements 952.204–2.

(26) Privacy Act 52.224–2.

(27) Safety and Health 952.223–71.

(28) Priorities, Allocations, and Allotments for Energy Programs 952.212–71.

(29) Sensitive Foreign Nations Controls 952.204–71.

(30) Nuclear Hazards Indemnity 952.250–70.

(31) Stop Work Order 52.212–13.

(32) Walsh-Healy Public Contracts Act 52.222–20.

(33) Preservation of Individual Occupational Radiation Exposure Records 952.223–75.

(34) Waiver of Indemnity 41 CFR 9–9.103–4.

(35) Classified Inventions 41 CFR 9–9.106.

(36) Rights to Proposal Data 10 CFR 600.18.

(37) Small Business and Small Disadvantaged Business Subcontracting Plan 52.219–9.

[FR Doc. 84–20837 Filed 8–6–84; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 680

[Docket No. 80N–0051]

Allergenic Products; Criteria for Source Materials; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the biologics regulation to establish manufacturing or propagation criteria for certain allergenic source materials (49 FR 25430; June 21, 1984). The name of the Center for Drugs and Biologics was inadvertently written as the National Center for Drugs and Biologics. This document corrects that error.

EFFECTIVE DATE: October 19, 1984.

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

SUPPLEMENTARY INFORMATION: In FR Doc. 84–16508 appearing at page 25430 in the issue of Thursday, June 21, 1984, the following correction is made on page 25433 in the first column: In § 680.1 *Allergenic products*, paragraph (b)(3)(iv) is corrected by changing "National Center for Drugs and Biologics" to read "Center for Drugs and Biologics."

Dated: July 31, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–20796 Filed 8–6–84; 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 880, 881, 883, 884, and 886

[Docket No. R–84–1035; FR–1688]

Section 8 Housing Assistance Payments Program for New Construction and Substantial Rehabilitation (100% Occupancy by Eligible Tenants)

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This final rule amends those Section 8 Housing Assistance Payments Program regulations which involve newly constructed or substantially rehabilitated housing. The amendments are needed to comply with a change made by the Housing and Community Development (HCD) Amendments of 1981, which requires that each assistance contract for newly constructed or substantially rehabilitated housing under section 8 of the U.S. Housing Act of 1937 provide that during the term of the contract the owner shall make available for occupancy by eligible families the number of units for which assistance is committed under the contract. Although not required under the statute, the final rule also applies to existing housing assisted under Part 886, Subpart A, Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages, and Part 886, Subpart C, Housing Assistance Program for the Disposition of HUD-Owned Projects.

EFFECTIVE DATE: October 3, 1984.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management, Room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 426–3944. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 325(l) of the HCD Amendments of 1981 amended section 8(b)(2) of the U.S. Housing Act of 1937 to require that all contracts to make assistance payments for newly constructed or substantially rehabilitated section 8 housing provide that, during the term of the contract, the owner shall make available for occupancy by eligible families the number of units for which assistance is committed under the contract. Section 371(b) of the HCD Amendments of 1981 further states that this provision shall apply only with respect to contracts entered into on and after October 1, 1981.

The Department administers six section 8 programs that involve newly constructed or substantially rehabilitated housing and which are, therefore, affected by section 325(l) of the HCD Amendments of 1981. They are the Section 8 New Construction Program, the Substantial Rehabilitation Program, the State Housing Agencies Program (insofar as it involves new construction and substantial rehabilitation), the New Construction Set-Aside for Section 515 Rural Rental Housing Projects Program, the Section 202 Loans for Housing for the Elderly or Handicapped Program, and the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (insofar as it involves substantial rehabilitation).

Except for the Section 202 Loan Program, current regulations do not require a reduction in units under the contract until rental to ineligibles exceeds 10 percent of the units (up to 20 percent in the Set-Aside Program for Rural Rental Housing Projects) to ineligible families. The final rule would amend these regulations to conform with the statutory requirement that, during the term of the Housing Assistance Payments Contract, all assisted units will be made available for occupancy by eligible families.

There currently are no regulations on this matter for the Section 202 Loan Program. However, the same policy as under other current regulations applies under the current contract documents for that program. The Department is preparing a regulation amending Part 885 which, among other matters, would incorporate this amendment and other statutory changes to section 8 programs affected by the HCD Amendments of 1981.

This rule eliminates the authority of a section 8 project owner to lease a percentage of assisted units to ineligible families without approval of the contract administrator. The authority to lease assisted units to ineligible families with the prior approval of the contract administrator in accordance with HUD guidelines, is retained to cover situations in which temporary market conditions prevent leasing all assisted units to eligible families. Approval to lease assisted units to ineligible families does not relieve a section 8 project owner of the obligation to continue making assisted units which become vacant available for occupancy by eligible families.

The final rule authorizes HUD to reduce the number of assisted units if an owner fails to make those units available to eligible families. The final rule also authorizes HUD to reduce the number of assited units notwithstanding its prior approval to lease to ineligible families, if HUD determines that the inability to lease to eligible families is not a temporary problem.

The final rule makes it clear that section 8 project owners of newly constructed or substantially rehabilitated housing who executed an Agreement to Enter into Housing Assistance Payments Contract on or after October 1, 1981, are subject to this statutory requirement, notwithstanding the fact that their Contracts may not contain such an express provision or even contain a contrary provision, since section 325(l) constituted law in effect at the time the Agreements were executed. A section 8 project owner of

newly constructed or substantially rehabilitated housing who, before the effective date of this rule and consistent with then-current regulations, had leased an assisted unit to an ineligible family can continue to lease the unit to that family. However, the section 8 project owner is required to make the unit available for occupancy by an eligible family whenever the ineligible family vacates the unit.

The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (24 CFR Part 886, Subpart C) involves existing housing in addition to substantially rehabilitated housing. The Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR Part 886, Subpart A) involves only existing housing. Under both subparts the assistance is project-based. The provisions of this final rule apply to owners of all housing under these Programs, not only substantial rehabilitation, because HUD has determined administratively that project-based assistance programs should be treated similarly to new construction and substantial rehabilitation for the purposes of this rule. However, the final rule applies only to a project owner of existing housing who executes a Contract under Part 886, Subpart A or C on or after the effective date of this final rule (instead of on or after October 1, 1981) since application of the rule to an owner of existing housing is not mandated by section 325(l) of the HCD Amendments of 1981.

The final rule does not affect the obligations of: (1) A section 8 project owner of newly constructed or substantially rehabilitated housing who entered a Housing Assistance Payments Contract pursuant to an Agreement to Enter into Housing Assistance Payments Contract executed before October 1, 1981 or (2) a section 8 project owner of existing housing assisted under Part 886 who executed a Contract before the effective date of this rule. Any such owner is subject to the restriction on making assisted units available to ineligible families that appear in the owner's Contract.

Comments

The Department received four comments on the proposed rule which was published on February 23, 1983, in the **Federal Register** (48 FR 7586). This rule, with the exception of the change recommended by the Farmers Home Administration and minor technical and editorial revisions, is essentially the same as the proposed rule.

The Department received one comment from the Farmers Home Administration (FmHA), with respect to the proposed amendment to 24 CFR Part 884. That Part establishes policies and procedures implementing a Memorandum of Understanding between HUD and FmHA (41 FR 34348, dated August 13, 1976). The Memorandum provides for a set-aside of section 8 contract authority for new construction financed by FmHA under section 515 of the Housing Act of 1949. FmHA requested that the final rule contain a provision to assure that FmHA has some participation in the decision to reduce section 8 units before such action takes place. The Department agrees and has revised § 884.223(b) to make it clear that reductions in the number of units covered by contract will be made only after consultation with FmHA.

Three commenters objected to the requirement that all units for which assistance is committed under the contract be made available to eligible families. One of these commenters, a State housing agency, noted that it was not opposed to eliminating an owner's privilege to rent up to 10 percent of its assisted units to ineligible families. However, the State agency expressed concern that an owner would not be able, even on a temporary basis, to rent a unit to an ineligible person who is needed in the project for security reasons or to handle maintenance.

Another of these commenters, a sponsor of an elderly housing project, urged that the full utilization requirement not apply to projects constructed with loans provided under section 202 of the Housing Act of 1959.

The third commenter, a manager of section 8 projects, urged that owners should be free to rent to whomever they please. This commenter stated that market conditions do not always allow for 100 percent of the units to be rented to eligible families, and that units should be rented to ineligible families rather than be left vacant.

The obligation to make the total number of units for which assistance is committed under the contract available to eligible tenants is statutory. While the Department is sympathetic to the State housing agency's desire for flexibility to lease to security or maintenance personnel, it cannot create exceptions to the statutory requirement. If the owner wishes to use a unit for this purpose, the unit may be removed from the Contract. It also cannot exempt section 202-financed projects. As previously indicated, the Department is preparing a regulation amending Part 885, which among other matters, would incorporate this amendment. Finally, the rule permits an owner, with the prior approval by the contract administrator in accordance with HUD guidelines, to rent to ineligible families if the owner is temporarily unable to rent to eligible families. This should provide sufficient flexibility to avoid extended vacancies.

The Department also received two internal comments on §§ 886.129(c) and 886.329(c). Those paragraphs deal with the restoration under a contract of units which have been removed from a contract for failure to lease to eligible families. The first comment suggested that since Parts 880, 881, 883, 884 and 886 were being revised, the language for these sections of Part 886, as well as for §§ 883.605 and 884.223 be made consistent with §§ 880.504(c) and 881.504(c). Sections 880.504 and 881.504 contain the most recently developed language on this subject matter. The second comment suggested that the last sentence of §§ 886.129(c) and 886.329(c) was technically irrelevant and, therefore, unnecessary, and should be deleted. That sentence provides that HUD may take such steps authorized by section 8(c)(6) of the U.S. Housing Act of 1937 as necessary to carry out the restoration. Section 8(c)(6) makes no reference to restoration authority. The sentence is, therefore, unnecessary and is not included in Part 880 or 881 for this reason. These two comments have been adopted.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 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 Executive Order 12291 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.

Pursuant to 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. This rule reflects a statutory requirement which applies to all section 8 newly constructed or substantially rehabilitated housing without regard to the size of the entities involved.

This rule was listed at 49 FR 15902, 15932 as Item H–138–82 in the Department's Semiannual Agenda of Regulations published on April 19, 1984, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number and title is 14.156, Lower Income Housing Assistance Program.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, New construction and substantial rehabilitation.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Rural area, Low and moderate income housing.

24 CFR Part 886

Grant programs—housing and community development, Low and moderate income housing, Rent subsidies.

Accordingly, the Department amends 24 CFR Parts 880, 881, 883, 884, and 886 as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. Section 880.504 is amended by revising paragraphs (a), (b), (c)(3), and (d) to read as follows:

§ 880.504 Leasing to eligible families.

(a) *Availability of Units for Occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 880.601(a); (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to the contract administrator. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of the contract administrator in accordance with HUD guidelines. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of Number of Units Covered by Contract.* HUD (or the PHA at the direction of HUD, as appropriate) may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by the contract administrator to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.

(c) * * *

(3) Contract and budget authority are available.

(d) *Applicability.* In accordance with section 8(b)(2) of the United States Housing Act of 1937 and section 371(b) of the Housing and Community Development Amendments of 1981, paragraphs (a) and (b) of this section apply only to Contracts entered pursuant to Agreements executed on or after October 1, 1981. An owner who is subject to paragraphs (a) and (b) of this section and who, before October 3, 1984 and consistent with regulations in effect at the time, had leased an assisted unit to an ineligible family may continue to lease the unit to that family. The owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

2. Section 881.504 is amended by revising paragraphs (a), (b), (c)(3), and (d) to read as follows:

§ 881.504 Leasing to eligible families.

(a) *Availability of Units for Occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 881.601(a); (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to the contract administrator in accordance with HUD guidelines. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of the contract administrator in accordance with HUD guidelines. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of Number of Units Covered by Contract.* HUD (or the PHA at the direction of HUD, as appropriate), may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by the contract administrator to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.

(c) * * *

(3) Contract and budget authority are available.

(d) *Applicability.* In accordance with section 8(b)(2) of the United States Housing Act of 1937 and section 371(b) of the Housing and Community Development Amendments of 1981, paragraphs (a) and (b) of this section apply only to Contracts entered pursuant to Agreements executed on or after October 1, 1981. An owner who is subject to paragraphs (a) and (b) of this section and who, before October 3, 1984 and consistent with regulations in effect at the time, had leased an assisted unit to an ineligible family may continue to lease the unit to that family. The owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

3. Section 883.605 is revised to read as follows:

§ 883.605 Leasing to eligible families.

(a) *Availability of Units for Occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 883.702(a); (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to the Agency. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of the Agency in accordance with HUD guidelines. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of Number of Units Covered by Contract.* HUD and the Agency may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by the Agency to lease such units to ineligible families, HUD and the Agency determine that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the ACC and the Agency may agree to an amendment to the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) HUD and the Agency determine that the restoration is justified by demand;

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are available.

(d) *Applicability.* In accordance with section 8(b)(2) of the United States Housing Act of 1937 and section 371(b) of the Housing and Community Development Amendments of 1981, paragraphs (a) and (b) of this section apply only to Contracts entered pursuant to Agreements executed on or after October 1, 1981. An owner who is subject to paragraphs (a) and (b) of this section and who, before October 3, 1984 and consistent with regulations in effect at the time, had leased an assisted unit to an ineligible family may continue to lease the unit to that family. The owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

4. Section 884.223 is revised to read as follows:

§ 884.223 Leasing to eligible families.

(a) *Availability of Units for Occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 884.214; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD (or the PHA in accordance with HUD guidelines and at the direction of HUD, as appropriate). If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD (or the PHA in accordance with HUD guidelines and at the direction of HUD, as appropriate). Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of Number of Units Covered by Contract.* HUD (or the PHA at the direction of HUD, as appropriate), after consultation with the Farmers Home Administration, may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD (or the PHA at the direction of HUD, as appropriate) to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are available.

(d) *Applicability.* In accordance with section 8(b)(2) of the United States Housing Act of 1937 and section 371(b) of the Housing and Community Development Amendments of 1981, paragraphs (a) and (b) of this section apply only to Contracts entered pursuant to Agreements executed on or after October 1, 1981. An owner who is subject to paragraphs (a) and (b) of this section and who, before October 3, 1984 and consistent with regulations in effect

at the time, had leased an assisted unit to an ineligible family may continue to lease the unit to that family. The owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

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

5. Section 886.129 is revised to read as follows:

§ 886.129 Leasing to eligible families.

(a) *Availability of Units for Occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 886.121; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of Number of Units Covered by Contract.* HUD may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD to lease such units to ineligible families, HUD determines that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are available.

(d) *Applicability.* Paragraphs (a) and (b) of this section apply to Contracts executed on or after October 3, 1984.

6. Section 886.329 is revised to read as follows:

§ 886.329 Leasing to eligible families.

(a) *Availability of Units for Occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 886.321; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of Number of Units Covered by Contract.* HUD may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD to lease such units to ineligible families, HUD determines that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are available.

(d) *Applicability.* In accordance with section 8(b)(2) of the United States Housing Act of 1937 and section 371(b) of the Housing and Community Development Amendments of 1981, paragraphs (a) and (b) of this section apply to Contracts involving substantial rehabilitation entered pursuant to Agreements executed on or after October 1, 1981. These paragraphs apply to all other Contracts executed on or after October 3, 1984. An owner of substantially rehabilitated housing who is subject to paragraphs (a) and (b) of this section and who, before [insert the effective date of this rule] and consistent with regulations in effect at the time, had leased an assisted unit to an ineligible family may continue to lease the unit to that family. The owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Sec. 8(b)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(b)(2)).

Dated: July 31, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-20858 Filed 8-6-84; 9:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 965

[Docket No. R-84-853; FR-350]

PHA-Owned or Leased Projects; Maintenance and Operation; Tenant Allowances for Utilities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, (HUD).

ACTION: Final rule.

SUMMARY: This rule amends the current requirements regarding the establishment and revision of utility allowances and surcharges for excess utility consumption in the Public Housing program. The rule adopts a new standard for allowances that emphasizes energy conservation by setting the allowance amounts based upon the reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment. In addition, the rule eliminates previous distinctions in

allowance amounts and surcharge policies between tenants in units with PHA-furnished utilities and units with tenant-purchased utilities. The rule also vests full responsibility for setting and revising allowances in accordance with the prescribed standards in the Public Housing Agency, without prior HUD approval of individual allowance schedules.

EFFECTIVE DATE: October 2, 1984.

FOR FURTHER INFORMATION CONTACT: Charles R. Ashmore, Utilities Specialist, Office of Public Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. Telephone: (202) 755–6640. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

On August 13, 1982 (47 FR 35249), HUD proposed to amend the sections of 24 CFR Part 865, published as an interim rule on September 9, 1980 (45 FR 59502), which prescribe procedures for establishing and revising utility allowances for tenants in public housing assisted under the United States Housing Act of 1937, as amended (the '37 Act).

(Effective December 13, 1983, all Parts of Chapter VIII, Title 24, Code of Federal Regulations, pertaining to the public and Indian housing programs were transferred to Chapter IX and, consequently, Part 865 became Part 965. (48 FR 44071, 55452.) For ease of reference, sections of the current interim rule and of the proposed rule are identified in this Preamble by their Part 865 designation, and sections of the final rule published herein are identified by their Part 965 designation.)

HUD historically has considered "rent" in the public housing program to include shelter cost plus a reasonable amount for utilities. As a result, the Department has provided for a system under which allowances are established as part of the rent schedule showing the amounts of utilities or utility-type services whose cost is to be covered by "rent." Where utilities are provided by the public housing agency (PHA), the allowance represents an amount of consumption for which there is no charge in addition to "rent." Where utilities are billed by the utility directly to the tenant, the "allowance" represents a dollar amount reduction in the "rent" paid by the tenant to the PHA.

In more detail, the interim rule published in 1980 established separate allowance provisions for tenants (1) who lived in projects where the PHA furnished utilities and measured tenant consumption by checkmeters, and (2) who purchased utility services directly from public utilities. (The interim rule generally did not apply to master-metered projects where individual consumption could not be measured.) In the case of PHA-furnished utilities, the allowance represented the maximum consumption units (e.g., kilowatt hours of electricity) which could be used by the tenant without surcharge. The interim rule required that the allowance level be sufficient to meet the requirements of about 90 percent of the dwelling units (§ 865.477). The allowance, where possible, was to be based on consumption levels for the preceding three-year period, with separate allowance amounts assigned by type of dwelling unit (§ 865.476). Any utility consumption in excess of the unit allowance amounts was subject to a surcharge to the tenant in dollar amounts computed either for blocks of excess consumption or on a straight per-utility-unit basis (§ 865.479). For example, if a tenant consumed 600 kilowatt hours (KWH) of electricity and the allowance was 500 kilowatt hours, the surcharge would be based on 100 kilowatt hours.

An allowance for tenant-purchased utilities, by contrast, represented a fixed dollar amount based on the average monthly utility requirement for a given type of dwelling unit (§ 865.475(b)). This dollar amount was deducted from gross rent in computing the contract rent owed the PHA. The tenant, in turn, was directly liable to the public utility for the amount of utilities actually consumed. If the tenant consumed only 400 KWH and the allowance was 500 as in the illustration above, the dollar cost of 100 KWH conserved due to under-consumption would accrue to the tenant because no reduction would be made in the allowance amount deducted from gross rent. Conversely, if the bill exceeded the allowance, the tenant, in effect, paid for the excess because the PHA made no increase in the allowance amount.

When utility rates increased, there would be a differential effect on tenants depending upon the allowance approach used. In units with PHA-furnished utilities, any rate increase would not affect the allowance amount (500 KWH in the above illustration). Moreover, if the tenant household consumed 100 KWH in excess of the allowance, the additional 100 KWH would be surcharged at the scheduled surcharge rate until the PHA revised the schedule. The impact of rate increases would be more immediate for households with tenant-purchased utilities. Since the tenant paid the actual bill, the tenant paid the full increase on both the excess 100 KWH and on the base 500 KWH. To alleviate this burden, the interim rule required PHAs to adjust their allowances for tenant-purchased utilities when the accumulated rate increases subsequent to the last adjustment date were equal to or exceeded 10 percent. The interim rule was silent concerning the effective date of the increase. HUD understands that some, but not all, PHAs have made rate change adjustments retroactive to the date(s) of rate changes. In this case, tenants would eventually be made whole for the rate increases on the base 500 KWH allowance and, thus, be similarly treated to tenants in units with PHA-furnished utilities.

HUD requirements for PHA review and revision of allowances differed between units with PHA-furnished utilities and units with tenant-purchased utilities. In the former case, as noted above, the allowance was required, where possible, to be based on consumption experience over a three-year period. If the allowance was based on a shorter period because of an inadequate data base, it was required to be reviewed and revised annually until it reflected three years' experience. Apart from this case, review and revision was not required more frequently than once every three years, unless during such a three-year period more than 25 percent of the tenants were being surcharged.

Allowances for tenant-purchased utilities are based on two factors, consumption levels and rates. Accordingly, the interim rule required revision of the rate factor when cumulative rate increases since the last revision equalled or exceeded 10 percent and review of the consumption levels whenever a change in circumstances indicated probability of a significant change in consumption levels but in any event once every three years.

As indicated, the level of utility consumption "allowed" to tenants who were provided utility services by the PHA was more generous than the amount "allowed" to tenants billed directly by the utility. In the former case, only 10 percent of tenants were intended to be surcharged for excess consumption; in the latter case, half the tenants were subject to bearing the cost of excess consumption. The historic rationale for this differential treatment was summarized in the preamble to the proposed rule as follows:

While the general standard of "reasonable" consumption is applicable both to PHA-

furnished and tenant-purchased utilities, a divergence has existed historically in the Department's approach to determining that amount in each case. In the case of tenant-purchased utilities, the Department's recommended method of establishing allowances under the 1963 guidelines was to use average actual cost of utilities for tenants in the covered project. (This same method has been carried forward without substantial change in the 1979 proposed rule and in the September 1980 interim rule.) In the case of PHA-furnished utilities, however, a more lenient standard of average cost plus 20% was recommended. The rationale for the difference was based largely upon a pragmatic objective "to prevent surcharging too many tenants. Otherwise, if the allowances are set at the average number of kilowatt-hours for the group, approximately one-half the tenants will be surcharged" (Local Housing Authority Management Handbook, Part II, Section 9, page 14 (1963)). Of course, the same effect, in terms of the proportion of tenants who would absorb exesss utility costs, resulted from the setting of allowances for tenant-purchased utilities at average cost. Apparently, however, HUD felt the avoidance of this result less necessary where the excess was paid to the utility than where it was being collected through an additional billing by the PHA. Moreover, the setting of allowances for PHA-furnished utilities was recommended at a level above average consumption notwithstanding evidence that where tenants did not pay their entire utility bill directly but only a relatively small surcharge on excess consumption, average consumption was considerably higher than where tenants must make direct payment to the utility for 100 percent of their consumption. Thus, tenants in PHA-furnished projects received a double advantage: their average consumption was higher than that of direct-purchasing tenants to begin with, and an additional allowance of 20% on top of the average was permitted. The higher master-metered consumption was accepted, however, because of the offsetting cost advantage of high volume master-meter utility rates. 47 FR 35251–35252.

The foregoing describes the levels of allowances for PHA-furnished utilities prior to 1980. In 1979, HUD proposed to base allowances for PHA-furnished utilities on average actual consumption, permitting a 15 percent "free zone" above average before imposition of surcharge and credits for consumption more than 15 percent below the average. In the interim rule, HUD provided that allowances for PHA-furnished utilities be set at the level at which 90 percent of the tenants would be covered without being surcharged.

Under the interim rule, tenants under either allowance system could seek individual relief if there were a defect in the meters which gave rise to erroneous readings (§ 865.481). Additional relief was also available for tenants with PHA-furnished utilities for which excess consumption surcharges were attributable to dwelling unit defects for which the PHA had a duty to repair. Similarly, additional relief was available for tenants with tenant-purchased utilities where consumption exceeded the allowance level by 20 percent or more for reasons other than wasteful or unauthorized use.

Provisions for notice of proposed allowances to tenants and HUD review and approval of allowance schedules appeared both inside and outside Part 865. Section 865.473, as in effect prior to August 1, 1982, required that allowances be included in rent schedules to be approved by HUD after notice to tenants and opportunity to comment under Part 861. Section 865.480(d) imposed the same requirement as to revisions. In August 1982, HUD implemented statutory provisions enacted in the Omnibus Budget Reconciliation Act of 1981 which removed PHA discretions to set maximum rents and, consequently, resulted in deletion of the requirements in Part 861 for tenant comment on rent schedules. Conforming deletions were made in Part 865. However, a requirement for submission of allowances to the HUD field office for approval was retained in § 865.473(a). (47 FR 19120, 19123 (May 4, 1982); 47 FR 30971 (July 16, 1982).)

HUD compensates PHAs for utility allowances and increased costs due to rate increases and/or excess consumption through operating subsidies calculated under the Performance Funding System (formerly 24 CFR Part 890, now Part 990). For PHA-furnished utilities a separate element of the operating subsidy provides funding for estimated utility use and, at the end of the year, the PHA can request adjustments at a rate of 50 percent to compensate for increases in cost due to increased consumption and at a 100 percent rate for the increased costs due to rate increases. Allowances for tenant-purchased utilities are taken into account in the calculation of operating income. When allowances are changed, any resulting reduction from projected operating income can be the basis of an adjustment to operating subsidies.

The history of the utility allowance regulation has been marked by controversy. HUD policy was originally set as a guideline in a HUD Local Housing Authority Management Handbook. HUD proposed a regulation on January 5, 1979 (44 FR 1600), and issued the interim rule currently in effect on September 9, 1980 (45 FR 59502). The history of both the proposed and interim rules are fully described in the preamble to the notice of proposed rulemaking published in August 1982 (47 FR 35250). Over 200 public comments were received in response to the 1979 proposed rule and 68 in response to the interim rule. On both occasions, sharp divisions separated public housing agencies and organizations representing tenant interests. Controversy centered on basic features of the rule: should the rule foster energy conservation or minimize surcharges to tenants; on what basis should allowances be set—actual consumption or other factors; should tenants who directly purchase their own utilities from the public utility be on an equal footing with those who pay the public housing agency on the basis of checkmeters; should public housing agencies be given greater discretion for setting and revising utility allowances; how frequently should allowances be revised and what events should trigger a review and revision.

The interim rule was designated on August 12, 1981, by the Presidential Task Force on Regulatory Relief, for review under Executive Order 12291. In its announcement, the Task Force commented:

> Under current rules, many tenants in public housing projects have no incentive to economize on utility use. Excessive utility use increases costs to both the Federal government and local public housing agencies (PHAs). As a result, PHAs may be forced to reduce other tenant services in order to cover costs. In effect, this system penalizes conservation-minded tenants and wastes energy.

II. Proposed Rule

On August 13, 1982, HUD proposed a new Subpart E of Part 865 that would make significant changes in allowances for tenant-purchased and PHA-furnished (and checkmetered) utilities. A major change was to place tenants in both situations on an equal footing. The proposal also would increase the emphasis on energy conservation objectives. This shift would be achieved by establishing the following standard for allowance for both PHA-furnished and tenant-furnished utilities: "to approximate the reasonable consumption of utilities by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment" (proposed § 865.476). This amount would include utility consumption to cover major equipment or utilities furnished all tenants by the PHA, essential equipment whether or not furnished by the PHA, and minor items of equipment furnished by tenants (§ 865.476). (The same standard was proposed and has been adopted in the section 8 program. See

the definition of "Utility Allowance" in 24 CFR 813.102, adopted at 49 FR 19926, 19937 (May 10, 1984).)

The Department's rationale for permitting allowances to be based on something other than actual consumption, and for adopting the same standard for both PHA-furnished and tenant-purchased utilities, was explained in the preamble to the proposed rule as follows:

> * * * the Department believes that the objective of energy conservation is thwarted by a system which requires that allowances be set at actual consumption levels, with mandated allowance increases as consumption increases, particularly where both the opportunity for financial saving and the financial penalty for excess consumption is less direct and immediate for the tenant as it is in the PHA-furnished context in comparison to the tenant-purchased utilities context. In addition, the Department believes that the pragmatic objective of avoiding the surcharging of too many tenants by PHA's is outweighed by the inequity which results from requiring more generous allowances for tenants in PHA-furnished projects than the allowances provided for direct-purchasing tenants. The Department therefore proposes a single general standard of "reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment," which would govern allowances for both PHA-furnished and tenant-purchased utilities. "Stated another way," the proposed rule continues, "it should be an objective of the Allowance that excess consumption which may result in a surcharge (or absorption of utility cost in excess of the Allowance) should be an amount of consumption that is reasonably within the control of a tenant household to avoid" [§ 865.476(a)]. (47 FR 35251)

The interim rule was prescriptive and detailed as to how allowances were to be calculated by PHAs based upon actual consumption data. The proposed rule would give significant flexibility to PHAs by not prescribing specific sources of data to be used, particular methodologies for calculating the allowance or exclusive factors for considering when setting the allowance level. HUD recognized that there would be variations in the data available to PHAs and the extent of the resources reasonably available to be devoted to collection of such data, formulation of methods of calculation, and actual calculation and monitoring of allowances. However, the proposal specified several recommended data sources.

The proposal would require that PHAs take into account, when setting allowance levels, a minimum number of factors that would affect the amount of utilities an energy-conservative household would consume. These factors, listed in proposed § 865.476(c), included:

(1) The equipment and functions intended to be covered by the allowance for which the utility will be used.

(2) Climatic conditions.

(3) Dwelling unit size.

(4) Type of construction and design of the housing project.

(5) The energy efficiency of PHA-supplied appliances and equipment.

(6) The utility consumption requirements of appliances and equipment that the PHA included in Family Gross Rent.

(7) The physical condition of the housing project.

Tenants would be responsible for utility consumption in excess of the allowance amount. As under the interim rule, the tenant with tenant-purchased utilities would pay the full cost of utilities directly to the public utility. The tenant with PHA-furnished utilities would be charged a surcharge amount by the PHA. In both cases, the effective amount of actual cash disbursement by the tenant was intended to be for excess consumption that was reasonably in the control of the tenant to avoid.

Separate surcharge rules for mastermetered projects without checkmeters which were included in the proposed rule reflected provisions currently contained in other regulations.

Individual relief from costs in excess of the allowance would continue to be available to tenants (proposed § 865.479). Reasonable grounds for such relief would include the special needs of elderly, ill or handicapped tenants, or special factors affecting utility usage not within the control of the tenant, as deemed appropriate by the PHA. No distinctions were made between tenant-purchased and PHA-furnished utility situations.

The proposed rule would require an annual review of all allowances to determine whether the allowance schedules required revision to remain consistent with the standard set forth in proposed § 865.476. This review would take into account all changes in circumstances that would affect energy consumption—e.g., completion of comprehensive or special purpose modernization under the Comprehensive Improvement Assistance Program—and changes in reasonable consumption requirements and in utility rates. A mandatory review would be required, other than at time of annual review, if rate changes since the last allowance revision equaled or exceeded 20 percent.

The proposal also would delete any requirements for HUD review and approval of utility allowances. It provided that PHA determinations of allowances and revisions would be final and valid "unless found, upon review pursuant to such procedures as may be available under State or Local law, to be arbitrary or capricious." This provision, accordingly, would assign judicial review of PHA determinations to proceedings for review of administrative action by agencies created under State law. The Department specifically invited comment on this provision.

The proposed rule contained no provisions for notice of proposed allowances and revisions to tenants with opportunity for comment.

III. Significant Changes in the Final Rule

The final rule is similar in substance to the proposed rule. The principal changes incorporated into the final rule are listed below with a fuller explanation for the changes provided in Section IV.

1. Terminology is conformed to that utilized in the recently published Part 913 establishing definitions of income, income limits, and procedures for determinations of rents (49 FR 21476 (May 21, 1984)).

2. New paragraphs are added to § 965.473 covering the retention by the PHA of a record documenting the basis of allowances and surcharges, which is to be available for inspection by tenants, and provision of notice of proposed allowances, surcharges, and revisions to tenants with opportunity to comment.

3. A paragraph is added to § 965.473 confirming that prior HUD approval of allowances and surcharges ordinarily will not be required. However, the rule permits HUD to take several actions following its review of allowances during monitoring audits and reviews, including requiring prior HUD approval of the next revision on an exception basis.

4. Section 965.476(d), which lists relevant factors affecting consumption requirements, is enlarged by adding the factor of temperature levels for space heating and domestic hot water and number of occupants in the dwelling unit.

5. A new paragraph is added to § 965.476 which specifies that utility allowances are to include the full amount of fixed priced utility services.

6. Exclusive assignment of review to State procedures is deleted. Section 965.473(e) provides that except where a different standard of review is applicable in a proceeding governed by State law, PHA determinations will be final and valid as to tenants unless found to be arbitrary, capricious, an

abuse of discretion, or otherwise not in accordance with law.

7. Section 965.478(b) is revised to require that allowance adjustments due to rate changes be effective as of the date the rates went into effect.

IV. Discussion of Significant Comments

HUD received 69 public comments of which 11 were from organizations representing tenant interests and 58 were from public housing agencies or associations of housing authorities. HUD also considered comments that addressed utility allowances raised in response to the interim rule on gross rents (47 FR 19120, May 4, 1982) and the interim rule of Part 865 (45 FR 59502, September 9, 1980). Comments which raised significant issues are discussed, by regulation section, below:

A. PHA Record and Notice to Tenants

Numerous commenters addressed the subjects of requiring PHAs to demonstrate that the methodology and criteria used for setting allowances and surcharges are reasonable, and of notice and tenant opportunity to comment.

The Department considers these subjects interrelated, particularly in view of the degree of latitude given to PHAs in devising formulas meeting the standards prescribed in the rule and the deletion of requirements for HUD review and approval of PHA-determined allowances and surcharges (discussed separately below).

Accordingly, a requirement is added at § 965.473(b) that the PHA maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised, which will be available for inspection by tenants.

Section 965.473(c) requires PHAs to give notice to all tenants of proposed allowances and scheduled surcharges and revisions thereof. Such notice shall be given in the manner provided in the lease for the giving of notices by the PHA concerning matters under the lease not less than 60 days prior to the proposed effective date of the allowances or scheduled surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, surcharges or revision, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify tenants of the place where the PHA's record is available for inspection; and shall provide all tenants an opportunity to submit written comments during a period expiring not less than 30 days prior to the proposed effective date of the allowances or surcharges or revisions.

B. HUD Review of PHA Actions

In a related issue, legal service organizations expressed concern about the absence of any HUD review of the PHA's allowance determination.

HUD's regulatory reform goals include the removal of unnecessary reviews and approvals of actions by responsible parties having equal or greater information at hand. This is particularly appropriate in the case of public housing in view of the '37 Act's injunction that "[I]t is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of their housing programs." 42 U.S.C. 1437. The Department believes that the definition of standards in § 965.476, combined with the record and notice provisions added to § 965.473, should adequately assure the reasonableness of PHA determinations so as to obviate the necessity or usefulness of HUD review and approval before implementation of PHA-determined allowances.

The Department agrees, however, that provisions should be made for administrative intervention on an exception basis. Review of PHA experience under its established allowances, including such indications of reasonableness of the standards as patterns of surcharges, will continue to be included in the scope of HUD's periodic monitoring reviews. Accordingly, § 965.473(d) provides that following monitoring audits or reviews, HUD may require additional data concerning the PHA's basis for determination of allowances or surcharges, may require that additional or different relevant data be considered by the PHA in its next annual review of allowances, or, on an exception basis, may require submission of proposed revisions to HUD before proposal to tenants or final adoption.

C. Review of PHA Decisions by State Courts

The National Housing Law Project and other legal service groups challenged, as illegal, proposed § 865.476(d) which would make PHA determinations of allowances and revisions thereof final unless found, upon review pursuant to such procedures as may be available under State or local law, to be arbitrary or capricious.

The commenters challenged HUD's power (1) to prescribe a standard of review for State courts, and (2) to divest Federal court of jurisdiction over cases involving questions of compliance with Federal statutes and regulations.

State procedures for review of actions by administrative bodies created under State law frequently have provided a forum for review of agency determinations that involve questions of Federal law. Such State law proceedings may be more accessible to public housing tenants in some localities than a Federal court. Moreover, the Department believes that State courts are fully competent to review determinations by authorities created under State law.

Nevertheless, the Department also recognizes that some plaintiffs may prefer to challenge PHA determinations in Federal rather than State court and that the Department's power to preclude access to Federal court is doubtful. The Department also recognizes that not all States may have adopted procedures providing for judicial review of administrative action. Accordingly, this provision (transferred to § 965.473(e)) has been revised (i) to expand the standard of review to "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" (compare Section 706 of the Administrative Procedure Act, 5 U.S.C. 706(2)), and (ii) to state that such standard of review will govern "except where a different standard of review is applicable in review procedures governed by applicable State law." This provision does not preclude Federal court review.

D. Mixed Utility Service

Clarification was sought concerning cases where utilities are in part checkmetered and in part mastermetered. This case is illustrated where heating and hot water are centrally provided and all other electrical service is checkmetered. The allowance and surcharges are only computed on the basis of utilities measured by the checkmeters. This distinction has been the practice under the old rule and continues unchanged under the new rule.

E. Period for Which All Allowances Are Established (§ 965.475)

The National Housing Law Project and one PHA commented that the regulation should specifically authorize use of seasonally adjusted rates. Since this result was intended, a clarification is appropriate for proposed § 865.475(b), covering tenant-purchased utilities, specifically allowed for seasonally adjusted rates. PHA practice, in cases of PHA-furnished utilities, has been to provide for seasonal adjustments. This practice has been acceptable to HUD.

Therefore, § 965.475(a), covering PHA-furnished utilities, has been clarified to authorize use of seasonally adjusted rates.

F. Standards for Allowances for Utilities (§ 965.476)

Several commentors criticized HUD for changing the basis for calculating utility allowances from "actual consumption" to "reasonable consumption * * * by an energy conservative household of modest circumstances," citing (i) an alleged absence of objective standards in the proposed rule to guide PHA's in establishing utility allowance schedules and (ii) HUD's failure to adequately justify the use of this standard. There was concern that PHA's would use the discretion under the new procedure to set unreasonably low utility allowances.

1. Form and adequacy of the standard

Legal services organizations argued that the criterion of "energy-conservative household of modest circumstances" was vague and therefore legally defective. They recommended that HUD retain the actual consumption standard. Several PHAs also criticized the proposed standard as vague and recommended that it be discarded while retaining the discretion for PHAs to set utility allowances without HUD guidance.

The task of estimating energy consumption requirements is well known to professionals and used by public utilities in the conduct of their work. There are various methodologies for making these estimates as well as a variety of factors to consider. In the proposed rule HUD did not require the use of a particular methodology and still considers the choice of methodology best handled at the local level where the PHA can use a procedure suitable to available data and local experience. However, HUD listed in the proposed rule at § 865.476(c) factors that the PHA should consider when making the calculations. These factors covered equipment and functions to be covered by the allowance, climatic conditions, dwelling unit size, type of construction and project design, energy efficiency of PHA supplied appliances and equipment, utility consumption requirements of appliances and equipment included in the Family Gross Rent (now termed Total Tenant Payment), and the physical condition of the housing project.

HUD reviewed the adequacy of these factors in light of (1) the Department's public housing modernization program, (2) HUD's energy audit and energy conservation requirements, and (3) selected public utility procedures for estimating energy consumption requirements of buildings. As a result of this review, HUD has added three additional factors to the list in § 965.476(c): air temperature to be maintained in the dwelling unit (day/night; cold/warm weather), the temperature of the domestic hot water as measured at the tap; and the number of persons in the household. These inclusions are appropriate because space heating and domestic hot water are principal end uses of energy, accounting for over three quarters of end use energy consumed. See *An Evaluation of the Physical Condition of Public Housing Stock—Energy Conservation*, Vol. 4 (U.S. Department of Housing and Urban Development, Washington, D.C. 1980) at 20 and *Encouraging Energy Conservation, supra* at 19. Domestic hot water heating can account for as much as a third of a dwelling's total energy consumption. (*Residential Energy Consumption, Multifamily Housing Final Report*, Hittman Associates (Office of Policy Development and Research, HUD, Report #HUD-HAI-4, June 1974).)

Because the amount of hot water used is directly proportional to the number of occupants, separate consideration of this latter factor is also appropriate. If the allowance schedule is set by dwelling unit size, separate consideration of household size is not necessary because household size is correlated to dwelling unit size (defined by number of bedrooms) and, in fact, unit size assignments in the public housing programs are largely based on household size. The exception is in the largest dwelling unit category, e.g. three bedroom units, which may accommodate five or more household members; therefore, separate consideration of household size here is appropriate.

Once the factors are selected, the level of energy consumption which an energy-conservative household of modest circumstances would require is a function of the levels set for the performance of some factors or the extent of elements included. Should indoor temperature levels be set at 68° F. or 70° F.? Should air-conditioning be included? Should elderly households be treated differently than non-elderly? Should washers and dryers be included? HUD believes these decisions are within the competence of PHAs to establish.

Sufficient guidance, published by the Department for PHA use, exists, contrary to the assertion that the standards are vague. PHA housing, by definition, serves households of modest circumstances. Thus, HUD treatment of these factors in public housing modernization standards (Handbook 7485.2 REV (June 14, 1982)) and the Energy Audits and Energy Conservation Measures (24 CFR 865 Subpart C) are relevant sources of guidance. Since these standards cover a broad number of factors unrelated to utility allowances and are designed for national use, HUD does not intend that PHAs be required to use them when making allowance calculations. Alternative guidance can be obtained from public utility companies who in fact have made these types of estimates for public housing agencies in cases of establishing expected utility usage in new buildings for which there has yet to be any actual consumption experience. Public utilities also perform energy audits, another source of relevant experience for PHA's. HUD believes that actual consumption overstates the amount of utilities required to meet the energy needs of an energy conservative household of modest circumstances. Actual consumption may include uses like several television sets, blenders, air conditioning in certain climates, portable electric space heaters, coffee makers, etc. These are not necessities, but are considered luxuries. (See, M.B. Berman, M.J. Hammer, D.P. Tihansky, *The Impact of Electricity Price Increases on Income Groups; Western United States and California*, Santa Monica, Calif., Rand 1972.) While actual consumption does not distinguish between necessities and luxuries, the energy conservative household standard does because the PHA must estimate the amount of energy needed to provide lighting, heating, hot water, refrigerator, cooking, etc. The division between necessities and luxuries is left to the particular PHA and HUD expects that this division will reflect local usage and custom patterns.

The final rule allows continued use of actual consumption data for calculating utility allowances. HUD recognizes that such data may be the only source of information available to the PHA and therefore should not be precluded from use.

2. Adequacy of the record

Legal service organizations claimed that the record was inadequate to support HUD's emphasis on energy conservation—that HUD failed to establish the reasonableness of basing utility allowances on the types of factors described above. They further criticized the proposed rule by disputing HUD's conclusion that a shift in responsibility for payment to the tenant would produce energy conserving results. HUD

cited in a footnote to the proposed rule a Federal Energy Administration funded study (*Energy Conservation Implications of Master Metering*. Gross, G.E., Harper, R.D., and Ahlstrom, S. (Midwest Research Institute for the U.S. Federal Energy Administration, October 1975.)) which found a 35 percent reduction in consumption when dwelling units were changed from master to individual metering and had been cited by the United States Supreme Court. 47 FR 35250. They cited, instead, the opinion of the United States Court of Appeals for the District of Columbia in *Massachusetts Union of Public Housing Tenants* v. *Landrieu*, No. 80–1332 (D.C. Cir. April, 1981), which rejected reliance on the FEA study for a 35 percent savings in energy consumption as well as cite their own analyses attacking the study methodology. One commenter, the National Housing Law Project, pointed to economic studies done in the early 1970's that conclude that lower income households have a low price elasticity of demand for electricity and therefore would not conserve if the effective cost to the tenant of utilities increased.

HUD does not believe these criticisms to be meritorious. HUD's emphasis on energy conservation as a major factor underlying the standard is supported by research findings not limited to the FEA study. Although the FEA study has been subject to criticism on methodology, the Court of Appeals in fact relied on the study to support a 15 percent level of savings. More recent studies demonstrate that significant savings can be achieved (in the 10–20 percent range although some findings place savings as high as 35 percent) through tenant actions. Recent studies on this issue include: *Metering: Topic 7* (Electric Utility Rate Design Study Report #4) Miller, W.E., *et al.* (Palo Alto, California, Electric Power Research Institute, 1977). *Alternative Metering Practices: Implications for Conservation in Multifamily Residences*, Booz, Allen, and Hamilton, Inc. for the U.S. Department of Energy, June 1979); "Short-Term Effects of Tenant Payment of Utilities on Energy Use in Multifamily Housing: Preliminary Results," Lou McClelland, (Boulder, Colorado, Institute of Behavorial Science, University of Colorado, 1982) (Paper presented to the American Council for an Energy-Efficient Economy, Santa Cruz, California, August 1982); *Encouraging Energy Conservation in Multifamily Housing: Rubs and Other Methods of Allocating Energy Costs to Residents*, Lou McClelland prepared for the Department of Energy (Washington, D.C., Office of Building and Community Systems, U.S. Department of Energy, 1980) (this study reports on and summarizes the EPRI and Booz, Allen studies); *Alternatives to Master Metering in Multifamily Housing* (Chicago, Ill., Institute of Real Estate Management, 1981).

The issue of price elasticity of demand for electricity is not relevant for determining the reasonableness of the proposed allowance standard. The utility allowance is intended to provide a public subsidy for a level of consumption established for a specified pattern of utility usage required by a household of modest circumstances. The proposed and final rule were drafted to assure that this public subsidy is provided even when prices changed due to rate changes. At least once a year, the PHA is to review the basis for its allowance calculation thereby providing opportunity to adjust the base amount to reflect factors not previously considered (e.g. PHA expenditures for energy conserving features under the Comprehensive Improvements Assistance Program or changes in climatic conditions for the locality). Price changes therefore do not affect the basic subsidy amounts provided to households for reasonable amounts of utility consumption. Price sensitivity however is relevant to the amount of consumption in excess of the allowance amount. By definition, and legally sustained by the courts, such consumption is properly paid by the tenant. The interim rule required tenants to pay for this consumption through surcharges and this policy is continued under the final rule. To avoid inequitable results in individual cases, the regulation retains procedures for individual relief, see § 965.479.

3. Fixed price utilities

A commenter suggested that fixed price utility services, e.g., garbage collection, should be fully included in the allowance. The Department agrees with this suggestion. Tenants have no control over services that are set at fixed prices. Therefore, tenant action will not reduce these costs and the full amount should be included in the allowance. An exception may exist in the case of scattered site housing, where the tenant may be in a position to choose between several service providers. In this case, the PHA should set the allowance at the lowest cost for adequate service. The regulation is modified to include these considerations (§ 965.476(e)).

4. Consultation with public utilities

A PHA recommended that PHAs should consult with utilities to determine average consumption levels. The rule need not be changed for it already provides for consultation with public utilities, § 965.476(c). Public utilities can be a signficant source of information for PHAs. Many utilities have developed energy audit and heat gain/heat loss programs to calculate the estimated energy consumption of a dwelling unit. Typically, the utility will require such data as: type of building, type of construction, amount of insulation in place, amount of wall exposed to the outside, presence of caulking around windows, major appliances and their efficiencies, climatic conditions, indoor temperatures, domestic hot water temperature, fuel type used, heating and cooling systems and their efficiencies, etc. Different utilities use different routines many of which are reasonable; therefore, is is inadvisable for HUD to prescribe a particular methodolgy. The Department encourages PHAs to contact their utilities for advice on how to proceed with the calculation. Where a local utility is not able to assist, the PHA could contact a utility in a nearby, larger jurisdiction.

The rule also allows PHAs to use the average consumption approach provided there is reasonable relationship between the average and the energy-conservative standard. This point was made in the preamble to the proposed rule. Such use may be appropriate where data exist for individual metered public housing units, where a reasonable presumption can be made that the savings expected through individual accountability for utilities have been achieved. However, data from mastermetered buildings that are not checkmetered would seem inappropriate for establishing allowances without further consideration as to the reasonableness of the result, because of the absence of individual accountability. The studies cited above provide a reasonable basis for questioning the use of averages in such circumstances.

5. Project conditions

The National Housing Law Project commented that the regulation should indicate that insulation and weatherization of units may affect consumption. Housing condition is a factor that PHAs must consider when establishing allowances (proposed § 865.476(c)(7)). The final rule specifies that weatherization and insulation are among conditions to be considered.

G. Review and Revision of Allowances (§ 965.478)

1. Retention of 10 percent/25 pecent revision rule.

Legal service organizations recommended that HUD retain existing provisions which base both the setting of allowances for PHA-furnished utilities and the need for revision on the number of tenants being surcharged. The current § 865.477 requires that the initial allowance be set so as not to impose a surcharge on more than 10 percent of the tenants, and current § 865.480(b) requires revision when the proportion of tenants surcharged increases to 25 percent. HUD has not accepted this recommendation because it is inconsistent with the basis of the prescribed standard for allowances. If a high number of tenants are being surcharged, this is a fact to be taken into account by the PHA on its annual review. A high incidence of surcharge may mean that the PHA standard is out-of-line with the § 965.476 standard, or that excess consumption by some tenants may be due to factors not within the control of the tenants.

2. Revision due to utility rate increases

Current § 865.480(c) requires revision of allowances for tenant-purchased utilities when rate increases since the last revision equal or exceed 10 percent. The proposed rule would have increased the threshold to 20 percent in response to PHA comments on the 1980 interim rule that the 10 percent level would cause frequent adjustments because of rapidly escalating rates and monthly fuel adjustments. Some PHAs would be seriously burdened with constant changes to allowances.

Legal service organizations recommended that HUD retain the 10 percent threshold, arguing that tenants should not carry the increased costs caused by increased rates for consumption that is within the level contemplated by the allowance.

HUD has considered this issue from both the tenant and PHA points of view and finds both positions to be meritorious. From the tenant's perspective, if an energy-conservative household with electric utilities has a budget of 200 KWH and the rates increase, but the family stays within the budget, the allowance should cover the rate increase. This is automatically the result in a project with PHA-furnished utilities since the tenant does not pay for the base 200 KWH but pays only for the excess KHWs. In a project with tenant-purchased utilities, however, until the allowance is adjusted the tenant will bear the increased cost for the base 200 KWH resulting from the rate increase.

The Department has determined to retain the 10 percent threshold. In addition, § 965.478(b) requires that adjustments to Tenant Rent triggered by this requirement shall be made retroactive to the effective date of the last rent change taken into account in the revision. Such a change will be considered a "revision of the PHA's rent schedule which has been approved by HUD" for purposes of PFS adjustments under § 990.110(d)(1).

H. Surcharges (§ 965.477)

A PHA commented that it should be allowed to base its surcharge on whatever rate is in effect. A similar comment was made by another PHA that recommended that surcharges for excess consumption of PHA-furnished utilities should be equal to actual cost.

The intent of the surcharge provision is to charge tenants for the actual costs of excess consumption. If the PHA has given notice to its tenants of its basis of determining the amount of a surcharge for PHA-furnished utilities (e.g., blocks of excess consumption on which surcharges are to be based, and statement of manner in which PHA's average utility rate is to be applied), no separate notice and opportunity to comment is warranted by a mere change in the rate. Section 965.477(a) has been revised to so provide.

Six PHAs commented that they should be allowed to prorate excess utility charges in non-checkmetered mastermetered projects. Section 965.477(b) repeats an interim rule provision that restricts surcharges to tenant-owned major appliances or to optional functions, such as air conditioning or PHA-furnished equipment. This requirement evolved from a policy that PHAs should not prorate excess utility costs where there was no means of knowing whether a tenant in fact consumed the energy for which he or she was being charged. HUD is adhering to this policy.

The National Housing Law Project commented that surcharges for excess consumption should be equal to the actual cost of the excess consumption to the PHA in order to avoid conflict with State laws prohibiting the resale of utilities. There is sufficient flexibility in § 965.477 to allow PHAs to establish their surcharge schedules consistent with State law.

I. Individual Relief (§ 965.479)

Legal services organizations favored the individual relief provisions of the interim rule over the proposed rule. Five PHAs favored deletion of the provision altogether. Section 865.481(a) of the interim rule sets forth three sets of circumstances that warrant individual relief. Item (1) covers situations where defects in meters or errors in meter reading account for excessive billing. Item (2) covers defects in PHA-furnished equipment that causes substantial and abnormal increases in utility consumption. "Defects" was defined as situations where the PHA has a duty to repair the item. Both of these items are covered by the "special factors" wording of § 965.479 and therefore have, in effect, been carried over from the interim rule. Item (3) covers tenant-purchased utilities situations where consumption exceeds the applicable allowance by 20 percent or more for reasons other than wasteful or unauthorized usage. Tenants in these situations would also be covered by the "special factors" provision if the excess consumption was not reasonably within the control of the tenant to avoid.

Deletion of the individual relief provision would be unfair given the inexact art of setting utility allowances and the knowledge that variations within a given class of dwelling units will, due to reasons other than tenant use, result in different levels of utility use. Where the variation is significant, individual relief may be warranted. While a standard may be set for a two bedroom unit in a high rise building, a unit on a middle floor of the building will consume less energy than an identical sized unit situated over an open, uninsulated parking garage. Since these situations are beyond the control of the tenant, higher consumption due to the insulation situation should not be subject to a surcharge. The PHA may elect between alternative courses of action. One would be to adjust the allowance amount. An alternative action might be to install insulation to correct the immediate problem. HUD intends that PHAs have the necessary flexibility to make the most effective and efficient decision in situations like these. HUD likewise intends that minor variations not be the subject of individual relief, only those cases that are significant. HUD leaves to PHA discretion decision on these matters.

J. Transition Provisions (§ 965.480)

Several PHAs indicated that some extension of the 120 day transition period was appropriate. One PHA favored a 180 day period. Two PHAs favored a phase-in of the allowance system to coincide with the annual review under § 965.478.

HUD has changed the period from 120 to 180 days. The implementation of the

allowance program did not seem to be a problem to most PHAs who chose to comment on the proposed regulation. The additional 60 day extension allows those PHAs that might have a problem sufficient time to make the transition. A longer period of time, which might be the case of a phase-in tied to the annual review, does not seem warranted.

K. Other Issues Raised

Legal services organizations argued that the proposed change in the basis of setting allowances would result in tenant payments exceeding the statutory maximums based on income. While some commenters argued that any payments based on actual usage that, when added to rental payments, exceeded the statutory percentage of income would violate the statute, others acknowledged, as noted in the preamble to the proposed rule, that "rent," for statutory purposes in this context, includes a "reasonable" amount for utilities. See *Clary* v. *Mabee*, 709 F.2d 1307 (9th Cir. 1983). The criticism, therefore, rests on an assumption that the standard prescribed in § 965.476 is an unreasonable standard or, as some argued, no standard. For reasons described above, HUD believes that the standard is both reasonable and sufficiently ascertainable.

Some legal services organizations recommended that grievance procedures should apply to the utility allowance provisions. Grievance procedures under former Part 866 (now Part 966) apply to individual, not class, grievances so that challenges to the general utility allowance schedules would be precluded. The Department believes that procedures to be followed on claims for individual relief under § 965.479 should be left to PHA determination.

The National Association of Housing and Redevelopment Officials and two PHAs commented that provision should be made to account for payments made to tenants under the Low Income Home Energy Assistance Program. The Department believes that this would be inconsistent with section 2605(f) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8624(f)), which prohibits the inclusion of energy assistance payments as income under other programs.

Five PHAs recommended that the regulation be revised to provide that a failure to pay a surcharge should be treated in the same way as failure to pay rent. HUD's practice, however, is to distinguish between rent and other charges. Under State law, failure to pay rent may be treated in a summary eviction proceeding whereas failure to pay charges other than rent requires more plenary proceedings. Because such other charges are not fixed, HUD believes that retention of the distinction is appropriate.

One PHA recommended that PHAs should notify tenants of public hearings on utility rate increase. Notification by the PHA would be a helpful action in the case of PHA-furnished utilities. Tenants under tenant-purchased arrangements receive notice directly from the utility. However, these types of PHA actions are best left to the discretion of the PHA rather than become the subject of HUD regulations.

The National Housing Law Project criticized HUD's finding of no significant impact under the National Environmental Policy Act and asserted that HUD should have conducted an environmental assessment. The Project's argument is that while any single PHA allowance action might have a negligible effect, the aggregate personal and financial effects on all households are substantial. HUD's determination is proper. The psychological and economic impacts which Part 965 might create are simply not the kind of effects for which NEPA requires preparation of an environmental impact statement or environmental assessment. The regulations of the Council on Environmental Quality specifically state that "economic or social effects are not intended by themselves to require preparation of an environmental impact statement" (40 CFR § 1508.14). While social or economic impacts may be appropriate subjects for analysis in an environmental impact statement or assessment that is otherwise required, they do not independently trigger the requirement that such analyses be prepared. The "triggering" concern of the NEPA is impact on the physical environment. *See Maryland National Capital Park and Planning Commission* v. *U.S. Postal Service*, 487 F.2d 1029 (D.C. Cir. 1973). Changes in the standard used to calculate utility allowances obviously do not have an impact on the physical environment. This issue was raised in *Massachusetts Union of Public Housing Tenants* v. *Landrieu, supra*, in the context of individual metering regulations under former Part 865 where HUD also found no significant impact. The court agreed.

V. Other Matters

The Department has determined that this rule does not constitute a "major rule" as defined in Executive Order 12291. Analysis of the proposed rule indicated that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets (47 FR 35252–3). This conclusion has not been altered by changes to the final rule.

A finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (47 FR 35253). The finding of no significant impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, at the address listed above.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule provides PHAs, both large and small, with greater flexibility in determining utility allowances which may result in some reduction in administrative costs. The rule minimizes the administrative cost and burdens to small PHAs by making the complexity of the methods developed by PHAs to carry out the objectives of the rule dependent upon the data available and the extent of the administrative resources reasonably available to PHAs.

This rule was listed as Item 140 in the Department's Semiannual Agenda of Regulations published on April 19, 1984, pursuant to Executive Order 12291 and the Regulatory Flexibility Act (49 FR 15936).

The Catalog of Federal Domestic Assistance program number and title are 14.146, Low-Income Housing—Assistance Program (Public Housing).

List of Subjects in 24 CFR Part 965

Public housing, Utilities, Energy conservation.

PART 965—[AMENDED]

Accordingly, the Department amends 24 CFR Part 965 as follows:

1. The Table of Contents and authority citations for 24 CFR Part 965 are revised to read as follows:

Subparts A–B—[Reserved]

Subpart C—Energy Audits and Energy Conservation Measures

Sec.
965.301 Purpose.
965.302 Applicability.

Sec.
965.303 Definitions.
965.304 Requirements for energy audits.
965.305 Energy conservation measures.
965.306 Order of funding.
965.307 Funding.
965.308 Energy conservation equipment.
965.309 Energy conservation practices.
965.310 Compliance schedule.

Subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects

965.401 Purpose.
965.402 Definitions.
965.403 Individually metered services.
965.404 Benefit/Cost analysis.
965.405 Funding.
965.406 Order of conversion.
965.407 Actions affecting tenants.
965.408 Compliance schedule.
965.409 Waivers for similar projects.
965.410 Reevaluation of Mastermeter Systems.

Subpart E—Tenant Allowances for Utilities

965.470 Purpose.
965.471 Applicability.
965.472 Definitions.
965.473 Establishment of allowances by PHAs.
965.474 Categories for establishment of allowances.
965.475 Period for which allowances are established.
965.476 Standards for allowances for utilities.
965.477 Surcharges for excess consumption of PHA-furnished utilities.
965.478 Review and revision of allowances.
965.479 Individual relief.
965.480 Transition provisions.

Subpart F—Modernization of Oil-Fired Heating Plants

965.501 Purpose.
965.502 Definitions.
965.503 Selection procedures.
965.504 Selection criteria.

Subpart G—Consolidated Supply Program

965.601 Purpose.
965.602 Definitions.
965.603 Consolidated supply contracts.
965.604 Purchase agreements.
965.605 Reports.

Authority: Secs. 2, 3, 6, and 9, United States Housing Act of 1937 (42 U.S.C. 1437(2), 1437a and 1437j); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. The subpart heading of Subpart D is revised to read as follows:

Subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects

3. The undesignated heading following the subpart heading of Subpart D is removed.

4. In Subpart D, the undesignated heading following § 965.410, and §§ 965.470–965.482, are removed.

Subpart E (§§ 965.501 Through 965.504) [Redesignated as Subpart F]

5. Subpart E is redesignated as Subpart F—Modernization of Oil-Fired Heating Plants.

Subpart F (§§ 965.601 Through 965.605) [Redesignated as Subpart G]

6. Subpart F is redesignated as Subpart G—Consolidated Supply Program.

7. A new Subpart E is added to read as follows:

Subpart E—Tenant Allowance for Utilities

§ 965.470 Purpose.

The purpose of this Subpart is to provide procedures for the establishment and administration by PHAs of Allowances for PHA-Furnished Utilities and Allowances for Tenant-Purchased Utilities. Allowances for PHA-Furnished Utilities represent the maximum consumption units (e.g., kilowatt hours of electricity) which may be used by a dwelling unit without a surcharge for excess consumption against the tenant. Allowances for Tenant-Purchased Utilities represent fixed dollar amounts which are deducted from the Total Tenant Payment otherwise chargeable to a tenant who pays the actual Utility charges directly to the Utility suppliers, whether they be more or less than the amounts of the Allowances.

§ 965.471 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to Public Housing and Indian Housing, including the Turnkey III Homeownership Opportunities Program but excluding the Mutual Help Homeownership Opportunities Program. This Subpart also applies to units assisted under Section 10(c) and 23 of the United States Housing Act of 1937 as in effect before amendment by the Housing and Community Development Act of 1974 and to which 24 CFR Part 800 is not applicable.

(b) This Subpart does not apply to dwelling units which are served by PHA-Furnished Utilities unless Checkmeters have been installed to measure the actual Utilities consumption of the individual units, except that tenants in such units shall be subject to charges for consumption of tenant-owned major appliances, or for optional functions of PHA-furnished equipment, in accordance with § 965.477(b).

§ 965.472 Definitions.

Checkmeter. A device for measuring Utility consumption of each individual dwelling unit where the Utility service is supplied through a Mastermeter System. The PHA pays the Utility supplier of the Utility service on the basis of the Mastermeter readings and uses the Checkmeters to determine whether and to what extent the Utility consumption of each dwelling unit is in excess of the Allowance for PHA-Furnished Utilities.

Tenant Rent. The amount paid monthly by the Family as rent to the PHA. Where all Utilities are supplied by the PHA, Tenant Rent equals Total Tenant Payment. Where some or all Utilities are not supplied by the PHA and the cost thereof is not included in the amount paid as rent, Tenant Rent equals Total Tenant Payment less the Allowance for Tenant-Purchased Utilities.

Total Tenant Payment. The monthly amount calculated under § 913.107 of this chapter. Total Tenant Payment does not include any Surcharge or other miscellaneous charges (see § 966.4 of this chapter).

Mastermeter System. A Utility distribution system in which a PHA is supplied Utility service by a Utility supplier through a meter or meters and the PHA then distributes the Utility service to its tenants.

Public Housing Agency [PHA]. Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of housing for lower income families. As used in this Subpart, PHA includes an Indian Housing Agency.

Surcharge. The amount charged by the PHA to a tenant, in addition to the Tenant Rent, for consumption of Utilities in excess of the Allowance for PHA-Furnished Utilities or for estimated consumption attributable to Tenant-owned major appliances or to optional functions, such as air conditioning, of PHA-furnished equipment. Surcharges calculated pursuant to § 965.477(b) based on estimated consumption where Checkmeters have not been installed are referred to as "scheduled Surcharges."

Utility. Electricity, gas, heating fuel, water and sewerage services, and trash and garbage collection. Telephone service is not included as a Utility.

§ 965.478 Establishment of allowances by PHAs.

(a) PHAs shall establish (1) Allowances for PHA-Furnished Utilities for all Checkmetered Utilities and (2) Allowances for Tenant-Purchased

Utilities for all Utilities purchased directly by tenants from the Utilities suppliers.

(b) The PHA shall maintain a record that documents the basis on which Allowances and scheduled Surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by tenants.

(c) The PHA shall give notice to all tenants of proposed Allowances and scheduled Surcharges and revisions thereof. Such notice shall be given, in the manner provided in the lease for the giving of notices by the PHA concerning matters under the lease, not less than 60 days prior to the proposed effective date of the Allowances or scheduled Surcharges or revisions; shall describe with reasonable particularity the basis for determination of the Allowances, scheduled Surcharges or revisions, including a statement of the specific items of equipment and function whose Utility consumption requirements were included in determining the amounts of the Allowances or scheduled Surcharges; shall notify tenants of the place where the PHA's record maintained pursuant to paragraph (b) above is available for inspection; and shall provide all tenants an opportunity to submit written comments during a period expiring not less than 30 days prior to the proposed effective date of the Allowances or scheduled Surcharges or revisions. Such written comments shall be retained by the PHA and shall be available for inspection by tenants and, upon request, by HUD.

(d) The PHA shall furnish to HUD, as instructed, a copy of its schedule of Allowances and scheduled Surcharges, and each revision thereof, promptly upon such schedule becoming effective. Schedules of Allowances and scheduled Surcharges shall not ordinarily be subject to approval by HUD before becoming effective but will be reviewed in the course of audits or reviews of PHA operations. Following such audits or reviews, HUD may require additional data concerning the PHA's basis for determination of Allowances or scheduled Surcharges, may require additional or different relevant data to be considered by the PHA in its next annual review of Allowances pursuant to § 965.478(a), and on an exception basis, may require that a PHA submit its proposed revision of Allowances or scheduled Surcharges to HUD for review and approval prior to such revision being proposed adopted.

(e) Except where a different standard of review is applicable in review procedures governed by applicable State law, the PHA's determinations of Allowances, scheduled Surcharges and revisions thereof shall be final and valid as to tenants unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(Approved by the Office of Management and Budget under OMB Control Number 2577–0062.)

§ 965.474 Categories for establishment of allowances.

Separate allowances shall be established for each utility and for each category of dwelling units determined by the PHA to be reasonably comparable as to factors affecting utility usage. The PHA will establish Allowances for different size units, in terms of numbers of bedrooms. Other categories may be established at the discretion of the PHA.

§ 965.475 Period for which allowances are established.

(a) *PHA-furnished utilities.* Allowances will normally be established on a quarterly basis; however, tenants may be surcharged on a monthly basis. The Allowances established may provide for seasonal variations.

(b) *Tenant-purchased utilities.* Monthly Allowances shall be established at a uniform monthly amount based on an average monthly utility requirement for a year; however, if the utility supplier does not offer tenants a uniform payment plan, the allowances established may provide for seasonal variations.

§ 965.476 Standards for allowances for utilities.

(a) The objective of a PHA in designing methods of establishing allowances for PHA-Furnished and Tenant-Purchased Utilities for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. Stated another way, it should be an objective of the Allowance that excess consumption which may result in a Surcharge (or absorption of utility cost in excess of the Allowance) should be an amount of consumption that is reasonably within the control of a tenant household to avoid.

(b) Allowances for both PHA-Furnished and Tenant-Purchased Utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the PHA for all tenants (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the PHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by tenants.

(c) The complexity and elaborateness of the methods chosen by the PHA, in its discretion, to achieve the foregoing objective will be dependent upon the data available to the PHA and the extent of the administrative resources reasonably available to the PHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances. Recommended sources of data for determining reasonable consumption levels include:

(1) Consumption information from the PHA's records or obtained through current reading of checkmeters.

(2) Consumption data on residential use of utilities obtained from utility suppliers or other sources.

(3) Engineering calculations based on technical data concerning energy requirements of appliances and equipment and of projects and units having particular characteristics.

(4) Data concerning energy requirements available from governmental and other sources.

(5) Data obtained from energy audits.

(d) In establishing allowances, the PHA shall take into account relevant factors affecting consumption requirement, including:

(1) The equipment and functions intended to be covered by the Allowance for which the utility will be used. For instance, natural gas may be used for cooking or heating domestic water or space heating or any combination of the three.

(2) The climatic location of the housing projects.

(3) The size of the dwelling units and the number of occupants per dwelling unit.

(4) Type of construction and design of the housing project.

(5) The energy efficiency of PH supplied appliances and equipment.

(6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the Total Tenant Payment.

(7) The physical condition, including insulation and weatherization, of the housing project.

(8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather.

(9) Temperature of domestic hot water.

(e) If a Utility (e.g., garbage collection) is charged on a fixed price basis, the full amount of the price shall be incorporated into the allowance. A reasonable allowance shall be set for a fixed price service if the tenant, who purchases the utility, has a choice between providers of services.

§ 965.477 Surcharges for excess consumption of PHA-furnished utilities.

(a) For dwelling units subject to Allowances for PHA-Furnished Utilities where Checkmeters have been installed, the PHA shall establish Surcharges for Utility consumption in excess of the Allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the PHA's average utility rate. The basis for calculating such Surcharges shall be described in the PHA's Schedule of Allowances. Changes in the dollar amounts of Surcharges based directly on changes in the PHA's average utility rate shall not be subject to the advance notice requirements of § 965.473(c).

(b) For dwelling units served by PHA-Furnished Utilities where Checkmeters have not been installed, the PHA shall establish schedules of Surcharges indicating additional dollar amounts tenants will be required to pay by reason of estimated Utility consumption attributable to tenant-owned major appliances or to optional functions, such as air conditioning, of PHA-furnished equipment. Such Surcharge schedules shall state the tenant-owned equipment (or functions of PHA-furnished equipment) for which Surcharges shall be made and the amounts of such charges, which shall be based on the cost to the PHA of the Utility consumption estimated to be attributable to reasonable usage of such equipment.

§ 965.478 Review and revision of allowances.

(a) *Annual review.* The PHA shall review at least annually the basis on which Utility Allowances have been established and, if reasonably required in order to continue adherence to the standards stated in § 965.476, shall establish revised Allowances. The review shall include all changes in circumstances (including completion of Comprehensive or Special Purpose Modernization under the Comprehensive Improvement Assistance Program and/or other energy conservation measures implemented by the PHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.

(b) *Revision due to rate changes.* The PHA may revise its Allowances for Tenant-Purchased Utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such Allowances were based. Adjustments to Tenant Rent as a result of such changes shall be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective.

(Approved by the Office of Management and Budget under OMB Control Number 2577-0062.)

§ 965.479 Individual relief.

Requests for relief from Surcharges for excess consumption of PHA-Furnished Utilities, or from payment of Utility supplier billings in excess of the Allowances for Tenant-Purchased Utilities, may be granted by the PHA on such reasonable grounds, such as special needs of elderly, ill or handicapped tenants, or special factors affecting utility usage not within the control of the tenant, as the PHA shall deem appropriate. The PHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the PHA adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including identification of the PHA representative with whom initial contact may be made by tenants), and the PHA's criteria for granting such relief, shall be included in each notice to tenants given pursuant to § 965.473(c) and in the information given to new tenants upon admission.

§ 965.480 Transition provisions.

PHA's shall establish Allowances in accordance with the standards stated in § 965.476 not later than 180 days after the effective date of this rule, unless for good cause shown an extension of such date is allowed by the Assistant Secretary for Public and Indian Housing.

Authority: Secs. 2, 3, 6, and 9, United States Housing Act of 1937 (42 U.S.C. 1437(2), 1437a and 1437j); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 31, 1984.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 84-20819 Filed 8-6-84; 8:45 am]

BILLING CODE 4210-27-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations; Title VII of the Civil Rights Act of 1964, as Amended

AGENCY: Equal Employment Opportunity Commission.

ACTION: Procedural regulations, amendment.

SUMMARY: On October 18, 1982, the EEOC at 47 FR 46275 last amended its procedural regulations for the issuance of written interpretations or opinions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.* This notice will amend the language contained in 29 CFR 1601.33(e) which sets forth what an employer may rely on as a "written interpretation or opinion" of the Commission within the meaning of Section 713 of Title VII.

EFFECTIVE DATE: August 7, 1984.

FOR FURTHER INFORMATION CONTACT: John Pagano, Office of Legal Counsel, Legal Services, EEOC, 2401 E Street, NW., Room 214, Washington, D.C. 20507, telephone (202) 634-6592.

SUPPLEMENTARY INFORMATION: EEOC's regulations at 29 CFR 1601.33 sets forth what an employer may rely on as a "written interpretation or opinion of the Commission" within the meaning of Section 713 of Title VII. The Commission's regulation at 29 CFR 1601.33(a) specifically mentions "opinion letters" issued on behalf of the Commission by EEOC's Legal Counsel or, if issued in the conduct of litigation, by the General Counsel. This current amendment will now include language specifying that these opinion letters are issued on behalf of and *as approved by* the Commission. Thus, the purpose of this amendment is simply to state explicitly the Commission's practice of approving all opinion letters issued by the Legal Counsel and General Counsel.

These regulations do not constitute a "major rule" and a regulatory inpact analysis is not required by Executive Order 12291.

Similarly, the Commission certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this rule will not result in a significant economic impact on a

substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

List of Subjects in 16 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—[AMENDED]

The Commission's regulation at 29 CFR 1601.33 is hereby revised to read as follows:

§ 1601.33 Opinions—Title VII.

Only the following may be relied upon as a "written interpretation or opinion of the Commission" within the meaning of Section 713 of Title VII:

(a) A letter entitled "opinion letter" and signed by the Legal Counsel on behalf of and as approved by the Commission, or, if issued in the conduct of litigation, by the General Counsel on behalf of and as approved by the Commission, or

(b) Matter published and specifically designated as such in the **Federal Register**, including the Commission's Guidelines on Affirmative Action, or

(c) A Commission determination of no reasonable cause, issued, under the circumstances described in § 1608.10 (a) or (b) of the Commission's Guidelines on Affirmative Action, 29 CFR Part 1608, when such determination contains a statement that it is a "written interpretation or opinion of the Commission."

(Sec. 713(a), Title VII, Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–12(a))

Signed at Washington, D.C., this 1st day of August, 1984.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 84-20758 Filed 8-6-84; 8:45 am]

BILLING CODE 6570-06-M

---

29 CFR Part 1621

Equal Pay Act; Procedures

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final procedural regulations.

SUMMARY: On July 1, 1979, pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978), responsibility and authority for enforcement of the Equal Pay Act, 29 U.S.C. 206(d), was transferred from the Department of Labor to the Equal Employment Opportunity Commission. The following regulations advise the public as to the procedures the Commission will follow in issuing written interpretations and opinions under the Equal Pay Act.

EFFECTIVE DATE: August 7, 1984.

FOR FURTHER INFORMATION CONTACT: John Pagano, Office of Legal Counsel, Legal Services, EEOC, 2401 E Street, NW., Room 214, Washington, D.C. 20507, telephone (202) 634–6592.

SUPPLEMENTARY INFORMATION: The Commission publishes the regulations herein with the desire to provide conformity with the Commission's procedural regulations for the issuance of interpretations and opinion letters under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*, inasmuch as the Commission's authority for the issuance of opinion letters under the Age Discrimination in Employment Act and the Equal Pay Act is derived from the same statutory basis, section 10 of the Portal to Portal Act of 1947, 29 U.S.C. 259.

These regulations do not constitute a "major rule" and a regulatory impact analysis is not required by Executive Order 12291.

Similarly, the Commission certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

List of Subjects in 29 CFR Part 1621

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

Accordingly, 29 CFR Part 1621 is hereby added to the Commission's regulations to read as follows:

PART 1621—PROCEDURES—THE EQUAL PAY ACT

Sec.

1621.1 Purpose.
1621.2 Definitions.
1621.3 Procedures for requesting an opinion letter.
1621.4 Effect of opinions and interpretations of the Commission.

Authority: Secs. 1–19, 52 Stat. 1060, as amended, Secs. 10–16, 61 Stat. 84, Pub. L. 88–38, 77 Stat. 56 (29 U.S.C. 201 *et seq.*); Sec. 1, Reorgan. Plan No. 1 of 1978, 43 FR 19807; Executive Order No. 12144, 44 FR 37193.

§ 1621.1 Purpose.

The regulations set forth in this part contain the procedures established by the Equal Employment Opportunity Commission for issuing opinion letters under the Equal Pay Act.

§ 1621.2 Definitions

For purposes of this part, the term "the Act" shall mean the Equal Pay Act the "Commission" shall mean the Equal Employment Opportunity Commission or any of its designated representatives.

§ 1621.3 Procedure for requesting an opinion letter.

(a) A request for an opinion letter should be submitted in writing to the Chairman, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20507, and shall contain:

(1) A concise statement of the issues for which an opinion is requested;

(2) A full statement of the relevant facts and law; and

(3) The names and addresses of the person(s) making the request and other interested persons.

(b) Issuance of an opinion letter by the Commission is discretionary.

(c) Informal advice: When the Commission, at its discretion, determines that it will not issue an opinion letter as defined in § 1621.4, the Commission may provide informal advice or guidance to the requestor. An informal letter of advice does not represent the formal position of the Commission and does not commit the Commission to the views expressed therein. Any letter other than those defined in § 1621.4 will be considered a letter of advice and may not be relied upon by any employer within the meaning of Section 10 of the Portal to Portal Act of 1947, 29 U.S.C. 255.

§ 1621.4 Effect of opinions and interpretations of the Commission.

(a) Section 10 of the Portal to Portal Act of 1947, 29 U.S.C. 255, which applies to the Equal Pay Act of 1963, 29 U.S.C. 206(d), provides that:

> In any action or proceeding based on any act or omission on or after the date of the enactment of this Act, no employer shall be subject to any liability or punishment * * * if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval or interpretation * * * or any administrative practice or enforcement policy of [the Commission].

The Commission has determined that only the following documents may be relied upon by any employer as a "ruling, approval or interpretation" or as "evidence of any administrative practice or enforcement policy" of the Commission within the meaning of the statutory provisions quoted above.

(1) A written document, entitled "opinion letter," signed by the Legal

Counsel on behalf of and as approved by the Commission;

(2) A written document issued in the conduct of litigation, entitled "opinion letter," signed by the General Counsel on behalf of and as approved by the Commission;

(3) A matter published and specifically designated as such in the **Federal Register.**

(b) An opinion letter issued pursuant to § 1621.4 (a)(1) or (a)(2) above, when issued to a specific addressee, has no effect upon circumstances beyond the situation of the specific addressee.

Signed at Washington, D.C. this 1st day of August, 1984.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 84-20756 Filed 8-6-84; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund; Fee Payment Responsibility

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

ACTION: Notice of clarification.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is providing further guidance regarding fee collection requirements for the Abandoned Mine Reclamation Fund. The notice clarifies which persons are responsible for payment of reclamation fees.

FOR FURTHER INFORMATION CONTACT: Dr. Phyllis G. Thompson, Chief, Abandoned Mine Land Reclamation Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Room 5401–L, Washington, D.C. 20240, Telephone (202) 343–7937.

SUPPLEMENTARY INFORMATION: On July 5, 1984, the Office of Surface Mining (OSM) published regulations (49 FR 27493) implementing certain debt collection and record keeping requirements relating to payment of Abandoned Mine Reclamation Fees. Section 402 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA), requires that all operators pay a reclamation fee based on coal produced, and section 701(13) defines "operator" as the person * * * engaged in coal mining who removes * * * the coal. OSM recognizes, however, that in light of the number and variety of business arrangements employed in the coal industry, the term operator is not limited to the party which actually removes the coal. Congress intended the burden of fee payment to fall upon the person or persons who stand to benefit directly from the sale, transfer, or use of coal. This intent will continue to guide the office in making decisions as to who is liable for the fee. The identification will continue to be made in light of the realities of the business world and will not necessarily turn solely on a literal interpretation of the word "removes."

The preamble to the final rules stated that OSM would use the operator-mine identification numbers currently assigned by the Mine Safety and Health Administration (MSHA) as an identifier for persons or entities engaged in coal production under SMCRA. OSM wishes to clarify that the MSHA identification number is assigned by MSHA for purposes of the Federal Mine Safety and Health Act of 1977. That number will not necessarily identify every entity responsible for payment of Abandoned Mine Land (AML) fees under SMCRA. OSM will use the MSHA identification number as an administrative and record maintenance tool. This system will aid OSM in making an initial identification of parties involved in removal of coal, either as a contract operator or as owner of the mineral exercising control over its removal. OSM's use of the MSHA operator-mine identification number should not be construed as an intent to consider the entity listed on the OSM–1 form as solely responsible for payment of AML fees.

OSM will consider as responsible for payment of AML fees, any or all of the following persons: The person or entity who stands to benefit directly from the sale, transfer or use of the coal; the MSHA-identified operator; or a person or entity having a contract with the MSHA-identified operator. This list is not all-inclusive. Moreover, it should be recognized that OSM will not be bound by private arrangements. Thus OSM will continue to pursue a policy of joint and several liability of involved parties for recovery of AML fees where appropriate.

Dated: July 30, 1984.

J. Lisle Reed,

Deputy Under Secretary.

[FR Doc. 84-20629 Filed 8-6-84; 8:45 am]

BILLING CODE 4310-05-M

INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2003

National Security Information; Standard Forms

AGENCY: Information Security Oversight Office (ISOO).

ACTION: Final rule.

SUMMARY: This amendment to 32 CFR Part 2003 authorizes the witnessing and acceptance of the Standard Form 189, "Classified Information Nondisclosure Agreement," to be accomplished, as circumstances may require, by different persons.

EFFECTIVE DATE: August 7, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, ISOO. Telephone (202) 535–7251.

SUPPLEMENTARY INFORMATION: This amendment to 32 CFR Part 2003 is issued pursuant to section 5.2(b)(7) of Executive Order 12356. ISOO has coordinated this amendment with those agencies that will be primarily affected by it.

List of Subjects in 32 CFR Part 2003

Classified information, National security information.

PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

Subpart B—Prescribed Forms

Section 2003.20 of 32 CFR, Part 2003 is amended by adding the following new paragraph (g):

§ 2003.20 Classified Information Nondisclosure Agreement: SF 189.

* * * * *

(g) An authorized representative of a contractor, grantee or licensee, acting on behalf of the United States, may witness the execution of SF 189 by another contractor, grantee or licensee employee, provided that an authorized United States Government official subsequently signs the SF 189 as an acceptance of the nondisclosure agreement by the United States. Also, an employee of a United States agency may witness the execution of the SF 189 by an employee, contractor, grantee or licensee of another United States agency, provided that an authorized United States Government official subsequently signs the SF 189 as an acceptance of the nondisclosure agreement by the United States.

(Sec. 5.2(b)(7), E.O. 12356)

Dated: August 2, 1984.

Steven Garfinkel,

Director, Information Security Oversight Office.

[FR Doc. 84-20854 Filed 8-6-84; 8:45 am]

BILLING CODE 6820-AF-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 264

Property Management; Mount St. Helens National Volcanic Monument Symbol

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will establish an official symbol for the Mount St. Helens National Volcanic Monument and restrict use of the symbol to the Forest Service, U.S. Department of Agriculture. The rule is needed to protect the symbol from inappropriate commercial use. Under the rule, any unauthorized use could be subject to criminal penalty.

EFFECTIVE DATE: September 6, 1984.

FOR FURTHER INFORMATION CONTACT: Donald S. Girton, Director, Public Information and Involvement, Forest Service, USDA, (202) 447-3760.

SUPPLEMENTARY INFORMATION: On February 29, 1984, at 49 FR 7410, the Department of Agriculture published a proposed rule to establish an official symbol for the Mount St. Helens National Volcanic Monument and to protect the symbol from inappropriate commercial use. The Gifford Pinchot National Forest developed the symbol to identify the visitor center, publications, and other public services provided by the Forest Service in the Mount St. Helens National Volcanic Monument.

Based on its day-to-day management experience in the Monument area, the Forest Service has concluded that it is in the public interest to reserve the Mount St. Helens symbol for official Government use only. Intense commercialization has followed the Mount St. Helens volcanic eruption, and there is strong likelihood that, unless use of the Government's official symbol is protected it will be displayed on souvenirs of all types and quality and offered for sale by commercial vendors. Reserving the symbol for official Government use will avert those commercial uses of the symbol that would be inappropriate to the Monument's status as a significant national area. Restricting use of the symbol will also assist the Monument visitors in clearly identifying the Government's role in managing the Monument and in offering public services in the area.

No comments were received on the proposed rule during the public comment period. Therefore, the provisions of the final rule are identical to those of the proposed rule.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12291 and it has been determined that the rule is not a major rule and does not require a regulatory impact analysis. The rule will have little or no effect on the Nation's economy or substantial numbers of individuals or businesses. Its application is limited to one relatively small geographical area.

Small Entity Impact

The Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 602 et seq.).

The reservation of the Mount St. Helens symbol for official Government use does not impede the ability of small businesses in the area to sell souvenirs associated with the monument. Therefore, a regulatory flexibility impact analysis is not required.

Environmental Impact

The final rule does not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Burden

The final rule does not contain an information collection or recordkeeping requirement as defined in the Paperwork Reduction Act of 1980.

List of Subjects in 36 CFR Part 264

Seals and insignia, Signs and symbols.

PART 264—PROPERTY MANAGEMENT

Therefore, for the reasons set forth above, Part 264 of Title 36, Chapter II, of the Code of Federal Regulations is hereby revised to add a new Subpart B to read as follows:

Subpart B—Mount St. Helens National Volcanic Monument Symbol

Sec.

264.10 Establishment.
264.11 Use of symbol.
264.12 Use without permission.
264.13 Unauthorized use.

Authority: 5 U.S.C. 301

§ 264.10 Establishment.

There is hereby established an official symbol, as depicted herein, to designate and represent the Mount St. Helens National Volcanic Mounment located in the Gifford Pinchot National Forest in the State of Washington.



§ 264.11 Use of symbol.

Except as provided in § 264.12, use of the Mount St. Helens National Volcanic Monument official symbol, including a facsimile thereof, in total or in part, is restricted to official signs, publications, and other materials of the Forest Service, U.S. Department of Agriculture.

§ 264.12 Use without permission.

Business or calling cards commercially prepared at employee expense for employees assigned to the Volcanic Monument may depict the official Monument symbol without special permission from Forest Service officials.

§ 264.13 Unauthorized use.

Except as provided in § 264.11 and 264.12, whoever manufactures, sells, or possesses the official symbol of the Mount St. Helens National Volcanic Monument may be subject to criminal penalty under 18 U.S.C. 701.

Dated: July 17, 1984.

John B. Crowell, Jr.,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 84-20822 Filed 8-6-84; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2647-3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA announces final action on revisions to the Illinois State

Implementation Plan (SIP) for sulfur dioxide (SO_2). The revision pertains to the incorporation of Illinois Pollution Control Board (IPCB) Rule 204(f)(2) into the SO_2 SIP with an exception as noted herein. USEPA's action is based upon a revision which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

In subsequent **Federal Registers**, USEPA will publish three related final rules. The first incorporates IPCB Rule 204(f) as it pertains to Peoria and Tazewell Counties into the SO_2 SIP. The second redesignates five townships in Peoria and Tazewell Counties to attainment for SO_2. The third approves the satisfaction of an outstanding SO_2 control strategy approval condition for the townships redesignated to attainment.

EFFECTIVE DATE: This final rulemaking becomes effective on August 7, 1984.

ADDRESSES: Copies of this revision to the Illinois SIP are available for inspection at:

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Randolph O. Cano, at (312) 886–6035 before visiting the Region V Office).

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: On March 23, 1984 (49 FR 11098), USEPA proposed approval of and solicited public comment on the incorporation of IPCB Rule 204(f)(2) as it pertains to Pekin Energy (formerly CPC International Inc.) into the Illinois sulfur dioxide (SO_2) SIP. Rule 204(f)(2) was adopted by the IPCB as part of a February 24, 1983, Order of the Board (R80–22). Rule 204(f)(2) provides that existing industrial sources not equipped with flue gas desulfurization (FGD) systems as of December, 1980, located in the Peoria Major Metropolitan Area shall not exceed 5.5 pounds of sulfur dioxide per million BTU of actual heat input. The rule's reference to sources with FGD systems recognizes that several industrial boilers in the Peoria area which already are equipped with FGD systems need a more stringent SO_2 emission limit than 5.5 lbs/MMBTU to prevent violations of the SO_2 National Ambient Air Quality Standards (NAAQS).

Effectively, this revised rule relaxes the federally approved SO_2 emission limit of one relatively large source, Pekin Energy, and three smaller sources (WABCO, Pabst and Archer Daniel Midland (ADM)) from 1.8 lbs/MMBTU to 5.5 lbs/MMBTU. The remaining industrial boilers covered by Rule 204(f)(2) already have federally approved SO_2 emission limits of 5.5 lbs/MMBTU (Bemis, Celotex and Sherex Chemical). The three smaller sources (WABCO, Pabst and ADM) are located in Peoria Township, Peoria County. USEPA only takes action on this rule at this time as it applies to Pekin Energy. Rulemaking on WABCO, Pabst, ADM [the latter source was only recently added to the SO_2 emission inventory in Peoria Township by the Illinois Environmental Protection Agency (IEPA)], or any other subject source will be taken at a later time.

Pekin Energy operates three coal-fired boilers with a combined maximum capacity near 800 MMBTU/hr actual heat input. Pekin Energy is located in Pekin Township, Tazewell County which is currently designated as primary nonattainment for SO_2. Redesignation to attainment for SO_2 in Pekin Township will be the subject of a separate final rulemaking to be published shortly in the **Federal Register.**

The modeling analyses contained in the State's technical support materials demonstrate that the revised emission limit for Pekin Energy will not cause or contribute to a violation of the SO_2 NAAQS.

These analyses also show that the SO_2 emission limits contained in the revised Rule 204(f)(2) and in Rule 204(f) for the electrical utility SO_2 sources in the Peoria area will attain and maintain the SO_2 NAAQS in Cincinnati, Pekin and Elm Grove Townships in Tazewell County, and Logan and Limestone Townships in Peoria County. Therefore, USEPA is redesignating these five townships which are currently nonattainment to attainment for SO_2 in a separate final rulemaking published in a future **Federal Register.** The modeling analyses predict violations of the SO_2 NAAQS elsewhere in the Peoria area attributable to several industrial boilers equipped with FGD systems which have a 1.8 lbs/MMBTU emission limit. Pekin Energy does not contribute to these modeled violations. Because Pekin Energy was in compliance with their previous 1.8 lbs/MMBTU emissions limit, the revision to a 5.5 lbs/MMBTU will result in a potential increase in emissions of up to 3,000 tons per year. Because Pekin Energy's area of significant SO_2 impact does not extend beyond Peoria and Tazewell Counties, located in the central part of Illinois, the revision will not have a significant impact on SO_2 (or TSP) levels in other States.

USEPA proposed to approve the incorporation of IPCB Rule 204(f)(2) as it applies to the Peoria major metropolitan area except for two of the previously identified other subject sources in Peoria Township. Due to the recent addition of ADM to the State's inventory, USEPA's proposal did not include ADM.

USEPA will take action of Rule 204 (f)(2) as it applies to these three sources, or any other subsequently identified subject sources after USEPA receives additional information from Illinois concerning the SO_2 air quality in Peoria Township.

USEPA received no public comments on this matter. USEPA, therefore, approves the incorporation of IPCB Rule 204(f)(2) as it pertains to Pekin Energy, into the Illinois SO_2 SIP. No action is taken on Rule 204(f)(2) as it pertains to other subject sources. There is no federally enforceable emission limit for Perkin Energy at this time. On August 30, 1983, the U.S. Circuit Court of Appeals for the Seventh Circuit (*Sierra Club* vs. *Indiana Kentucky Electric Corporation*, 716 F. 2d 1145 7th Cir. 1983) ruled that a federal court may not enforce a federally approved implementation plan provision that was, thereafter, invalidated by a court of the adopting State on State law procedural grounds. Consequently, the prior federally approved IPCB Rule 204(c)(1)(A), which would impose a 1.8 lb/MMBTU SO_2 emission limit on Pekin Energy cannot be interpreted to be federally enforceable, due to a State court invalidation. Because Pekin Energy is subject to no federally enforceable SO_2 emission limit until this final rulemaking is effective, this rulemaking is made immediately effective upon publication.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

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 October 9, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the Clean Air Act.)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

This notice is issued under authority of Sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: July 30, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart O—Illinois

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52 is amended as follows:

§ 52.720 [Amended]

1. Section 52.720 is amended by adding paragraph (c)(50) to read as follows:

* * * * *

(c) * * *

(50) On May 3, 1983, the State requested that USEPA incorporate IPCB Rule 204(f)(2) into the Illinois SIP. Rule 204(f)(2) was adopted by Illinois as part of a February 24, 1983, Order of the Board (R80–22). USEPA approves the incorporation of Rule 204(f)(2) as it pertains to Pekin Energy, a source in the Peoria major metropolitan area.

* * * * *

[FR Doc. 84–20842 Filed 8–6–84; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[Docket No. NH–1440; A–1–FRL–2647–7]

Approval and Promulgation of Implementation Plans; New Hampshire; Sulfur-in-Fuel Revisions for Five Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan revisions submitted by the State of New Hampshire. These revisions will change the sulfur-in-fuel limits for five sources from 1.0% sulfur by weight to 2.0% (2.2 pounds of sulfur dioxide per million Btu). These sources were excluded from recent revisions to the statewide sulfur-in-fuel limit. They were excluded because the New Hampshire Air Resources Agency was in the process of amending their operating permits to ensure no violations of the National Ambient Air Quality Standards. The intended effect of this action is to allow these sources to burn the higher sulfur fuel under the statewide regulation.

EFFECTIVE DATE: September 6, 1984.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2313, JFK Federal Bldg., Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C. 20460; Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408; and the New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Stephen S. Perkins, (617) 223–4866.

SUPPLEMENTARY INFORMATION: On March 23, 1984 (49 FR 11099) EPA published a Notice of Proposed Rulemaking (NPR) for regulatory changes to the New Hampshire State Implementation Plan. These revisions would allow an increase in the sulfur-in-fuel content from no more than 1.0% sulfur by weight to no more than 2.0% at the following sources:

1. International Packings Corp., Bristol.
2. Velcro USA, Inc., Manchester.
3. Dartmouth College, Hanover.
4. Sprague Energy-Atlantic Terminal Corp., Newington.
5. Hoague-Sprague Corp., Hopkinton.

These sources were excluded from recently approved revisions to the statewide sulfur-in-fuel limit. The New Hampshire Air Resources Agency has issued amended permits to these sources to ensure that there will be no violations of National Ambient Air Quality Standards. In each case, increases in existing stack height, operating restrictions, or both, were required. Inspections of each source by the New Hampshire Air Resources Agency have shown that each source is complying with its amended permit. The revisions and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

Final Action

EPA is approving the revisions to burn higher sulfur oil by those sources in New Hampshire which were submitted on November 1, 1983.

Portions of the stack height regulations promulgated on February 8, 1982 (47 FR 5864), on which EPA is basing its action today, 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). The court decision has been appealed to the United States Supreme Court by a group of affected industries. The raising of the height of the stacks at International Packings, Velcro USA, Sprague Energy, and Hoague-Sprague is not inconsistent with that decision. The *de minimis* provision of EPA's stack height regulations (40 CFR 51.1(ii)(1)(1982)) was not challenged in the Court of Appeals. The maximum height of any of these stacks, after they are raised, will be 23 m, which is 42 m below the *de minimis* stack height in EPA's regulations. If, however, the *de minimis* provision of EPA's regulations is modified as a result of the further judicial process, it may be necessary to review today's SIP action.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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 October 9, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, and Intergovernmental relations.

Authority: Sections 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note.—Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 31, 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 EE—New Hampshire

1. Section 52.1520, paragraph (c) is amended by adding subparagraph (29) as follows.

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(29) Revisions raising the allowable sulfur-in-oil limit to 2.0% for five sources excluded from revisions to CHAPTER Air 400, Section 402.02 (identified at subparagraph (c)(26) above), submitted on November 1, 1983. The five sources, and the source specific emission limits where applicable, are:

1. International Packings Corp., Bristol.

2. Velcro USA, Inc., Manchester.

3. Dartmouth College, Hanover (Limited to a maximum allowable hourly production of 164,000 pounds of steam.).

4. Sprague Energy-Atlantic Terminal Corp., Newington (Limited to firing any three of four boilers, or if all four boilers are fired, the sulfur content is limited 1.5%.).

5. Hoague-Sprague Corp., Hopkinton (Limited to firing any one of two boilers.)

[FR Doc. 84-20881 Filed 8-6-84; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Part 52

[TN-015; A-5-FRL-2649-2]

Approval and Promulgation of Implementation Plans; Tennessee; Lead Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today announces approval/disapproval action on the Tennessee State Implementation Plan (SIP) for lead, which consists of a control strategy, source-specific regulations (operating permits), and other regulations (Chapter 1200–3–22: Lead Emission Standards). On December 21, 1983 (48 FR 56409), EPA proposed to approve the Tennessee plan with the understanding the State would correct certain deficiencies. Although the corrections were incorporated in the final version of the plan submitted to EPA on June 4, 1984, the regulatory portions of the plan are not yet in effect in the State because the Attorney General of Tennessee has not approved them. To meet the terms of the United States District Court for the District of Columbia's July 26, 1983 Order, EPA is approving only the control strategy demonstration of the plan and is disapproving its regulatory portions. EPA will propose to promulgate the regulations needed to implement the control strategy at a later date.

DATE: These actions are effective September 6, 1984.

ADDRESSES: Copies of the material submitted by Tennessee may be examined during normal business hours at the following locations:

Division of Air Pollution Control, Tennessee Department of Health and Environment, 150 9th Avenue North, Nashville, Tennessee 37203

Air Management Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Denise W. Pack at the EPA Region IV address above or call 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: On October 5, 1978 (43 FR 46246), EPA promulgated National Ambient Air Quality Standards (NAAQS) for lead. Tennessee responded to the requirements of section 110(a)(1) of the Clean Air Act (the Act) by preparing and submitting a State Implementation Plan (SIP) which will provide for the attainment and maintenance of the primary and secondary lead NAAQS (1.5 $\mu g/m^3$, averaged over a calendar quarter).

On September 15, 1983, Tennessee submitted a control strategy demonstration and source-specific regulations (operating permits) for the three stationary lead facilities that the State had identified as significant lead sources. EPA's review of the submittal indicated the following deficiencies.

1. The State utilized the CRSTER model to demonstrate attainment at two of the significant sources. (EPA recommends use of the Industrial Source Complex (ISC) model).

2. The State also failed to include the results of the base-year modeling or any justification as to why these results had been omitted.

3. The State used a background value of 0.008 $\mu g/m^3$ in their model. This value is specified in EPA guidance as the concentration of lead in the cleanest area of the country; it is not a recommended background value for urban areas. Most states have used backgrounds of around 0.1 $\mu g/m^3$. Tennessee should have used a background from a monitor not influenced by industry or urban traffic.

4. The plan also failed to include a summary of all ambient air monitoring data collected since 1974 or justify why this data was not included, nor did it indicate where the description of the ambient air monitoring network could be reviewed.

In proposing to approve the Tennessee lead plan on December 21, 1983 (48 FR 56409), EPA asked the State to correct the above deficiencies and to make other minor editorial revisions which are described in a technical support document available at the EPA addresses listed above.

On November 17, 1983, the State submitted for parallel processing Chapter 1200–3–22: Lead Emission Standards, which contains definitions, specific emission standards for existing, new and modified sources, source sampling requirements, and lead ambient monitoring requirements. EPA's review of these standards indicated that the new source review portion of the rule was deficient because it did not require that a full ambient air quality analysis be conducted for all new or modified sources. Also, the State failed to include in the submittal the adopted version of the test methods required in this Section. EPA pointed out these deficiencies in the proposal notice.

The Tennessee Division of Air Pollution Control corrected all of the deficiencies detailed in EPA's proposal, which elicited no comments from the public. The corrected version of the SIP was submitted for EPA's approval on June 4, 1984. The regulatory portions of the SIP are not yet in effect in the State, however. To meet the terms of the United States District Court for the District of Columbia's July 26, 1983 Order in *NRDC* v. *Ruckelshaus*, No. 82-2137, EPA is today approving only the control strategy portion of the Tennessee lead SIP and is disapproving its regulatory portions. EPA will at a later date propose promulgation of regulations needed to implement the control strategy.

The State operates a lead monitoring network in accordance with the requirements contained in 40 CFR Part 58. Additional monitoring sites will be established as near as possible to point of maximum ambient impact of the three major lead emitting sources. The public may inspect the description of the monitoring network for lead at the Tennessee address listed above.

Action

EPA today approves the control strategy demonstration of the Tennessee

lead SIP, and disapproves its regulatory portions. These actions are effective thirty days from this date.

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 October 9, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This rule will not have a significant economic impact on a substantial number of small entities because it imposes no requirements beyond those specified in existing Federal regulations.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response are available for public inspection at the EPA Region IV office (see **ADDRESS** above).

Incorporation by reference of the Tennessee State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

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: July 31, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. Section 52.2220 is amended by adding paragraph (c)(59) as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * *

(59) Control strategy demonstration for lead, submitted on June 4, 1984, by the Tennessee Department of Health and Environment.

2. A new § 52.2229 is added as follows:

§ 52.2229 Rules and regulations.

(a) The regulatory portions (source-specific permits and other regulations) of the Tennessee lead SIP submitted on June 4, 1984, are disapproved because they were not in effect in the State at the time of submittal.

(b) [Reserved].

[FR Doc. 84-20882 Filed 8-6-84; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 271

[WH-FRL-2635-3]

Georgia: Decision on Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on Georgia's Application for Final Authorization.

SUMMARY: Georgia has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Georgia's application and has reached a final determination that Georgia's Hazardous Waste Program satisfies all of the requirements necessary for Final Authorization. Thus, EPA is granting Final Authorization to the State to operate its program in lieu of the Federal program.

EFFECTIVE DATE: Final Authorization for Georgia, for purposes of judicial review, shall be effective at 1:00 p.m. Eastern time on August 21, 1984.

FOR FURTHER INFORMATION CONTACT: Allan E. Antley, Chief, Waste Planning Section, Residuals Management Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. (404) 881-3016.

SUPPLEMENTARY INFORMATION: Section 3006 of RCRA allows the EPA to authorize state hazardous waste management programs to operate in the state in lieu of the Federal program. To qualify for Final Authorization, a state's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other state programs, and (3) provide for adequate enforcement (Section 3006 (b) of RCRA, 42 U.S.C. 6226(b)).

On February 6, 1984, Georgia submitted a complete application to obtain Final Authorization to administer an RCRA program. On May 7, 1984, EPA published a tentative decision announcing its intent to grant Georgia Final Authorization. Further background on the tentative decision appears at 49 FR 19341, May 7, 1984.

Along with the tentative determination, EPA announced the availability of the State's application for public review and comment and the date of a public hearing on the application. The public hearing was not held as scheduled on June 6, 1984, since neither EPA nor the Georgia Department of Natural Resources received significant interest in holding the hearing.

To date, all RCRA hazardous waste management permits in Georgia have been issued by the State under the authority granted to the State during interim authorization. Therefore, there will be no change in the status of permits or permitting authority on the effective date of this rule.

Georgia is not authorized by the Federal government to operate the RCRA program on Indian Lands and this authority will remain with EPA.

Decision

It is my conclusion that Georgia's Application for Final Authorization meets all of the regulatory and statutory requirements established by RCRA.

Accordingly, Georgia is granted Final Authorization to operate its hazardous waste management program. This means that Georgia now has the responsibility for permitting treatment, storage and disposal facilities within its borders and for carrying out all other aspects of the RCRA program. Georgia also has primary enforcement responsibility, although EPA retains the right to take enforcement action under Section 3008 of RCRA.

Compliance With Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Georgia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and

7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b), and EPA delegation 8-7.

Dated: July 13, 1984.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 84-20678 Filed 8-6-84; 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; Final Rule To Determine Frankenia Johnstonii (Johnston's Frankenia) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines a plant, *Frankenia johnstonii* (Johnston's frankenia), to be an endangered species under the Endangered Species Act of 1973, as amended. This species is known from two counties in Texas and one locality in Mexico. About 1,000 plants are known to exist within a 35-mile-radius area in Texas; several hundred plants occur in Mexico. The plants are not reproducing well and show signs of having been browsed by cattle. There is no current management plan for Johnston's frankenia, nor is there State or Federal protection. This action implements the protection provided by the Endangered Species Act for this plant.

DATES: The effective date of this rule is September 6, 1984.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Region 2, 421 Gold Avenue SW., Room 407, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972).

FOR FURTHER INFORMATION CONTACT: Dr. Russell L. Kologiski, Botanist, U.S. Fish and Wildlife Service, Endangered Species Office, Region 2 (see ADDRESSES above), or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

Frankenia johnstonii is a member of the family Frandeniaceae and was first collected and described by Dr. D. C. Correll in 1966. There are 5 populations known in Texas, and another population is known from near Monterrey, Mexico. The most distinctive features of the plant are its blue-green color and wiry appearance. The plants are small perennial shrubs, usually about 31 centimeters tall, but individuals may be up to 62 centimeters. The roots are wiry and dark brown. The leaves and numerous stems are grayish- or bluish-green and have a covering of very short whitish hairs. The leaves are somewhat oblong in shape, about 13 millimeters long and 4 millimeters wide. The single, white flowers are 5-petaled and small, about 4 millimeters long. Flowering is from September to May (Correll and Johnston, 1970). Pollination is mainly by bees and flies. Seed set in natural populations is less than 50 percent and seedlings are very rarely observed. Experimental pollination attempts have also resulted in less than 50 percent seed set (Turner, 1980).

Frankenia johnstonii occurs in relatively small populations in highly specialized habitats on rocky gypseous hillsides or saline flats (Whalen, 1980). It occurs in soils of the Maverick series at the most saline end of the range for that series. All known populations are located on privately owned lands. The branches of most plants are hedged or clipped as is common on plants which have been grazed by cattle.

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. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice 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 1973 Act (Section 4(c)(3)(A) now), and of its intention thereby to review the status of the plant taxa included therein. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Frankenia johnstonii* was included in the Smithsonian report, the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. Therefore, on December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, which included *Frankenia johnstonii*.

Frankenia johnstonii was again included in category 2 of the list of plants under review for threatened or endangered classification in the December 15, 1980, **Federal Register** (42 FR 82480). Category 2 included those taxa for which more information was needed to biologically support a determination to list the species. A status report compiled in 1980 and investigations carried out by Service and other botanists since December 1979 (Whalen, 1980; Turner, 1980) have provided new biological data concerning *Frankenia johnstonii*, including information on the low number of plants, low reproduction, and grazing pressure. This new information, as well as data previously available to the Service, formed the basis for the July 8, 1983, proposed rule (48 FR 31414) and for the present determination of this species as endangered.

Summary of Comments and Recommendations

In the July 8, 1983, proposed rule (48 FR 31414) and associated notifications, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in *The Monitor* in McAllen, Texas, on August 3, 1983, which invited general public comments. A total of six comments were received on the proposal, one each from the Texas Parks and Wildlife Department, the U.S. Soil Conservation Service, the National Park Service, the International Union for the Conservation of Nature and Natural Resources, a professional botanist, and an interested private individual. No public hearing was requested or held.

The Texas Parks and Wildlife Department submitted comments in support of the proposal. It also pointed out that under Chapter 88 of the Texas Parks and Wildlife Code, any Texas plant that is placed on the Federal list as endangered is required to also be listed by the State of Texas as endangered. Thus, this rule will provide both State and Federal protection for *Frankenia johnstonii*.

The National Park Service stated that it had no new information on the species, and as it did not occur on its

lands it had no comment on the proposal. The International Union for the Conservation of Nature and Natural Resources also had no comments on the proposal.

The U.S. Soil Conservation Service commented that it knew of no reason why *Frankenia johnstonii* should not be listed, and that it was not aware of any populations other than those already mentioned in the proposal.

In addition, a professional botanist who is the leader of the Texas Plant Recovery Team, submitted comments in support of the proposal.

An interested private individual submitted several questions concerning the possibility of vegetative reproduction, how recently the type locality had been searched, what the populations at the type locality were in 1966, and what habitat characteristics would be most beneficial for the species' survival. The Service responded to his inquiries by stating that there is no evidence of natural vegetative reproduction in this species and that no attempts are known to have been made to vegetatively propagate it in nurseries, that the type locality was last searched in 1980, that the population at the type locality when it was discovered in 1966 was probably only a few plants (these are no longer proven to exist), and that the habitat characteristics for the species were described in more detail in the status report (Turner, 1980), a copy of which was enclosed.

Due to an inadvertent oversight, the Mexican Government was not contact at the time when the proposed rule was published. However, Mexico was notified of the proposed action on April 22, 1984, and requested to submit its data, comments, and/or opinions on the proposal by May 20, 1984. The Mexican Government has not responded to this request.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Frankenia johnstonii* should be classified as an endangered species. Procedures found at 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 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Frankenia johnstonii* Correll (Johnston's frankenia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* There are 6 known populations of *Frankenia johnstonii*. Five occur in Zapata and Starr Counties in southern Texas on grazing lands owned by approximately 5 private landowners. One of the populations in Starr County consists of about 200-400 plants scattered over 15–20 acres. Two other Starr County populations consist of several hundred individuals, each on less than 1 acre. One Zapata County population has 50–100 plants in an area of less than 1 acre. The other Zapata County population (the type locality) has not been relocated despite extensive search, and may no longer exist. There are several hundred plants in population in Nuevo Leon, Mexico, which covers 4 to 5 acres of privately owned land. All populations are on rangeland that is in poor condition. The populations show low reproduction, and could be adversely impacted by any habitat change brought about by land and vegetation manipulation such as chaining or plowing. All known populations occur on private land; thus, the Endangered Species Act would not restrict land use *per se*, unless Federal activities, funds, or authorizations are involved. Modification of the habitat could occur and result in destruction of some of the populations.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Critical habitat is not being proposed because of the potential for collecting and vandalism. All of the populations are on private land and therefore are not protected from taking by the Endangered Species Act.

C. *Disease or predation.* All the known populations are located in heavily grazed areas. The branches of most of the *Frankenia johnstonii* appear to be hedged or clipped, a characteristic of plants that have been grazed by cattle. Grazing on these populations may also be partially responsible for the low reproductive rate. The tender new shoots of plants are often preferred forage for livestock, and are cropped off shortly after emergence. Grazing could not only affect the *Frankenia johnstonii* populations directly, but could also have an indirect adverse effect by altering the habitat of which the *Frankenia johnstonii* is a part.

D. *The inadequacy of existing regulatory mechanisms.* There are currently no State or Federal laws protecting Johnston's frankenia. However, once this species is added to the Federal list of endangered species, Chapter 88 of the Texas Parks and Wildlife Code requires that it also be added to the Texas list of endangered species.

E. *Other natural or manmade factors affecting its continued existence.* Reproduction in *Frankenia johnstonii* is occurring at a very law rate. Seed set in natural populations is less than 50 percent and seedling are very rarely observed. Because of this low reproductive rate, the low population numbers, and the restricted habitat, any natural or human-caused environmental change could have an effect on *Frankenia johnstonii*. There is a low pool of genetic variability because of the low numbers, resulting in a reduced ability of the species to tolerate stresses and loss of individuals. Any loss of individuals from these populations could cause irreversible decreases of the populations, especially when the added impacts of grazing are considered.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Frankenia johnstonii* as endangered. Given the small number of plants, their restricted distribution, the impact of grazing on them, and the low reproductive potential of the species, *Frankenia johnstonii* must be regarded as a species in danger of becoming extinct. Therefore, a threatened classification would not be appropriate. A critical habitat determination would not be appropriate because it might pose an increased threat to the species (see discussion under heading Critical Habitat). A decision to take no action would exclude this species from the protection of the Endangered Species Act. Therefore, no action or listing as threatened would be contrary to the Act's intent.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. If exact localities for *Frankenia johnstonii* were published in the **Federal Register** the species might be additionally threatened by taking and vandalism. All known populations occur on privately owned lands and the Endangered Species Act of 1973, as amended, does not prohibit taking of plants on non-Federal lands.

Since publication of critical habitat maps might make this species more vulnerable, it is not prudent to do so 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 by 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 50 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 informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. 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 species. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Frankenia johnstonii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the U.S. to import or export, transport in interstate or foreign commerce in the course of a commerical 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 for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. International and interstate commercial trade in *Frankenia johnstonii* is not known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be issued since this plant is not common in the wild and is not presently in cultivation.

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. This new prohibition now applies to *Frankenia johnstonii*. However, the plant is not known to occur on Federal land. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417) and these will be made final following public comment. No taking permits are expected to be requested.

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).

The Service will now review this species to determine whether it should be considered for placement upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

The U.S. 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

Correll, D.S. 1966. *Frankenia johnstonii* Correll sp. nov. Rhodora 68:424–425.

Correll, D.S., and M.C. Johnston. 1970. Manual of the Vascular Plants of Texas. Texas Research Foundation, Renner, Texas. xiii + 1881 pp.

Turner, B.L. 1980. Status report on *Frankenia johnstonii* Correll. Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 7 pp.

Whalen, M. 1980. Systematic study of the American species of the genus *Frankenia*. Ph.D. Dissertation, University of Texas, Austin, Texas.

Authors

The primary author of this rule is Sandra Limerick, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended 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. Amend § 17.12(h) by adding the following, in alphabetical order, 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					
•	•	•	•	•	•	
Frankeniaceae—Frankenia family:						
Frankenia johnstonii	Johnston's frankenia	U.S.A. (TX) Mexico (Nuevo Leon).	E	NA	NA.	
•	•	•	•	•	•	

Dated: July 6, 1984.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

(Final: *Frankenia johnstonii* (Johnston's frankenia)—endangered)

[FR Doc. 84-20852 Filed 8-6-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

Final Frameworks for Selecting Early Hunting Seasons on Certain Migratory Game Birds in the United States for the 1984–85 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final frameworks (i.e., the outer limits for dates and times when shooting may begin and end, hunting areas, and the numbers of birds which may be taken and possessed) for early season migratory bird hunting regulations from which States may select season dates and daily bag and possession limits for the 1984–85 season. These seasons may open prior to October 1, 1984, and apply to mourning doves; white-winged doves; band-tailed pigeons; rails; woodcock; snipe, gallinules; teal (September only, in designated States); sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; an experimental early goose season framework in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; and special falconry seasons.

DATES: Effective on August 7, 1984. Season selections are due from the States by July 27, 1984. Selected season dates are to be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) by July 27, 1984, for publication in the **Federal Register** as amendments to §§ 20.103 through 20.106 of 50 CFR Part 20.

ADDRESSES: Season selections from States are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received are available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, Department of the Interior, Washington, D.C. 20240, telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: On March 23, 1984, the U.S. Fish and Wildlife Service published for public comment in the **Federal Register** (49 FR 11120) proposals to amend 50 CFR Part 20, with comment periods ending June 21, 1984, for Alaska, Hawaii, Puerto Rico and the Virgin Islands frameworks; July 16 (later extended to July 18), 1984, for other early season frameworks; and August 17, 1984, for late season frameworks. That document dealt with establishment of seasons, limits and shooting hours for migratory game birds under §§ 20.101 through 20.107 of Subpart K. A supplemental proposed rulemaking for both the early and late hunting season frameworks appeared in the **Federal Register** dated June 13, 1984 (49 FR 24417).

On June 21, 1984, a public hearing was held in Washington, D.C., to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged doves, sandhill cranes and other species. The meeting was announced in the **Federal Register** on March 23, 1984 (49 FR 11120) and June 13, 1984 (49 FR 24417). Proposed hunting regulations were discussed for these species and for common snipe; rails; gallinules; September teal seasons in the Mississippi and Central Flyways; early duck seasons in Florida, Iowa, Kentucky and Tennessee; special sea duck seasons in the Atlantic Flyway; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; falconry seasons and hunting regulations for Alaska, Puerto Rico and the Virgin Islands. Public comments on these matters were received.

On July 9, 1984, the Service published in the **Federal Register** (49 FR 28026) a third document in the series of proposed and final rulemaking documents dealing specifically with proposed frameworks for the 1984–85 season from which, when completed, wildlife conservation agency officials may select season dates for hunting certain migratory birds in their respective jurisdictions during the 1984–85 season. On July 19, 1984, the Service published in the **Federal Register** (49 FR 29238) a fourth document in the series which dealt specifically with final frameworks for Alaska, Puerto Rico and the Virgin Islands.

This rulemaking is the fifth in the series and deals specifically with final frameworks for other early season migratory game bird hunting regulations from which State wildlife conservation agency officials may select season dates and daily bag and possession limits for the 1984–85 season. These seasons may open prior to October 1, 1984, and apply to mourning doves; white-winged doves; band-tailed pigeons; rails; woodcock; snipe; gallinules; teal (September only, in designated States); sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; and experimental early goose season framework in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; and special falconry seasons.

These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Review of Public Comments

The Service has already responded to earlier comments on proposed regulations published in the **Federal Register** on March 23, 1984 (49 FR 11120) and June 13, 1984 (49 FR 24417), and discussed at the June 21, 1984, Public Hearing in Washington, D.C. These responses appeared in the **Federal Register** on June 13, 1984 (49 FR 24417), July 9, 1984 (49 FR 28026), and July 19, 1984 (49 FR 29238). Three additional

comments, relating to proposed early season frameworks, have been reviewed and are discussed here. They include comments by one State representative and two individuals. They are discussed in the same order as the items, to which they apply, were listed in previous 1984 Federal Register publications.

6. *September Teal Season.* A correspondent from Georgia expressed concern that Florida was allowed to hunt teal in September while Georgia was not, even though both States shoot essentially the same teal population. He proposed that Georgia be permitted to take 4 days of the regular duck season in September for the purpose of hunting early migrating teal.

Response. The Service notes that a teal only season in September is not offered in Florida or elsewhere in the Atlantic Flyway. Although September seasons in which teal only may be hunted are permitted in some States in the Mississippi and Central Flyways the Service does not favor expanded use of such seasons. Since only teal are legal during these special seasons and they are commonly intermingled with numbers of other species there is no margin for inadvertent duck identification errors by hunters. In lieu of a September teal season, States in the Atlantic Flyway that select conventional rather than point system regulations may take two additional teal per day (four in possession) during 9 consecutive days of the regular duck season beginning no earlier than October 1.

In order to explore alternatives to September teal seasons four States, including Florida, are engaged in experimental September duck seasons. These experiments have not yet been completed. The service believes it desirable to fully evaluate these experimental seasons before considering additional requests for September duck seasons.

21. *Woodcock.* The New York State Department of Environmental Conservation reiterated their view that an October 1 opening date for woodcock hunting is inappropriate and inequitable in New York and that the woodcock opening in New York should be September 20. They state that the reduction in woodcock harvest associated with an October 1 opening falls far more heavily on hunters in New York than in other States (43 percent vs 27 percent fewer woodcock harvested) and substantially exceeds the harvest reduction objective intended for the Atlantic Flyway States generally. They requested that the Service offer regulatory options from which States could make satisfactory selections while meeting Atlantic Flyway objectives for woodcock management.

Response. The Service believes that the actual reduction in woodcock harvests effected by an October 1 opening is less than suggested by the figures cited above. This is believed to be due partly to incomplete estimates of harvest and partly to a reduced woodcock population in the Atlantic Flyway in 1982 and 1983. The present system of woodcock harvest regulations calls for uniform frameworks for hunting seasons throughout a management unit such as the Atlantic Flyway. The Service is willing to explore the feasibility of other approaches for possible future application in consultation with New York and other States in the Flyway. The Service has previously announced its intention to call a meeting to review the status and management of Atlantic Flyway woodcock (48 FR 35102, August 3, 1983; and 49 FR 28028, July 9, 1984) in late 1984 or early 1985. Questions about management objectives and hunting regulations would be an appropriate part of such review. In the meantime, in view of the continuing decline in eastern woodcock populations it appears that the current frameworks, including an October 1 opening date, should apply for the 1984–85 hunting season.

23. *Mourning Doves.* One Texas hunter objected to the proposed mourning dove zone boundary separating the Central and South Zones in Texas and requested that the boundary be shifted further south in the immediate vicinity of San Antonio in order to allow an opening date of September 1 rather than September 20 in that area. He stated that since the affected area comprises less than one-tenth of one percent of the area of Texas, the impact on the national dove population would be negligible, but the economic impact on the affected area would be substantial.

Response. The Service, in consultation with State authorities, has examined biological information accumulated over a period of years and concluded that mourning dove seasons in south Texas should be open later than those in central and northern Texas. The proposed zones were established after careful review of all available information on dove nesting cycles in various major ecological units in Texas. The proposed boundary was selected because it separates areas with generally differing ecological characteristics and season requirements, and is prominent and readily discernible by hunters. While it is possible that there could be some adverse economic impacts on certain hunting operations in the affected area it has not been demonstrated that these will necessarily occur. The Service believes that the proposed boundary changes are highly desirable for proper management and conservation of mourning doves in Texas and that mourning dove hunting opportunity in the affected area will remain highly satisfactory and economically viable.

Comments received are available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act "[and]" * * * by taking such action necessary to insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species * * * which is determined to be critical." The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On July 5, 1984, the Chief, Office of Endangered Species, concluded that the proposed actions were not likely to jeopardize the continued existence of listed species.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for

inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 23, 1984 (49 FR 11120), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Memorandum of Law

The Service published its Memorandum of Law, as required by section 4 of Executive Order 12291, in the **Federal Register** dated July 19, 1984 (49 FR 29238).

Authorship

The primary author of this final rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed rules were published March 23, June 13, and July 9, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that at the periods' close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that States would have insufficient time to select their season dates, shooting hours and limits; to communicate those selections to the Service; and finally establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from State officials, the Service will publish in the **Federal Register** final rulemaking amending 50 CFR Part 20 to reflect seasons, limits, and shooting hours for the contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands for the 1984–85 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Final Regulations Frameworks for 1984–85 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved final frameworks which prescribe season lengths, limits, shooting hours and outside dates within which States may select seasons for mourning doves; white-winged doves; band-tailed pigeons; rails; woodcock; snipe; gallinules; September teal seasons; experimental duck seasons opening in September in Iowa, Florida, Kentucky, and Tennessee; sea ducks (scoter, eider and oldsquaw) in certain defined areas of the Atlantic Flyway; sandhill cranes; sandhill cranes-Canada geese in southwestern Wyoming; experimental early goose framework in a portion of Michigan; and special extended falconry regulations. For the guidance of State conservation agencies, these frameworks are summarized below.

**** Notice ****

Any State desiring its hunting seasons for mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe, gallinules, sandhill cranes or special falconry seasons to open in September must make its selection no later than July 27, 1984. States desiring these seasons to open after September 28 may make their selections at the time they select regular water fowl seasons. Season selections for the 4 States offered experimental September duck seasons must also be made by July 27, 1984.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than July 27, 1984. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between ½ hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1984, and January 15, 1985, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively, or not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Shooting Hours: Between ½ hour before sunrise and sunset daily.

Zoning: Alabama, Georgia, Illinois, Louisiana and *Mississippi* may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia—U.S. Highway 280 from Columbus to the Little Ocmulgee River, down the Little Ocmulgee to the Ocmulgee River, southwesterly along the Ocmulgee River to the western border of Jeff Davis County, south along the western border of Jeff Davis County, east along the southern border of Jeff Davis and Appling Counties, north along the eastern border of Appling County to the Altamaha River, east along the Altamaha River to the eastern border of Tattnall County, north along the eastern boundary of Tattnall County, north along the western border of Evans County to Candler County, east along the northern border of Evans County to Bulloch County, north along the western

border of Bulloch County to Highway 301, then northeast along Highway 301 to the South Carolina line.

Illinois—U.S. Highway 36.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1984.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming)

Hunting Seasons and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively, or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning: Option 1—In addition to the basic framework and the alternative, Texas may select hunting seasons for each of 2 previously established zones subject to the following conditions:

A. The hunting season may be split into not more than 2 periods.

B. The North Zone may have a season of not more than 70 (or 60 under the alternative) days between September 1, 1984 and January 25, 1985.

C. The South Zone may have a season of not more than 70 (or 60 under the alternative) days between September 20, 1984, and January 25, 1985. In that portion of Texas where the special 4-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves. However, the remaining days must be within the September 20, 1984–January 25, 1985, period (see white-winged dove frameworks).

D. The daily bag limit may not exceed 12 mourning, white-winged, and white tipped (white-fronted) doves in the aggregate including no more than two white-winged and two white-tipped doves per day; and the possession limit may not exceed 24 mourning, white-winged, and white-tipped doves in the aggregate including no more than four white-winged and four white-tipped in possession. This modification would permit a limited harvest of white-winged and white-tipped doves while still protecting the breeding populations of these species.

Option 2—Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then southeast on U.S. 87 to the Port Lavaca Channel and along the Channel to the Gulf of Mexico.

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 4-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1984 and January 25, 1985; the South zone between September 20, 1984 and January 25, 1985.

C. Except during the special 4-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

Western Management Unit

(Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively.

In all states except Arizona, not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Hawaii

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 60 days with bag and possession limits of 10 and 20, respectively.

White Winged Doves

Outside Dates: Arizona, California, Nevada, New Mexico and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1984. *Florida* may select hunting seasons between September 1, 1984 and January 15, 1985.

Arizona may select a hunting season of not more than 29 consecutive days running concurrently with the first period of the split mourning dove season. The daily bag limit may not exceed 12 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial, Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24,

respectively, with a 70-day season, or 15 and 30 if the 60-day option for mourning doves is selected; however, in either season, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged mourning, and white-tipped (white-fronted) doves in the aggregate including no more than two mourning doves and two white-tipped doves per day; and the possession limit may not exceed 20 white-winged, mourning and white-tipped doves in the aggegate including no more than four mourning doves and four white-tipped doves in possession; and

In addition, *Texas* may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1984, and January 25, 1985, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be whitewings and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be whitewings and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1984, and January 15, 1985, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 is the 60-day option for mourning doves if selected); however, in either season, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

Band-Tailed Pigeons

Pacific Coast States: California, Oregon, Washington and the Nevada Counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside Dates: Between September 1, 1984, and January 15, 1985.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with a bag and possession limit of 5. Each band-tailed pigeon hunter in Nevada must have in possession while hunting a permit issued by the State for the purpose of collecting harvest and hunter participation data.

Zoning: California may select hunting seasons of 30 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-Corners States: Arizona, Colorado, New Mexico and Utah.

Outside Dates: Between September 1 and November 30, 1984.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1984, in the North Zone and October 1 and November 30, 1984, in the South Zone.

Rails

(Clapper, King, Sora and Virginia)

Outside Dates: States included herein may select seasons between September 1, 1984, and January 20, 1985, on clapper, king, sora and Virgina rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits: In *Rhode Island, Connecticut, New Jersey, Delaware* and *Maryland*, 10 and 20, respectively, singly or in the aggregate of these two species. In *Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina* and *Virginia*, 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits: In the Atlantic, Mississippi and Central [1] Flyways, and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway,[2] 25 daily and 25 in possession, singly or in the aggregate of the two species.

Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1984, and February 28, 1985. In *Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland* and *Virginia*, the season must end no later than January 31. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1984, and February 28, 1985.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 55 days.

Common Snipe

Outside Dates: Between September 1, 1984, and February 28, 1985. In *Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland* and *Virginia* the season must end no later than January 31.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of *Montana, Wyoming, Colorado* and *New Mexico*. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

---

[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah and Washington; those protions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

Gallinules

Outside Dates: September 1, 1984, through January 20, 1985 in the Atlantic and Mississippi Flyways and Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway seasons may be the same as the duck seasons. Seasons may be split. Bag and possession limits are 15 and 30, respectively; except in the Pacific Flyway the daily bag and possession limits may not exceed 25 coots and gallinules, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway

Seasons not to exceed 58 days between September 1, 1984, and February 28, 1985, may be selected in the following States: *Colorado* (the Central Flyway portion except the San Luis Valley); *Kansas; Montana* (the Central Flyway portion except that area south of I–90 and west of the Bighorn River); *North Dakota* (west of U.S. 281); *South Dakota;* and *Wyoming* (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1984 and February 28, 1985 may be selected in the following States: *New Mexico* (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); *Oklahoma* (that portion west of I–35); and *Texas* (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary).

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill cranes season must obtain and have in his possession while hunting, a valid Federal sandhill crane hunting permit. Exceptions are made for experimental seasons described below where State permits are required.

Experimental Seasons in New Mexico: New Mexico may select experimental seasons, to be described in detail in State hunting reglations, in portions of Dona Ana, Luna and Sierra Counties as follows:

Area 1 (those portions of Dona Ana, Luna and Sierra Counties west of Interstate Highway 25, north of Interstate Highway 10, east of New Mexico Highways 26 and 27 between Deming and Hillsboro, and south of New Mexico Highway 90): October 27–29, 1984; December 15–17, 1984; and January 12–14, 1985, not to exceed 40 special permits during each season; and

Area 2 (that portion of Luna County south of Interstate Highway 10): October 27–29, 1984; December 15–17, 1984; and January 12–14, 1985, not to exceed 75 special permits during each season.

Bag and Possession Limits: Not to exceed 3 cranes which must be tagged upon taking.

Permits: Each person participating in the experimental seasons must obtain and have in possession while hunting, a valid special permit issued by the State of New Mexico.

Experimental Season in Arizona: Arizona may select an experimental sandhill crane season subject to the following conditions:

1. The season may not exceed 4 days in November 1984.

2. The hunting area is confined to Game Management Units 30A, 30B, 31, and 32.

3. Each hunter must obtain and have in possession while hunting a special permit issued by the State. No more than 200 permits may be issued. Each permittee may take 2 sandhill cranes per season.

4. Emergency closures for all crane hunting may be invoked as necessary.

Special Sandhill Crane-Canada Goose Season

Wyoming may select an experimental season on sandhill cranes and Canada geese subject to the following conditions:

1. The season will be September 1–14, 1984.

2. Hunting will be by State permit, with 125 permits issued for the Bear River drainage and 125 permits issued for Star Valley, all in Lincoln County. Each permittee may take 2 sandhill cranes and 3 Canada geese per season.

3. Emergency closures for all crane hunting may be invoked as necessary.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1984, and January 20, 1985.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: In the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in *Maine, New Hampshire, Massachusetts, Rhode Island* and *Connecticut;* in those coastal waters of the State of *New York* lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of *New York* lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in *New Jersey, South Carolina* and *Georgia;* and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in *Delaware, Maryland, North Carolina* and *Virginia;* and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

Deferred Selection: Any State desiring its sea duck season to open in September must make its selection no later than July 27, 1984. Any State desiring its sea duck season to open after September may make its selection at the time it selects the waterfowl season.

September Teal Season

Outside Dates: Between September 1 and September 30, 1984, an open season on all species of teal may be selected by *Alabama, Arkansas, Colorado* (Central Flyway portion only), *Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico* (Central Flyway portion only), *Ohio, Oklahoma, Tennessee* and *Texas* in areas delineated by State regulations.

Hunting Seasons, and Bag and Possession Limits: Not to exceed 9 consecutive days, with bag and possession limits of 4 and 8, respectively.

Shooting Hours: From sunrise to sunset daily.

Deadline: States must advise the Service of season dates and special provisions to protect non-target species by July 27, 1984.

Special September Duck Seasons

Iowa September Duck Season: Iowa may experimentally hold a portion of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. In 1984, the 5-day season segment may commence no earlier than September 22, with daily bag and possession limits being the same as those in effect during the 1984 regular duck season.

Tennessee, Kentucky and Florida September Duck Seasons: Experimental 5-consecutive-day duck seasons may be selected in September by *Tennessee, Kentucky* and *Florida* subject to the following conditions:

1. In *Kentucky* and *Tennessee* the seasons will be in lieu of September teal seasons;

2. In all States, the daily bag limit will be 4 ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit;

Experimental September Goose Season

Michigan—In the counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee and Ontonagon, the framework opening date for geese is September 26. Season length and limits for geese in this area will be established later with other regulations for the regular waterfowl season.

Special Falconry Regulations

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September seasons, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: July 27, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-20821 Filed 8-6-84; 8:45 am]

BILLING CODE 4310-55-M

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; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document adds four figures, or maps for illustrative purposes, which were not included with the final rule for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic that was published on July 23, 1984, 49 FR 29607. It also corrects a specification incorrectly published in the regulatory text.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

Dated: August 2, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

§ 638.2 [Corrected].

In FR Doc. 84-19420, appearing on page 29610 in the issue of July 23, 1984, column 3. In § 638.22, reference is made to the following figures which are included in this correction:

(1) In paragraph (a) *West and East Flower Garden Banks* refers to Figures 1A and 1B;

(2) In paragraph (b) *Florida Middle Grounds* refers to Figures 2; and

(3) In paragraph (c) *The Oculina Bank* refers to Figure 3; also the specification in the third line from the bottom is corrected from "80°'OW. longitude" to "80°0'W. longitude."

BILLING CODE 3510-22-M

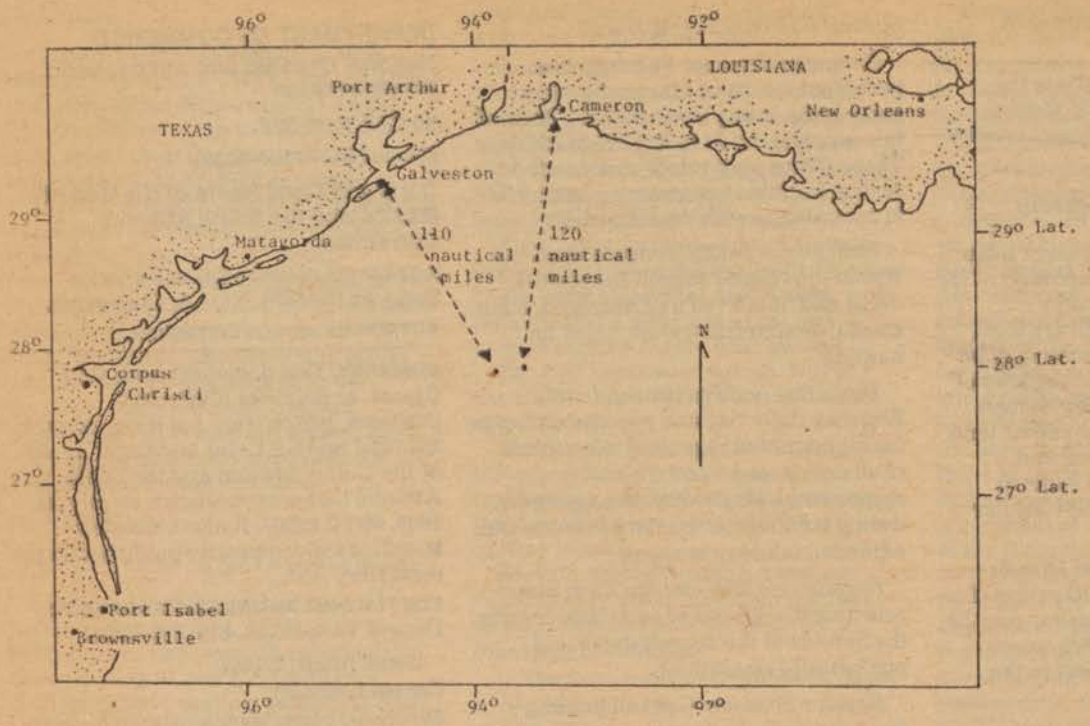


Figure 1A EAST AND WEST FLOWER GARDENS HABITAT AREAS OF PARTICULAR CONCERN

(Map for illustrative purposes only NOT TO SCALE)

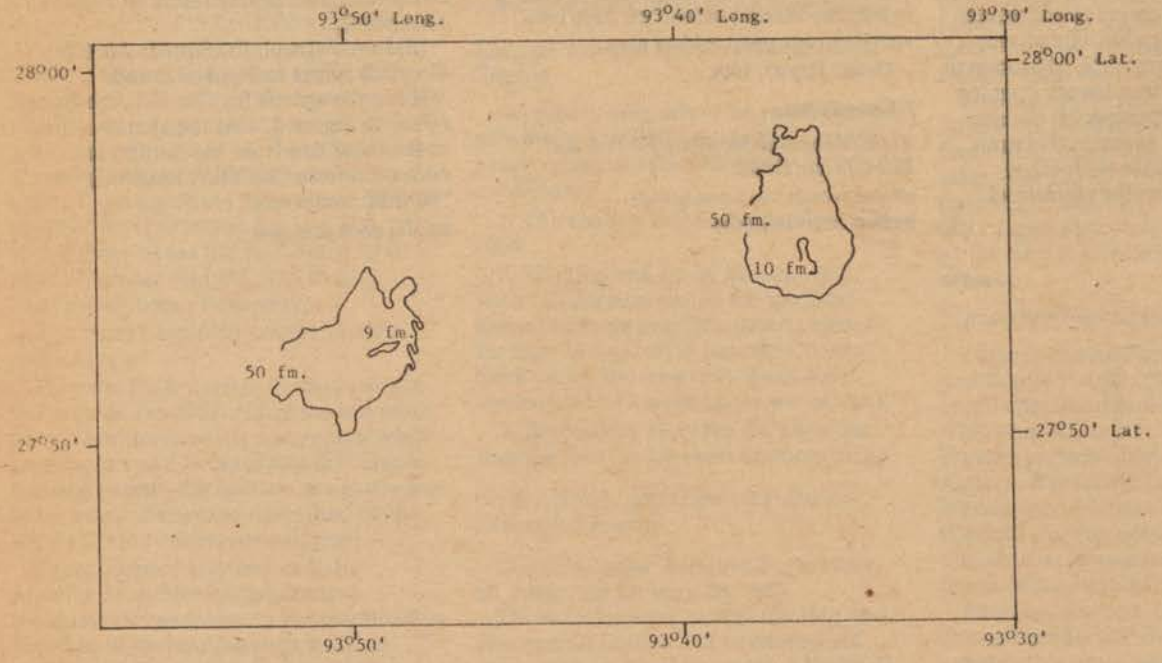


Figure 1B EAST AND WEST FLOWER GARDENS HABITAT AREAS OF PARTICULAR CONCERN

(Map for illustrative purposes only NOT TO SCALE)

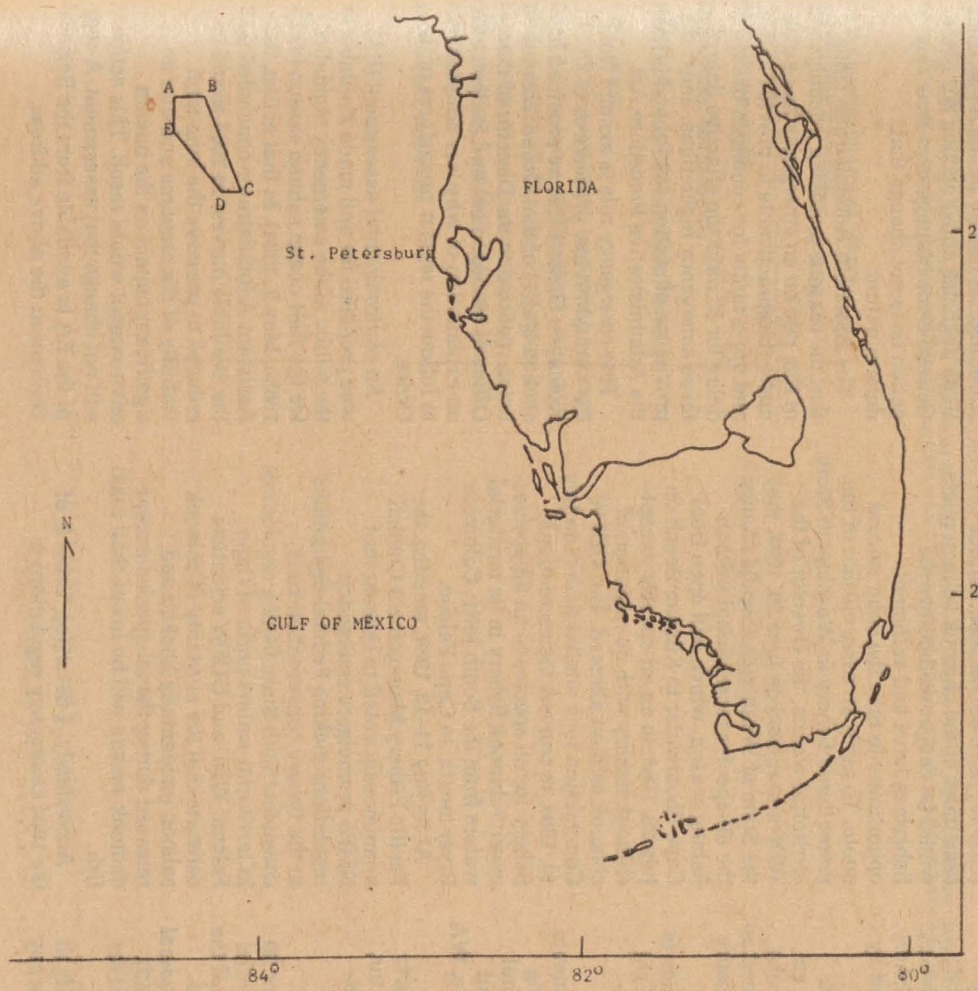


Figure 2. Florida Middle Grounds Habitat Area of Particular Concern

(Map for illustrative purposes only NOT TO SCALE)

[FR Doc. 84-20887 Filed 8-6-84; 8:45 am]

BILLING CODE 3510-22-C

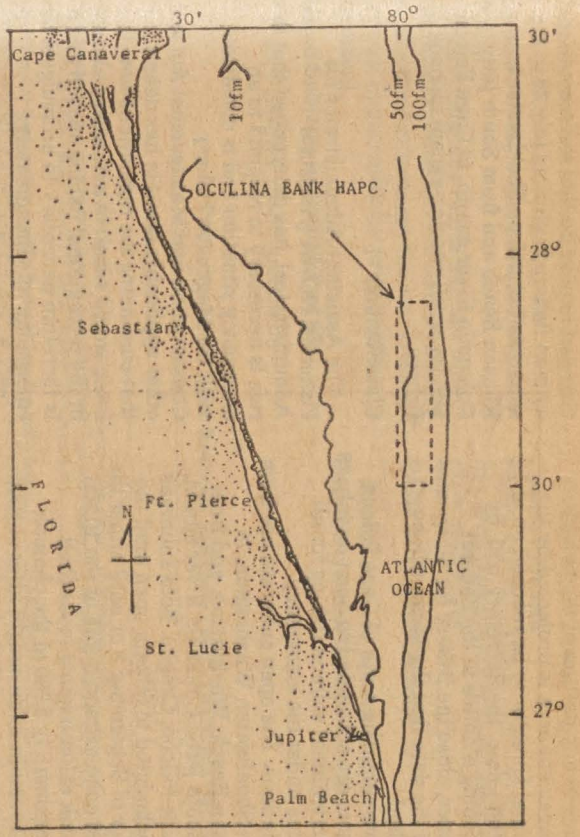


Figure 3. Oculina Bank Habitat Area of Particular Concern

(Map for illustrative purposes only NOT TO SCALE)

50 CFR Part 652

[Docket No. 40790-4090]

Atlantic Surf Clam and Ocean Quahog Fisheries

Correction

In FR Doc. 84-20495 beginning on page 30946 in the issue of Thursday, August 2, 1984, make the following corrections:

1. On Page 30947, column 2, last paragraph, line 3, "(20)" should read "(2)".

2. On page 30948 column 1, line 11, "1901" should read "1801".

BILLING CODE 1505-01-M

---

50 CFR Part 661

[Docket No. 40791-4091]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

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

ACTION: Emergency rule.

SUMMARY: The Secretary of Commerce issues emergency regulations to change the ocean recreational salmon fishery for the two subareas north of Cape Falcon, Oregon, to Cape Shoalwater, Washington, from an all-species fishery to an all-species-except-chinook fishery. This action, unanimously requested by the Pacific Fishery Management Council, is necessary to provide the ocean recreational salmon fishery an opportunity to harvest the 43,000 coho salmon quota. If the fishery remained an all-species fishery, a premature closure would be inevitable.

EFFECTIVE DATE: This emergency rule is effective at 12:01 a.m. Pacific Daylight Time (PDT) on August 2, 1984, to midnight PDT, September 3, 1984.

ADDRESSES: You may submit comments on this emergency rule to the Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Kruse (Acting Director, Northwest Region, NMFS), 206-526-6150.

SUPPLEMENTARY INFORMATION: Emergency regulations (effective for 90 days) to manage the ocean commercial and recreational salmon fisheries off the coasts of Washington, Oregon, and California were published in the Federal Register on May 3, 1984 (49 FR 18853). These regulations may be extended for an additional 90 days.

The emergency regulations specify at § 661.42(a)(2) that when a quota for any species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the Federal Register, close the fishery for all species as of the date that the quota will be reached.

Two subareas north of Cape Falcon, Oregon, are scheduled to open on July 28 to recreational salmon fishing for all species under the emergency regulations. The open subareas are from Cape Shoalwater, Washington, to Klipsan Beach, Washington, and from the South Jetty, Columbia River mouth, to Cape Falcon, Oregon. Both subareas are scheduled to remain open until the earlier of September 3 or until either the 43,000 coho salmon quota or the 10,300 chinook salmon quota is reached. Approximately 2,700 of the chinook quota remain to be caught after earlier chinook-only recreational seasons. Thus, when the remainder of the 10,300 chinook quota, about 2,700 fish, is caught, the recreational fisheries must be closed.

The Directors of the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW) have determined that the remainder of the chinook salmon quota would be caught well before the fishermen have had sufficient opportunity to take the coho salmon quota. To avert an early closure of the recreational fishery in Washington State territorial waters, the Director of the WDF announced on June 29, 1984, that the State of Washington would change the all-species recreational salmon fishing season, which will open from Cape Shoalwater to Klipsan Beach on July 28, 1984, to an all-species-except-chinook fishery with no retention of chinook salmon allowed. The ODFW Commission took similar action on July 13, 1984, to convert the recreational fishery for all species to an all-species-except-chinook fishery in its territorial waters from the South Jetty, Columbia River mouth, to Cape Falcon.

At its July 11-12, 1984, meeting, the Pacific Fishery Management Council unanimously voted to request that NMFS promulgate emergency regulations making Federal regulations in the fishery conservation zone consistent with State fishing regulations in territorial waters north of Cape Falcon. WDF and ODFW scientists estimate that the mortality of chinook salmon incidentally hooked and released during the all-species-except-chinook season will be fewer than 2,000 fish.

Accordingly, § 661.41(a), Table 2, of the 1984 emergency regulations is changed to provide that the recreational salmon fishery beginning July 28 in the subareas from Cape Shoalwater to Klipsan Beach and from South Jetty, Columbia River mouth, to Cape Falcon will be an all-species-except chinook fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law. He has determined that continuing the regulations now in force would result in a needless closure of the recreational fishing season and it is therefore necessary to promulgate this emergency rule immediately.

The Assistant Administrator has determined that the 1984 emergency regulations for ocean salmon are consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, and California. A copy of this determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. This action does not change that determination.

The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable to provide notice and opportunity for comment, or to delay for 30 days the effective date of these emergency regulations, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that Order.

An environmental assessment (EA) was prepared for and made available to the public in the emergency regulations for the 1984 ocean salmon season (49 FR 18853, May 3, 1984). In that action, the Assistant Administrator concluded that the available harvest in 1984 would be reduced to preserve the long-term viability of the resource and that no significant impact on the human environment would result. This action will not change that assessment. A copy of the EA is available from the Regional Director at the above address.

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

This emergency rule is exempt from the regular procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: August 2, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Services.

PART 661—[AMENDED]

For the reasons set out above, 50 CFR Part 661 is amended as follows:

1. The authority citation for Part 661 reads as follows:

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

2. In § 661.41(a), Table 2 is revised to read as follows:

§ 661.41 Recreational fishing.

* * * * *

Table 2.—Area, Open Seasons and Daily Catch Limits for Recreational Ocean Salmon Fishing

Areas and open seasons [1] [7]	Species	Open zones [2] [3] [4]	Daily bag and length limits [5] [6]
Queets River to Klipsan Beach: May 26 to earlier of June 17 or chinook quota	All except coho	0–6 miles	Two fish legal size.
Cape Shoalwater to Klipsan Beach: July 28 to earlier of Sept. 3 or coho quota	All except chinook	0–200 miles	Do.
South Jetty to Cape Falcon: July 28 to earlier of Sept. 3 or coho quota	do	Only waters within special fishery zone (south of Columbia River mouth) are open.	Do.
Cape Falcon to Cape Blanco: July 9 to earlier of Sept. 3 or coho quota	All salmon	0–200 miles	Do.
Cape Blanco to OR/CA border: July 9 to earlier of Sept. 3 or coho quota	do	do	Do.
Earlier of Sept. 4 or coho quota to Oct. 31	All except coho	do	Do.
OR/CA border to Cape Vizcaino:			
Feb. 18 to June 15	All salmon	0–200 miles except conservation zone 2 (Klamath River mouth) is closed Aug. 1 to Aug. 31.	Do.
July 1 to Nov. 18	do	do	Do.
Cape Vizcaino to U.S./Mexico Border: Feb. 18 to Nov. 18	do	0–200 miles	Do.

[1] Seasons are subject to automatic quota closures. See, § 661.42(a)(2).
[2] Distances shown are in nautical miles and are measured from "0", the nearest point on the shore from which the baseline used to measure the width of the territorial sea is measured.
[3] All areas are subject to inseason quota and season adjustments. See, § 661.42(b).
[4] Conservation zones and special fishery zones are defined in § 661.33.
[5] The daily bag limit may be reduced to one fish in one or more areas during the season. See, § 661.42(c).
[6] Length limits are set forth in the table at § 661.41(c).
[7] In addition to the recreational seasons listed, there will be an all-salmon-except-coho season in State waters (Washington Management Area 4, including 4B) from July 1 to July 27 or chinook quota, and an all-salmon fishery in Washington Management Areas 3 and 4, including 4B, from July 28 to earlier of September 3 or coho quota.

* * * * * * * *

[FR Doc. 84-20685 Filed 8-2-84; 3:49 pm]

BILLING CODE 3510-22-M

---

50 CFR Part 663

[Docket No. 40453-4053]

Pacific Coast Groundfish Fishery

Correction

In FR Doc 84-20430 beginning on page 30948 in the issue of Thursday, August 2, 1984, make the following correction: on page 30950, in the 3rd column, 1st paragraph (c), last line, "50000" should read "5000".

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 49, No. 153
Tuesday, August 7, 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

Federal Grain Inspection Service

7 CFR Part 810

Proposed Amendment to the U.S. Standards for Triticale

Correction

In FR Doc. 84–20085 beginning on page 30480 in the issue of Tuesday, July 31, 1984, make the following corrections:

1. On page 30480, the first column, in the **DATES** section, the Comment deadline should read "October 1, 1984".

2. On page 30482, in §§ 810.656, the table should read as set forth below:

Grade	Minimum test weight per bushel pounds	Maximum limits of—					
		Damaged kernels		Foreign material			
		Heat-damaged percent	Total[1] percent	Material other than wheat or rye percent	Total[2] percent	Shrunken and broken kernels percent	Defects (Total)[3] percent
U.S. No. 1	48.0	0.2	2.0	1.0	2.0	5.0	5.0
U.S. No. 2	45.0	0.2	4.0	2.0	4.0	8.0	8.0
U.S. No. 3	43.0	0.5	8.0	3.0	7.0	12.0	12.0
U.S. No. 4	41.0	3.0	15.0	4.0	10.0	20.0	20.0
U.S. Sample grade:							

U.S. Sample grade shall be triticale which:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contains 8 or more stones, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis*), 4 or more particles of an unknown foreign substance(s), or a commonly recognized harmful or toxic substance(s), or 2 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth per 1,000 grams of triticale; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

[1] Includes heat-damaged kernels.
[2] Includes material other than wheat or rye.
[3] Defects (total includes damaged kernels (total), foreign material (total) and shrunken and broken kernels. The sum of these three factors may not exceed the limit for "defects (total)" for each numerical grade.

BILLING CODE 1505-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Environmental Qualification of Electric Equipment; Removal of June 30, 1982 Deadline

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of Comment Period.

SUMMARY: Because of confusion regarding the finality of the May 1, 1984 deadline to comment on this proposed rule, 49 FR 8445 (March 7, 1984), the Commission hereby extends the comment period to August 13, 1984.

ADDRESSES: Mail comments to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Deliver comments to: Room 1121, 1717 H Street, NW., Washington, D.C. between 8:15 a.m. and 5:00 p.m. Examine copies of comments received at: The NRC Public Document Room, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Juan L. Rodriguez, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone (202) 634–3224.

SUPPLEMENTARY INFORMATION: On March 7, 1984, the Nuclear Regulatory Commission initiated a rulemaking proceeding on whether to delete from certain licenses for nuclear power plants a June 30, 1982 deadline for completing the environmental qualification of certain electric equipment. The deadline for comments on the proposed rule was set at May 1, 1984. As that deadline approached, several requests for extensions of up to thirty days were received. Subsequently, by telephone call of July 16, 1984, and letter of July 17, 1984, a Commission attorney informed those requesters that comments filed by July 20, 1984 would be considered fully. However, recent correspondence to the Commission indicates that there was still some confusion regarding the deadline for submitting comments. Accordingly, to assure that no commenters will be cut off by a misunderstanding about the close of the comment period, the Commission hereby extends the deadline for comments to August 13, 1984. All comments now in the Commission's hands together with comments received by August 13, 1984 will be considered timely and will be given full consideration.

Those individuals who previously requested extensions have been notified directly of this extension. The Commission notes that by Order of the U.S. Court of Appeals for the D.C. circuit, a final rule is to be published by August 15, 1984. Therefore, the Commission urges anyone who intends to comment to do as quickly as possible. The Commission may have to petition the D.C. Circuit for an extension of the August 15, 1984 deadline for rulemaking to assure that such comments can be fully considered.

Dated this 2nd day of August 1984, at Washington, D.C.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 84–20889 Filed 8–6–84; 8:45 am]
BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-17-AD]

Airworthiness Directives; Piper Models J-3, J-4, J-5, PA-11, PA-12, PA-14, PA-15, PA-16, PA-17, PA-18, PA-18A, PA-20, and PA-22 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD) applicable to all Piper models J-3, J-4, J-5, PA-11, PA-12, PA-14, PA-15, PA-16, PA-17, PA-18, PA-18A, PA-20, and PA-22 series airplanes that would require the installation of fuel tank quick drains in the above aircraft. Investigations indicate that numerous accidents have occured involving engine stoppage or malfunction in which water in the fuel system was cited as a contributing factor. The installation of quick dain valves in lieu of the existing drain plugs will facilitate the complete drainage of water and other contaminants from the fuel tanks during preflight.

DATES: Comments must be received on or before October 1, 1984.

ADDRESSES: Piper Aircraft Corporation Services Spares Letter No. SP-6 dated February 5, 1960, is applicable to this proposal and may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven Pennsylvania 17745 or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration Central Region, Office of the Regional Counsel, Attention: Rules Docket, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Raymond J. O'Neill, Propulsion Branch ANE-174, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone (516)-791-7421.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention; Airworthiness Rules Docket No. 84-CE-17-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Service and accident reports involving various Piper single engine high wing airplanes indicate that the present fuel draining provisions do not ensure that water and othe contaminants drain properly from the fuel tank through the feed lines down to the fuel system strainer bowl for proper single point draining in the normal ground attitude. The FAA believes the elimination of water from the fuel system will be improved by installation of quick drains in the fuel tank sumps and the daily drainage of these sumps, in addition to draining of the in-line strainer bowl(s).

The manufacturer has made available a wing fuel tank quick drain installation kit for Piper PA-22 series airplanes which can also be installed on the earlier high wing aircraft, i.e. PA-11, PA-16, PA-18, PA-18A, and PA-20 series aircraft that incorporates a ¼ inch diameter tapered pipe fitting in the wing fuel tanks. The Piper J-4, J-5, J-5C, PA-12 and PA-14 series airplanes have ⅜ inch diameter tapered pipe fittings in the wing fuel tanks.

The Piper J-3, J-4, PA-15, PA-16 and PA-17 series airplanes are equipped with a fuselage fuel tank incorporating a ⅜ inch diameter tapered pipe fitting in the tank drain location.

Accordingly an AD applicable to Piper models J-3, J-4, J-5, PA-11, PA-12, PA-14, PA-15, PA-16, PA-17, PA-18, PA-18A, PA-20 and PA-22 series airplanes is proposed which would require replacement of the drain plug at these locations with a quick drain valve. On airplanes having fuselage tanks a clear plastic tube will be fitted to the quick drain valve and routed overboard to prevent fuel spillage in the cockpit area. Additionally, installation of a fuel sump drainage placard is required.

The FAA has determined that this proposed regulation involves approximately 43,000 airplanes. The average cost per airplane is estimated to be $46.00. Very few small entities operate this type of aircraft and those small entities that are impacted by this AD only operate a few aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for the action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Piper: Applies to all Models of J-3, J-4, J-5, J-5C, PA-11, PA-12, PA-14, PA-15, PA-16, PA-17, PA-18, PA-18A, PA-20, and PA-22 Series airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD or at the next annual inspection, whichever occurs first, unless fuel tank quick drain valves have previously been installed except that the placard described in paragraph (g) must be installed in these airplanes.

To prevent engine stoppage or malfunction due to the accumulation of water or other contaminants in the fuel system, accomplish the following:

(a) For models J-3, J-4 (S/N 4-1 through 4-1377, 4-1379 through 4-1384), PA-15 and PA-17 series airplanes with fuselage fuel tanks and ⅜ NPT (National Pipe Thread) drain boss:

(1) Drain fuel tank.

(2) Remove fuel tank drain plug, Piper Part Number 70151, from the lower aft portion of the fuel tank.

(3) Install elbow, Piper Part Number 458–918, reducer/adapter Piper Part Number 453–618, and drain valve, Piper Part Number 22179–00 or FAA approved equivalents.

(4) Install clear plastic tube ¼ inch I.D. x ⅜ inch O.D. The tubing shall be long enough to extend from the drain valve to a minimum of 1 inch below the lower fuselage skin.

(5) Add appropriate clamp to the tube at the drain valve and secure palstic tube to the existing fuel feed line and/or adjacent airplane structure.

(6) Route the tube clear of the rudder pedals or pilots feet and through a hole in the fuselage bottom near the centerline if the engine has two exhaust tailpipes or on the side opposite the engine exhaust tailpipe if it has only one.

(7) Install ⅜ inch I.D. grommet in the lower fuselage skin where the clear plastic drain tube exits the fuselage.

(8) Add fuel, check for leaks and assure that the fuel drains clear of the airplane.

(b) For series PA–16 airplanes which have a wing tank with a ¼ NPT drain boss and a fuselage tank with a ⅜ NPT drain boss, install quick drain valves, Piper P/Ns 22179–00 and 753–105 or FAA approved equivalents in accordance with the following procedure:

(1) Install fuselage quick drain Piper P/N 22179/00 by repeating the procedure set forth in paragraph (a) steps (1) through (8).

(2) Drain wing fuel tank.

(3) Remove the inspection cover located approximately 4 inches outboard of the butt rib and approximately 5 inches forward of the rear spar.

(4) Remove the fuel tank drain plug, Piper Part Number 70151.

(5) Install quick drain, Piper P/N 753–105.

(6) Add a ¾ inch diameter hole in the inspection cover at the quick drain location.

(7) Add fuel, check for leaks, check for proper quick drain operation and install inspection cover.

(c) For model J–4, (S/N 4–1378, 4–1385 and up) and J–5 series airplanes with a wing tank incorporating a ⅜ NPT drain boss inside the wing, install drain valve, Piper P/N 753–105 or FAA approved equivalent in accordance with the following procedure:

(1) Drain fuel tank.

(2) Remove the inspection cover located approximately 4 inches outboard of the butt rib and approximately 5 inches forward of the rear spar.

(3) Remove the fuel tank drain plug.

(4) Install special pipe adapter, Aeroquip P/N 2040–6–6S or an FAA approved equivalent.

(i) Install adapter/bushing, Piper Part Number 453–617.

(5) Install quick drain, Piper P/N 753–105.

(6) Add ¾ inch diameter hole in the inspection cover at the quick drain location.

(7) Add fuel, check for leaks, check for proper operation of the quick drain valves and install inspection cover.

(d) For model PA–22–108 and PA–11 series airplanes which have a wing fuel tank incorporating a ¼ NPT drain boss, install drain valve Piper P/N 753–105 or FAA approved equivalent in accordance with the following procedure:

(1) Drain fuel tank.

(2) Remove the inspection cover located approximately 4 inches outboard of the butt rib and approximately 5 inches forward of the rear spar.

(3) Remove the fuel tank drain plug.

(4) Install quick drain valve, Piper P/N 753–105.

(5) Add a ¾ inch diameter hole in the inspection cover at the quick drain location.

(6) Add fuel, check for leaks, check for proper operation of the quick drain valve and install inspection cover.

(e) For models J–5C, PA–12, and PA–14 airplanes equipped with two wing tanks incorporating a ⅜ NPT drain boss inside the wing, install drain valve, Piper P/N 753–105 or FAA approved equivalent in accordance with the following procedure:

(1) Drain fuel tank.

(2) Remove the inspection cover(s) located approximately 4 inches outboard of the butt rib and approximately 5 inches forward of the rear spar.

(3) Remove the fuel tank drain plug(s), Piper Part Number 70151.

(4) Install special pipe adapter, Aeroquip P/N 2040–6–6S or an FAA approved equivalent.

(a) Install bushing, Piper Part Number 453–617.

(5) Install quick drain valves, Piper P/N 753–105.

(6) Add ¾ inch diameter hole in the inspection cover at the quick drain location.

(7) Add fuel, check for leaks, check for proper operation of the quick drains and install the inspection cover.

(f) For models PA–18, PA–18A, PA–20, and PA–22 series airplanes which have two wing fuel tanks and ¼ NPT drain boss, install valve, Piper P/N 753–105 or FAA approved equivalent in accordance with the following procedure:

(1) Drain fuel tanks.

(2) Remove the inspection covers located approximately 4 inches outboard of the butt rib and approximately 5 inches forward of the rear spar.

(3) Remove the fuel tank drain plugs. Piper P/N 70151.

(4) Install quick drain valves, Piper P/N 753–105.

(5) Add a ¾ inch diameter hole in the inspection covers at the quick drain location.

(6) Add fuel, check for leaks, check for proper operation of the quick drain valve and install the inspection cover.

Note.—Drain Valve, Piper P/N 753–105, is designed for use with sample cup, Piper P/N 751–551 as shown in Piper Service Spares Letter SP–6 dated February 1960.

(g) For all aircraft models affected by this AD, after complying with paragraphs (a) through (f) above, install a permanent placard in the cockpit in a location visible to the pilot, using letters ⅛ inch minimum height. The placard must read as follows:

"Drain All Fuel Sumps Daily"

(h) An equivalent method of compliance with this AD may be used when approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, ANE–170, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(i) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

Sec. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); Sec. 11.85 of the Federal Aviation Regulations (14 CFR Sec. 11.85).

Issued in Kansas City, Missouri, on July 18, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84–20806 Filed 8–6–84; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 84–ASO–6]

Proposed Revocation of Control Zone, Moultrie, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Moultrie, Georgia, control zone. The intended effect of this action is to raise the floor of controlled airspace from the surface to 700 feet above ground level.

DATE: Comments must be received on or before: September 20, 1984.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO–530, P. O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Ronald T. Niklasson, Airspace Specialist, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in

triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———" The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Moultrie, Georgia, control zone. One of the requirements for the continued designation of a control zone is hourly and special weather observations being transmitted to the Air Traffic Control facility having jurisdiction over that control zone. No weather observations have been available from the Moultrie Municipal Airport for several months. Communications with the air carrier serving this airport have not rectified this situation. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

List of Subjects in 14 CFR Part 71

Aviation Safety, Airspace, Control Zone.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR 71) as follows:

Moultrie, GA—[Removed]

By removing the title and text.

((Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97-449, January 12, 1983))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on July 24, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84-20604 Filed 8-6-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 73

[Airspace Docket No. 83-AWA-26]

Proposed Department of Energy Prohibited Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of Comment Period on Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The ANPRM which initiated rulemaking on a Department of Energy (DOE) request that the FAA establish or modify existing prohibited airspace areas at nine DOE nuclear facilities was published in the **Federal Register,** Vol. 49, No. 27, February 8. A public hearing was held on March 13, in Washington, D.C. Due to the number of comments received objecting to the ANPRM proposal, and the complexity and sensitivity of the action, the FAA will hold public hearings to gather additional information with respect to the impact of the DOE proposal. The Notice of Public Hearings was published in the **Federal Register,** Vol. 49, No. 141, July 20, 1984. In conjunction with the scheduled public hearings, the FAA is reopening the comment period on the ANPRM to further allow those who will be unable to attend these hearings, the opportunity to express their opinions.

DATE: Comments must be received on or before November 16, 1984.

ADDRESS: Send comments in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), docket No. 83-AWA-26, 800 Independence Avenue, S.W., Washington, D.C. 20591; or deliver comments in duplicate to FAA Rules Docket, Room 916, 800 Independence Avenue S.W., Washington, D.C. 20591. Comments may be examined in the Rules Docket weekdays, except Federal Holidays, between 8:30 a.m. and 5:00 p.m.

Availability of ANPRM

Any person may obtain a copy of the ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Requests must include the title "Proposed Department of Energy Prohibited Areas." Persons interested in being placed on a mailing list for future ANPRM's and Notice of Proposed Rulemaking should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace-Rules and Aeronautical Information Division, AAT-200, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, D.C. 20591, telephone (202) 426-8626.

SUPPLEMENTARY INFORMATION:

The Proposed Airspace Prohibition

If the prohibited airspace areas proposed by the DOE are established by the FAA, helicopter operations at any altitude over the designated sites would be prohibited without prior authorization. Operation of fixed-wing aircraft would be affected at five of the nine sites, but only to 3,000 feet above ground level (AGL) (except at Amarillo, Texas, where the present 1,200 feet AGL prohibition would be retained; and Los

Alamos, New Mexico, where the present designated airspace ceiling would be raised from 12,000 feet mean sea level (MSL) to 14,500 feet MSL). It should be noted that Federal Aviation Regulations Part 73, Section 73.83, provides that no person may operate an aircraft in a prohibited area unless authorization has been granted by the using agency. Comments are specifically requested concerning the extent and circumstances under which flights should be authorized in the subject airspace.

Regulatory Evaluation and Economic Questions

An important consideration in the FAA regulatory process is the examination of the benefits and costs of rulemaking actions. Agencies of the Federal Government are required by Executive Order 12291 to adopt only those regulatory programs in which the potential benefits to society outweigh the potential costs to society. Therefore, it is essential that comments for or against the proposals are accompanied by statements of the economic impacts perceived by the commenter.

FAA specifically solicits comments from individuals, corporate entities and organizations on the economic impacts of the proposed regulations. In particular, the FAA is concerned about the "excess cost" associated with proposed regulations. By "excess cost," FAA means the difference between complying with the proposed regulations and the cost of complying with current regulations or standard practices. For example, what is the excess cost for a fixed-wing aircraft operator to fly "over the top" or circumnavigate the proposed prohibited airspace, compared to the normal operating practices of fixed-wing aircraft operations in the airspace?

With this in mind, the FAA poses several additional questions:

1. What are the "excess costs" to rotorcraft operators associated with eliminating operation of rotorcraft in the proposed prohibited airspace areas (i.e., circumnavigation costs, impacts on rotorcraft-related businesses)?

2. What are the cost impacts on the aviation public, particularly helicopters, with regard to:

a. Elimination of an instrument approach (Amarillo)?

b. Revision of a standard terminal arrival route (San Francisco)?

c. Revision of standard instrument departures (Dallas/Ft. Worth, Denver, and San Francisco)?

d. The realignment of numerous low altitude airways near or penetrating proposed prohibited airspace?

e. The realignment of airport traffic patterns?

f. The impact on public use airports that lie nearby the proposed prohibited airspace areas?

3. Will the proposed rule have a significant negative economic impact on small businesses, nonprofit organizations, emergency services, law enforcement, fire fighting, power and water authorities, or governmental jurisdictions? If so, what are the types and sizes of the entities affected? Also, what is the nature and magnitude of the negative economic impact?

4. What modifications or alterations to the DOE proposal would lessen the impact on aviation activities?

Responsess to these questions should fully address the nature of the impact, the site-specific location of impact, and the groups or types of operators, businesses or entities that are impacted. Commenters should describe and quantify the specific benefits and costs supported by factual data to the extent possible, or explain why costs are not quantifiable. Commenters should also provide the rationale for their opinions, which might include information pertaining to frequency of flight in the area, number of miles and minutes to avoid the area, type of operation and typical aviation practices. The FAA will examine separately the costs imposed on the Federal Government (e.g., impact on military training routes, revision of instrument approach procedures, relocation of navigational aids).

The benefit and cost questions outlined above cover the broad areas of the proposal. The FAA desires comments pertaining to these areas of impact and other areas which the commenter feels may be of impact. The FAA invites particularly interested groups to gather the preferences, ideas and comments of their group members.

Reopening of the Comments Period

Accordingly, the comment period on Docket No. 83-AWA-26 is reopened. The new comment period closes on November 16, 1984.

Issued in Washington, D.C., on August 1, 1984.

O. E. Falsetti,

Acting Manager, Airspace and Air Traffic Rules Branch.

[FR Doc. 84-20900 Filed 8-6-84; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 225

[Economic Regulations Docket 41686]

Carrier-Owned Computer Reservations Systems

Dated: July 13, 1984.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to adopt rules that would require airline-owned computer reservations systems to maintain the capacity to display connecting flights over a minimum of nine connect points in city-pair markets. This action is a result of the Board's ongoing effort to eliminate unfair practices in the computerized reservations system industry.

DATES: Comments by: August 22, 1984. Reply comments by: September 3, 1984.

Comments received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 41686, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Robert D. Young (202) 673-6060, Samuel E. Whitehorn (202) 673-5450, Paul Samuel Smith (202) 673-5450, Barry L. Molar (202) 673-5205 or George S. Baranko (202) 673-6011, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: In EDR-466C, we proposed rules to deal with competitive abuses and consumer injury resulting from practices of airlines that provide computer reservations services to other air carriers and travel agents. One of the major objectives of our proposed rules is to eliminate the use of factors based on carrier identity—bias—to order the display of flights on computer screens. (The adverse effects of bias and the other reasons for our rules are discussed at length in EDR-466C, 49 FR 11644, March 27, 1984.) With regard to selection and display of connecting flights, our proposed rules bar the use of carrier identity factors in both the selection of connect points or hubs and in the editing process which determines the services actually displayed. To enhance the rules' effectiveness we have also proposed to

requires disclosure of the criteria used to select connect points and to edit flights, the weight or relative importance of each criterion, and the connect points chosen in each city-pair market.

With the recent and continuing development of hub-and-spoke route structures, connecting flights have played an ever-increasing role in air transport competition. Moreover, as we recognized at an early stage in this proceeding, bias in the display of connecting flights can be both more subtle in appearance and more dramatic in effect that direct-flight bias. System vendors today generally select a limited number of possible points over which to build connections. They then edit all possible connecting flights over these hubs to eliminate duplicate and inferior services so that the system subscriber need not search through a long series of display screens in order to find suitable offerings for each passenger.

This two-step screening process gives system vendors a substantial degree of discretion that may be used to evade the general anti-bias rules we have proposed. For example, by manipulating seemingly objective hub selection criteria, a CRS vendor may have the ability to keep all connecting services over a competitor's hub off its CRS displays for various city-pair markets. *See* EDR–471, p. 2. Unlike direct flight bias, which affects display position, this connect point bias has the effect of blocking the display of competing services completely.

For those reasons, we sought comments on whether more specific rules might be necessary to cope with bias in connecting flight displays. EDR–471, 49 FR 11643, March 27, 1984. We also posed a number of potential regulatory alternatives: whether to set specific, uniform standards governing construction of connecting flight displays; whether to require that all carrier-owned systems use a minimum number of connect points; whether to allow "sales" of connect points for display; and whether to forbid pre-screening of connect points in favor of a mandatory "pure" service standard under which systems would compare flights over all possible connect points in reponse to each user inquiry.

Comments were received on April 26, 1984, and reply comments on May 11, 1984. (We will grant all motions for leave to file late or othewise unauthorized documents.) A solid consensus supported more specific regulation of connecting flight displays than is now proposed in Part 255. Most commenters urged that systems be required to have the capacity to display a minimum number of connect points in each market. A relatively small but equal number of comments were represented on both sides of the proposal to sell connect points. A majority opposed imposition of uniform service standards and a prohibition on pre-selection of connecting points.

On the basis of the record in Dockets 41663 and 41686 and the comments received in response to EDR–471, we have tentatively decided to supplement Part 255, if adopted, by adding rules that fix a minimum capacity of connect points for display. We will not propose sales of additional points, uniform service standards to govern displays, or mandatory comparison of flights over all possible connect points at this time.

The Problem

CRS vendors pre-select a finite number of hubs over which they will buld connections in any given city-pair. Eastern and Delta have a capacity of five connect points; American builds connections over nine hubs; and United can go up to thirty hubs for each city-pair. Under the rules proposed in EDR–466C, system vendors with a small connect point capacity or those unwilling to use a large number of hubs may have the ability and incentive to adopt ostensibly "objective" criteria that lead to selection of their own hubs for constructing connections. The inability or refusal to show additional connect points results in an extreme form of bias—suppression of all connecting flights that might be available over non-selected hubs, even if those connections are superior from the point of view of most consumers. This type of bias gives the vendor a potentially substantial advantage over competing carriers in addition to conveying less useful information to consumers.

Connect point bias affects a substantial number of markets. American has submitted data showing that roughly 60 percent of all connecting passengers travel in markets with more than 5 connect points, 32 percent in markets with 9 or more hubs and 10 percent in markets with 16 or more hubs.

Delta, the primary opponent of the rule we propose here, raises two points in arguing that connect point bias will not have an adverse impact on consumers or competition. First, it contends that a system's limited connect points capacity is irrelevant for a system, like its own, that also has the ability to construct connections over any point requested by subscriber in a separate inquiry. However, this ability to "force" connections cannot be viewed as an adequate substitute for having the most desireable connections shown on the primary display. As American notes in its comments, travel agents cannot be expected at all times to be aware of the best alternative hub(s) for each passenger; nor can they be expected to take the time to request connections over specific points any more than they now take the time to call up and study multiple screens to counteract normal display bias.

Delta's second argument is that American's data on the percentage of passengers traveling in markets with more than five connect points is misleading since it focuses on the number of connect points theoretically available to passengers rather than the number of points actually used by the vast bulk of travelers. Delta counters with data showing that almost 95.85 percent of all connecting passengers use five or fewer connect points, 96.6 percent use nine or fewer and nearly 97 percent use fifteen or fewer. Delta's figures substantially understate the importance of connecting service by including the 70 percent of all passengers that take direct flights.

More importantly, Delta's argument loses sight of the vendors' incentive to manipulate facially objective hub selection criteria to favor their own hubs. Because of these incentives, there is no guarantee that systems with a capacity for five connect points will always choose the five best, most convenient or most heavily travelled routings in each market.

We therefore believe, based on the responsive comments to EDR–471 and the other materials before us, that the rules proposed in EDR–466C on bias of connecting flights may leave too much room for evasion and abuse, and must be refined further.

Possible Solutions

The problem outlined above has three possible solutions. First, we could require CRS vendors to abandon their pre-selection of connect points and require instead that the systems construct and evaluate all possible connections based on pure service criteria. Second, we could permit pre-selection of hubs, but regulate the criteria used in the selection process either by prescribing the permissible ranking criteria and the weight to be given to each, or by prescribing the use of certain specific criteria. The final option is to establish a minimum number of hubs over which vendors will build connections but allow them to establish their own objective selection and weighing criteria.

We have tentatively decided that the first two possible solutions are

inadvisable and impractical, and that the third option offers a viable solution to the connect points bias problem without imposing unacceptable costs or inefficiencies on vendors or others.

We agree with United, American, USAir and Delta that the first option—mandating a pure service standard—is not technologically feasible at this time. Requiring the system to search for, construct, evaluate, store and display connecting flights over all possible connect points for each city-pair would likely entail significantly increased computer storage and processing capabilities. This procedure would also delay the response time following a subscriber inquiry and still may not produce a more useful display without additional editing.

We have also decided not to propose specific criteria to govern displays of connecting flights. While it is probably true that the factors mentioned in EDR-471—proximity of arrival or departure to desired time, overall elapsed time, online vs. interline connections, type of equipment, and so forth—are generally taken into account by connecting passengers as a whole, we agree with the majority of comments that mandated use of these or others in all cases is undersirable.

We simply cannot know (at least without massive study) passenger preferences well enough to confidently select some standards and eliminate or downgrade others. Accordingly, we reject for now the arguments of Muse, Northwest, and others that total elapsed time should be the only or major standard for connecting flights. We are simply not in a position to say that passengers do not consider other factors (such as on-line versus interline connections or time of departure) important.

Another alternative proposed in EDR-471 would have permitted sales of connect point capacity by vendors. That alternative would not effectively solve the problem and may create its own problems. The difficulty with this approach is that it may provide vendors with even greater incentives to bias their hub selection criteria to induce participants to purchase display of their own hubs. It also may have the effect of discriminating against carriers that have developed newer alternative hubs.

On the other hand, a requirement that airline-owned CRS's must have the capacity to construct and display connecting flights over at least nine (or more) hubs, has a strong possibility of substantially reducing the connect point bias problem without imposing substantial costs. The primary benefit of such a rule is that it would substantially reduce the ability of a CRS vendor to manipulate its hub slelection criteria to eliminate logical competing hubs. As noted, according to American, nearly 60% of all connecting passengers moved in city pairs with more than five available connect points. The danger we perceive is that vendors may be able to manipulate their hub selection criteria to replace one or more of the "top five" connect points for many city-pairs with less logical, convenient or useful connect points. Stated another way, our general anti-bias rules do not guarantee that a system with a five-hub capacity will actually show the five "best" hubs. However, if a system's capacity is nine hubs, one may be much more certain that the five, six or seven best connect points will be included. Regardless of the selection criteria, a nine hub requirement increases the probability that the best hubs will be selected. A CRS vendor will find it more difficult to arbitrarily exclude attractive competing hubs with such a requirement in place.

One of our major concerns in issuing EDR-471 was the desire to obtain comment and information on the costs of mandating a minimum connect point capacity. Based on the responses received, it appears that such costs will be minimal. American states that is in the process of increasing its connect point capacity from nine to thirty. It estimates that the expansion will require eleven man-months and a total cost of $115,000, a relatively low figure given the overall costs associated with CRSs. It further states its willingness to assist other vendors in increasing their capacity. Moreover, a required increase in hub capacity would not place added demands on a system for all city-pair markets. American's figures show that, even though it has a current capacity of nine hubs for each city-pair, it actually needs to use more than five hubs in only 15 percent of those city-pair markets. Finally, neither of the system vendors that currently has a capacity of less than nine hubs has raised cost as an argument against the action we propose.

A more difficult and less quantifiable concern is the argument of DOJ and Delta that the rule we propose will stifle innovation and make entry and expansion by smaller CRS's more difficult. Delta alleges that its DATAS II system currently builds all its connections differently than other CRS's do, although the connect points that are used in building those connections are the five or fewer hubs pre-selected by Delta or any specified by the subscriber. Instead of construction and storing connections in advance of any subscriber inquiries, it relies totally on "dynamic construction"—*i.e.* it builds, ranks and displays connections in response to specific subscriber inquiries. Delta claims that its dynamic construction method is in many respects superior to the pre-storage method used by other vendors. It contends further that increasing the number of connect points will increase pocessing and response time for a dynamic system to such an extent that Delta "might" be forced to abandon that method and turn to pre-storage of connections. Beyond that speculation, however, Delta offers no hard information on the costs or inefficiencies involved in using nine hubs in a dynamic system. Delta also fails to note that the other CRSs provide subscribers with the ability to build connections dynamically as well. Since the majority of city-pair markets will not require use of more than five hubs even under our proposed rule and since we have been given no data countering American's contention that the costs of increasing capacity are minimal, we are not inclined to forgo the clear and substantial benefits that our proposal will provide. We recognize that the proposal will place some added burdens or the newer, smaller systems, but as noted those burdens appear at this point to be small. Since this is an NPRM, Delta and other opponents will of course have a further opportunity to challenge that conclusion.

Our Proposal

For the reasons described above, if we adopt anti-bias rules as proposed in EDR-466C, we propose to add a requirement that any CRS covered by those rules must be capable of building connections over at least nine hubs. In addition, we request comments on the likely costs and benefits of setting minimum CRS capacity at a level higher than nine hubs. A number of commenters have suggested a higher level, but our tentative conclusion is that the proposed minimum strikes the best balance between our desire to intrude as little as possible and the need to limit vendor ability and incentives to foreclose display of service over convenient hubs.

Our rule will not, and could not, expressly force every system to display nine connect points in every city-pair market. Indeed, most city-pairs do not have nine viable connecting hubs. Consequently, for most cities less than nine hubs will be adequate. There is a danger, however, that vendors could use criteria such as historical traffic flows to limit the number of hubs they actually use to less than nine even in city-pairs where more are viable. Therefore, we propose to require vendors to use any

additional hubs requested by participating carriers up to a total of nine. If more than nine hubs are requested for any city-pair, we would require the vendor to rank the hubs according to objective criteria and use the nine hubs that match the criteria most closely.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96-354, is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, will have a significant economic impact on a substantial number of small entities.

The analysis is required to describe the need, objectives, legal basis for, and flexible alternatives to the agency's proposed action. These requirements are met by the discussion above. In addition, the analysis must include a description of the small entities to which this proposal would apply, the reporting, recordkeeping, or other compliance requirements of the proposed rule, and any other Federal rules that may duplicate, overlap, or conflict with it.

The Board tentatively finds that because this rule only supplements the underlying CRS regulation, Part 255, it may, if adopted as proposed, have only a slight incremental economic impact on a substantial number of small entities. The proposed rule would affect airlines operating aircraft with less than 60 seats, travel agents, and new, low-cost airlines.

The proposed rule would have an overall beneficial economic impact on a substantial number of small air carriers. They would benefit by the prohibition of display bias pertainining to connecting flights. Currently, none of these carriers are system vendors and consequently have not enjoyed the benefit of built-in display preference. Under the new rules, their connecting flights will be displayed strictly on the basis of service criteria. This change will allow them to go from what may be a nonexistent display to a competitive display. As a result, these small carriers will be better able to compete.

Travel agents would also be affected by this rule. Nationwide, there are approximately 24,000 travel agents, 75-80 percent of which use automated reservations systems. Of these agents, the Board estimates that over three quarters would be considered small entities for the purposes of the Regulatory Flexibility Act.

Travel agents should benefit from this rule by the elimination of bias in connecting flight displays. This change should increase efficiency and lower agency costs since personnel will no longer be required to take time to overcome bias. New low-cost airlines should also receive significant benefits from this rule. Presently, new entrants are among the greatest competitive threat to the established airlines that own the CRS systems. Flights by new entrants tend to be displayed inconspicuously. The prohibition against bias should result in more favorable displays, which in turn should increase sales and lower the cost per seat.

The rule does not contain any direct reporting, recordkeeping, or other compliance requirements. System vendors must disclose to interested subscribers and participating carriers what criteria were used in determining the order of display and the construction of connecting flights and to identify connecting points used for specific markets.

There are no other Federal rules that duplicate, overlap, or conflict with this proposed rule.

Regulatory Impact Review

Executive Order 12291, dated February 17, 1981, requires every executive agency to prepare a Regulatory Impact Analysis for every "major rule." Major rule is defined in the order as any that is likely to result in 1) an annual effect on the economy of $100 million or more; 2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As an independent agency, the Civil Aeronautics Board is not required to comply with E.O. 12291. Because of the importance of this rule and its expected transfer to the Department of Transportation in connection with the sunset of the Board, we have voluntarily examined whether the proposed rule constitutes a major rule, and we have determined that it does not.

We find that this rule, if adopted as proposed, would likely not meet the definition of a major rule within the meaning of the Executive Order. This rule represents a slight modification of an already proposed rule. We have estimated that the rule as originally proposed could have accounted for redistribution of more than $100 million in bias induced incremented revenues. However, our minimum connecting point rule will merely supplement our proposed comprehensive rule on bias. The more general requirement of the basic proposal, which prohibits use of carrier identity as a factor in ranking flights, selecting connecting points, and editing flights is likely to account for most of the bias-induced incremental revenue. The minimum connect point proposal is a supplemental rule intended to reduce the risk of manipulation. As such it is unlikely to produce independently $100 million in incremental revenue shifts.

Comment Period

In light of our conclusions on the significant potential for competitive harm and consumer injury from CRS practices, comments on this notice of proposed rulemaking will be due 15 days after publication in the **Federal Register** and reply comments will be due 10 days after the comments. Our investigation of CRS practices began eighteen months ago. In that time, CRS vendors, participating carriers, travel agents, federal agencies, and others have had multiple opportunities to comment and otherwise contribute to the record. This exact rule was in fact the subject of an advance notice of proposed rulemaking. Part 255, which the proposed rule supplements, will be made effective in the fall of this year. So as to avoid additional programming and operational changes, we hope to put into force the final rule on connecting flight bias, if adopted, at the same time as Part 255.

List of Subjects in 14 CFR Part 255

Advertising, Air carriers, Air transportation—foreign, Antitrust, Consumer protection, Essential air service, Travel agents.

PART 255—[AMENDED]

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Chapter II by adding a new paragraph 255.4(c)(4) to proposed Part 255, *Carrier-Owned Computer Reservations Systems*, to read:

§ 255.4 Display of information.

* * * * *

(c) * * *

(4) If system vendors select connecting points for use in constructing connecting flights they shall use at least nine points for each city-pair, except

that vendors may select fewer than nine such connecting points for a city-pair where—

(i) Fewer than nine connecting points meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The vendor has used all the points that meet those criteria, along with all additional connecting points requested by participating carriers.

Authority: Secs. 102, 204, 404, 411, 419, 1102, Pub. L. 85–726 as amended, 72 Stat. 740, 743, 760, 769, 797; Stat. 1732; 49 U.S.C. 1302, 1324, 1374, 1381, 1389, 1502.

By the Civil Aeronautics Board.

Phyllis T. Kayor,

Secretary.

All Members concurred and Member Morales filed the following concurring statement.

Morales, Member, Concurring

While I agree with the majority of the language in the NPRM, I would have added after the second paragraph under *Our Proposal* on p. 7 the following two paragraphs:

We are somewhat concerned that, by requiring vendors to accept hubs suggested by participants, we may be creating incentives for carriers to force a vendor to construct connections over circuitous or inconvenient hubs, resulting in needless costs. Please comment on this concern. In response to our concern, we seek comments on the additional requirement that participant requests must produce at least one connection that would survive the vendor's editing criteria. Under this alternative if the addition of the requested hub would not result in additional flights(s) being listed, the vendor would not be obligated to honor the request. We also request comments on possible alternatives to our proposed request mechanism, such as deletion of the requirement that participant requests must be accepted or a requirement that participant requests must be reasonable.

We want to make it clear that, for vendors with a capacity greater than nine hubs, our rules would impose no affirmative obligation to use that capacity. However, under the general antibias rules as proposed, if such carriers chose to use more than nine hubs for any city-pair, their choice of which additional hubs to use would have to be based on objective criteria.

Diane K. Morales,

Commissioner.

[FR Doc. 84–20825 Filed 8–6–84; 8:45 am]

BILLING CODE

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 832–3191]

Commodore Business Machines, Inc., Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a West Chester, Pa. firm, among other things, to cease, in connection with the advertising, sale or distribution of the Commodore 64 or any other hardware or software computer product, to cease representing the availability or capability of a product, unless at the time of the claim the product is available for public sale in reasonable quantities, or has the claimed capability. The order would further bar the company from making any representations concerning the future availability or capability of a computer product unless firm has a reasonable basis for the claim at the time the representation is made. The company would additionally be required to maintain prescribed records for a period of three years.

DATES: Comments must be received on or before October 9, 1984.

ADDRESS: Comments should be directed to FTC/Office of the Secretary, Room 136, 6th St. and Pa Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B 411–6. Joel Winston, Washington, D.C. 20580. (202) 376–8648.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Computer products, Trade practices.

Before Federal Trade Commission

[File No. 832–3191]

Agreement Containing Consent Order To Cease and Desist

In the matter of Commodore Business Machines, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Commodore Business Machines, Inc., a corporation, and it now appearing that Commodore Business Machines, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Commodore Business Machines, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Commodore Business Machines, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1200 Wilson Drive, in the City of West Chester, State of Pennsylvania.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and

decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

This order shall not apply to representations made by respondent exclusively outside the United States and its possessions and territories.

I

It is ordered that respondent Commodore Business Machines, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of the Commodore 64 computer, or any other computer hardware or software product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desisit from representing, directly or by implication:

a. That any such product is available for sale to the public or has any capability, unless at the time such representation is made such product is then available for sale in reasonable quantities to the public or has said capability.

b. That any such product will be available for sale to the public or will have any capability, unless at the time of such representation respondent possesses and relies upon reasonable basis for said representation.

II

It is further ordered that respondent or its successors or assigns maintain accurate records of all materials that were relied upon by respondent in disseminating any representation covered by this order.

Such records shall be retained by respondent or its successors or assigns for three (3) years from the date that the representations to which they pertain are last disseminated. It is further ordered that any such records shall be retained by respondent or its successors or assigns and that respondent or its successors or assigns shall make such documents available to the Commission for inspection and copying upon request.

III

It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in respondent 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 which may affect compliance obligations arising out of the order.

IV

It is further ordered that respondent shall forthwith distribute a copy of this order to each of its operating divisions.

V

It is further ordered that respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Commodore Business Machines, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges Commodore with disseminating advertisements containing misrepresentations about the availability of certain accessories for the Commodore 64 computer and about its current capabilities. Specifically, the complaint alleges Commodore's ads represented that (a) the Z–80 microprocessor for use with the Commodore 64 was available for sale to the public, and (b) the Commodore 64 could be equipped to use the CP/M operating system and thereby process CP/M software through purchase of the Z–80 microprocessor. In fact, according to the complaint, the Z–80 microprocessor was not then available for sale and, therefore, the Commodore 64 could not use CP/M or process CP/M software. CP/M is an operating system which allows the use of hundreds of software programs. Installation of the Z–80 microprocessor is necessary to enable the Commodore 64 to utilize CP/M.

The consent order prohibits misrepresentations of the availability or capability of computer products. The order covers representations about the Commodore 64 or any other computer hardware or software product. However, the order does not apply to representations made by Commodore exclusively outside the United States and its possessions and territories.

Part IA of the order prohibits representations that a product is available for sale or has any capability unless at the time the claim is made, the product is then available for sale to the public in reasonable quantities or has the claimed capability.

Part IB prohibits representations that a product *will* be available for sale or *will* have any capability, unless Commodore has a reasonable basis for the claim at the time it is made.

Part II of the order requires Commodore to maintain records of

materials it relied on in making representations covered by the order for three years. Part III requires Commodore to notify the Commission of any change in its corporate structure that may affect its compliance with the order. Part IV provides that Commodore must distribute a copy of the order to its operating divisions. Part V requires the filing of a compliance report within sixty days.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Secretary.

[FR Doc. 84-20868 Filed 8-6-84; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Contract Market Enforcement of Floor Broker Registration Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: Persons acting as floor brokers on a contract market are required to be registered as such with the Commodity Futures Trading Commission ("Commission") pursuant to Section 4e of the Commodity Exchange Act ("Act"). However, the Commission has found numerous instances in which persons apparently have acted as floor brokers without being registered as such. The Commission believes that contract markets can, as part of their own membership registration procedures and without significant additional burden, affirmatively assist the Commission to ensure that their members who engage in brokerage are registered as required by the Act. The Commission is thus proposing to require that each contract market adopt a rule which provides that before a person may execute orders for others on the floor of that contract market, the person must be registered with the Commission as a floor broker. The Commission is also requesting comment on whether, in the alternative, the Commission should exercise its authority under section 8a(7) of the Act to supplement existing contract market rules to this same end.

DATES: Comments must be received on or before October 9, 1984.

ADDRESS: Comments on the proposed rule should be sent to: Jane K. Stuckey, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Dolins, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: Section 4e of the Act provides that:

> It shall be unlawful for any person to act as floor broker in executing any orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery on or subject to the rules of any contract market unless such person shall have registered, under this Act, with the Commission as such floor broker and such registration shall not have expired nor been suspended nor revoked.[1]

This section was first adopted on June 15, 1936, as part of the Commodity Exchange Act of 1936.[2] The primary purpose for requiring exchange members acting as floor brokers to register with the Secretary of Agriculture was to identify and provide some measure of control over exchange floor members who may be in a position to take advantage of customer orders.[3] The Commission does not believe this Congressional purpose has diminished in importance or significance in the ensuring years. If anything, the Congressional purpose set forth in 1936 has grown in importance with the significant increase in public participation and the subsequent rise in the volume of futures and options transactions executed on contract markets today.

Registration with the Commission of particular market participants is fundamental if the Commission is to meet its statutory responsibilities to protect investors and to promote fair and honest dealing on the part of those persons subject to the Act. In addition, the highest ethical standards must prevail in the commodity futures industry, and registration is one of the means available to the Commission to achieve this result.[4] As stated by the United States Court of Appeals for the Second Circuit:

> The intent of the congressional design is clear; persons engaged in the defined regulated activities within the commodities business are not to operate as such unless registered, [sic] the Commission is charged in the first instance with determining the applicant's qualifications and whether proper grounds exist for refusing registration, and the Commission is empowered to seek injunctive prohibitions against violations of any provisions of the Act, including registration provisons. Registration is the kingpin in this statutory machinery, giving the Commission the information about participants in commodity trading which it so vitally requires to carry out its other statutory functions of monitoring and enforcing the Act.[5]

The Commission has found, however, that certain individuals who were acting as floor brokers were not, in fact, registered with the Commission in accordance with the requirements of section 4e, either because they had failed to apply for registration, failed to wait for registration to be granted, or continued to do brokerage even though they had failed to renew an expired registration. Specifically, while conducting routine reviews of trading practices at several contract markets, the Commission's Division of Trading and Markets recently found persons who were apparently acting as floor brokers in violation of section 4e.

Although three contract markets do have exchange registration requirements

---

[1] 7 U.S.C. 6e (1982). The procedure for registering with the Commission as a floor broker is set forth in section 4f of the Act, 7 U.S.C. 6f (1982), and Commission regulation 3.11, 17 CFR 3.11 (1983). Pursuant to § 33.2(a)(2) of the Commission's regulations, 17 CFR 33.2(a)(2), the provisions of sections 4e and 4f of the Act also apply to exchange-traded commodity option transactions.

[2] Public Law 74-675, 49 Stat. 1491 (1936). At that time, section 4e required registration with the Secretary of Agriculture.

[3] In explaining proposed section 4e to the Senate Committee on Agriculture and Forestry, J.M. Mehl, Assistant Chief of the Grain Futures Administration, Department of Agriculture, stated:

> [W]e fell . . . the registration requirement is necessary to enable us to know at all times exactly what members in the various pits are engaged in executing orders for others.

Hearings on H.R. 6772 Before the Senate Committee on Agriculture and Forestry, 74th Cong., 2nd Sess., at 216 (1936). H.R. 6772 later was enacted as the Commodity Exchange Act of 1936. Also with regard to this section, Senator James P. Pope of the Senate Committee on Agriculture and Forestry stated:

> Annual registration would appear to be especially desirable in the case of floor brokers. As was shown in the committee hearings, floor brokers trade and speculate for their own account while executing orders for others. In these circumstances it is absolutely necessary . . . to know at all times what persons are actually engaged as floor brokers.

80 Cong. Rec. 6612 (1936). It was also stated with regard to this section: "The bill also seeks to register commission merchants handling funds of the public and floor brokers executing the orders. This procedure is necessary to secure control of these activities. The registration would be subject to suspension or revocation for cause." 80 Cong. Rec. 7858 (1936) (remarks of Senator Murray).

[4] *See Commodity Futures Trading Commission* v. *J.S. Love and Associates Options, Ltd.*, 422 F. Supp. 652, 659 (S.D.N.Y. 1976).

[5] *Commodity Futures Trading Commission* v. *British American Commodity Options Corp.*, 560 F.2d 135, 139-40 (2d Cir. 1977), *cert. denied*, 438 U.S. 905 (1978).

of one form or another, the exchanges generally have not appeared willing t add a floor broker registration requirement to their standard audit programs. Even though the Commission staff in July and September 1981 sent letters to four exchanges where persons were found to be acting as floor brokers without being registered to suggest that those exchanges adopt such a requirement, none of those exhanges did so.

The Commission has reviewed the rules and procedures of all eleven contract markets and has determined that seven exchanges already have some procedure for reviewing the qualifications of their members who which to handle brokerage on the trading floor.[6] The Commission believes that making registration an exchange requirement is consistent with self-regulation and that assuring the registration of floor brokers may be more readily accomplished by the exchanges through daily membership supervision than by the Commission through its floor surveillance program and other surveillance techniques. The Commission further believes that implementation by the exchanges of rules to require registration of floor brokers is a reasonable adjunct to the regular membership screening already performed by the exchanges.[7]

To aid the Commission in better enforcement of its registration requirements and consistent with its general policy of requiring direct regulation in the first instance by the contract markets, the Commission is proposing to adopt regulation 1.62. The regulation is intended to complement the Commission's enforcement capability and to ensure that certain minimum standards are imposed uniformly on all persons currently executing orders for others.

The proposed regulation would require each contract market to adopt a rule which requires any person who does brokerage on its floor to be registered with the Commission as a floor broker. In order to ensure that exchange members who execute customer business comply with such a rule, the contract markets could include provisions requiring each floor broker to notify the contract market immediately of any change in his or her floor broker registration status with the Commission. Because the Commission wants to make certain that all person presently acting as floor brokers are registered as such, the proposed regulation would apply to new as well as esisting floor brokers. The Commission would review the contract market rules submitted under proposed regulation 1.62 pursuant to the requirements of section 5a(12) of the Act.

Initially, each contract market would be required to determine which of its members currently are acting as floor brokers and which of these members also are registered with the Commission. Of course, Commission registration data would be made available to assist in this process. Thereafter, each contract market would periodically determine whether its members who act as floor brokers are registered with the Commission in accordance with the requirements of section 4e.[8] In this connection, if an exchange determines that a member is executing trades for others,[9] the contract market could simply refer to a copy of the "CFTC Registration System—Directory of Floor Brokers" computer printout in its possession. (A copy of this computer printout listing all persons currently registered with the Commission as floor brokers is supplied to each contract market by the Commission.) In the event the exchange member is not included within the Directory of Floor Brokers, the contract market could request that the member produce a copy of the notification from the Commission which indicates that registration has been granted. Where the exchange member is unable to produce this letter, the Contract market may then contact the Commission to determine whether the particular exchange member is, in fact, currently registered as a floor broker.

In the event a particular exchange member is not registered with the Commission as a floor broker, it is anticipated that the contract market would review its trade register periodically to determine whether that member is trading for customers. Periodic review of trade registers, or some similar affirmative monitoring technique, is a task which exchanges already are required to perform in order to attempt to detect substantive trade practice abuses pursuant to Commission regulation 1.51.[10]

As noted above, Commission believes that it is consistent with an exhange's self-regulatory responsibilities to require each exchange to ensure that any person acting as a floor broker on its floor is registered as such with the Commission. The Commission further believes that each exchange should be provided an opportunity to determine the best means by which this responsibility may be met, consistent with its other self-regulatory programs. Adoption of proposed rule 1.62 would afford the exchanges this opportunity. The Commission notes, however, that it is authorized under section 8a(7) of the Act to alter or supplement exchange rules as necessary or appropriate and, therefore, the Commission may achieve its purposes through the procedures set forth in that provision of the Act. In this connection, the Commission also specifically requests comment on whether the Commission should proceed under section 8a(7) rather than adopting proposed regulation 1.62.

Certification Under the Regulatory Flexibility Act

As discussed above, the only regulated entities which will be affected by proposed regulation 1.62 are contract markets, and the Commission has determined that contract markets are not "small entities" within the meaning of the Regulatory Flexibility Act.[11] Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act,[12] the

[6] *See*, for example, Chicago Mercantile Exchange Rule 510; New York Merchantile Exchange Rule 53.13; and Commodity Exchange, Inc. Rule 520.

[7] Indeed, the Commission further observes that enforcement of such a requirement is in the self-interest of each exchange. If an exchange knowingly permits any person to act as a floor broker when such person is not registered, the exchange may be liable under section 13(a) of the act for aiding and abetting a violation of section 4e.

[8] Commission regulation 1.35(e) states, in pertinent part, that each contract market shall maintain a record which shall show, among other things, symbols indicating the buying and selling customer for each futures or options trade. These symbols, the customer type indicators, shall show, with respect to each person executing the trade, whether such person (1) was trading for his own account; (2) was trading for his clearing member's house account; (3) was trading for another member present on the exchange floor, or an account controlled by such other member; or (4) was trading for any other type of customer.

[9] The proposed regulation would not expand the definition of floor broker as it currently exists in Commission regulation 1.3(n). Thus, for example, a general partner of a futures commission merchant ("FCM") who executes trades for that FCM's house account would not have to register with the Commission as a floor broker. Commodity Exchange Authority Administrative Determination 211 (March 14, 1968).

[10] The Commission does not intend to foreclose other means by which exchanges could meet this obligation. The Commission anticipates that such monitoring could occur as a regular adjunct to an exchange's trade practice investigations.

[11] 5 U.S.C. 801(3) and (6) (1982). *See* 47 FR 18618 (April 30, 1982). In addition, as to floor brokers, this proposed regulation would impose no additional requirement for doing floor brokerage since this class of commodity participant is already required to register with the Commission pursuant to section 4e of the Act, 7 U.S.C. 6e (1982).

[12] 5 U.S.C. 605(b) (1982).

Chairman, on behalf of the Commission, certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Commission has submitted pertinent portions of this rule to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

List of Subjects in 17 CFR Part 1

Commodity futures, Floor brokers, Registration.

In consideration of the foregoing and based upon the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 4e, 4f, 5, 5a and 8a thereof, 7 U.S.C. 6c, 6e, 6f, 7, 7a, 12a (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations by adopting new §1.62 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.62 is proposed to be added and, as added, would read as follows:

§ 1.62 Contract market requirement for floor broker registration.

Each contract market shall adopt, maintain in effect, and enforce rules which have become effective pursuant to section 5a(12) of the Act and § 1.41 of this chapter and which provide that no person in or surrounding any pit, ring, post, or other place provided by such contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered with the Commission as a floor broker in accordance with section 4f of the Act and § 3.11 of this chapter, and such registration has not expired nor been suspended (and the period of such suspension shall not have expired) nor revoked.

Issued in Washington, D.C. on August 1, 1984, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-20794 Filed 8-6-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

[Docket No. 84N-0036]

Notice to Sponsors of Drugs Containing Sulfamethazine, Sulfaquinoxaline, Sulfamerazine, Sulfathiazole, Sulfapyridine, or Sulfanilamide for Oral, Injectable, Intramammary, or Intrauterine Use in Food-Producing Animals; Termination of Interim Marketing; Data Submission Requirements

Correction

In FR Doc. 84-17707, beginning on page 27543, in the issue of Thursday, July 5, 1984, make the following corrections:

1. On page 27548, in the third column, in the table, in the entries for NADA Nos. 99-848, 99-855 and 99-857, "Salsburg" should read "Salsbury"; in the same table, in entry +99-920, in the Product name column, "Sulfamerazine" should read "Sulfamethazine" the first time it appears.

In entry 99-927, in the product name column, "Sulfamerazine" should read "Sulfamethazine".

2. On page 27549, in the first column, in the table, in entries 99-947 and +99-952, in th Sponsor column, "(formerly Laboratories)" should read "(formerly Osborn Laboratories)"; in entry 99-985, in the Product name column, "Sulfonomide" should read "Sulfonamide".

3. On page 27549, in the third column, in the NADA No. column, "99-071" should read "99-971".

4. On page 27550, in the second column, in the table, in entry 99-854, in the Product name column, "Sulfamathiazole" should read "Sulfathiazole"; entry "99-111" should read "99-911"; in entry 99-912, in the Product name column, "Sulfdathiazole" should read "Sulfathiazole"; and in entry +99-980, in the Sponsor column, "lus" should read "Plus".

5. Also on page 27550, in the third column, in entry 100-007, in the Product name column, "Sulfathizole" shoud read "Sulfathiazole", in the same entry, the second listing of "Sulfapyridine sodium" shoud be removed.

6. On page 27551, in the third column, in entry *99-849, in the Product name column, "*D*-Calcium pathothenate" should read "*D*-calcium pantothenate".

7. On page 27552, in the first column, in entry 99-919, in the Product name column, "Ethylendiamin" should read "Ethylenediamine".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-84-1175; FR-1501]

Mutual Mortgage Insurance and Insured Home Improvement Loans; Issue Date of Debentures

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the method by which debenture interest is computed when a one-to four-family property is conveyed to the Secretary in exchange for insurance benefits. Currently, debentures on all reimbursable expenses are dated as of the date of default under the mortgage. Consequently, debenture interest may accumulate on reimbursable items before an actual expenditure of funds is made for these items by a mortgagee. This proposed rule would amend the procedure to provide that, with respect to debentures issued for reimbursable expenditures made by a mortgagee, these debentures would be dated as of the actual date the expenditure is incurred by a mortgagee. The effect of this amendment would be to eliminate the overpayment of debenture interest because the Department would no longer be paying debenture interest on a reimbursable expense for a period before the expendure is actually incurred .

DATE: Comments must be received by October 9, 1984.

ADDRESS: Interested persons are invited to submit written comments regarding this rule on or before the due date to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Richard B. Buchheit, Director, Single

Family Servicing Division, Department of Housing and Urban Developoment, Room 9180, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755-6672. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: When an FHA mortgage insurance claim is settled, a mortgagee receives the unpaid principal amount due on a mortgage as well as payment for a number of additional items. These items include funds advanced by a mortgagee for mortgage insurance premiums (MIP), hazard insurance premiums, taxes, ground rents, and water rates. Items deducted from a mortgage insurance claim include funds held in escrow and rent received by a a mortgagee. To this balance is added two-thirds of foreclosure costs such as sheriff's costs, advertising and publication fees, recording fees, clerk's costs, court costs, auctioneer fees, trustee's fees, attorney's fees, filing fees, and acquisition costs for an abstract, title policy, etc. Reimbursable costs also include funds a mortgagee expends for protection and preservation of a property.

Interest on the total amount of the insurance claim is calculated at the debenture rate established by the Secretary. Under the current regulation, interest begins to accrue on the date of default under the mortgage, even though many reimbursable expenses are not incurred until after that date. For example, preservation and protection expenses are incurred after a mortgagor (who had defaulted on the mortgage) has abandoned the property—usually some time after defaulting on the mortgage. Nevertheless, the Department currently pays debenture interest as if the mortgagee made the expenditure on the date of default.

Section 204(d) of the National Housing Act (NHA) 12 U.S.C.A. 1710(d) (1980)) provides, in part, that "debentures issued pursuant to claims for insurance . . . shall be dated as of the date of default or as of such later date as the Secretary, in his discretion, may establish by regulation. The debentures shall bear interest from such date * * *." In accordance with his statutory authority (*see* 42 U.S.C. 3535(d)), the Secretary promulgated regulations at 24 CFR 203.499 that provide that "The regulation in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured * * *."

It is clear that under section 204(d) of the NHA the Secretary has the authority to provide, by regulation, that debentures may be dated later than the date of default. As such, it would be from that later date that those debentures would bear interest. Also, there is no doubt that the Secretary is empowered to amend the relevant regulations at any time, provided the amended regulations do not "adversely affect" an existing contract of insurance. Therefore, with respect to mortgage insurance contracts executed after the effective date of this rule, the question of an "adverse effect" on a mortgagee's interest does not arise. However, insofar as existing contracts are concerned, there is some question whether a mortgagee's rights may not be adversely affected by the proposal to date debentures issued in settlement of reimbursable expenses as of the actual date of the expense, rather than as of the date of default.

The Department does not believe debenture interest should accure on reimbursable items before an expenditure is actually made by the mortgagee. Therefore, 24 CFR 203.410 would be amended to permit issuance of separate debentures for each reimbursable item in an insurance claim. These debentures would be dated as of the date of such expenditure. This amendment would apply to all future mortgage insurance contracts as well as to those contracts now in effect. In the latter case, although there would be a minimal reduction in benefits to mortgagees on settlement of a claim as a result of this proposed regulatory change, the Department is obligated to discontinue a practice that produces undeserved windfalls, however small, to mortgagees, at the expense of the insurance fund. Moreover, it is an accounting anomaly to accrue interest on a reimbursable expense for a period commencing before the expense is incurred. Additionally, HUD does not believe that this rule, as applied to existing contracts of insurance, would "adversely affect" the interests of a mortgagee because, in the Department's view, a mortgagee has no valid expectancy in being unjustly enriched, especially if that expectancy is based upon a currently defective rule. Moreover, the Department concludes that the term "interests of a mortgagee" must be construed to include only reasonably ligitimate interests; and that mortgagees have no legitimate, reasonable interest in continuing to receive the "windfall" benefits of the defective regulation.

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

This rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would result in mortgagees receiving less debenture interest, though the reduction is negligible. More importantly, this action would amend a regulation that erroneously resulted in mortgagees being overpaid.

This rule was listed as Item 42 (H-51-81; FR-1501) under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15918) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The following numbers identify the programs, as listed in the Catalog of Federal Domestic Assistance, affected by the regulation change: 14.105, 14.108, 14.117, 14.118, 14.119, 14.120, 14.121, 14.122, 14.123, 14.133, 14.140, 14.152, 14.159, 14.161, 14.165.

List of Subjects in 24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Solar energy.

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

Accordingly, the Department proposes to amend 24 CFR Part 203 as follows:

Section 203.410 is revised by adding a new paragraph (c) to read as follows:

§ 203.410 Issue date of debentures.

* * * * *

(c) Notwithstanding paragraph (a) of this section debentures issued as reimbursement for expenditures made by a mortgagee after the date of default shall be dated as of the date the expenditure is actually made by the mortgagee.

Authority: Sections 204(d) and 221 of the National Housing Act (12 U.S.C. 1710d, 1715b); section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 30, 1984.

Shirley M. Wiseman,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 84-20856 Filed 8-6-84; 8:45 am]

BILLING CODE 4210-27-M

---

24 CFR Part 570

[Docket No. R-84-1134; FR-1822]

Community Development Block Grants: Secretary's Fund-Insular Areas

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: The proposed rule would update, clarify and simplify the regulations governing operation of the Secretary's Fund within the Community Development Block Grant (CDBG) program. It would delete certain requirements that are no longer required by statute, make certain technical changes necessitated by the recent changes to Part 570 published on September 23, 1983 (48 FR 43538), and make a variety of changes to the regulations governing: use of data from the Census Bureau, standards to be used in HUD review of the application, the criteria by which program amendments will be approved, increase in the application period, permission to incur costs before approval of the application in hardship cases, threshold requirement for funding, and provision for conditional grant approval.

DATES: Comments must be received by October 9, 1984.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Hazel P. Braxton or Leroy P. Gonnella, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6092. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The present regulations governing the Community Development Block Grant (CDBG) program applicable to Insular Areas (the Secretary's Fund) under Section 107 of the Housing and Community Development Act of 1974 (the 1974 Act) are located at 24 CFR 570.44 and 570.405. A variety of statutory and regulatory changes necessitate updating of these two sections.

First, the rule would eliminate three elements of the present regulations that were deleted by the Housing and Community Development Amendments of 1981 (1982 Amendments): (a) A-95 review requirements would be eliminated from § 570.400 because this review was revoked by OMB under Executive Order 12372; (b) all references in § 570.405 (b) and (c) to the consolidation of an Insular area grant with one for Comprehensive Planning Assistance funds under section 701 of the Housing Act of 1954 would be eliminated, since the section 701 authority was repealed by section 313(b) of the 1981 Amendments; and (c) requirements regarding a community development plan in § 507.405(c)(3) would be eliminated because this requirement was eliminated from section 104 of the 1974 Act by section 302(a) of the 1981 Amendments.

Second, certain technical and substantive changes are proposed to harmonize §§ 570.400 and 570.405 with the recent final CDBG rules published on September 23, 1983 (48 FR 43538): (a) All references to Subpart B would be eliminated; (b) cross references to other sections of part 570 would be changed (e.g., the ability of the Secrretary to make conditional approvals); and (c) the elements for an appropriate performance report would be specified (see proposed § 570.405(e)(3), which is considerably simpler than the grantee performance report currently required by § 570.400(h)).

Third, the rule would update, clarify and simplify a variety of substantive elements of the Insular area program. These proposals include: (a) Allowing HUD to use the most recent available information it acquires from the Census Bureau, if all of the data are referable to the same point or period in time; this change would provide greater flexibility in the use of population data (see proposed § 570.400(b)); (b) enumerating standards by which HUD would review the application (see proposed § 570.400(c)(1)(iv)); (c) stating certain criteria by which program amendments would be approved (see proposed § 570.400(d)); (d) changing the deadline date for submitting applications from 75 days before the end of the program year to 90 days after funding notification from the Area Office; this would give the grantees a fixed date to work toward (see proposed § 570.405(e)); (e) permitting Insular Areas to incur costs before application approval in hardship cases (see proposed § 570.405(f)); (f) adding threshold requirements to inform applicants of the minimum standards that must be met in order to be considered for funding (see proposed § 570.405(b)); this would clarify requirements for local governments, as well as reduce the burden on applicants; (g) adding certain criteria to be used by HUD in determining the amount of funds for which Insular Area grantees may apply (see proposed § 570.405(d)); (h) allowing the Secretary to make conditional grant approvals because the isolation of many Insular Areas from the continental United States makes it difficult for them to obtain desired and necessary technical assistance (see proposed § 570.405(g)); and (i) specifying citizen participation requirements in the application and amendment process.

Finally, section 104(b) of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. No. 98-181, amends the requirements for the grantee's final statement of community development objectives to include information regarding benefit to low and moderate income persons and the grantee's plans for minimizing displacement. These requirements have been added to § 570.405(h) of the proposed regulations regarding citizen participation in the examination and appraisal of the grantee's final statement of community development objectives.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements 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 during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued 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.

The information collection requirements contained in § 570.400 pertaining to the application and performance report have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35) and have been assigned OMB Control numbers 2506–0060 and 2506–0062. The information collection requirements contained in § 570.405 do not require approval from OMB since there are less than 10 eligible applicants (44 U.S.C. § 3509).

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant enconomic impact on a substantial number of small entities. For Insular Areas, there are fewer than 10 eligible applicants. The rules will simplify and reduce the requirements of applications. The other grantees under the program are relatively large entities and the changes made here should not have any significant economic impact on them. Additionally, in making grants, the program provides ample funds to cover those expenditures related to the administrative costs of the program.

The provisions of this rule pertaining to 24 CFR § 570.405 were listed as item CPD–6–83 in the Department's most recent Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15948) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number and title is 14.225—Secretary's Discretionary Fund/ Territories Program.

Lists of Subjects in 24 CFR Part 570

Community development block grant, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

PART 570—[AMENDED]

Accordingly, the Department proposes to amend 24 CFR Part 570 by revising §§ 570.400 and 570.405 to read as follows:

§ 570.400 General

(a) *Applicability.* The policies and procedures set forth in Subparts A, C, J, K, and O (except review for compliance with primary objectives) of this part shall apply to this subpart, except to the extent that they are specifically modified or augmented by the contents of this subpart, including specified exemptions described herein. The HUD Environmental Review Procedures contained in 24 CFR Part 58 also apply to this subpart, unless otherwise specifically provided herein.

(b) *Data.* Wherever data are used in this subpart for selecting applicants for assistance or for determining grant amounts, the source of such data shall be the most recent information available from the United States Bureau of the Census which are referable to the same point or period in time.

(c) *Review of applications for discretionary grants.* (1) Applications for assistance under this subpart shall be reviewed by HUD to ensure that: (i) The application is postmarked or received on or before the final date established by HUD for submission of applications for assistance for the current fiscal year; (ii) the application is complete, as required by the provisions of this subpart; (iii) the required certifications have been properly executed; and (iv) the applications meets the specific program requirements listed in the **Federal Register** Notice published in connection with a competition for funding and any other specific requirements listed under this Subpart for each of the programs.

(2) *Timing and Review.* Although HUD is not required by the Act to review and approve a discretionary grant application within any specified time period, every effort will be made to complete reviews of all such applications within 75 days.

(3) *Notification to applicants.* HUD will notify the applicant in writing that the application has been approved, partially approved, or disapproved. If an application is partially approved or disapproved, the applicant will be informed of the specific reasons for partial approval or disapproval. HUD may make conditional approvals, as provided in § 570.304(d).

(d) *Program amendments.* (1) Grantees shall request prior HUD approval for all program amendments involving changes in the scope or the objective of approved programs. Approval of amendments shall be subject to the following: (i) Capability to complete the modification or new activities in a timely manner; (ii) compliance with the requirements of this section for citizen participation; and (iii) the preparation of an amended or new environmental review in accordance with Part 58 of this title, if there is a significant change in the scope or location of approved activities.

(2) Any program amendments that do not require HUD approval must be fully documented in the grantee's records.

(e) *Performance report.* Each discretionary grantee shall submit a performance report in a form as specified in this subpart or, if in connection with a specific competition, in a Notice published in the **Federal Register.**

(Approved by the Office of Management and Budget under OMB control numbers 2506–0060 and 2506–0062.)

§ 570.405 The Insular areas.

(a) *Eligible applicants.* Eligible applicants are Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(b) *Threshold requirements.* HUD shall review the progress on outstanding grants made under this section of each grantee based on the grantee's performance report, the timeliness of close-outs, compliance with fund management requirements and other pertinent regulations taking into consideration the size of the grant and the degree and complexity of the program. If HUD determines upon such review that the applicant does not have the capacity to administer effectively a new grant, or a portion thereof, in addition to the grants currently under contract, that applicant shall not be invited to submit an application for current year funding.

(c) *Previous audit findings and outstanding monetary obligations.* HUD shall not accept for review an application from an applicant that has either an outstanding audit finding for the Community Development Block Grant Program or an outstanding Community Development Block Grant monetary obligation to HUD that is in arrears, or for which a repayment schedule has not been agreed. The

Regional Administrator may waive this restriction if the applicant has made a good faith effort to clear the audit. In no instance, however, shall a waiver be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made and payments are current.

(d) *Criteria for funding.* The Secretary shall establish for each fiscal year an amount for which eligible applicants (that have been determined to have the capacity to manage a new grant effectively) may apply. Grant amounts will be based on population of the applicant and its performance in prior years. In determining performance, HUD will consider program achievements and the applicant's effectiveness in using program funds. Effectiveness in using program funds shall be measured by reviewing audit, monitoring and performance reports.

(e) *Application and performance reporting.* Application and performance reporting requirements are as follows:

(1) Applicants must submit applications within 90 days of the notification of grant amount from HUD.

(2) Applicants must meet the application requirements in § 570.430 relating to small cities single purpose grants.

(3) Grant recipients shall submit an annual performance report of progress made on previously funded grants at a time determined by the Field Office. The status report shall be in narrative form addressing three areas:

(i) Progress: Progress in completing activities, the work remaining, changes in the implementation schedule and a breakdown of funds expended on each approved project;

(ii) Grantee assessment: A description of the effectiveness of funded activities in meeting the recipients community development needs; and

(iii) Environment: Status of the following:

(A) The environmental assessments and environmental impact statements prepared by the recipient;

(B) Action taken for compliance with other environmental obligations;

(C) Compliance with the conditions under § 58.34 of this title for exempt projects; and

(D) If appropriate, environmental reviews of emergency projects under § 58.33 of this title.

(f) *Costs incurred by the applicant.* (1) Notwithstanding any provision in this part, HUD will not reimburse or recognize any costs incurred before submission of the application to HUD.

(2) Also, HUD will not normally reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances the Manager may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue or unreasonable hardship on the applicant. Such authorization will be made only before the costs are incurred and where the conditions for release of funds have been met in accordance with 24 CFR 58.22, and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

(g) *Criteria for conditional approval.* HUD may approve a grant subject to specified conditions. In that case, the obligation and utilization of funds may be restricted. The reasons for the conditional approval and the actions necessary to remove the conditions shall be specified. Failure of the applicant to satisfy the conditions may result in a termination of the grant. A conditional approval may be made under any of the following circumstances:

(1) When local environmental reviews under 24 CFR Part 58 have not yet been completed;

(2) To ensure that actual provision of other resources required to complete the proposed activities will be available within a reasonable period of time;

(3) To ensure that the project can be completed within estimated costs;

(4) When outstanding monetary obligations are due to HUD based on a satisfactory arrangement for their payment between HUD and the applicant;

(5) Pending resolution of problems with specific projects or of the capability of the grantee to obtain resources needed to carry out, operate or maintain the project; or

(6) Pending site and neighborhood standards approval for proposed housing projects, if applicable.

(h) *Citizen participation.* (1) The applicant shall provide for appropriate citizen participation in the application and amendment process, including at least the following:

(i) Furnishing citizens with information concerning amounts of funds available for community development and housing activities and the range of activities that may be undertaken including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the grantee for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities;

(ii) Holding one or more public hearings (scheduled at convenient times and places) to obtain the views of citizens on community development and housing needs;

(iii) Developing and publishing or posting the community development statement in such a manner as to afford affected citizens an opportunity to examine its contents and to submit comments;

(iv) Affording citizens an opportunity to review and comment on the applicant's performance under any community development block grant.

(2) Before submitting the application to HUD, the applicant shall certify that it has (i) met the requirements of paragraph (1) of this section, (ii) considered any comments and views expressed by citizens, and (iii) if appropriate, modified the application accordingly and made the modified application available to citizens.

Authority: Section 107 of the Housing and Community Development Act of 1974 (42 U.S.C. 5307); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 31, 1984.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 84-20855 Filed 8-6-84; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Reopening and Extension of Public Comment Period on Proposed Amendment to the Illinois Permanent Regulatory Program

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

ACTION: Reopening and extension of public comment period.

SUMMARY: On March 16, 1984, the Illinois Department of Mines and Minerals (IDMM) submitted to OSM a proposed program amendment consisting of changes to the Illinois regulations concerning the exemption from prime farmland permitting requirements and performance standards. OSM published a notice in the **Federal Register** on April 4, 1984, announcing receipt of the amendment and inviting public comment on the

adequacy of the proposed amendment (49 FR 13380). The public comment period ended May 4, 1984.

By letter dated July 19, 1984, IDMM submitted a revised proposed rule which includes a new provision concerning integration of the exemption decision with the permit application process.

Accordingly, OSM is reopening and extending the comment period on Illinois' March 16, 1984 proposed amendment as modified on July 19, 1984. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendment.

DATE: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 p.m. September 6, 1984 will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to: James Fulton, Director, Springfield Field Office, Office of Surface Mining, Room 20, 600 E. Monroe Street, Springfield, Illinois 62701.

Copies of the Illinois program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters office and the office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays:

Office of Surface Mining, Administrative Record, Room 5124, 1100 L Street, NW., Washington, D.C. 20240

Illinois Department of Mines and Minerals, Land Reclamation Division, 227 South 7th Street, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: James Fulton, Director, Springfield Field Office, Office of Surface Mining, Room 20, 600 E. Monroe Street, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION: The Illinois State program was conditionally approved by the Secretary of the Interior on June 1, 1982 (47 FR 23858). Information pertinent to the general background, revisions, modifications, and amendments to the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Illinois program can be found in the June 1, 1982 Federal Register.

When the Secretary approved the Illinois program, he noted in response to a comment that the Illinois program did not contain the specific criteria of 30 CFR 785.17(a), which implements Section 510(d)(2) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Section 510(d)(2) is commonly referred to as the "grandfather clause" because it exempts certain surface coal mining operations from the applicability of SMCRA's special prime farmland permitting requirements and performance standards. The Secretary stated that because of the extensive litigation over the grandfather clause, Illinois could not have anticipated the adoption of the final Federal rule on September 29, 1981. The Secretary added that Illinois would be afforded an opportunity to amend its regulations as appropriate if necessary to make its program consistent with the September 29, 1981 rule.

In a related rulemaking, the Secretary recently announced his decision on remand of the issues involved in the *Illinois South Project, Inc. v. Watt* litigation. (49 FR 13494, April 5, 1984). The Illinois South Project and nine other Illinois organizations challenged the Secretary's June 1, 1982 decision approving the Illinois program. The United States District Court for the Central District of Illinois remanded the case to the Secretary at his request to review the issues in light of legal developments since June 1, 1982. In his April 5, 1984 decision, the Secretary determined that the Illinois program is not fully consistent with the current Federal permanent regulatory program in several areas. The Director of OSM notified the State that certain required program amendments would be necessary as a result of the Secretary's decision. One of the program amendments required of Illinois is to revise the criteria used to determine exemptions from prime farmland requirements to be no less effective than the Federal criteria at 30 CFR 785.17(a).

The Secretary noted in his April 5, 1984 decision that Illinois had proposed such a regulation change on May 20, 1983, and had submitted the proposed regulation to OSM as a program amendment on March 16, 1984.

By letter dated March 16, 1984, Illinois submitted regulatory amendments to revise the exemption from the prime farmland permitting requirements and performance standards. Specifically, Illinois revised it rule 1785.17(a) which sets forth the applicability of prime farmland requirements. The rule implements Section 2.08 of the Illinois statute which corresponds to Section 510(d)(2) of SMCRA.

On April 4, 1984, OSM published a notice in the **Federal Register** announcing receipt of the amendment and inviting public comment on whether the proposed amendment was no less effective than the Federal regulations (49 FR 13380). The public comment period ended May 4, 1984. A public hearing scheduled for April 25, 1984, was not held because no one expressed a desire to present testimony.

During the public comment period, it was brought to OSM's attention that the proposed Illinois rule OSM had published in the April 4, 1984 **Federal Register** was different from the rule that IDMM was promulgating through its State rulemaking process. IDMM apparently submitted the proposed rule to OSM and later amended the rule as a result of comments received during the State rulemaking process. Those changes were not submitted to OSM. OSM was subsequently notified that the Joint Committee on Administrative Rules had published in the *Illinois Register* a notice of withdrawal of the proposed rulemaking because IDMM had not responded to certain objections within the statutory 90-day period. OSM discussed this matter with IDMM and by letter dated July 19, 1984, IDMM resubmitted the proposed rule in the form in which it should have been printed in the **Federal Register** for public comment. IDMM stated that it is anticipated that Sate rulemaking will be completed by early September.

For the convenience of the public, the entire text of the proposed rule is printed below.

Section 1785.17 Prime Farmland.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland. Nothing in this section shall apply to any permit issued prior to the date of enactment of the Act, or to any revisons or renewals thereof, or to any existing surface mining operation for which a permit was issued prior to the date of enactment of the Act as determined by the Department prior to September 29, 1981. For lands for which a request for exemption was initially made or pending on or after Septermber 29, 1981, this section does not apply to:

(1) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(2) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

(3) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977; provided that:

(i) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(ii) the permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract or lease but not including an option to buy, lease, or contract; and

(iii) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pit if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(4) For purposes of this section:

(i) "Renewal" of a permit shall mean a decision by the Department to extend the time by which the permittee may complete mining within the boundaries of the original mining within the boundaries of the original permit and "revision" of the permit shall mean a decision by the Department to allow changes in the method of mining operations within the original permit area, or the decision of the Department to allow amendment pursuant to state law prior to June 1, 1982, or other incidental boundary changes to the original permit;

(ii) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;

(iii) A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(5) The exceptions granted by Paragraphs (a) (1)–(3) of this section shall apply fully only to lands permitted and exempted by a Departmental decision on requests made prior to August 1, 1982. Persons initially requesting an exemption under subparagraphs (a) (1)–(3) after July 31, 1982 may obtain such exemption, but lands subject to such requests shall comply with the prime farmland productivity standards of Section 1823.15. Requests first made after July 31, 1982 shall be further subject to tan acreage limitation of 13,000 acres statewide, as set out in subsection (6) below.

(6) The acreage limitation referred to in subsection (5) shall be implemented as follows:

Requests for exemptions from prime farmland permit requirements for lands first submitted after July 31, 1982 and pending before the Department on the effective date of this rule shall be collectively totalled for acreage. If the acreage requested and also eligible (based upon the merits of the request) for this exemption is less than 13,000 acres, the requests shall be granted. On a monthly basis thereafter, the acreage granted under this exemption shall be cumulatively totalled. In the month that the cumulative total of acreage granted under this exemption since July 31, 1982 exceeds 13,000 acres, the exemptions shall be granted subject to a determination of their merits, for that month on a pro-rata basis, so that the cumulative total of acres exempted hereunder including that month's total, equals 13,000 acres. When the 13,000 total cumulative acres have been exempted pursuant to this exemption, the exemption shall become unavailable to future requests. Any permittee may relinquish exempted acreage to the Department in writing, identifying the acreage released. In the event available exempt acreage shall ever be so relinquished, the availability of the total number of acres shall be announced by the Department to all existing permittees and requests made within 30 days of the announcement shall be granted an exemption on a pro-rata basis to the extent of available acreage.

(7)(i) All applicants for an exemption shall supply the Department with a scale map of the area proposed to be exempted, delineating all prime farmland soils and showing the total number of acres proposed for exemption to the nearest acre, and the numbers of acres of each prime farmland soil type in the area proposed to be exempted.

(ii) Requests for grandfather exemptions will be reviewed initially by the Department. Based on the information initially submitted in the request, the Department will prepare a preliminary review. The request and the Department's preliminary review will be subject to public comment and review along with the permit application to which the grandfathering request applies. A decision on the grandfathering request will be included with the Department's results of decision on the permit application which includes the requested acreage.

For comparative purposes, the text of the original proposed amendment is available for review at the locations listed above under **ADDRESSES**, as are all other documents referenced in this notice. Accordingly, OSM is reopening and extending the public comment period on the adequacy of Illinois' proposed amendment to rule § 1785.17.

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

Dated: August 2, 1984.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 84–20829 Filed 8–6–84; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

Amendment to and Clarification of Certain Provisions Relating to Direct Deposit Payments by Means Other Than Check

AGENCY: Bureau of Government Financial Operations.

ACTION: Notice of proposed rulemaking.

SUMMARY: There are five purposes for the proposed rule. First, Treasury proposes to clarify the liability of financial institutions that credit recurring benefit payments made by means other than check (EFT) after the death or legal incapacity of a recipient or death of the beneficiary, or that otherwise do not comply with the regulations in 31 CFR Part 210.

Second, Treasury proposes to simplify and clarify the procedures for collection of the amount for which financial institutions are liable.

Third, Treasury proposes to clarify that a financial institution that accepts a Direct Deposit Standard Authorization Form on which the recipient's signature is forged will be liable for any payments made by the Government on the basis of that form.

Fourth, Treasury proposes to require that a financial institution send a notice to the account owner(s) when the financial institution receives a reclamation notice relating to an account. This notice will inform account owners that payments have stopped, that reclamation is being processed, and explain how errors may be corrected.

Fifth, Treasury proposes procedures for financial institutions to follow in the event that the Government sends a reclamation notice because of the death of a recipient or depositor, and either the date or fact of death is in error.

DATE: Comments on this proposed rule must be submitted on or before October 9, 1984.

ADDRESS: Comments may be mailed to: James R. Finegan, Program Analyst, EFT Program Management Branch, Bureau of Government Financial Operations, U.S. Department of the Treasury, Room 222A, Treasury Annex No. 1, Washington, D.C. 20226.

FOR FURTHER INFORMATION CONTACT: James R. Finegan, (202) 535–6331.

SUPPLEMENTARY INFORMATION: Part 210 of the Code of Federal Regulations sets forth the rights and liabilities of the Government, the financial institution and the recipient where a recipient of Federal recurring benefits authorizes direct deposit of recurring benefit payments and the payments are made by means other than check, *i.e.*, by electronic funds transfer (EFT). Part 210, contains the terms of the contract to which financial institutions agree to be bound in executing the Direct Deposit Standard Authorization Form (SF 1199) or by crediting an EFT Direct Deposit payment. The regulations in this Part were promulgated in 1975 and revised in 1977. Since that time, it has become apparent that the regulations need clarification and improvement in a number of respects. Notably, we propose to simplify the reclamation prodedures in § 210.10 in response to a number of complaints from financial institutions that the current procedures are cumbersome.

In addition, there are incidents when the Government's information regarding the date or fact of death of a recipient of Direct Deposit payments is incorrect. Treasury proposes to amend the regulations so that both recipients and financial institutions can take effective steps to remedy such errors and avoid hardship.

If these amendments become final, extensive explanations of the changes and new procedures will be published as amendments to the *Green Book* on Direct Deposit which is distributed to financial institutions and other interested parties.

1. Changes to § 210.9

Section 210.9 sets forth the liability of financial institutions when benefit payments are credited after the death or legal incapacity of a recipient or the death of a beneficiary, or when a financial institution does not comply with the regulations in Part 210. Subsection 210.9(a) provides that a financial institution can limit its liability if it had no knowledge of the death or legal incapacity. The financial institution is liable to the Government in accordance with § 210.9 without regard to the financial institution's ability to recover this amount from any other party. Proposed § 210.9(b) sets forth how the amount of limited liability will be measured.

Proposed § 210.9(c) states that Treasury does not authorize or direct the financial institution to debit the account of any customer under this Part. The substance of this provision is not new and was the subject of a regulatory clarification published in a Notice of Proposed Rulemaking on April 24, 1984 (49 FR 17546).

The proposed regulation deletes the provision in § 210.9 that requires financial institutions to make "every practicable administrative effort" to collect from withdrawers in order to limit liability.

Proposed § 210.9(d) clarifies that when a financial institution learns of the death of a depositor, it must determine whether that individual is a recipient or beneficiary of Direct Deposit payments. If it does not do so, it will be unable to limit its liability for after death payments. The current regulation in § 210.9(b) does not clearly impose this duty.

Note.—Neither the proposed regulation nor the current regulation imposes a duty on financial institutions to learn of the deaths of their customers by searching obituaries or any other means.

Proposed § 210.9(e) clarifies that even if a financial institution had no knowledge of the death or legal incapacity it will forfeit its right to limit its liability if it fails to follow the collection procedures in § 210.10. This result is not new, but it is currently not clearly stated in the regulations. In addition, a financial institution will also forfeit its right to limit its liability if it fails to send out the Notice to Account Owners required by proposed § 210.11.

Proposed § 210.9(f) clarifies that these regulations do not apply when a representative payee or custodian appointed by a program agency for a beneficiary fraudulently executes a Standard Authorization Form after the beneficiary has already died. The financial institution would be liable if it had knowledge of the death of the beneficiary. A related change also has been proposed to the definition of "recipient" in § 210.2(f).

Finally, proposed § 210.9(g) states that a financial institutions responsible for verifying the identity of a customer who executes a Direct Deposit Standard Authorization Form. If the financial institution executes a Standard Authorization Form containing a forged signature, the financial institution will be responsible for any payments credited on the basis of the form. The current regulations do not specifically state this liability.

2. Changes to § 210.10

Section § 210.10 simplifies the procedures for reclamation of after death payments from financial institutions. Current regulations provide a two tier collection procedure under which a financial institution must return forms, and in some cases funds, at two different times during the collection process. Treasury has received a number of complaints that the collection procedures are cumbersome and difficult to understand.

As proposed, the financial institution would only receive one collection notice ("Notice of Reclamation") form which must be completed and returned within 60 days along with the proper amount. (A followup notice will be sent to ensure that the notice is received by the financial institution.) Under proposed § 210.10(b), failure to comply with the 60 day return period would result in a debit of the financial institution's Federal Reserve account for the full amount of after death credit payments.

Currently, the regulations are not explicit that the Government's form must be used in response to the Government's collection demands. Financial institutions sometimes respond with letters that omit necessary information. Under the proposed rule the notice form must be used. This will facilitate processing and lessen the possibility of a financial institution being held fully liable for failure to comply with the collection procedures.

If a financial institution had no knowledge of the death or legal incapacity, and properly and timely returns the reclamation form with a payment measured by the amount in the recipient's account, the program agency will attempt to recover an outstanding balance from the person who withdrew the funds. Proposed § 210.10(d). If the program agency is unable to recover, the financial institution's remaining liability cannot exceed the amount of credit payments credited within 45 days of the recipient's death or legal incapacity. The amount of remaining liability will be debited from the financial institution's Federal Reserve account, and the Federal Reserve bank will provide the financial institution with an advice of debit.

In the proposed rule, the time at which the "amount in the recipient's account" will be measured is new. Under the proposed rule, the amount would be the total in the account on the date the

Notice of Reclamation is received *plus* any additional amounts credited to the account before the form is returned by the financial institution. § 210.10(b)(2)(i), § 210.9(b).

The proposed requirement in § 210.10(b)(2)(ii) that the financial institution must explain on the returned Notice of Reclamation why it cannot provide the name(s) of withdrawer(s) is also new.

The financial institution no longer will be required to certify that it made "every practicable administrative effort" to recover the after death payments at any time in the collection process.

The proposed § 210.10(b)(1) and § 210.10(e) clarify what a financial institution must do if it learns of the death or legal incapacity after payments received after death or legal incapacity have already been credited to the recipient's account. It would have to return all further payments to the Government without regard to whether it has received any notification from the Government. If a financial institution fails to return a payment after it learns of the death, it would be unable to limit its liability, and would be liable for all payments credited after the death or legal incapacity. If, however, the financial institution returns payments received after it learns of the death or legal incapacity, it will be able to limit its liability to the same extent as a financial institution that had no knowledge of the event until notification by the Government.

It should be noted that we propose to change all references to "Treasury" in current § 210.10 to "the Government." This is not a substantive change, but merely recognizes that military and certain other payments are not administered by the Department of the Treasury.

3. Notice to Account Owners

Proposed § 210.11 imposes a new requirement that when a financial institution receives a Notice of Reclamation, it will be required to send a Government form "Notice to Account Owners" to the last known address of the account owner(s). The form will be included with the Notice of Reclamation. An example of this Notice follows as an appendix to this Notice of Proposed Rulemaking. The financial institution must also advise the account owner in writing of any action the financial institution intends to take against the account to protect itself from loss in responding to the Government's collection action against the financial institution.

The purpose of the Notice to Account Owners is to inform the account owners that payments have been stopped, that reclamations have been initiated and what to do if the Government has made an error regarding the fact or date of death. This information is best communicated through the financial institutions because often the Government does not have the current address of a Direct Deposit recipient.

4. Erroneous Death Information

Proposed § 210.12 is also a completely new provision. It sets forth the procedures for financial institutions to relieve themselves of liability if the date or fact of death reflected in the Notice of Reclamation is in error. Proposed § 210.12(d) advises financial institutions what to do if, after they have returned funds to the Government based on a Notice of Reclamation, it is determined that the date or fact of death was in error.

Special Analyses: The Treasury Department has determined that this proposal is not a major rule for the purposes of E.O. 12291. Therefore, no regulatory impact analysis is required.

It has been certified that the rulemaking proposed herein will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

List of Subjects in 31 CFR Part 210

Banks, Banking, Electronic funds transfer.

PART 210—FEDERAL RECURRING PAYMENTS THROUGH FINANCIAL INSTITUTION BY MEANS OTHER THAN BY CHECK

Accordingly, it is proposed that 31 CFR Part 210 be amended as follows:

1. By changing all references to "financial organization" to "financial institution."

§ 210.2 [Amended]

2. By revising paragraph (f) of § 210.2 to read:

* * * * *

(f) "Recipient" means a person entitled to receive recurring payments from the Government. Recipient includes a custodian or representative payee named by a program agency for a beneficiary.

* * * * *

3. By adding paragraph (l) to § 210.2:

* * * * *

(l) Outstanding total: The sum of all credit payments received after death or legal incapacity, minus any amount returned to, or recovered by the Government.

4. By revising § 210.9 to read:

§ 210.9 Death or legal incapacity of recipients or death of beneficiaries.

(a) A financial institution shall be liable to the Government for the total amount of all credit payments received after the death or legal incapacity of the recipient or the death of the beneficiary. A financial institution may limit its liability provided that the financial institution did not have knowledge of the death or legal incapacity at the time of the deposit or withdrawal of any of the payments made after the death or legal incapacity.

(b) If limitation of liability is available to a financial institution under this Part, the amount of its liability shall be:

(1) An amount equal to the amount in the recipient's account as defined in § 210.10(b)(2)(i), plus

(2) An amount equal to the credit payments received by the financial institution within 45 days after the death or legal incapacity of the recipient or the death of the beneficiary; *Provided,* that the financial institution will only be liable for the 45-day amount to the extent described in § 210.10(d).

(c) Although a financial institution shall be liable for an amount equal to the amount in the recipient's account, this Part does not authorize or direct a financial institution to debit the account of any customer, living or deceased, including that of the recipient, for the financial institution's liability to the Government under this Part. The amount in the recipient's account is only a measure of the financial institution's liability.

(d) A financial institution shall be deemed to have knowledge of the death or legal incapacity of the recipient when it is brought to the attention of a financial institution employee who handles credit payments, or it would have been brought to that person's attention if the financial institution had exercised due diligence. The financial institution will be considered to have exercised due diligence only if it maintains procedures under which, once it learns of the death of a depositor, it determines whether its deceased depositor is a recipient of credit payments under this Part, and immediately communicates such information to the appropriate employees, and it complies with such procedures.

(e) A financial institution that fails to comply timely with the collection procedures set forth in § 210.10 of this Part or the Notice to Account Owners requirement of § 210.11 of this Part forfeits its right to limit its liability in accordance with paragraph (a) of this section.

(f) A financial institution will not be liable under this Part for credit payments made after the death of a beneficiary if the beneficiary was deceased at the time the recipient executed a Standard Authorization Form, provided that the financial institution had no knowledge of the beneficiary's death.

(g) A financial institution shall verify the identity of all persons who sign a Standard Authorization Form. A financial institution that executes a Standard Authorization Form on which the recipient's signature is forged shall be liable to the Government under this Part for all credit payments made on the basis of such form.

5. By revising § 210.10 to read:

§ 210.10 Collection procedures.

The amount for which the financial institution is liable under § 210.9 shall be collected as follows:

(a) For each type of recurring payment, the Government will send a Notice of Reclamation form to the financial institution. The form will identify payments sent to the financial institution for credit to the account of a recipient which should have been returned by the financial institution because of the death or legal incapacity of a recipient or the death of a beneficiary.

(b) Upon receipt of the Notice of Reclamation, the financial institution must do one of the following:

(1) If the financial institution had knowledge of the death or legal incapacity and did not immediately return to the Government all payments received after it acquired that knowledge, the financial institution shall immediately return to the Government the total outstanding amount of credit payments listed on the notice form that it received after it learned of the death. With respect to any credit payments received prior to learning of the death that have not been returned, the financial institution shall certify on the Notice of Reclamation the date it learned of the death and follow the procedure in paragraph (2) of this subsection.

(2) If the financial institution had no knowledge of the death or legal incapacity at the time any payments (made after the death or legal incapacity) were credited to the recipient's account, an appropriate official of the financial institution shall certify on the Notice of Reclamation form that it had no knowledge of the death or legal incapacity and fully complete the form in accordance with its instructions and do the following:

(i) The financial institution shall return to the Government both the executed Notice of Reclamation form and an amount equal to the amount in the account, or the outstanding total, whichever is less. The amount in the account includes the balance in the account on the date the financial institution receives the Notice of Reclamation plus any additional credits to the account made before the financial institution returns the completed Notice of Reclamation to the Government.

(ii) If the amount returned is less than the amount requested in the notice, the financial institution shall include with the form the name and address of any person(s) who withdrew funds from the account after the death or legal incapacity. If the financial institution is unable to supply the name(s) of the withdrawer(s), it shall state the reason for its inability on the form.

(c) If the Government does not receive from the financial institution the fully completed and properly executed Notice of Reclamation form along with the amount due under § 210.9(b)(1) within 60 days of the date of the Notice of Reclamation, the financial institution shall be liable for the full outstanding total listed on the form. Following the 60th day after the date of the Notice of Reclamation, the Government will instruct the appropriate Federal Reserve Bank to debit the account utilized by the financial institution for receipt of credit payments in the amount of the outstanding total. By receiving credit payments under this Part, the financial institution is deemed to authorize this debit. The Federal Reserve Bank will provide advice of the debit to the financial institution.

(d) If the program agency is unable to collect the entire outstanding total from the withdrawer(s), the financial institution shall be liable for an additional amount equal to the credit payments received by it within 45 days of the death or legal incapacity, or the outstanding total, whichever is less. The Government will instruct the appropriate Federal Reserve bank to debit the account utilized by the financial institution for receipt of credit payments in this amount. By receiving credit payments under this Part, the financial institution is deemed to authorize this debit. The Federal Reserve bank will provide advice of the debit to the financial institution.

(e) Immediately upon learning of the death or legal incapacity, regardless of whether there has been notification from the Government, the financial institution shall return to the Government any further credit payments it receives and notify the Government that it has learned of the death or legal incapacity in order that the above collection procedures can be commenced. *See*, § 210.7(f)(3.

6. By redesignating § 210.11 as § 210.13 and adding § 210.11 and § 210.12 as follows:

§ 210.11 Notice to account owners of collection action.

(a) Upon receipt by a financial institution of a Notice or Reclamation as described in § 210.10(a), the financial institution shall immediately mail to the recipient's current address of record a copy of the Notice to Account Owners form included with the Notice of Reclamation.

(b) The financial institution shall indicate with the Notice to Account Owners any action it has taken or intends to take with respect to the recipient's account in connection with the Government's collection action against the financial institution.

(c) The financial institution is not authorized by this Part to debit the account of any party or to deposit any funds from any account in a suspense account or escrow account or the equivalent. If such action is taken, it must be under authority of state law or the financial institution's contract with its depositor(s).

(d) The financial institution's liability under this Part is not affected by any action taken or not taken by the financial institution to recover its liability to the Government from any party.

(e) Failure to mail the "Notice to Account Owners" shall result in forfeiture by the financial institution of its ability under this Part to limit its liability. *See*, §210.9(e).

§210.12 Erroneous death information.

(a) In the event that the financial institution is advised that the Government's information that the recipient is deceased is incorrect, or that the date of death is incorrect, the financial institution shall certify the correct information to the Government by one of the following means:

(1) Certify on the "Notice of Reclamation" that the person whose name is reflected on the notice is alive, or that the date of death is incorrect, and that the financial institution took prudent measures to assure the person was alive or that the date of death was erroneous. Prudent measures to assure that the person was alive would include, but not be limited to, the person providing the financial institution adequate identification, or an individual other than the person providing a

notarized statement from the person. Prudent measures to assure the correct date of death would include obtaining a death certificate.

(2) If there is any question regarding the sufficiency of the evidence presented to demonstrate that the date or fact of death is incorrect, the individual presenting the evidence should be referred by the financial institution to the agency making the payment, *e.g.*, the Social Security Administration. The agency will certify in writing to the financial institution the corrected information. The financial institution will return the agency's certification with the Notice of Reclamation.

(b) If the Government's information that the person is dead is in error, upon timely receipt by the Government of both an appropriate certification in accordance with paragraph (a) of this section on or with a properly completed Notice of Reclamation, the financial institution will be relieved of its liability, and will no longer be subject to collection procedures under this Part.

(c) If the date of death on the Notice of Reclamation is in error, upon timely receipt by the Government of both an appropriate certification in accordance with paragraph (a) of this section on or with a properly completed Notice of Reclamation, the financial institution will be relieved of an appropriate part of its liability. If the date of death is in error, the financial institution must adjust the outstanding total on the Notice of Reclamation to exclude payments made before the correct date of death. The financial institution must include an explanation of the adjustment with the Notice of Reclamation.

(d) If after the financial institution has returned to the Government a completed Notice of Reclamation and has made payment of its liability, the financial institution learns that the fact of death or date of death was in error, it should bring the information to the attention of the agency which made the credit payments, *e.g.*, the Social Security Administration. The agency will refund to the financial institution, without interest, the appropriate amount of funds paid by the financial institution pursuant to §210.10, including funds debited from its Federal Reserve account under §210.10 (b) or (c).

(5 U.S.C. 301; 12 U.S.C. 391; Title 31, U.S.C., and other provisions of law)

Dated: July 3, 1984.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[Note.—This appendix will not appear in the CFR.]

Appendix

Notice to Account Owner From the Government

The Government has received information that the person named on this notice is dead. The purpose of this notice is to inform you that by law, entitlement to Government benefits for this person ended at death. Therefore, the Government must recover all payments made after the date of death. If there has been an error and this person *did not die*, or if the *date of death is wrong*, this notice explains how to correct the mistake. If you do not understand this notice, please get help from either your financial institution or the Government agency that was making payments.

Payments to This Person Have Been Stopped

Your financial institution has been asked to return the payments shown on this notice to the Government because they were issued in error. The Government has asked your financial institution to send this notice to you, the account owner. Your financial institution must notify you if it has taken action to recover these funds from the account. Contact your financial institution immediately if you do not understand its actions. If the Government is unable to collect from the financial institution the full amount of the payments made after death, you may be contacted by the agency which made the payments.

If the Person Did Not Die

If the person did not die, *immediately* contact both your financial institution and the agency that made the payments to correct the error. The Government regrets any inconvenience this error may cause. Your financial institution can correct the collection action if it is given satisfactory proof that the person is alive. *NOTE:* YOU *MUST* CONTACT THE AGENCY THAT MADE THE PAYMENTS BECAUSE THIS ERROR HAS STOPPED FURTHER PAYMENTS. ONLY THE AGENCY CAN RESTART THE PAYMENTS.

If the Date of Death Is Wrong

If the date of death shown is wrong, *immediately* show your financial institution a copy of the death certificate which will permit it to make any needed adjustment to the amount it must return to the Government. If it is inconvenient to go to the financial institution, bring this notice and a death certificate to the agency that made the payments so correction may be made.

The agency that made the payments is shown using these abbreviations:

SOCIAL SECURITY ADMINISTRATION: RSI–SSA; DIB–SSA; RSI–SSI
VETERANS ADMINISTRATION: VA
OFFICE OF PERSONNEL MANAGEMENT: OPM
RAILROAD RETIREMENT BOARD: RRB
OTHER AGENCY ABBREVIATIONS: AF RET PAY; ARMY RET; ARMY BEN; MarCorRet; MarCorAnn; NAVYRET; NAVY ANN; CIADSANNU

Survivor Benefits

Persons related to the deceased may qualify for survivor payments. Survivors should contact the agency that made payments to determine whether they are eligible.

[FR Doc. 84–20575 Filed 8–6–84; 8:45 am]
BILLING CODE 4810–35–M

Bureau of Government Financial Operations

31 CFR Part 223

Financial Guidelines for Qualification of Surety Companies Under 31 U.S.C. 9304–9308

AGENCY: Bureau of Government Financial Operations.

ACTION: Proposed Guidelines and Request for Comments.

SUMMARY: The proposed guidelines supplement the current financial standards which require that a company must be solvent and able to keep and perform its contracts in order to qualify as an acceptable surety on Federal bonds. The Treasury (BGFO) has determined that its current guidelines and practices (as set forth in its regulations at 31 CFR Part 223) do not adequately provide such satisfaction in all instances. In view of rapidly changing insurance industry technology and the need to effectively and efficiently utilize fewer resources, Treasury (BGFO) proposes to amend its guidelines and alter its practices to strengthen the financial standards governing surety companies doing business with the United States.

DATES: The proposed additional financial guidelines for companies

seeking or holding Treasury authority are proposed to become effective December 31, 1984. Under the proposed guidelines, companies not meeting the revised criteria as of that date would not be renewed as of June 30, 1985 (the date their authorities would normally expire without subsequent renewal).

Comment Deadline: All comments or inquiries received on or before October 9, 1984, will be given due consideration.

ADDRESS: Comments or inquiries may be mailed to Surety Bonds Branch, Finance Division, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Terry L. Boyer, Telephone (202) 634–5763.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department of the Treasury has determined that this proposal is not major for purposes of E.O. 12291. Therefore, no regulatory impact analysis is required.

Background

Pursuant to 31 U.S.C. 9305, the Secretary of the Treasury is required, among other things, to be satisfied that a surety company is able to keep and perform its contracts before authorizing that company to write Federal bonds. By Treasury Department Order No. 145–18, dated September 22, 1983, the Fiscal Assistant Secretary delegated to the Commissioner, Bureau of Government Financial Operations (BGFO), the authority of the Secretary of the Treasury under 31 U.S.C. 9304–9308 (formerly 6 U.S.C. 6–13), and the regulations issued thereunder to carry out those responsibilities.

The applicable regulations are set forth in 31 CFR Part 223 (Treasury circular 297) entitled "Regulations Governing Surety Companies Doing Business with the United States." The guidelines applied in assessing a company's financial condition are in the "Instructions Relating to the Submission of Annual Financial Statements of Surety Companies to the Treasury Department." *See,* 31 CFR 223.8(b) and 223.9. These instructions are transmitted to surety companies annually with the Treasury's "Annual Letter to Surety Companies Reporting to the Treasury."

Treasury's practices for assessing a company's financial condition involve the review of the company's annual financial statements, application of the criteria set forth in the regulations and guidelines, and establishing a Treasury underwriting limitation in accordance with the criteria. If a company no longer meets the set criteria, Treasury terminates a company's authority to act as a surety on Federal bonds. The proposed guidelines will better enable Treasury (BGFO) to furnish Federal bond-approving officers with a list of surety companies which are not only solvent and able to keep and perform their contracts at the time of the listing, but which can unquestionably be expected to remain so for a reasonable period in the future.

The Department of the Treasury proposes to adopt the following financial guidelines:

Additional Financial Guidelines: Effective December 31, 1984, in order to qualify for a certificate of authority to do business with the Government as a surety, a company must meet one of the following requirements: (1) have a A+ rating in the current edition of *Best's Insurance Reports, Property-Casualty* or (2) ratio results for all of the following ratios must fall within Treasury specified ranges.

Ratios	Treasury specified ranges	
	Over	Under
1. Premium to surplus		300
2. Two-year adjusted underwriting		110
3. One-year reserve development to surplus		25
4. Two-year reserve development to surplus		25
5. Estimated current reserve deficiency to surplus		25

The Treasury would recognize as admitted reinsurers (restricted to non-Federal bonds and policies) only companies rated A or higher by Best's. A company not having an A rating would also be required to maintain the same ratio values as specified above.

In evaluating comments, Treasury will give more weight to those comments which include a practical means of accomplishing the desired end, and less weight to those responses which merely object to the revisions without offering a workable alternative. In addition, more weight will be given to alternatives which include supporting data.

Treasury has the option of revising these guidelines in the future should Best's rating standards and procedures change significantly.

Dated: July 3, 1984.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-20859 Filed 8-6-84; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 155

[DoD Directive 5220.6]

Industrial Personnel Security Clearance Program

AGENCY: Office of Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This part is being revised and reissued to (1) reflect organizational changes in the Department, (2) simplify the language contained in the existing rule, and (3) incorporate the Equal Access to Justice (5 U.S.C. 504) standard in the section pertaining to reimbursement for lost earnings. While publication of this proposed notice of revision is not required under the Administrative Procedures Act, 5 U.S.C. 553(a), notice and the opportunity for public comment are provided voluntarily by the Department of Defense.

DATE: The comments must be received by August 30, 1984.

ADDRESS: Directorate for Industrial Security Clearance Review, 4019 Wilson Blvd, Suite 101, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. James P. Brown, Director telephone (202) 696–4598.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense published the last edition of this directive in FR Doc. 76–13745 appearing in the **Federal Register** on May 12, 1976 (41 FR 19303). It is now being revised and incorporates the changes described in the **SUMMARY** above.

1. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

2. This rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

3. Although exempt under section 1.(a)(2) of E.O. 12291, the Department of Defense does not consider this rule to be a major rule under section 1.(b), E.O. 12291.

List of Subjects in 32 CFR Part 155

Administrative practice and procedure, Business and industry, Classified information, Security clearance.

Accordingly, 32 CFR is amended by revising Part 155, reading as follows:

PART 155—INDUSTRIAL PERSONNEL SECURITY CLEARANCE PROGRAM

Sec.
155.1 Purpose.
155.2 Applicability and scope.
155.3 Definitions.
155.4 Policy.
155.5 Responsibilities.
155.6 Procedures.
155.7 Additional procedural guidance.

Authority: 5 U.S.C. 504, E.O. 10865.

§ 155.1 Purpose.

This Part has been revised to update policy, the standard, criteria, and procedures of the Industrial Personnel Security Clearance Program (IPSCP) under E.O. 10865.

§ 155.2 Applicability and scope.

(a) This Part applies to the Office of the Secretary of Defense, the Military Departments, Office of the Joint Chiefs of Staff, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) By mutual agreement, the Part also extends to other federal agencies that include:

Department of State
Department of Treasury
Department of Interior
Department of Agriculture
Department of Commerce
Department of Labor
Department of Justice
Environmental Protection Agency
Federal Emergency Management Agency
Federal Reserve System
General Services Administration
National Aeronautics and Space Administration
National Science Foundation
Small Business Administration
Arms Control and Disarmament Agency
Department of Transportation
General Accounting Office
U.S. Information Agency

(c) This Part applies to cases in which the Defense Industrial Security Clearance Office (DISCO) or other agency cannot affirmatively determine that it is clearly consistent with the national interest to grant or continue a security clearance for access to classified information by persons employed by United States industry, or to U.S. citizens who require NATO security access because of NATO-related employment, or to Red Cross or United Service Organizations (USO) employees nominated for assignment with the Armed Forces overseas. These cases must be referred to the Directorate for Industrial Security Clearance Review (DISCR) for action under this Part.

(d) This Part does not apply to cases in which a security clearance is withdrawn for administrative reasons with no finding or prejudice to a later determination as to whether the grant or continuance of applicant's security clearance would be clearly consistent with the national interest, or to cases in which an interim security clearance is withdrawn during an investigation.

§ 155.3 Definitions.

(a) *Applicant.* Industrial personnel who require access to classified Defense information and U.S. citizens who require NATO security clearance in connection with their NATO employment, or to Red Cross or USO personnel nominated for assignment with the Armed Forces overseas.

(b) *Appeal Board.* A panel of three persons designated by the Assistant General Counsel (Legal Counsel), DoD, to make final determinations in cases of appeal from a determination.

§ 155.3 Policy.

It is the policy of the Department of Defense that a security clearance shall be granted or continued only upon a finding that to do so is clearly consistent with the national interest.

§ 155.4 Responsibilities.

(a) The *Deputy Under Secretary of Defense (Policy)* shall develop investigative and adjudicative policies for this program.

(b) The *General Counsel, Department of Defense, or designee,* shall:

(1) Administer the IPSCP.

(2) Determine the organization and composition of the requisite staff and offices.

(3) Issue guidance and instructions, as needed, to fulfill these responsibilities.

(4) Designate Examiners who are attorneys assigned to DISCR to conduct hearings and to reach clearance determinations.

(5) Designate members of the Appeal Board.

(6) Issue invitational travel orders to persons to appear and testify who have provided oral or written statements adverse to the applicant relating to a controverted issue.

(7) Approve or disapprove claims for reimbursement for lost earnings arising from actions under this Part.

(c) The *Director, Industrial Security Clearance Review,* shall:

(1) Manage the IPSCP and the DISCR.

(2) Maintain all DISCR records created.

(d) *Heads of DoD Components,* or designees, shall support boards, staffs, and field offices and shall provide, from resources available to the designated DoD Component, financing, personnel and personnel spaces, office facilities, and related administrative support, as designated.

§ 155.6 Procedures.

(a) Any applicant for a security clearance shall be investigated in accordance with the standards set forth in DoD Directive 5200.2–R. The adjudicative guidelines of Appendix I to DoD Regulation 5200.2–R shall be applied in reaching clearance determinations under this Part.

(b) The applicant is required to give full, frank, and truthful answers to relevant questions, and to authorize others to furnish relevant information:

(1) The applicant may elect on constitutional or other grounds not to comply.

(2) However, refusal or failure to furnish or authorize the providing of relevant information at any stage in the investigative or adjudicative process may preclude the Department of Defense from reaching the finding required by § 155.6(c), below. In this case, the security clearance then in effect shall be suspended by the Director, DISCR, and further processing of the case shall be discontinued. Resumption of case processing will be approved by the Director, DISCR, after coordination with the General Counsel or designee only upon showing of good cause by the applicant.

(c) The *Standard* for reaching determinations of security clearance eligibility for access to classified information is that access shall be granted or continued only upon a finding that to do so is clearly consistent with the national interest.

(d) Circumstances relevant to whether it would be clearly consistent with the national interest to grant or continue a security clearance vary in significance depending upon all the factors in a particular case. Therefore, the ultimate determination must be a fair and impartial overall commonsense decision based upon all the information, both favorable and unfavorable, that may properly be considered under this Part, including such factors as:

(1) Mitigating or extenuating circumstances;

(2) Seriousness, frequency, recency, motivations, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; and

(3) Probability that the conduct will continue in the future, to the extent such can be assessed including consideration of the applicant's age, and positive evidence of rehabilitation or change in life style.

(e) Inquiries necessary to reach a security determination shall be limited to matters relevants to whether granting the applicant access to classified information would be clearly consistent with the national interest. The applicant's opinion concerning matters of religious beliefs, race and political activities are not generally relevant except as race and religious beliefs may be serious stress areas, and are therefore relevant to the examination and evaluation of applicants by psychiatrists or psychologists.

(f) The *Criteria* for determining an eligibility for clearance under the standard shall include, but not be limited to the following:

(1) Commission of any act of sabotage, espionage, treason, terrorism, anarchy, sedition, or attempts threat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any such act.

(2) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, revolutionist, or with an espionage or other secret agent or representative of a foreign nation whose interest may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or to alter form of government of the United States by unconstitutional means.

(3) Advocacy or use of force or violence to overthrow the Government of the United States to alter the form of government of the United States by unconstitutional means.

(4) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group or combination of persons that unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or any state or subdivision thereof by unlawful means.

(5) Unauthorized disclosure to any person of classified information, or other information, disclosure of which is prohibited by Statute, Executive Order or regulation.

(6) Performing or attempting to perform one's duties, or otherwise acting, so as to serve the interests of the United States.

(7) Disregard of public law, statutes, Executive Orders or regulations including violation of security regulations or practices.

(8) Criminal or dishonest activity or acts of sexual perversion.

(9) Acts of omission or commission that indicate poor judgment, unreliability or untrustworthiness.

(10) Illness or mental condition which, in the opinion of competent medical authority, may cause significant defect in judgment or reliability with due regard to the transient or continuing effect of the illness or mental condition.

(11) Vulnerability to coercion, influence, or pressure that may cause conduct contrary to the national interest. This may be (a) the presence of immediate family members or other persons to whom the applicant is bonded by affection or obligation in a nation (or areas under its domination) whose interests may be inimical to those of the United States, or (b) any other circumstances that could cause the applicant to be vulnerable to coercion, influence, or pressure by foreign agents, terrorists, or others with interests inimical to the security of the United States.

(12) Excessive indebtedness, recurring financial difficulties, or unexplained affluence.

(13) Habitual or episodic excessive use of intoxicants.

(14) Unlawful or improper use, possession, transfer or sale, or addiction to any controlled substance.

(15) Misrepresentation, falsification or omission of relevant or material facts from any written or oral statement required to be made under oath or affirmation, under penalty of law, or in accordance with procedures to obtain access to classified information.

(16) Failing or refusing to answer or to authorize others to answer questions or provide information required by a Congressional committee, court, or agency in the course of an official inquiry whenever such answers or information concern matters pertinent to an evaluation of the applicant's trustworthiness, reliability, and judgment.

(g) Whenever there is probable cause to believe that interim action is warranted in the interest of national security, a security clearance may be temporarily suspended pending final determination under this Part by the Deputy Under Secretary of Defense for Policy or by the Director, Defense Investigative Service, after coordination and approval by the Office of General Counsel, DoD, and the Office of the Deputy Under Secretary of Defense for Policy.

(h) In cases where an applicant's clearance has been suspended or a Statement of Reasons issued, the subsequent termiation of employment shall not affect an applicant's right to pursue the procedures provided by this Directive.

(i) Nothing contained in this Directive shall limit or affect the responsibility and powers of the Secretary of Defense or the head of another federal department or agency to deny or revoke a security clearance when the security of the nation so requires. Such a determination shall be conclusive.

§ 155.7 Additional procedural guidance.

(a) When the DISCO cannot affirmatively find that it would be clearly consistent with national interest to grant or continue a security clearance the case shall be referred to DISCR.

(b) Upon referral, DISCR shall make a determination promptly whether to grant or continue clearance, to issue a Statement of Reasons as to why it is not clearly consistent with the national interest to do so, or to take whatever interim actions, such as to direct further investigation, to propound written interrogatories to the applicant of other persons with relevant information, to require the applicant to be examined by a medical doctor or psychiatrist, or to interview the applicant under oath in order to reach a final determination.

(c) An authorization for access to classified information may not be denied or revoked unless the applicant has been provided with a written Statement of Reasons. The Statement of Reasons shall be as detailed and comprehensive as the national security permits. A letter of instructions with the Statement of Reasons shall also explain the applicant's right to respond, in writing, to the Statement of Reasons, and to have a hearing conducted.

(d) To be entitled to a hearing the applicant first must have submitted a written answer to the Statement of Reasons under oath or affirmation which shall admit or deny each listed allegation. A general denial or other similar answer is not sufficient. The answer must be specific and must be submitted within twenty (20) days of the receipt of the Statement of Reasons. The response must be sent to the Examiner assigned to conduct the hearing. Reasonable requests for extension may be submitted to the Examiner.

(e) When an applicant answers a Statement of Reasons as prescribed and a hearing is not requested by the applicant or by counsel assigned to DISCR to present the case against the applicant (hereafter called Department Counsel), the determination will be made by the Examiner and will be based upon a review of the file of all relevant material which could be adduced at a hearing. The applicant will

be given a reasonable time in which to submit documentary information in rebuttal, or to explain adverse information in the file.

(f) When the Director, DISCR, determines that there is probable cause to believe that interim action is warranted in the national interest during the pendency of these proceedings, he or she shall immediately suspend the applicant's clearance, after coordination with, and approval by the General Counsel, or designee.

(g) If the applicant does not answer the Statement of Reasons or fails to submit a responsible answer, the Director, DISCR, shall deny issuance of the clearance and shall direct DISCO to permanently suspend any outstanding DoD clearance held by the applicant. The applicant shall be notified in writing by the Director, DISCR, of the action taken.

(h) If the applicant answers the Statement of Reasons in writing and specifically requests a hearing, the applicant may appear in person with or without counsel or a personal representative. The applicant shall have a reasonable time to prepare his or her case. At the hearing, the applicant may present evidence on his or her behalf and may cross-examine adverse witnesses, either orally or in writing. Hearings shall be conducted in the United States except for good cause based upon a petition to be filed by the applicant.

(i) The Examiner assigned to hear the case may require prehearing conference, may rule on procedural issues to expedite the proceedings and shall conduct the proceedings in an orderly manner. Hearings will be closed to spectators except upon mutual agreement of applicant, applicant's counsel and Department Counsel.

(j) Parties to the proceeding shall serve each other with a copy of any pleading or communication at the time of submission to the Examiner hearing the case.

(k) Upon the failure of the applicant or applicant's counsel to comply with an order, or failure to appear or proceed in a timely fashion, the proceeding may be discontinued and the case referred to the Director, DISCR, for appropriate action, which may include suspension of any security clearace held by the applicant.

(l) Department Counsel is responsible for producing witnesses and information relied upon by DISCR to establish those facts alleged in the Statement of Reasons which have been controverted. The Statement of Reasons may be amended by the Examiner, upon motion by the Department Counsel or the applicant at the hearing to make it conform to the information or evidence presented. When such amendments are made, the Examiner may grant applicant's request for such additional time as the Examiner may deem appropriate to answer such amendments and to present evidence or information thereto.

(m) Applicants shall be notified in writing at least fifteen (15) days in advance of the time and place of the hearing. A continuance shall be granted only for good cause.

(n) The Examiner hearing the case shall notify the applicant and all witnesses testifying that section 1001 of Title 18, United States Code is applicable.

(o) Relevant and material oral, documentary, or other evidence may be received and technical rules of evidence relaxed to permit the development of a full record. The Federal Rules of Evidence shall serve as a guide.

(p) Records compiled in the regular course of business, or other physical evidence other than investigative reports, may be received and considered, subject to rebuttal without authenticating witnesses, provided that such information has been furnished by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary of Defense, or the Agency Head concerned, to safeguard classified information within industry pursuant to Executive Order 10865.

(q) Records compiled in the regular course of business or other physical evidence other than investigative reports, relating to a controverted issue, which, because they are classified, may not be inspected by the applicant, may be received and considered, provided the General Counsel has made a preliminary determination that such physical evidence appears to be material, and determines that failure to receive and consider such evidence would, in view of the level of access sought, be substantially harmful to the national security.

(r) A written or oral statement adverse to the applicant on a controverted issue may be received and considered without affording an opportunity to cross-examine the person making the statement only in either of the following circumstances:

(1) If the Head of the Department or designee supplying the statement certifies that the person who furnished the information is a confidential informant and that disclosure of his identity would be harmful to the national interest.

(2) If the General Counsel, DoD, has preliminarily determined that the statement concerned appears to be reliable and material, and has determined that failure to receive and consider such statement would be harmful to the national security, and that the person who furnished the information cannot appear to testify due to death, severe illness, or similar cause or due to some other cause determined by the Secretary of Defense, or when appropriate, by the Agency Head concerned.

(s) Whenever evidence is received under § 155.7 (q) or (r), above, the applicant will be furnished with as comprehensive and detailed a summary of the information as the national security permits.

(t) A transcript shall be made of the hearing. The applicant, without cost, and Department Counsel will be furnished one copy each of the transcript, less the exhibits.

(u) The Examiner hearing the case shall make written findings for or against the applicant with respect to each allegation in the Statement of Reasons and shall provide reasons in support of the findings. The Examiner shall make a determination under the standard of whether or not it is clearly consistent with the national interest to grant or continue the applicant's eligibility for access to classified information. Further, the Examiner may recommend to the Director, DISCR, that any clearance then held by the applicant be suspended pending an appeal from an adverse finding. The applicant and Department Counsel shall each be provided a copy of the determination, less any deletions required in the interest of national security.

(v) Within (10) ten days after receiving a copy of the determination, the applicant or Department Counsel may appeal the determination by filing a notice of appeal with the Appeal Board. The appeal shall be by oral argument or the submission of a written brief, or both. The choice of the manner of appeal must be indicated in the notice of appeal.

(w) A brief shall state the specific issues involved in the appeal, shall cite relevant portions of the record, and shall set forth the reasons why the determination should be reversed. When an appeal is made by oral argument, the appellant shall file with the Appeal Board, prior to the oral argument, a written statement identifying the issues to be considered.

(x) The Appeal Board shall determine whether or not the determination made by the Examiner should be upheld or reversed.

(y) The written determination of the Appeal Board shall be issued promptly following the filing of briefs or oral argument, whichever is later. The applicant and Department Counsel shall each be provided a copy of the Appeal Board determination, less any deletions required in the interest of national security.

(z) In cases where a security clearance is subsequently granted at an equal or higher level after suspension, denial or revocation, an applicant may petition for reimbursement of lost earnings resulting directly from the suspension, revocation, or final denial of clearance unless the General Counsel or his designee finds that the Department was justified in taking action to suspend, deny or revoke such clearance. The petition for reimbursement must include as an attachment the written determination of the Examiner hearing the case or the Appeal Board granting the clearance. The determination whether or not to reimburse will then be made by the General Counsel or designee based on whether it is fair and equitable to reimburse the applicant.

(aa) Claims for reimbursement must be filed with the General Counsel or designee within one year after the date the claim arises.

(bb) The amount of reimbursement shall not exceed the difference between the earnings of the applicant at the time of the suspension, revocation, or final denial, and the interim earnings, subject to reasonable efforts on the part of the applicant to mitigate his loss of earnings. No reimbursement shall be allowed for any period of undue delay resulting from the applicant's acts or failure to act. Reimbursement is not authorized for lost merit raises and general increases, loss of employment opportunities, counsel's fees and other costs relating to the industrial security clearance proceeding.

(cc) Approval of claims will be forwarded to the agency concerned for payment. Any payment made in response to a claim for reimbursement shall be in full satisfaction of any claim against the United States or agency, or any of its officers or employees.

(dd) Reinstatement of a suspended or revoked clearance and resumption of case processing after failure or refusal of the applicant or attorney to provide requested information, or to proceed in a timely manner, or to respond to a Statement of Reasons, or to comply with an order of the Examiner at a hearing, or to comply with an order of the Chairman of the Appeal Board during appeal shall only be made upon request submitted by the applicant within thirty (30) days of the action taken upon showing of good cause. All such requests can only be approved by the Director, DISCR, with the concurrence of the General Counsel or designee.

Darlene C. Scott,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 1, 1984.

[FR Doc. 84-20914 Filed 8-6-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 84-56]

Regatta; South Bay Marathon, Great South Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Special Local Regulations are being proposed for the South Bay Marathon. This power boat race will be held on the Great South Bay, near Brookhaven, New York on September 8, 1984. The Coast Guard is considering the issuance of this regulation to provide for the safety of participants and spectators on navigable waters during the event.

DATES: Comments must be received on or before August 31, 1984.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG D.R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3 84-56) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The comment period for this proposed rule making is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone are acceptable. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information

The drafters of this notice are LTJG D.R. Cilley, Project Officer, Boating Safety Office, and Ms. MaryAnn ARISMAN, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The South Bay Marathon is sponsored by the South Bay Performance Association of East Patchogue, New York. This power boat race will be held in the Great South Bay on September 8, 1984. This event is well known to the boaters and residents in this area. Several changes to this event are being proposed in response to a Coast Guard review of last year's event. Participants will race at speeds averaging 60 mph around a smaller rectangular course south of Patchogue, NY. Approximately 25-35 production performance class power boats will race nine (9) times around a nine (9) mile course in one race lasting less than 2 hours. The course will be marked by large spherical floats (4 feet in diameter), spaced approximately ½ mile apart. No spectators will be allowed to anchor or remain within the race course area. The sponsor will provide in excess of 15 patrol vessels to mark the race course and to help escort transiting vessels around the course as needed. The Coast Guard, in conjunction with local authorities and the sponsor, will establish a regatta patrol to control this event. In order to provide for the safety of participants and spectators, the Coast Guard will restrict vessel movement within the regulated area during the event. The Coast Guard will issue a safety voice broadcast to advise mariners of this event.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The ecomomic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event

will draw a large number of spectator craft into the area for the duration of the races. This should easily compensate area merchants for the slight inconvenience of having navigation restricted. Transiting vessels will be allowed to proceed around the race course throughout the effective period.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding a temporary § 100.35–311 to read as follows:

§ 100.35–311 South Bay Marathon, Great South Bay, Brookhaven, NY.

(a) *Effective Date:* This regulation shall be effective from 10:00 a.m. to 2:00 p.m. on September 8, 1984.

(b) *Regulated Area.* That section of the Great South Bay bounded by longitude 73 degrees 01 minutes on the west and longitude 72 degrees 56 minutes on the east.

(c) *Special Local Regulations.* (1) The approximate boundaries of the rectangular race course area within the regulated area are marked by the following coordinates: latitude 40 degrees, 44 minutes, 21 seconds north, longitude 073 degrees, 00 minutes, 16 seconds west; latitude 40 degrees, 42 minutes, 59 seconds north, longitude 073 degrees, 00 minutes, 21 seconds west; latitude 40 degrees, 44 minutes, 04 seconds north, longitude 072 degrees, 56 minutes, 32 seconds west; latitude 40 degrees, 43 minutes, 24 seconds north, longitude 072 degrees, 56 minutes, 33 seconds west. The sponsor shall mark this area with large inflatable markers (floats) approximately 4 foot by 4 foot in size, positioned at one half mile intervals around the race course. Both Coast Guard and sponsor provided patrol craft will be spaced between these markers. No person or vessel shall enter or remain within this area unless participating in the event or authorized by the sponsor or Coast Guard Patrol Commander.

(2) The sponsor shall ensure that no participant passes another participant while on the turns.

(3) After the first participant finishes the race, all other racers will complete the lap they are on and then proceed to the interior of the race course.

(4) All race participants shall remain within the race course area. Any participant going outside this area into the spectator areas shall be immediately disqualified by the event sponsor unless the vessel is down off plane, at a slow speed before entering the spectator area.

(5) The sponsor shall provide approximately 15 vessels to assist in marking the race course and patrolling the event. Each patrol vessel shall have an orange pennant displayed conspicuously as a means of identification.

(6) The sponsor shall ensure that, at a minimum, the 4 check point (turn) boats have VHF-FM marine radios capable of communications with the Coast Guard. Each of these vessels shall have a distinctive flag to be used to communicate a stop or cancel command to race participants.

(7) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels shall be anchored outside the race course area described in paragraph (c)(1) in such a way that will allow passage through this portion of the Great South Bay by transiting vessels.

(8) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(9) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(33 U.S.C. 1233; 49 U.S.C. 108(b); 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: July 30, 1984.

R. L. Johanson,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 84–20830 Filed 8–6–84; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 40785–4085]

Trademark Automated Search System Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Offices proposes to amend the rules of practice in part 2 of Title 37, Code of Federal Regulations, to set forth charges that will be made to users of a new automated trademark search system. Pub. L. 96–517, enacted on December 12, 1980 and Pub. L. 97–247, enacted on August 27, 1982, authorized the Commissioner to establish fees for all services related to trademarks. In compliance with section 9 of Pub. L. 96–517, the Patent and Trademark Office prepared and submitted to the Congress on December 12, 1982, an automation master plan. The first stage of this plan called for the automation of trademark operations. The proposed rule changes are intended to establish a basis for the charges for use of the automated systems. Comments on the proposed changes are solicited.

DATES: Comments must be submitted on or before September 5, 1984. A public hearing will be held on September 5, 1984, at 9:30 a.m. Requests to present oral testimony should be received on or before August 28, 1984.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, Attention: J. Howard Bryant, Administrator for Automation, Room CP6–1108. The hearing will be held in Room 11C10 on the 11th floor of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 11E10 of Building 3, Crystal Plaza at 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: J. Howard Bryant by telephone at (703) 557–6000 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The proposed rule change is designed to establish new fees for the use of an

automated trademark search system and the methods of fee collection.

Background

As part of the PTO plan to automate trademark operations, three interrelated systems have been developed:

TRAM (Trademark Reporting and Monitoring) stores and maintains a complete file of trademark applications and registration information including status and location data. The data base maintained by TRAM will become the official trademark register, ultimately replacing bound paper volumes that have previously served this purpose.

T-SEARCH (Trademark Search) maintains a data base of basic trademark application and registration information, consisting of textual data, digital facsimiles of figurative marks, and certain indexes to aid in searching the data base. T–SEARCH will provide a variety of automated capabilities for searching the data base and retrieving the textual and figurative information.

T–CAR (Trademark Computer Assisted Retrieval) uses microfilm cassettes and provides automated serial or registration number indexes to enable retrieval and printing of images of trademark case papers or documents.

In developing the data to be used with these systems, the PTO executed agreements with three private firms that will have created computer processable data bases—text, digitized facsimiles, and design codes (indexes)—at their own expense in exchange for rights to use certain of the data for their own purposes. The original agreement provided that their contributed data could not be used by the public with the T-SEARCH system except in a manner comparable and equivalent to the manner in which the current paper files are used. These agreements have now been renegotiated to allow the public to use all the capabilities of T-SEARCH. To gain this access for the public, the PTO agreed to collect and pay a royalty to these firms as repayment for their investment in the data bases. These arrangements are described below.

Levels of T-SEARCH Capability

The PTO will provide the public with access to two levels of capability using T-SEARCH:

The FULL SYSTEM capability will allow unrestricted access to all T-SEARCH data and will permit use of phonetic search programs, Boolean logic operator, and all design descriptor codes. The FULL SYSTEM capabilities are those used by PTO trademark examiners.

The BASIC SYSTEM or more limited level will provide capabilities "comparable and equivalent" to present manual, paper file searching in the PTO Search Library. A subset of the design descriptor codes, considered to be better than the current design file in level of detail, will also be provided.

For the use of the FULL SYSTEM capabilities, the PTO will collect a royalty of $30.00 per hour of terminal session time, prorated for actual time used, to be distributed among the private firms on the basis of a formula that has been mutually agreed upon by all the parties. The royalty was based on the estimated value of the investment by these firms in the creation of the data, compounded at a rate of ten percent annually to take into account the time value of money. When the full value of the data provided by these firms has been paid, no further royalty will be paid. While the payout period was projected over a 10-year period, the payout could occur at any time that the principal investment cost has been paid.

User charges for the BASIC SYSTEM were calculated on the marginal cost of providing the public services. Marginal costs included additional equipment, space, personnel, and similar costs attributable to the public search services, but did not include the cost of T-SEARCH development which was required for use by PTO examiners. The estimated cost of the BASIC SYSTEM was determined to be $40.00 per hour of terminal session time, prorated for actual time used.

The proposed charge for the public users of the FULL SYSTEM will be the cost of the BASIC SYSTEM plus the cost of the royalty payment, for a total of $70.00 per hour of terminal session time, prorated for actual time used. All Payments for use of either level of T-SEARCH capabilities will be made in advance through deposit accounts or daily prepayments to cover the anticipated costs. Imbalances between daily prepayments and actual accrued costs will be refunded to the user. T-SEARCH results, consisting of inquiries submitted for the search, application and registration data, and figurative marks, may be viewed on an electronic display and printed. In addition to the charge for the use of T-SEARCH terminals, there will be a charge of twenty cents for each page requested to be printed.

T-SEARCH Fees

Public users of T-SEARCH will have four options for paying for search services and related printing:

1. Deposit Accounts

The standard PTO deposit account system (see 37 CFR 1.25) may be used. A one-time authorization to charge the deposit account for T-SEARCH fees will be necessary.

2. Cash Deposits

Upon submission of cash, the amount will be credited to a working account in the T-SEARCH system. Ten minutes prior to the depletion of the cash deposit during the search process, the user will be given a warning signal or message. If the funds are depleted before the session is voluntarily terminated by the user, the terminal display will be automatically turned-off. The system will complete the transactions in process, including the last search inquiry, and then automatically terminate the session. The user can pay the additional amount due (terminal session time used to complete the search in process plus the cost of pages printed), to receive the printed results of the search. If the cash deposit is not depleted before the session is terminated by the user, the cash balance will be refunded.

3. Deposits by Check of a Specific Amount

The same procedure discussed under item 2. above may be used by depositing a specific amount by check. On completion of the session, the user may substitute a new check for the amount actually due to replace the original deposit check. Alternatively, if a refund is due, the refund check will be mailed.

4. Unspecified Amount Check Deposit

The user may submit a signed check with the amount left blank, to be filled-in at the completion of the session.

For options 2. and 3. above, a minimum of $40 must be deposited.

Some terminals will be available for reservation for specific blocks of time. Reservations must be paid for in full in advance. The process will be the same as the process for cash or checks for specific amount except that the cost of the full block of time will be charged regardless of the actual time used.

The TRAM and T-CAR systems will continue to be available to the public at no cost, other than the cost of twenty cents for each printed or copied page that is requested or made by the user.

When the automated systems have been fully proven,the PTO intends to discontinue maintenance and ultimately to dispose of the paper search file. However, a public hearing will be held before a final decision is reached about the disposition of the paper file.

Discussion of Impact

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

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the rule change would not have an adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–374), since it makes an on-line, fully automated system available to the public at lower rates than can be obtained commercially—$40 an hour for the comparable and equivalent capabilities, and $70 an hour for the full system capabilities. The most comparable commercial systems cost $85 or more for each hour of use.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule change does not contain a collection of information requirement for the purpose of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 15 U.S.C. 1113 and 1123, Pub. L. 96–517 and Pub. L. 97–247, the Patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations as set forth below.

PART 2—[AMENDED]

It is proposed to amend 37 CFR Part 2 as follows with additions indicated by arrows.

1. Section 2.6 is proposed to be amended by adding new paragraphs (u) and (v) to read as follows:

§ 2.6 Trademark fees.

* * * * *

►(u) Marginal cost, paid in advance, for each hour of terminal session time using the BASIC T-SEARCH SYSTEM capabilities, prorated for the actual time used $40.00

(v) Royalty paid in advance, for use of data provided to the PTO by private firms, for each hour of terminal session time on the FULL T-SEARCH SYSTEM, prorated for the actual time used (additional to the BASIC T-SEARCH SYSTEM capabilities in (u) above) ..... $30.00◄

Dated: July 17, 1984.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 84–20898 Filed 8–6–84; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124 and 125

[OW-FRL-2564-3]

National Pollutant Discharge Elimination System; Water Quality Variances

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth application requirements and decision criteria for granting water quality variances under section 301(g) of the Clean Water Act. Section 301(g) authorizes a waiver from BAT ("best available technology economically achievable") requirements for nonconventional pollutants. The variance will be granted if the applicant can demonstrate that the proposed modified effluent limitation for a nonconventional pollutant is equal to or more stringent than BPT ("best practicable control technology currently available") and applicable water quality standards, that the modified limitation will not result in additional requirements on other sources, and that it will not impair the integrity of the receiving water or pose unacceptable risks to the environment or human health because of bioaccumulation, persistency, acute or chronic toxicity, or synergistic propensities.

DATES: Comments on the proposed regulation must be received by November 5, 1984.

A public hearing to discuss and to receive comments on the proposed regulation will be held on October 16, 1984, in Washington, D.C.

ADDRESSES: Interest presons may participate in the proposed rulemaking by submitting comments to Robert Cantilli, Permits Division (EN–336), Office of Water Enforcement and Permits, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

A copy of all comments received will be available for review during normal business hours at the Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, SW., Washington, D.C. 20460.

A public hearing to discuss and to receive comments on the proposed rulemaking will be held on October 16, 1984, at Waterside Mall, 401 M St., Washington, D.C. Anyone wishing to make an oral statement at the hearing should notify in writing Robert Cantilli, Permits Division (EN–336), Office of Water Enforcement and Permits, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Robert Cantilli, Permits Division (EN–336), Office of Water Enforcement and Permits, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; (202) 426–7035. Anyone interested in obtaining a copy of the draft technical guidance manual that has been prepared in connection with this proposed regulation should also contact Mr. Cantilli.

SUPPLEMENTARY INFORMATION: In 1972 the Clean Water Act (the Act) was amended to require all non-municipal discharges to meet best available technology economically achieveable (BAT) by 1983. In 1977 the Act was further amended to categories pollutants into 3 classes—conventional, nonconventional and toxic—and to establish for non-municipal discharges distinst treatment requirements depending on the type of pollutant discharged. The conventional pollutants are listed in 40 CFR 401.16, while the toxic pollutants are listed in 40 CFR 401.15. All other pollutants fall into the third class of nonconventional pollutants, e.g., ammonia and chlorine. The amended Act requires BAT July 1, 1984 for specified toxic pollutants and requires BAT no later than three years after the applicable effluent limitation guidelines are established for other toxic pollutants, section 301(b)(2) (A), (C), and (D); for conventional pollutants, the Act requires compliance with best conventional technology by July 1, 1984. Section 301(b)(2)(E). For nonconventional pollutants, the Act requires compliance with BAT July 1, 1984 or up to three years after the applicable effluent limitations are established, but in no case later than July 1, 1987. Section 301(b)(2)(F).

Although the Act requires BAT for nonconventional pollutants, it provides for the possible modification of that requirement. Under section 301(g) of the Act, the Administrator may modify BAT requirements established for

nonconventional pollutants if the owner or operator of the point source discharging those pollutants can make specified demonstrations. The requirements for toxic and convential pollutants and for the thermal components of the discharge can not be modified under section 301(g). In essence, the owner or operator must show that the discharge will comply with BPT and applicable water quality standards, will not result in the imposition of additional requirements on any other source, and will not impair the integrity of the receiving water or pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency, acute or chronic toxicity or synergistic propensities. Section 301(g).

EPA is today proposing regulations to establish procedures, standards, and criteria for the implementation of section 301(g). The Agency will make a technical guidance manual available for review during the Public comment period on these regulations. The manual will discuss methodologies for making the demonstrations required by section 301(g) and will include a checklist for use in developing section 301(g) completed requests.

I. Program Description

These regulations, 40 CFR Part 125, Subpart F, would establish the procedures, criteria and standards to be applied by EPA in acting upon section 301(g) applications for modification of the BAT requirements applicable to the discharge of nonconventional pollutants.

A. Eligibility; Initial Requests

In keeping with the Clean Water Act, existing EPA regulations require that, in order to be eligible to apply for a variance under section 301(g), a discharger must have submitted an initial request no later than 270 days after the date of promulgation of the applicable effluent limitation guideline under section 304 of the CWA or not later than 270 days aften enactment of section 301(g) (December 27, 1977), whichever is later. 40 CFR 122.21(l)(2)(i); see CWA section 301(j)(1)(B). The statute does not specify applicable deadlines in cases where guidelines have not been promulgated and BAT requirements for a nonconventional pollutant are developed using best professional judgment (BPJ) and are initially proposed in a draft permit. Section 122.21(l)(2)(iii) of the existing regulations provides that in these cases no initial request is mandated and the applicant may submit its completed request up to the close of the public comment period on the draft permit. Under these regulations, the public comment period could close less than 270 days after the date of notice of the draft permit. See § 214.10(b). To assure that all applicants are provided the same period of time to prepare their applications, § 125.53(d) of today's proposal makes it clear that applicants for a BPJ/BAT modification can request an extension of the public comment period for their draft permit when the period is less than 270 days.

Any source seeking variances from BAT under sections 301(g) and 301(c) (variance based on showing that modified requirements will represent the maximum technology within the economic capability of the owner or operator and that they will result in reasonable further progress toward the elimination of the discharge of pollutants) may file its section 301(c) application only within the time that the applicant is eligible to apply for the section 301(g) variance. Section 301(g)(2).

B. Completed Requests

Existing EPA regulations require eligible sources to submit a completed request for a section 301(g) variance no later than the close of the public comment period on the draft permit. 40 CFR 122.21(l)(2)(ii). A public comment period may be as short as 30 days after public notice of the draft permit, 40 CFR 124.10(b), but EPA recognizes that a longer period will often be necessary in complicated proceedings and will establish longer public comment periods as necessary. See 40 CFR 124.13. As noted above, where a section 301(g) applicant seeks modification of requirements based on best professional judgment, rather than on promulgated effluent limitation guidelines, EPA proposes to allow applicants to request extensions of the public comment period when it is less than the statutory period of 270 days.

The existing regulations provide that a discharger who cannot file a completed request required under section 40 CFR 122.21(l)(2)(ii) or (l)(2)(iii) may request an extension which may not exceed 6 months in duration. The extension may be granted or denied at the discretion of the Director. 40 CFR 122.21(n)(2).

Existing 40 CFR 122.21(l)(2)(ii) provides that the completed request must demonstrate compliance with the requirements of 40 CFR 124.13 and applicable requirements of Part 125. Today's proposal would establish the Part 125 requirements.

Proposed 125.53(e) would establish requirements for a completed request. It would require each request to contain a completed NPDES Application Standard Form 1 and 2B or 2C as appropriate, documentation demonstrating compliance with the requirements of § 125.54 and certification by the applicant signatory in accordance with 40 CFR 122.6(d).

C. Early Consultation

The regulation proposed today states that an applicant for a section 301(g) modification of its BAT limitations should hold an early consultation with Federal and State permitting authorities. Proposed 125.53(b). Early consultation is not mandatory, but the applicant is strongly urged to take advantage of this opportunity. Early consultation would allow EPA, the State and the applicant to determine what is required to prepare a section 301(g) completed request.

EPA recommends that the early consultation be held soon after (within 90 days of) the promulgation of this regulation or the promulgation of the applicable effluent guideline. § 125.53 (b)(1) and (b)(2). For applicants requesting a variance from BAT limitations based on BPJ, EPA recommends an early consultation within 90 days of the notice of preparation of the applicant's draft permit. Section 125.53(b)(3).

In each of the above cases, the applicant should discuss a plan of study describing the proposed modified limitation, a general description of the data, studies, experiments and other information which will be submitted, and other data and information to assist the Regional Administrator and State Director in determining whether the applicant's plan of study is well conceived. Early consultation is designed to assist the applicant in determining the tests and data necessary to make a complete section 301(g) demonstration. The early consultation will help the applicant avoid unnecessary or inadequate testing and could lead to a redirection of the applicant's proposed study. In addition, early consultation could lead to an earlier decision on the completed request.

Early consultation is particularly recommended if: (1) The proposed modified effluent limitation is for a pollutant or pollutant parameter for which the State has not adopted a numerical water quality standard and the applicant does not plan to use a published EPA numerical water quality criterion or none is available; (2) the proposed modified effluent limitation is for a pollutant or pollutant parameter which is suspected of being a carcinogen; (3) the applicant has reason to believe that the pollutant or pollutant

parameter for which the modification is requested will contribute to synergistic or additive characteristics in the effluent or receiving water; and/or (4) the applicant plans to request an extension for filing a final application as provided in 40 CFR 122.21(n)(2).

D. Section 301(g) Decisionmaking Procedures; State Role

Permitting under section 301(g) will follow the procedures set forth in 40 CFR Part 124. See, in particular, § 124.62 (b), (c), and (d), § 124.63, and § 124.64.

Only the Administrator of EPA is authorized to modify effluent limitations pursuant to section 301(g). However, section 301(g) requires the Administrator to assure State concurrence prior to approving a modification. Under existing regulations, the applicant in an NPDES State must file its request with the State, as well as with EPA, see 40 CFR 122.21(1)(2)(i); the State may deny the request, forward it to the Regional Administrator with a written concurrence (which may include conditions the State deems appropriate) or submit the request without recommendation. See 40 CFR 124.62(b)(3). As discussed below, if the State submits the variance request without recommendation, EPA will be required to deny the request.

The present regulations provide that in the case of an EPA-administered permit program, the applicant is only required to file its request with EPA. Section 122.21(1)(2)(ii). However, EPA must then assure an opportunity for State review, which is accomplished through the State certification process. If EPA receives an application without State certification, the Regional Administrator will forward the application to the certifying State agency for action. Section 124.53.

In most instances, EPA proposes to review the variance request concurrently with the State's consideration. However, where applicable State water quality standards contain specific numerical water quality limits for the pollutant that is the subject of the variance request, and those standards are designed to assure the levels of water quality protection required by section 301(g), EPA proposes to defer consideration of the section 301(g) application until after the State determines whether the proposed modified effluent limitation would comply with its specific standards.

Section 301(g) specifically requires State concurrence in any variance approval under the section. Therefore, EPA proposes to deny any variance request where a State either refuses certification or waives its right to respond to the request. Proposed § 124.67(b)(1).

For an EPA-administered NPDES program, the State's section 401 concurrence or its waiver or denial constitutes its response to the section 301(g) application. In State-administered NPDES programs, the State may forward the variance request to EPA as provided in § 124.62(b).

The following State concurrence, the Regional Administrator may deny the section 301(g) request or forward it to the EPA Office Director for Water Enforcement and Permits, previously referred to as the Deputy Assistant Administrator for Water Enforcement. See 40 CFR 124.62(c).

Under today's proposal, where the Office Director approves a variance respecting a permit in a NPDES-approved State, the State Director may prepare a draft permit incorporating the variance. See proposed § 124.67(b)(3). Although the EPA-approved variance is incorporated in the State permit, the variance may be challenged in a separate action against EPA. See 40 CFR 124.64.

E. Application Review Criteria

In developing application review criteria under Subpart F, EPA has kept in mind the Congressional admonition that section 301(g) applications must not excessively delay the NPDES permit process. See, e.g., A Legislative History of the Clean Water Act of 1977, serial No. 95–14, October 1978, Vol. 3, p. 457. At the same time, elements of the section 301(g) criteria involve sophisticated scientific conclusions of extreme importance to human health and the environment. These elements include the requirement that the proposed modified effluent limitation not threaten human health or the environment because of bioaccumulation, persistency, acute or chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities. The present proposal attempts to balance the justified concern for a speedy decision with the critical need for a level of information sufficient to support EPA's determination that a section 301(g) modification should or should not be granted.

Section 125.54 would state the criteria for EPA review of the section 301(g) applications. These proposed criteria are designated to implement the statutory requirements of section 301(g). The section would list each statutory criterion and would briefly state the minimum demonstration needed to satisfy that criterion. Further, the proposed section would indicate that the preferred method of making the water quality demonstration is through the use of State or Federal water quality criteria numbers applicable to the specific pollutant. A brief discussion of the major factors in approving or denying an application follows.

Proposed 125.54(b) would require compliance at a minimum with BPT, State water quality standards and other Federal and State requirements. The section would make it clear that if no BPT effluent limitation guidelines has been promulgated, best professional judgement (BPJ) would be used to establish BPT limitations. Under the section as proposed, the applicant would make its technical demonstration regarding BPT and State requirements. The Completed request would have to include a determination from the State or interstate agency that provides section 401 certifications that the modified effluent limitation would comply with applicable provisions of State law. The determination would have to be supported by a discussion of the basis for the conclusion. The applicant would have to show compliance with any applicable requirement formally established by the governing State or interstate agency, whether or not the requirement was subject to or had obtained EPA approval.

Proposed § 125.54(c) would provide that the proposed modification must not result in any additional pollution control requirements on any other point or nonpoint source. To make this showing, the completed request would have to include a determination from the State or interstate agency which conducts wasteload allocations and total maximum daily loads. As with § 125.54(b), before EPA would approve the request, the State or interstate agency would have to provide a discussion of the basis for its conclusion that other sources' requirements would not be increased.

Proposed § 125.54(d) would provide that the proposed modification must not interfere with attainment or maintenance of water quality which will assure protection of public water supplies, the protection and propagation of a balanced aquatic population and human recreational activities. It would also provide that the proposed modification must not result in the discharge of pollutants in quantities which may pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency, acute or chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic

propensities. In particular the proposed regulation would specify that the modified effluent must not interfere with any planned or existing public water supply, must mot prevent a balanced population of shellfish, fish and wildlife, and must not interfere with recreational activities. The last two factors would be evaluated at the edge of a mixing zone, if the zone is approved by the State under its water quality standards regulations. For recreational activities, the proposed regulation would require the applicant to show that there would be no special Federal, State, or local restrictions on recreation activities in the vicinity of the applicant's modified discharge.

These requirements may pose significant difficulties for some applicants because of the complexity of determining requirements for, and assuring protection of the aquatic environment and human health. The difficulties would be minimized by relying on State water quality standards, where adequate, and by encouraging the use of EPA criteria or criteria development methodology to make a demonstration of the section 301(g) environmental effects and toxicity questions where State standards are insufficient. To the extent that State water quality standards supply numerical standards for the specific nonconventional pollutant and are designed to assure protection of factors listed at section 301(g)(1)(C), EPA proposes to give considerable weight to the applicant's showing (confirmed by the State) that the standards would be satisfied by the proposed modified effluent limitation. Otherwise, EPA proposes to ease the difficulty of demonstrating environmental effects by giving considerable weight to an applicant's showing that the modified effluent would comply with a published EPA criterion number for the pollutant or with a criterion number which the applicant would derive using published EPA methodologies.

The Agency's proposal to give considerable weight to demonstrations based on these numbers and methodologies is designed to facilitate an environmentally sound yet reasonably expeditious section 301(g) process. Of course, EPA numbers and methodologies are not officially promulgated rules. In the event they are challenged by third persons, EPA will explain their technical basis. The applicant, however, will bear the risk of the numbers or methodologies being found insufficient.

Similarly, the applicant should realize that section 301(g) establishes a broad environmental test independent of State water quality standards. Under the proposal, compliance with stringent State standards will serve as evidence, but not as complete proof, that the statutory requirements would be met by the proposed modified effluent limitation. It also should be noted that, while the applicant is required to show whether its proposed modified effluent limitation will satisfy State water quality standards, use of EPA criteria or criteria development methodologies is optional.

F. Federal Criteria

The Clean Water Act, section 304(a)(1), currently requires the Administrator, after consultation with appropriate Federal and State agencies and other interested persons, to publish water quality criteria that will reflect the latest scientific knowledge on various factors. These factors include all identifiable effects on species and ecological health and welfare, pollutant concentration and dispersal, and effects of pollutants on biological communities' diversity, productivity and stability.

Current EPA water quality criteria documents present the most recent toxicological data on a pollutant and outline the derivation of the aquatic life and human health criteria numbers. These criteria are based solely on studies of the scientific data and expert judgment on the relationship between pollutant concentrations and environmental and health effects. Economic and technical feasibility are not considered in establishing environmental criteria values.

For studied pollutants, EPA develops two sets of criteria numbers: One set is designed to assure protection of human health; the other is developed to protect aquatic life. Since these criteria numbers, developed after careful study, address several of the objectives which underlie the section 301(g) statutory criteria (e.g., acute and chronic toxicity and bioaccumulation), EPA concludes that the most stringent, published section 304(a) criteria for a given pollutant generally should be useful for purposes of determining whether a section 301(g) modification is justified. Use of the most stringent criteria to review section 301(g) variance requests will promote the expeditious decisionmaking which Congress has directed while providing adequate assurance of environmental protection. Persistency and synergistic propensities, two conditions which are not addressed by the EPA criteria, must also be considered by the applicant. See Section H—Special Considerations, Synergistic Propensities and Persistency.

EPA and its predecessor agencies have been engaged in developing water quality criteria since publication in 1968 of the "Green Book" (Water Quality Criteria, Report of the National Technical Advisory Committee to the Secretary of the Interior, April 1, 1968, FWPCA), a water quality criteria study which formed the basis for many State water quality standards. Subsequent publications include a "Blue Book" (Water Quality Criteria, 1972, EPA/R3/73/033/March 1973), a "Red Book" (Quality Criteria for Water, 1976), and additional criteria, published at 45 FR 79318 (Nov. 28, 1980). EPA will publish further criteria from time to time.

Initial criteria documents have addressed recognized toxic pollutants, rather than the nonconventionals. EPA will publish further criteria from time to time.

Initial criteria documents have addressed recognized toxic pollutants, rather than the nonconventionals. EPA has published criteria documents for the nonconventional pollutants ammonia and chlorine (49 FR 4551; February 7, 1984). EPA is also developing a number of multimedia documents to address the toxicity of nonconventional pollutants in different environmental media—air, water and soil. The documents will not include recommended criteria numbers but will contain a great deal of scientific data which should be helpful in making section 301(g) variance decisions. The documents will offer results of studies, lowest effect levels, and no effect levels for the following nonconventional pollutants:

1. Acetone
2. Dibenzofurans
3. Methoxychlor
4. Chlorophenoxy Herbicides
5. Malathion
6. Parathion
7. Myrex
8. Kepone
9. Iron
10. Barium

EPA expects to publish these multimedia documents during 1984 and 1985.

G. Use of Criteria

When the applicant uses published EPA criteria, the most stringent criterion in the most recently published section 304(a) criteria documents should be used. For example, the criteria in the November 1980 **Federal Register** should be used rather than superseded Red Book criteria for the same parameter, and where the published criteria include for both aquatic life and human health,

the more stringent of the two figures should be used.

Where neither a State water quality standard nor an EPA criterion (the latest published EPA criterion or 1976 "Red Book" criterion) addresses the nonconventional pollutant for which section 301(g) modification is sought, or where local conditions or other factors may bear upon the effects of the nonconventional pollutant in particular receiving waters, the applicant may use different criteria. However, it will need to justify its development and use of such criteria.

To generate criteria to measure the acceptability of a proposed modified effluent limitation, EPA proposes to recommend that the applicant use EPA's methodology for developing criteria numbers, "Guidelines for Deriving Water Quality Criteria for the Protection of Aquatic Life and Its Use," 45 FR 79341, Appendix B. The applicant may use an alternative methodology or may substitute local biota in the bioassays, but it will have to justify that course to EPA.

In some cases, State water quality standards or EPA criteria will provide aquatic life criteria but not human health criteria. The applicant will then be expected to use the most stringent aquatic life criterion available and also to provide information adequate to support a reasonable expectation that the proposed discharge will not pose an unacceptable risk to human health. Development of human health criteria pursuant to EPA methodology is extremely complex and time-consuming. EPA does not anticipate that each applicant seeking a section 301(g) variance for a pollutant for which no human health numbers are available will generate such a number. Instead, EPA will expect the applicant to supply information sufficient to indicate that the nonconventional pollutant, in the amounts to be discharged, will not pose a human health danger.

H. Special Considerations

1. *Pollutant Parameters.* Pollutant parameters are pollutant categories which comprise one or more unspecified pollutants or pollutant characteristics. For example, COD and TOC are pollutant parameters which may comprise one major pollutant constituent or many unidentified pollutant constituents or measure a pollutant characteristic such as chemical oxygen demand. EPA proposes that the applicant seeking a section 301(g) variance for a pollutant parameter use existing water quality standard or EPA criteria, if available, or employ a criteria derivation methodology for aquatic life in the same manner as for other specific pollutants. This may be accomplished by regarding the whole effluent as if it were a single pollutant and using the single pollutant bioassays cited in the criterion derivation methodologies at 45 FR 79318, November 28, 1980. When tests are conducted with the whole effluent, results should be expressed as a percentage of the whole effluent. (For example, if acute bioassays are conducted, the whole effluent shoud be assayed and the percentage of the whole effluent which causes 50% mortality (LC–50) in the toxicity test should be identified. The resulting criterion might be, for example, 20% of the whole effluent.)

At the same time, EPA proposes that for pollutant parameters the applicant must identify all toxic and conventional pollutants that are constituents of the parameter, to assure that none of the constituents is a conventional pollutant or a section 307(a) toxic pollutant, or that each toxic or conventional pollutant is subject to appropriate BAT or BCT limitations. In addition, the applicant may employ "bench scale treatment" to simulate the nonconventional pollutant load at BAT and BPT for the pollutant parameter. Toxicity tests can then be conducted to compare the toxicity of the effluent after BPT and BAT treatment for the pollutant parameter. All toxicity tests must be approved by EPA. The applicant must also address the other section 301(g)(1)(C) factors, such as synergism and persistency.

2. *Total Phenols.* In keeping with the NPDES Litigation settlement of June 7, 1982, EPA recognizes that total phenols may be considered for section 301(g) variance requests as long as certain conditions are met. Because total phenols is a pollutant parameter, it would be subject to the requirements of § 125.54(e)(2). Therefore, the applicant must demonstrate that the total phenols in its effluent do not include toxic phenolics, that those toxic phenolics present are at concentrations as low as required by BAT, or that the toxic phenolics are directly controlled by BAT effluent limitations.

3. *Mixing Zones.* EPA proposes to recognize a mixing zone in reviewing section 301(g) applications, which the applicable State standards provide for such a zone. Defined State mixing zones would be used where available. Where applicable water quality standards allow but do not sufficiently define the dimensions of the State mixing zone, the State, in conjunction with the applicant, could develop a case-specific mixing zone for the purposes of the section 301(g) application. EPA would review any case-specific mixing zone as a part of its consideration of the variance request. Where a State prohibits the use of a mixing zone, or where a mixing zone is not specifically defined by the State and the applicant does not develop a mixing zone in conjunction with the State, the demonstrations required by § 125.54 must be made at the point of discharge. If a State standard includes a zone of passage in its mixing zone definition, this must be adhered to in a section 301(g) determination. If the State standards separate mixing zones from zones of passage, both concepts must be addressed by the applicant.

4. *Synergistic Propensities.* EPA proposes to require the section 301(g) applicant to demonstrate whether synergistic propensities are associated with its proposed modified effluent. Proposed § 125.54(d)(5). To make this demonstration, the applicant would identify the pollutants and the physical conditions in the effluent and the receiving waters to determine whether synergistic relationships may exist. For example, the toxicity of ammonia varies greatly according to the temperature and pH. Also, if ammonia and chlorine are in the same effluent or receiving water, they may combine to form more toxic and persistent chlorinated amines.

Although all section 301(g) applicants must make the demonstration about synergism, EPA particularly urges applicants who have reason to suspect that their nonconventional pollutants may contribute to synergistic propensities either in their effluent or the receiving stream to describe to the Agency during the early consultation their plan to determine whether synergism is occurring. EPA is particularly concerned that pollutants regulated in the Pesticides and Organic Chemical industries may exhibit such propensities, especially at levels of acute toxicity.

EPA suggests that applicants apply biomonitoring techniques, where applicable, to determine whether synergism is occurring in an applicant's effluent. These techniques could include conducting acute and chronic bioassays on the whole effluent and separate fractions of the whole effluent to determine whether the nonconventional component of the effluent, when combined with toxic and conventional fractions, exhibits synergistic qualities.

5. *Persistency.* EPA proposes to require the section 301(g) applicant to demonstrate whether the nonconventional pollutant will impact human health or aquatic life due to persistency. Proposed § 125.54(d)(5). Under this proposal, the applicant should determine the fate of the

nonconventional pollutant with regard to its chemical structure and concentration in the environment. The applicant should determine whether the pollutant or pollutant concentration will be altered by such chemical or physical reactions as volatilization, photolysis, adsorption, absorption, oxidation, hydrolysis, etc. This can be accomplished through a review of the literature or direct measurements. Direct analytical methods must be cited, if used.

6. *Indicator Pollutants.* 40 CFR 125.3(g) states that if a pollutant is being used as an indicator for toxic or conventional pollutants it cannot be considered for a section 301(g) variance. Notwithstanding that prohibition, a nonconventional pollutant may be considered for a section 301(g) variance even though it is proposed for use as an indicator in its draft permit or is being used in an existing BAT permit, provided the nonconventional pollutant being used as an indicator is replaced by another indicator not the subject of the variance request or individual limits are placed on the toxic or conventional pollutants in question.

II. Section-by-Section Analysis

A. Section 124.67

This proposed amendment to 40 CFR Part 124 would provide special procedures for 301(g) variance decisions.

Subsection (a) would allow EPA or the State to make summary denial of a section 301(g) application where it is clear on the face of the application that the applicant is not entitled to a variance. This authority can be used to deny requests which are clearly incomplete or which are for ineligible pollutants (e.g., toxic pollutants). The Agency's experience with the variances indicates that responding to incomplete variance requests can be very resource intensive. To avoid this drain on permitting resources, the Agency expects to use the authority in § 124.67(a) to deny requests which are incomplete because they omit any information required by Subpart F. The early consultation is a device by which applicants can avoid this result. When the applicant has made a good faith effort to provide all the information required by Subpart F, the Agency intends to use the authority in § 125.53(f) to fill minor gaps in the applicant's request.

Subsection (b) would (1) make it clear that no section 301(g) variance will be approved in the absence of State concurrence; (2) provide that where a State standard specifically addresses the pollutant for which a variance is requested and is designed to assure protection and propagation of a balanced population for shellfish, fish and wildlife and to allow recreational activities, in and on the water, then EPA will not review a variance request until the State has determined that the proposed modified effluent limitation will not violate that standard; (3) provide for NPDES States to issue permits reflecting section 303(g) variance decisions, and (4) make it clear that where the State denies a request or where EPA bases it denial on the submission of a completed request without recommendation by the State Director, the matter is reviewable only under State procedures. State certification of a request under §124.53 would constitute the concurrence required by §124.67(b)(1). Any State concurrence in a section 301(g) variance would have to clearly indicate State approval of the request and would have to include the analysis required by §125.54.

Subsection (c) would provide that section 301(g) variance permits will adhere to requirements of 40 CFR Parts 122 and 124. Subsection (d) would provide that, upon expiration of the five-year term of a section 301(g) modified permit, no permit containing a modified section 301(g) effluent limitation shall be considered for reissuance unless the State has: (1) Adopted a numerical water quality criterion into its standards for the relevant pollutant(s) and EPA has approved such standards; and (2) the State has established wasteload allocations/total maximum daily loads through the wasteload allocation/total maximum daily load process and EPA has approved the State total maximum daily loads (TMDLs) and waste load allocations (WLAs). Since approval of a section 301(g) request necessarily involves a Federal and State determination that receiving water concentrations of the subject pollutant or pollutant parameters are acceptable, a reasonable next step is the adoption of the section 301(g) determination formally during State procedures establishing State water quality standards and WLAs and TMDLs for the locality. This requirement is consistent with section 303(c)(1), which requires review by the State of its water quality standards every three years. Availability of promulgated water quality standards and WLAs and TMDLs in an area where a section 301(g) determination has been made will expedite future variance proceedings in that locality.

EPA recognizes that standards adoption and TMDL/WLA procedures take considerable time due to institutional constraints even where substantial scientific work has been done. However, the Agency believes that the five-year permit term is sufficient time for this process.

B. Part 125, Subpart F

1. *Section 125.50. Scope and Purpose.* This section would establish the general scope and purpose of the section 301(g) regulations.

2. *Section 125.51. Law governing issuance of a section 301(g) modified permit.* This section would set forth the statutory language applicable to section 301(g) modified permits.

3. *Section 125.52. Definitions.* This section would set forth the definitions applicable to the section 301(g) regulations.

Section 125.52(a) would define "applicant" as the section 301(g) applicant.

Section 125.52(b) would define "balanced population of shellfish, fish and wildlife" as an ecological community which is similar to nearby healthy communities under comparable but unpolluted conditions or which may reasonably be expected to be established if sources of pollution were removed. The definition is similar to the definition contained in 40 CFR 125.58(f), implementing section 301(h) of the Act (municipal variance for ocean discharges). However, that section of the Act uses the term balanced "indigenous" population and therefore the section 301(h) regulation refers to water quality conditions which will allow pre-existing aquatic communities to return to the area of the applicant's discharge. The present proposal does not include the "pre-existing" communities concept.

Section 125.52(c) would define "early consultation" as correspondence or meetings between the applicant and the Federal and State permitting authorities to determine the type of data which should be submitted in the applicant's section 301(g) completed request and to identify the methods by which the data should be obtained.

Section 125.52(d) would define "load allocation" as the portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources.

Section 125.52(e) would define "mixing zone" as the State authorized area contiguous to the discharge where the effluent mixes with the receiving water. The definition establishes a preference for State-established mixing zones but recognizes that case-by-case definitions may be made if the State

definition is imprecise. No mixing zone will be allowed if the State water quality standards prohibit one. Where a State prohibits the use of a mixing zone, or where a mixing zone is not defined by the State and the applicant does not develop a mixing zone in conjunction with the State, the demonstrations required by § 125.54 must be made at the point of discharge. For marine and estuarine discharges, the definition allows use of a zone of initial dilution as defined by § 125.52(n).

Section 125.52(f) would define "nonconventional pollutant" as a pollutant which is not a toxic pollutant or a conventional pollutant, as those terms are designated by 40 CFR 401.15 and 401.16, or the thermal component of a discharge.

Section 125.52(g) would define "Office Director" as the Director of EPA's Office of Water Enforcement and Permits. The Administrator has delegated to the Office Director authority to grant or deny section 301(g) variance requests.

Section 125.52(h) would define "pollutant parameter" as a pollutant category which comprises one or more individual pollutants or pollutant characteristics. The term includes but is not limited to total phenols, total organic carbon (TOC), and chemical oxygen demand (COD).

Section 125.52(i) would define "proposed modified effluent limitation" as an effluent limitation modified pursuant to section 301(g) and Subpart F.

Section 125.52(j) would define "public water system" as a system for the provision of piped water for human consumption, where the system meets certain minimum size requirements. The definition is the same as the definition of the term in the section 301(h) regulations, § 125.58(o).

Section 125.52(k) would define "total maximum daily load" (TMDL) as the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background. TMDLs may be expressed in terms of either mass per time, toxicity, or other appropriate measure.

Section 125.52(l) would define "wasteload allocation" (WLA) as the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of a water quality-based effluent limitation.

Section 125.52(m) would define "water quality standards" as the applicable standards approved, left in effect, or promulgated under section 303 of the Act.

Section 125.52(n) would define "zone of initial dilution" (ZID) as the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards. A zone initial dilution as defined here may be applied to marine and estuarine discharges in determining mixing zone limits for the purposes of a section 301(g) determination. The ZID definition is the same as the definition in the regulations implementing CWA section 301(h) regulations under § 125.58.

4. *Section 125.53. Applications.* Section 125.53(a) would specify that section 301(g) initial requests must be submitted as specified in existing § 122.21(l)(2)(i) and that applicants requesting modification of effluent limitations not based on effluent limitations guidelines are not required to submit an initial request, as provided by § 122.21(l)(2)(iii).

Section 125.53(b) would recommend an early consultation (as defined in proposed § 125.52(c)) between the applicant and the State and Federal permit authorities and would suggest the timing for the early consultation.

Section 125.53(c) would require each applicant to submit a completed request as provided in § 122.21(l)(2)(ii) and this section unless the Director extends the period for submission pursuant to § 122.21(n)(2).

Section 125.53(d) would assure that each applicant seeking a variance from proposed effluent limitations based on best professional judgement (BPJ) could request 270 days from the date of notification of the draft BPJ/BAT permit to submit a completed request. If a draft BPJ/BAT permit provides for a public comment period of less than 270 days, and the discharger requires an extension of the comment period, the discharger must request an extension from the Director. The Director must either extend the public comment period or separate the permit proceeding from the variance request pursuant to § 124.63.

Section 125.53(e) would set forth the required contents of a completed section 301(g) variance request. Under the proposal, the completed request must include NPDES Standard Form 1 and 2B or 2C, as appropriate, demonstration of compliance with the criteria in § 125.54, and certification by the owner or operator.

Section 125.53(f) would call for the applicant to submit any information which the Regional Administrator or State Director determines to be necessary to make a decision on the variance requests. The Agency expects that this authority ordinarily will be exercised only when there are minor gaps in the completed request forwarded by the State to the Region.

Section 125.53(g) would provide for EPA to notify the Secretaries of Commerce and the Interior and any affected State of the filing of a section 301(g) completed request and to consider any timely recommendations from them.

Section 125.53(h) would allow the Regional Administrator and State Director to consider information in addition to the material submitted by the applicant. Any additional data or material used in the section 301(g) decision will be included in the record for the decision.

5. *Section 125.54. Criteria* § 125.54(a) would indicate that § 125.54 establishes the criteria for determining whether a section 301(g) modification should be granted. The burden will be on the applicant for the variance to show that the criteria of the statute and Part 125 would be met by the modified limitation.

Section 125.54(b) would require the applicant to demonstrate compliance with BPT, water quality standards and other applicable requirements of Federal or State law or regulation. The completed request must include a determination from the State or interstate certifying agency showing compliance with State requirements and discussing the basis for its conclusion.

Section 125.54(b)(1) would require the applicant to demonstrate compliance with State requirements, including water quality standards. If the applicant intends to rely on applicable State water quality standards to make a section 301(g) demonstration, those standards must be designed to maintain water quality which protects aquatic life and human health.

Section 125.54(b)(2) would require the applicant to provide a determination signed by the State or interstate agency(s) authorized to provide certification under § 124.53 that the proposed modified effluent limitation will comply with applicable provisions of State law and regulations, including applicable water quality standards.

Section 125.54(c) would require the applicant to demonstrate that the proposed section 301(g) modification will not result in the imposition of additional requirements on other point or nonpoint sources. The completed request must include a determination from the State or interstate agency which conducts wasteload allocations/total maximum daily loads showing that no additional requirements will be imposed on other sources as a result of

granting the section 301(g) variance and discussing the basis for its conclusion.

Section 125.54(d) would require the applicant to demonstrate that the proposed section 301(g) modification will not interfere with the attainment or maintenance of water quality which would assure protection of public water supplies, provide for protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, or result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

Section 125.54(d)(1) would require that the proposed modification not prevent the use of planned or existing public water supplies or cause the system to provide additional treatment.

Section 125.54(d)(2) would require that the proposed modification not prevent the existence of a balanced population of fish, shellfish and wildlife immediately adjacent to the mixing zone.

Section 125.54(d) (3) and (4) would require that the proposed modification not interfere with any customary recreational activities beyond the mixing zone. In particular, the applicant would have to show that there were not Federal, State or local restrictions on recreational activities in the vicinity of the applicant's discharge due to the proposed modification, unless such restrictions are routinely imposed around industrial discharges.

Section 125.54(d)(5) would require the applicant to demonstrate that the proposed modified effluent limitation will not cause an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

Section 125.54(e)(1) would provide that, in considering whether a proposed modified effluent limitation would satisfy section 301(g)(1)(C), EPA will give considerable weight to:

Section 125.54(e)(1)(A)—a demonstration that the proposed modified effluent limitation would be in compliance with applicable State water quality standards which supply numerical criteria for the specific nonconventionl pollutant, to the extent that these specific criteria are designed to assure levels of water quality protection specified in section 301(g)(1)(C);

Section 125.54(e)(1)(B)—a demonstration that the proposed modified effluent limitation would not interfere with attainment of water quality consistent with the most recently published, most stringent EPA criterion number for the specific nonconventional pollutant; or

Section 125.54(e)(1)(C)—a demonstration that the proposed modified effluent limitation would not intefere with the attainment of water quality consistent with an aquatic life criterion number for the specific nonconventional pollutant derived by the applicant through the use of the most recently published EPA criterion development methodologies. Where no published EPA human health criterion number is available to make a human health assessment, the applicant could attempt to demonstrate the human health effects of the proposed modified effluent limitation by supplying existing available information.

Section 125.54(e)(2) would inform those applicants seeking a variance for a pollutant parameter that EPA will give considerable weight to a demonstration that the proposed modified effluent limitation would comply with applicable water quality standards or a specific water quality criterion number as provided in § 125.54(e)(1). To derive a criterion for the pollutant parameter, the applicant may derive a number for the whole effluent containing the pollutant parameter by using EPA criterion derivation methodologies (see 45 FR 79318) and may express the resulting criterion in percent effluent. Additionally, section 125.54(e)(2) would provide that for a pollutant parameter, the applicant will be required to identify each toxic and conventional pollutant that is a constitutent of the parameter and demostrate that none of the constitutents of the pollutant parameter is a section 307(a) toxic pollutant or that each section 307(a) pollutant or conventional pollutant has BAT or BCT limitations. Toxicity tests must be approved by EPA.

III. Request for Comments

EPA recognizes that there are a number of issues under section 301(g) which may be controversial and welcomes comments on these. EPA particularly invites comments on the issues of use of EPA water quality criteria to make a water quality assessment; synergism and persistency; early consultation; and mandatory establishment of water quality standards for nonconventional pollutants before reissuance of the NPDES permit.

A. EPA Water Quality Criteria

The Agency is interested in comments from the public, particularly the States, on the appropriateness of relying on national criteria or discharger developed criteria (subject to EPA approval) in those cases where State standards are not available. The use of the criteria and the EPA criteria derivation methodology may raise three issues. One is the scientific validity of the criteria developed before the establishment of a standard criteria development methodology. Another issue is the fact that EPA criteria, because they are based on laboratory data, may not reflect site-specific conditions in terms of water quality and local biota acclimations to elevated background pollutant levels. The third issue is the appropriateness of using a simplified, site-specific methodology rather than the EPA criteria development methodology in producing site-specific criteria. A site-specific methodology might involve a reduced number of acute and chronic bioassays employing local sensitive species.

B. Synergism and Persistency

With regard to synergism and persistency, EPA recognizes that there are no standard established procedures for measuring each of these characteristics in surface waters and solicits comments on the EPA ad hoc approach to evaluating the potential for synergism or persistency in an applicant's discharge and receiving water. EPA also invites suggestions on methods for examining synergism and persistency in effluent and receiving waters and the appropriateness of applying biomonitoring techniques (toxicity tests) to measure synergistic propensities in the applicant's effluent and the receiving water.

C. Early Consultation

EPA solicits comments on the necessity for an early consultation and asks commentors whether the early consultation should be made mandatory (either for all section 301(g) requests or in specified situations) or maintained as an option.

D. Mandatory Establishment of Water Quality Standards

EPA solicits comments on the mandatory establishment of water quality standards and wasteload allocations/total maximum daily loads for nonconventional pollutants before reissuance of a NPDES permit

containing the section 301(g) variance provisions. EPA is especially interested in receiving State comments on this subject.

IV. Compliance With Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. EPA's proposed regulation in support of section 301(g) does not constitute a "major" regulation because it will not have a major financial or adverse impact on industrial dischargers and because it is voluntary in nature.

The following discussion of regulatory costs and savings is based on an EPA survey conducted in July 1983. Representatives from several industrial groups were interviewed to determine the probable cost of filing a completed request.

Based on the availability of EPA water quality criteria and State water quality standards, costs may vary widely for industry. If a water quality standard or criterion has already been developed, the estimated total cost to file a completed request, including dilution/dispersion determinations, literature review, technical and administrative time, and secretarial time, is estimated to be between $7,500 and $15,000.

If a water quality criterion or State standard does not exist, total costs to develop the information necessary for a completed request, including in-field testing and site-specific criterion development, may total between $100,000 and $200,000 based on EPA's criterion development methodology. If an applicant chooses an alternative criterion derivation methodology (upon EPA approval), its costs could fall outside this range.

EPA has estimated savings to section 301(g) permittees for the two largest industries eligible for a section 301(g) variance (Steam Electric and Iron and Steel). About 50 plants (15%) could be eligible for section 301(g) variances in the Steam Electric category because, at BPT, the plants' effluents are projected to meet water quality standards and the national criteria for chlorine at low flow. Total annualized costs for chlorine control for a 500 megawatt plant (median size) is about $88,000 (1982 dollars). Based on this cost, total Steam Electric category savings due to section 301(g) variances are estimated to be $4.4 million annually, exclusive of the cost of preparing and submitting the completed request.

Approximately 20 Iron and Steel plants have filed for a section 301(g) variance for ammonia and total phenols. If a variance is granted it would allow plants to eliminate BAT treatment for ammonia and total phenols, which would result in annual cost savings per plant of $270,000 (1982 dollars). If the 20 section 301(g) variance requests already filed are granted, industry-wide annual cost savings would be about $5.4 million.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB and any EPA response to those comments are available for public inspection at EPA, Room 3220, 401 M Street, SW., Washington, D.C. 20460.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, EPA must prepare a regulatory flexiblity analysis for all regulations that may have a significant impact on a substantial number of small entities. EPA examined small facilities in the Inorganic Chemical, Iron and Steel, and Steam Electric categories to determine the cost to prepare a 301(g) completed request. For the smallest of the facilities, the $15,000 estimated cost to produce a completed request represents less than 1% of its annual revenues. The Agency expects that even the smallest of the facilities could afford to apply for the variance. If a small plant desires to develop its own site-specific criterion or conduct other in-field studies, the $200,000 expenditures (anticipated highest cost) could represent about 10% of the smallest facility's annual revenues. Since the variance is voluntary only those entities which expect to gain a net benefit from the variance would expend the larger cost.

Nonetheless, EPA recognizes that costs may be substantial for small entities who choose to develop water quality criteria using EPA's criterion derivation methodology and has allowed for flexibility in the regulation. EPA strongly suggests, but does not require, each entity to rely upon EPA water quality criteria and the EPA criterion derivation methodology to make their water quality impact assessment. The regulation allows any entity, regardless of size, to derive a water quality criterion using its own methodology upon approval by EPA. This flexibility should help to minimize the impact on small entities.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the reporting provisions that are included in this proposed rule have been submitted for approval to OMB under section 3504(h) of the Act. Burden hour estimates in EPA's request to OMB are base on the Agency's experience with water quality criterion development and other variance processes. Information collection requirements contained in the proposed section 301(g) regulation have been approved by OMB under the provision of the Paperwork Reduction Act and have been assigned OMB control number ———— .

List of Subjects

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

40 CFR Part 125

Water pollution control, Waste treatment and disposal.

Dated: July 31, 1984.

William D. Ruckelshaus,

Administrator.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

For the reasons set out in the preamble, Parts 124 and 125 of Title 40 of the Code of Federal Regulations are proposed to be amended by the addition of § 124.67 and Part 125, Subpart F as set forth below.

PART 124—PROCEDURES FOR DECISIONMAKING

§ 124.67 Special procedures for decisions on variances for nonconventional pollutants under section 301(g).

(a) Where it is clear on the face of a section 301(g) request that the applicant is not entitled to a variance, the request must be denied. Notice of applicable procedures for appeal must be provided in accordance with § 124.62. If the applicant's variance request has been separated from its draft permit under § 124.63(a)(2) (or comparable State procedure) and the permit has become final, the Director shall prepare a new draft permit which includes the denial of the request and give notice of it under § 124.10. This draft permit shall be accompanied by the fact sheet required by § 124.8, except that the only matters considered shall relate to the variance.

(b)(1) EPA will not approve any section 301(g) variance unless the

appropriate State officials have concurred in the variance request pursuant to § 124.53 (EPA-adminstered program) or § 124.62(b)(3) (State NPDES program). Notwithstanding the provisions of §124.53, EPA will not approve any section 301(g) variance if the State waives its right to concur.

(2) If applicable State water quality standards include a specific, numerical standard for the pollutant or pollutant parameter for which the section 301(g) request is made, and the State's standard is designed to assure compliance with section 301(g) statutory factors, EPA will not review the variance request until the appropriate State officials have determined that the proposed modified effluent limitation would not result in a violation of the applicable standard.

(3) In the case of a variance approved by the Office Director in an NPDES-approved State, the State Director may prepare a draft permit incorporating the variance pursuant to § 124.62(d).

(4) When the State denies a request or when EPA denies a request on the basis of the State's submission of the request without recommendation, the matter is reviewable through the applicable procedures of the State and review is not available through the procedures in this Part. Notice of a denial by the State shall be given in accordance with State procedures.

(c) Any permit containing a section 301(g) modified effluent limitation shall contain all applicable terms and conditions set forth in Part 122 and shall be issued in accordance with the procedures set forth in Parts 123 and 124.

(d) No permit containing a section 301(g) modification may be reissued unless the State agency responsible for setting water quality standards has approved numerical water quality criteria and total maximum daily loads/wasteload allocations in a standard for the nonconventional pollutant or pollutants addressed in the modification.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act

Sec.

125.50 Scope and purpose.
125.51 Law governing issuance of a section 301(g) modified permit.
125.52 Definitions.
125.53 Applications.
125.54 Criteria for the determination of modified effluent limitations under section 301(g).

Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act

§ 125.50 Scope and purpose.

This subpart establishes the criteria to be applied by EPA in acting on section 301(g) requests for modification to Best Available Technology (BAT) effluent limitations for nonconventional pollutants, section 301(b)(2)(F).

§ 125.51 Law governing issuance of a section 301(g) modified permit.

(a) Section 301(g) of the Clean Water Act provides that: "(1) The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge of any pollutant (other than pollutants identified pursuant to section 304(a)(4) of this Act, toxic pollutants subjects to section 307(a) of this Act, and the thermal component of discharges) from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that—

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1) (A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(2) If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutants only during the same time-period as he is eligible to apply for a modification under this subsection."

(b) Section 301(j)(1)(B)—[(time for filing)]

Any application filed under this section for a modification of the provisions of subsection (b)(2)(A) as it applies to pollutants identified in subsection (b)(2)(F) shall be filed no later than 270 days after the date of promulgation of an applicable effluent guideline under section 304 or not later than 270 days after the date of enactment of the Clean Water Act of 1977 [December 27, 1977], whichever is later.

(c) Section 301(j)(2)—[(Stay of Clean Water Act Requirements)]

Any application for a modification filed under subsection (g) of this section shall not operate to stay any requirements under this Act, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, teratogenicity), or synergistic propensities, and that there is substantial likelihood that the applicant will succeed on the merits of such application. In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

§ 125.52 Definitions.

For the purposes of this subpart:

(a) "Applicant" means an applicant for a modified effluent limitation pursuant to section 301(g) and this subpart.

(b) "Balanced population of shellfish, fish and wildlife" means an ecological community which:

(1) Exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions; or

(2) May reasonably be expected to be established in the polluted water body segment if sources of pollution were removed.

(c) "Early Consultation" means correspondence or meetings between the applicant and the Federal and State permitting authorities to determine the type of data which should be submitted in the applicant's section 301(g) completed request and to identify the

methods by which the data should be obtained.

(d) "Load Allocation" (LA) means the portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to background sources.

(e) "Mixing Zone" means an area, defined by or allowable pursuant to the State water quality standards, contiguous to the discharge where the effluent mixes with the receiving water. Mixing zones may be authorized by State water quality standards and determined pursuant to a specific definition in such water quality standards or, in the case of an approved State mixing zone policy in the standards, determined on a case-by-case basis by the State. Where a State prohibits the use of a mixing zone, or where the dimensions of the mixing zone are not specifically defined by the State water quality standards and the applicant does not develop a mixing zone in conjunction with the State, the demonstrations required by section 125.54 must be made at the point of discharge.

(f) "Nonconventional Pollutant" means any pollutant which is not a conventional pollutant listed in 40 CFR 401.16, a toxic pollutant listed in 40 CFR 401.15, or the thermal component of a discharge.

(g) "Office Director" refers to the Director, Office of Water Enforcement and Permits.

(h) "Pollutant Parameter" means a pollutant category which comprises one or more individual pollutants or pollutant characteristics. The term includes, but is not limited to, total phenols, total organic carbon (TOC), and chemical oxygen demand (COD).

(i) "Proposed modified effluent limitation" means an effluent limitation which is proposed pursuant to this subpart and section 301(g) as a replacement for a source's effluent limitation based on an effluent limitation guideline or best professional judgment.

(j) "Public water supply system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. The term includes (1) any collection, treatment, storage and distribution facilities under the control of the operator of the system and used primarily in connection with the system, and (2) any collection or pretreatment storage facilities not under the control of the operator of the system which are used primarily in connection with the system.

(k) "Total maximum daily load" (TMDL) means the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source's waste load allocation plus the load allocations for any nonpoint sources of pollution and natural background sources. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measures.

(l) "Wasteload allocation" (WLA) means the portion of the receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

(m) "Water quality standards" means applicable water quality standards which have been approved, left in effect, or promulgated under section 303 of the Clean Water Act.

(n) "Zone of initial dilution" (ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

§ 125.53 Applications.

(a) Each applicant requesting modification under this subpart of effluent limitations based on an effluent limitations guideline shall submit an initial request as provided in § 122.21(1)(2)(i). As provided in § 122.21(1)(2)(iii), an applicant requesting modification of effluent limitations not based on effluent limitations guidelines is not required to submit an initial request.

(b) Each applicant should hold an early consultation with Federal and State permitting authorities according to the following schedule:

(1) For applicants requesting a variance from BAT requirements based on an effluent guideline promulgated on or before the date this subpart is promulgated, no later than 90 days after the promulgation of this subpart;

(2) For applicants requesting a variance from BAT requirements based on an effluent guideline promulgated after the promulgation of this subpart, no later than 90 days of the promulgation of that guideline; and

(3) For applicants requesting a variance from BAT based on best professional judgment (rather than an effluent limitation guideline), within 90 days of public notice of the preparation of the applicant's draft permit.

(c) Each applicant requesting a variance under this subpart shall submit a completed request as provided in § 122.21(l)(2)(ii) and this section, unless the Director extends the period for submission pursuant to § 122.21(n)(2).

(d) An applicant seeking a modification under this subpart of proposed effluent limitations based on best professional judgment (BPJ) (not based on effluent limitations guidelines) may request extension of the public comment period for its draft BPJ/BAT permit when the period is less than 270 days. An applicant must submit its request for an extension during the original public comment period to the Director, who must grants the request or separate the processing of the variance request from the processing of the permit.

(e) Each completed request for a section 301(g) variance submitted by the applicant or forwared by the State to the Region shall contain:

(1) A completed NPDES Application Standard Form 1 and 2b or 2c, as appropriate;

(2) Documentation demonstrating compliance with the requirements of § 125.54; and

(3) Certification as required by § 122.22(d).

(f) The applicant shall submit any data or information which the Regional Administrator and State Director subsequently determine necessary to support the completed request and, within the times specified by the Regional Administrator or State Director, may also provide any additional data or information which the applicant considers appropriate.

(g) The Regional Administrator shall promptly notify the Secretary of Commerce and the Secretary of the Interior, and any affected State, of the filing of the completed request and shall consider any timely recommendations they submit.

(h) In deciding whether to issue a modified effluent limitation under section 301(g), in addition to data and information supplied by the applicant, the Regional Administrator and State Director may consider any EPA or other relevant data and information.

§ 125.54 Criteria for the determination of modified effluent limitations under section 301(g).

(a) The Office Director shall approve a request for a modified effluent limitation if the applicant demonstrates, to the Office Director's satisfaction, that the proposed modified effluent limitation will comply with the requirements of this section.

(b) BPT; Water Quality Standards; Other Federal and State requirements.

(1) The applicant must demonstrate that the proposed modified effluent limitation will result at a minimum in compliance with the requirements of section 301(b)(1) (A) and (C) of the Clean Water Act and other applicable requirements of Federal law. For purposes of section 301(b)(1)(A), if BPT is not defined by effluent limitation guidelines regulations, BPT must be defined by best professional judgment.

(2) To show compliance with State requirements, the applicant must demonstrate that the modified effluent limitation will comply with any applicable State water quality standards and other applicable requirements of State law or regulation. If the applicant intends to rely on an applicable State water quality standard to demonstrate that the proposed modified effluent limitation will satisfy portions of section 301(g)(1)(C), the applicant shall identify the portions of the statute which it believes are satisfied by the standard and set forth the basis for its conclusion.

(3) The completed request must include a determination signed by the State or interstate agency(s) authorized to provide certification under § 124.53 that the proposed modified effluent limitation will comply with applicable provisions of State law and regulations including applicable water quality standards. This determination shall include a discussion of the basis for the conclusion reached.

(c) Other Point and Nonpoint Sources. The applicant must demonstrate that the proposed modified effluent limitation will not result in any additional pollution control requirements on any other point or nonpoint source. The completed request must include a determination from the State or interstate agency(s) having authority to establish WLAs/TMDLs indicating whether the applicant's discharge will result in any additional treatment, pollution control, or other requirement on any other point or nonpoint sources. The State determination shall include a discussion of the basis for its conclusion.

(d) Environmental Effects. The applicant must demonstrate that the proposed modified effluent limitation will not interfere with the attainment or maintenance of water quality which shall assure protection of public water supplies and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chornic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities. The applicant must demonstrate that:

(1) The proposed modified effluent limitation will not prevent a planned or existing public water supply system from being used, or from continuing to be used, as a public water supply, or have the effect of requiring any public water supply system to provide additional treatment.

(2) The proposed modified effluent limitation will not prevent the existence of a balanced population of shellfish, fish and wildlife immediately beyond the State mixing zone applicable to the applicant's discharge or, where appropriate, beyond the zone of initial dilution (ZID).

(3) The proposed modified effluent limitation will not interfere with recreational activities beyond the boundary of the mixing zone or, where appropriate, of the ZID, including without limitation swimming, diving, boating, fishing and picnicking and sports activities along shorelines and beaches.

(4) There will be no Federal, State, or local restrictions on recreational activities in the vicinity of the applicant's discharge due to the proposed modified effluent limitation, unless such restrictions are routinely imposed around such industrial discharges.

(5) There will be no unacceptable risk to human health or the environment due to the proposed modifed effluent limiation, because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(e)(1) In determining whether the proposed modified effluent limitation would satisfy the environmental effects and toxicity requirements of section 301(g)(1)(C), EPA will give considerable weight to:

(A) A demonstration that the proposed modified effluent limitation, when evaluated at the edge of the mixing zone (if any), would be in compliance with applicable State water quality standards which supply numerical criteria for the specific nonconventional pollutant, to the extent that these specific criteria are designed to assure the levels of water quality protection specified in section 301(g)(1)(C);

(B) A demonstration that the proposed modified effluent limitation, when evaluated at the edge of the mixing zone (if any), would not interfere with attainment of water quality consistent with the most stringent of the most recently published EPA criteria numbers for the specific nonconventional pollutant; or

(C) A demonstration that the proposed modified effluent limitation, when evaluated at the edge of the mixing zone (if any), would not interfere with attainment of water quality consistent with an aquatic life criterion number for the specific nonconventional pollutant derived by the applicant through the use of the most recently published EPA criterion-development methodologies. Where no published EPA human health criterion number is available, the applicant may attempt to demonstrate the human health effects of the proposed modified effluent limitation by supplying existing available information.

(2) For a pollutant parameter, EPA will give considerable weight to a demonstration that the proposed modified effluent limitation would comply with applicable water quality standards or a specific water quality criterion number as provided in § 125.54(e)(1). To derive a criterion for a pollutant parameter as provided in § 125.54(e)(1)(C), the applicant may use EPA methodologies to derive a criterion number for the whole effluent containing the pollutant parameter. The resulting criterion number would be expressed as a percentage of the whole effluent. In addition, for a pollutant parameter the applicant must identify each toxic and conventional pollutant which is a constituent of the parameter and must demonstrate that any toxic or conventional pollutant that is a constitutent of the pollutant parameter would be present at concentrations as low as required by BAT or BCT, respectively, or would be controlled by BAT or BCT effluent limitations if the variance is granted.

[FR Doc. 84-20878 Filed 8-6-84; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1880

Financial Assistance, Local Governments; Amendments to Payment in Lieu of Taxes Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would make changes in the existing payment in lieu of taxes regulations to incorporate amendments made to the authorizing legislation by recently enacted Acts of Congress.

DATE: Comments should be submitted by October 9, 1984. Comments postmarked or received after the above date may not be considered during the decisionmaking process on a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:
Edward P. Greenberg, (202) 343–6743
or
Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: The Congress recently enacted legislation amending the Payment in Lieu of Taxes legislation (31 U.S.C. 6901 et seq.) as part of the Supplemental Appropriations Act for Fiscal Year 1983 (Pub. L. 98–63). The amendment grew out of a decision by the United States Court of Appeals for the Sixth Circuit that struck down the Department of the Interior's use of the "principal provider of government services" test contained in § 1800.0–5(b)(1) of the existing regulations. This test provided criteria for determining which units of general local government within a State are eligible to receive entitlement land payments. The Supplemental Appropriations Act for Fiscal Year 1983 provided a definition of the term "unit of general local government" that gives the Secretary of the Interior explicit discretionary authority to apply the principal provider test. In addition to the authority granted in connection with the term "unit of local government," the Supplemental Appropriations Act for Fiscal Year 1983 provided authority for the States to enact legislation requiring distribution of funds provided by the Payment in Lieu of Taxes payment to the various smaller units of general purpose local government in that State. If a State enacts such legislation, the United States would be required to make a single payment to that State for subsequent distribution by the State. The amount paid the State would be required to be passed through to the eligible units of local government within that State in the manner prescribed by State law in accordance with the requirements of the pertinent provisions of the Supplemental Appropriations Act for Fiscal Year 1983.

A final rulemaking amending 43 CFR Part 1880 to incorporate the changes to the definition of the term "unit of local government" provided in Title VII of the Supplemental Appropriations Act for Fiscal Year 1983 was published in the **Federal Register** on September 20, 1983 (48 FR 43816). This proposed rulemaking would require a State that enacts its own distribution legislation to notify the Secretary of the Interior that the Payment in Lieu of Taxes payment shall be made directly to that State, rather than to the eligible units of local government. It would also adopt provisions of Title VII of the Supplemental Appropriations Act for Fiscal Year 1983 providing for an expansion of section 3 payments for lands acquired in the Lake Tahoe Basin under the Act of December 23, 1980 (Pub. L. 96–586), and would make minor technical amendments to bring the existing regulations into conformance with the language of the final rulemaking of September 20, 1983.

The principal author of this proposed rulemaking is Edward P. Greenberg, Division of Finance, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The amendments that would be made by this proposed rulemaking are in compliance with changes made in the Payment in Lieu of Taxes legislation by the Congress and will have no direct impact on small entities.

The information collection requirements contained in this proposed rulemaking do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than 10 respondents per year.

List of Subjects in 43 CFR Part 1880

Administrative practice and procedure, Civil rights, Grant programs—natural resources, Intergovernmental relations, Loan programs—natural resources, Public lands, Public lands—mineral resources.

PART 1880—[AMENDED]

Under the authority of 31 U.S.C. 6901—6907, as amended, it is proposed to amend Part 1880, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

§ 1881.0–3 [Amended]

1. Section 1881.0–3 is amended by removing the phrase "Pub. L. 94–565, 90 Stat. 262, 31 U.S.C. 1601–1607," and replacing it with the phrase ", as amended, 31 U.S.C. 6901–6907,".

§ 1881.0–5 [Amended]

2. Section 1881.0–5(b) is amended by:

A. Amending paragraph (1)(i) by adding after the word "general" the word "local";

B. Amending paragraph (1)(ii) by adding after the word "general", in the two places it appears, the word "local"; and

C. Amending paragraph (2) by adding after the word "general" the word "local".

3. Section 1881.0–5(c)(1) is amended by:

A. Removing from the end of paragraph (vi) the word "or";

B. Removing the period from the end of paragraph (vii) and replacing it with a semicolon and the word "or"; and

C. Adding a new paragraph (viii) to read:

§ 1881.0–5 Definitions.

* * * * *

(c)(1) * * *

(viii) Lands located in the vicinity of Purgatory River Canyon and Pinon Canyon, Colorado, that were acquired by the United States after December 23, 1981, to expand the Fort Carson military installation.

§ 1881.1–2 [Amended]

4. Section 1881.1–2 is amended by:

A. Amending paragraph (a) by adding after the word "general", in the two places it appears, the word "local"; and

B. Adding a new paragraph (f) to read:

§ 1881.1–2 Procedures, Section 1 payments.

* * * * *

(f) If a unit of general local government eligible for payments under this part reorganizes, the authorized officer shall, for the fiscal year in which the reorganization occurred, calculate payments as if the reorganization had not occurred and issue any payments due under this part jointly to all of the

newly formed units of general government.

§ 1881.1-3 [Amended]

5. Section 1881.1-3(d) is amended by inserting after the phrase "March 27, 1978,", where it appears the second time, the phrase "and lands acquired in the Tahoe Lake Basin under the Act of December 23, 1980 (Pub. L. 96-586),".

6. A new § 1881.1-5 is added to read:

§ 1881.1-5 Requirement to report enactment of State distribution legislation.

(a) Section 6907 of the Act provides that a single payment may be made to a State for reallocation and redistribution to units of general local government other than the principal provider of services as determined by the Secretary. If the State decides to avail itself of this provision, it shall comply with the following conditions:

(1) The State shall notify the authorized officer that it has enacted legislation that conforms to section 6907 of the Act and within 60 days of its enactment, provide the authorized officer with a copy of the legislation and the name and address of the State office to which payment is to be made.

(2) The State legislation shall conform to the requirements of the Act, particularly section 6907(a).

(3) The State legislation shall provide for distribution of all moneys received by the State pursuant to the Act, and shall not differentiate between moneys received from the various types of entitlement lands or provide for payment to other than a unit of general local government containing entitlement lands.

(b)) If the authorized officer finds that a State's legislation complies with the conditions set forth in paragraph (a) of this section, he/she shall notify the State that a single payment will be made to the designated State government office beginning with the Federal fiscal year in which the conforming legislation was received by the authorized officer. However, if notification is received by the authorized officer after July 1, the payment to the State authorized by the Act shall not begin until the subsequent Federal fiscal year. The authorized officer shall provide the State with appropriate information that identifies the entitlement lands data on which the payments are based.

(c)(1) If a State that has enacted conforming legislation as described in paragraphs (a) and (b) of this section later repeals or amends that legislation, the State shall immediately notify the authorized officer of such change(s), in writing, and shall furnish the authorized officer a copy of the legislation.

(2) If a State's conforming legislation is repealed or if the authorized officer finds from a review of the legislation that it is so altered as a result of amendments that it no longer complies with the conditions stated in paragraph (a) of this section, he/she shall notify the State office designated under paragraph (a)(1) of this section that payment shall be made directly to eligible units of local government. These payments shall begin with the Federal fiscal year in which a copy of the State's legislation repealing or amending the State's conforming legislation is received by the authorized officer. However, if a copy of the State's repealing or amending legislation is received after July 1, payments made directly to eligible units of local government shall not begin until the subsequent Federal fiscal year.

Dated: June 27, 1984.

Leona A. Power,

Acting Assistant Secretary of the Interior.

[FR Doc. 84-20786 Filed 8-6-84; 8:45 am]

BILLING CODE 4310-84-M

---

43 CFR Part 2650

Alaska Native Selections; Amendment Changing the Chargeability of Submerged Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the provisions of the Alaska Native Selection regulations to change the procedures used for excluding meanderable water bodies from acreage charged against the entitlements of Alaska Native Corporations and would add provisions for Native villages which are underselected. This amendment would implement a policy decision of the Secretary of the Interior on these subjects.

DATE: Comments should be submitted by October 9, 1984. Comments postmarked or received after this date may not be considered as part of the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lee Barkow, (202) 343-6511

or

Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: Earlier this year, the Secretary of the Interior made a determination that the procedure used for charging submerged lands against the entitlements of Alaska Native Corporations should be changed. Current procedures are described in 43 CFR 2650.5-1(b) and require that all nonnavigable water bodies be charged against Alaska Native Corporation entitlement if they are validly selected. The proposed rulemaking would amend this procedure and would provide that the Alaska Native Corporations will not be charged for meanderable water bodies in accordance with the Bureau of Land Management's 1973 *Manual of Surveying Instructions*, as modified by this proposed rulemaking.

This change in procedure, if adopted, may cause certain Alaska Native Village Corporations to be underselected. To solve this problem, the proposed rulemaking would amend § 2651.4 to incorporate the provisions of section 1410 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101) for additional selections for those village corporations that are underselected.

The village corporations will be required to take patent to all previously validly selected lands. Any new land selections would be made from lands identified by the Secretary of the Interior from vacant, unreserved and unappropriated public lands and not from lands currently unavailable for withdrawal for selection.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The change in procedure that would be made by this proposed rulemaking should allow Alaska Native Corporations to receive larger amounts of uplands because it would change the procedures used to exclude water bodies from their selection entitlement. The change will benefit many of the Alaska Native Corporations; however,

the change should not have a major economic effect on any of the corporations.

The proposed rulemaking contains no information collection requirements requiring approval by the Office of Management and Budget under 44 U.S.C. 3507.

The principal author of this proposed rulemaking is Lee Barkow of the Alaska Programs Staff, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

List of Subjects in 43 CFR Part 2650

Administrative practice and procedure, Airports, Alaska, Cemeteries, Historic places, Indians—claims, Indians—lands, National forests, National Wildlife Refuge System, Public lands—grants, Public lands—mineral resources.

PART 2650—[AMENDED]

Under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), it is proposed to amend Part 2650, Group 2600, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

1. Section 2650.0–5 is amended by adding a new paragraph (v) to read:

§ 2650.0–5 Definitions.

* * * * *

(v) "Native corporation" means any Regional Corporation, any Village Corporation, Urban Corporation and any Native Group.

2. Section 2650.5–1 is amended by revising paragraph (b) to read:

§ 2650.5–1 General.

* * * * *

(b) The following procedures shall be used to determine what acreage is not to be charged against Native entitlement:

(1) For any approved plat of survey where meanderable water bodies were not segregated from the survey but were included in the calculation of acreage to be charged against the Native corporation's land entitlement, the chargeable acreage shall, at no cost to the Native corporation, be recalculated to conform to the principles contained in the Bureau of Land Management's *Manual of Surveying Instructions*, 1973, except as modified by this part. Pursuant to such principles, the acreage of meanderable water bodies, as modified by this part, shall not be included in the acreage charged against the Native corporation's land entitlement.

(2) For any plat of survey approved after December 5, 1983, water bodies shall be meandered and segregated from the survey in accordance with the principles contained in the Bureau of Land Management's *Manual of Surveying Instructions*, 1973, as modified by this part, as the basis for determining acreage chargeability.

(3) If title to lands beneath navigable waters, as defined in the Submerged Lands Act, of a lake less than 50 acres in size or a river or stream less than 3 chains in width did not vest in the State on the date of Statehood, such lake, river or stream shall not be meandered and shall be charged against the Native corporation's entitlement.

(4) Any determinations of meanders which may be made pursuant to this subparagraph shall not require monumentation on the ground unless specifically required by law or for good cause in the public interest.

3. Section 2651.4 is amended by:

A. Amending paragraph (b) by removing from the second sentence thereof the phrase "or a section in which a body of water comprises more than one-half of the total acreage of a section."; and

B. Adding a new paragraph (i) to read:

§ 2651.4 Selection Limitations.

* * * * *

(i)(1) Where lands selected and conveyed or to be conveyed to a village corporation are insufficient to fulfill the corporation's entitlement under sections 12(b), 14(a), 16(b) or 16(d), the Secretary may withdraw twice the amount of unfulfilled entilement and provide the village corporation 90 days from receipt of notice from the Secretary to select from the withdrawn lands the lands it desires to fulfill its entitlement. In making the withdrawal, the Secretary shall first withdraw public lands that were formerly withdrawn for selection by the concerned village corporation by, or pursuant to, sections 11(a)(1) and 11(a)(3), 16(a) or 16(d). Should such lands no longer be available, the Secretary shall withdraw public lands that are vacant, unreserved and unappropriated, except that the Secretary may withdraw public lands which has been previously withdrawn pursuant to section 17(d)(1) of the act.

(2) Conservation system units created or enlarged by the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101), the Steese National Conservation Area, the White Mountains National Recreation Area and lands withdrawn for study for wild and scenic rivers, shall not be made available for withdrawal for village selection.

(3) Any subsequent selections by a village corporation shall be in the manner provided in paragraph (b), (c) and (e) of this section.

(4) Village corporations that file selections pursuant to this paragraph may maintain selection applications in excess of their entitlement; however, the land selections shall not exceed 125 percent of unconveyed entitlement. To ensure that the corporations acquire their choices in the order of their priorities, they shall identify their choices numerically, section-by-section, in the order they wish them conveyed. If the villlage corporation fails to identify properly and submit to the Bureau of Land Management its priorities within 60 days of receipt of notice of excess land selection, rejection of selections shall be based on date of filing or order of serialization, with the latest unprioritized selection filed or the highest serial number assigned to the application being rejected first. Excess selections may be voluntarily relinquished at any time prior to approval for conveyance; remaining selections shall comply with criteria for compactness and contiguity.

Dated: July 12, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84–20797 Filed 8–6–84; 8:45 am]

BILLING CODE 4310–84–M

Notices

Federal Register
Vol. 49, No. 153
Tuesday, August 7, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Guidelines: Considering Cultural Values in Project Review Under Section 106 of the National Historic Preservation Act

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation is beginning work on a guideline document to assist the Council, Federal agencies, State Historic Preservation Officers, and the public in the consideration of cultural values when reviewing projects under section 106 of the National Historic Preservation act and the Council's regulations (36 CFR Par 800). For the purposes of the proposed guideline, "cultural values" means the values ascribed to an historic property by contemporary cultural groups that may have historic or traditional ties to the property. Examples include the value ascribed to some historic properties by American Indian groups that associate the properties with events in their traditional culture-histories or with traditional religious practices, and the neighborhood value ascribed to some historic districts by the residents of such districts.

The guidelines are intended to be responsive to the recommendations of the report entitled *Cultural Conservation*, issued in 1983 by the Department of the Interior and the American Folklife Center pursuant to section 502 of the National Historic Preservation Act Amendments of 1980. It is also anticipated that the guidelines will be responsive to the American Indian Religious Freedom Act (Pub. L. 95-341, 92 Stat. 469).

The Council solicits initial recommendations from interested agencies, organizations, and individuals as to subjects to be covered in the guidelines and as to the manner in which such subjects should be treated. The Council also intends to make drafts of the guidelines available for review and comment as they are developed, and will be pleased to include interested parties on its list of reviewers at their request.

Initial comments due: September 6, 1984.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave. NW., Rm. 809, Washington DC 20004, Attn. Dr. Thomas F. King.

Dated : August 2, 1984.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 84-20879 Filed 8-6-84; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

CA-177 Turlock Livestock Auction Yard, Turlock, California
CO-149 Gunnison Valley Horse Auction, Gunnison, Colorado
GA-192 Pulaski County Stockyard, Inc., Hawkinsville, Georgia
IL-170 Great Rivers Hog Market, Inc., Pittsfield, Illinois
IN-156 Gary Keislings Feeder Pigs, Walton, Indiana
IN-160 M&R Livestock Co., Inc., Loogootee, Indiana
KY-169 Lee City Livestock Co., Inc., Lee City, Kentucky
NC-154 Southeastern Livestock Market, Inc., Clinton, North Carolina
TN-182 Hogin Livestock Sales, Dixon, Tennessee

Notice is hereby given that pursuant to authority under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed designation, may do so by filing them with the Chief, Financial Protection Branch, Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250, by August 22, 1984.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Chief of the Financial Protection Branch during normal business hours.

Done at Washington, D.C., this 30th day of July, 1984.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 84-20869 Filed 8-6-84; 8:45 am]

BILLING CODE 3410-KD-M

Posted Stockyard

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock market named below is a stockyard within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owner and to the public by posting notices at the stockyards as required by said section 302, on respective date specified below.

Facility No., name, and location of stockyard	Date of posting
CA-176 Mike's Livestock Auction Mira Loma, CA.	July 9, 1984.

Done at Washington, D.C., this 30th day of July, 1984.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 84-20877 Filed 8-6-84; 8:45 am]

BILLING CODE 3420-KD-M

Soil Conservation Service

Saltville Critical Area Treatment RC&D Measure, Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Saltville Critical Area Treatment RC&D Measure, Smyth County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240, telephone 804–771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for grading, shaping and seeding eroding areas in Smyth County, Virginia. The planned work will include the establishment of three (3) acres of permanent vegetative cover, installing a diversion, tile drain, and heavy use area protection.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: July 23, 1984.

Manly S. Wilder,

State Conservationist.

[FR Doc. 84–20812 Filed 8–6–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Docket 41961]

Airwest International Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter will be held on August 10, 1984, at 10:00 a.m. (local time) in Court Room A, Eighth Floor, 1111 20th Street NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., July 31, 1984.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 84–20927 Filed 8–6–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 42376]

South Pacific Island Airways, Inc.; Compliance with Part 250, Enforcement Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to him.

Dated Washington, D.C., August 2, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84–20926 Filed 8–6–84; 8:45 am]

BILLING CODE 6320–01–M

CIVIL RIGHTS COMMISSION

Nebraska Advisory Committee to the United States Commission on Civil Rights Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Advisory Committee to the Commission originally scheduled for August 24, 1984, at Omaha, Nebraska (FR Doc. 84–20349 on page 30763) has a new meeting date.

The meeting will be conducted on August 23, 1984. The address and time will remain the same.

Dated at Washington, D.C., August 1, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–20853 Filed 8–6–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA)

Title: Marketing and Capacity Information Report; Primary Beneficiary Marketing and Capacity Information Report

Form Numbers: Agency–ED–220; OMB—N/A ED–220PB

Type of Request: New

Burden: 40 respondents; 80 reporting hours

Needs and Uses: Information is needed to determine economic and competitive impacts of increased production or service capacity in a particular firm or industry.

Affected Public: Business or other for-profit institutions; small businesses or organizations

Frequency: Once at time of project application

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Timothy Sprehe 395–4814.

Copies of the above information collection proposals 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 collections should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20230.

Dated: July 30, 1984.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84–20863 Filed 8–6–84; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

Cincinnati Art Museum; 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 No.: 84–171. Applicant: Cincinnati Art Museum, Cincinnati, OH 45202. Instrument: Infrared Reflectography Equipment, Model FA 70H/BG12. Manufacturer: Vanandel B.V., The Netherlands. Intended use: See notice at 49 FR 23673.

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, was being manufactured in the United States at the time the instrument was ordered (December 9, 1983).

Reasons: The foreign instrument provides very high resolution (735 and 875 lines) and very low distortion (±1.0 percent) with a bandwidth of at least 9 megahertz. The National Bureau of Standards advises in its memorandum dated July 10, 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 being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the foreign instrument being manufactured at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–20899 Filed 8–6–84; 8:45 am]

BILLING CODE 3510–DS–M

Oklahoma State University; 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 No. 84–37. Applicant: Oklahoma State University, Stillwater, OK 74078. Instrument: Terrain Conductivity Meter, Model EM 34–3. Manufacturer: Geonics, Inc., Canada. Intended use: See notice at 49 FR 3236.

Comments: None received.

Decision: Approved. No instrument of equivalent scientifc 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 selectable resistivity/conductivity measurements for mapping hydrologic or geologic units and fluids. The National Bureau of Standards advises in its memorandum dated July 24, 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)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–20900 Filed 8–6–84; 8:45 am]

BILLING CODE 3510–DS–M

Solar Energy Research Institute; 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 No. 84–202. Applicant: Solar Energy Research Institute, Golden, CO 80401. Instrument: Leo Wafer Lifetime Measuring System, Model #1302. Manufacturer: Leo Giken Co., Ltd., Japan. Intended use: See notice at 49 FR 23673.

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 a measurement range of 0.1 to 10,000 microseconds and the capability of measuring minority carrier recombination lifetimes of materials in the form of slices or wafers. The National Bureau of Standards advises in its memorandum dated July 20, 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)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–20901 Filed 8–6–84; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limits for Certain Cotton and Man-Made Fiber Textile Products From the People's Republic of China

August 1, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 7, 1984. For further information contact Diana Bass, International Trade Specialist (202) 377–4212.

Background

A CITA directive establishing import limits for specified categories of cotton and man-made fiber textile products, including Categories 341, 342 and 640, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1984, was published in the Federal Register on December 22, 1983 (48 FR 56626). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, the Government of the People's Republic of China has notified the Government of the United States of

its intention to use flexibility in the form of swing to be applied to the current-year limits of these categories. The limit for Category 640 is being reduced accordingly to account for swing being applied to Categories 341 and 342.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 5, 1984 (49 FR 13397).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 1, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain specified categories of cotton and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1984.

Effective on August 7, 1984, the directive of December 19, 1983 is hereby further amended to adjust the previously established levels of restraint for Categories 341, 342 and 640 to the following under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983:[1]

Category	Adjusted 12-month level of restraint[1]
341	493,986 dozen.
342	172,515 dozen.
640	1,081,795 dozen.

[1] The levels have not been adjusted to reflect any imports exported after December 31, 1983.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

[1] The Agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-20864 Filed 8-6-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Natural Gas Futures Contract; Availability of Terms and Conditions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBOT") has applied for designation as a contract market in natrual gas. The Commodity Futures Trading Commission ("Commission") has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, making available the proposed contract for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 9, 1984.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CBOT Natural Gas futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7303.

A copy of the terms and conditions of the CBOT's proposed natural gas futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBOT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBOT in support of its application, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by [sixty (60) days after publication]. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on August 1, 1984.

Jane K. Stuckey,

Secretary to the Commission.

[FR Doc. 84-20793 Filed 8-6-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement for the Operation and Maintenance of the John H. Kerr Reservoir in South-Central Virginia and North-Central North Carolina

AGENCY: U.S. Army Corps of Engineers, Wilmington District, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. John H. Kerr Reservoir Dam was completed in 1953 and impounds a total of 48,900 acres in North Carolina and Virginia at normal pool elevation of 300 feet m.s.1. The dam is located on the Roanoke River near Boydton, Virginia, at river mile 179 with a drainage area at the dam of 7,800 square miles. The reservoir has many uses including flood control downstream, hydropower, water supply, recreation, and fish, wildlife, and forest management. The DEIS will discuss these and other aspects of the operation and maintenance of the reservoir.

2. No significant uses or activities are anticipated to be added or deleted at the reservoir. However, alternative

management and development plans for existing uses have been considered and will be discussed in the DEIS.

3. a. Participation of concerned Federal, State, and local agencies and environmental groups is invited in the NEPA process. Input will be solicited through this notice of intent and by wide distribution of the DEIS for public review and comment. Significant public and agency inpuf has already occurred regarding the John H. Kerr Reservoir. This included development of the *John H. Kerr Resevoir Master Plan Update* issued in 1980 and the John H. Kerr Dam and Reservoir Section 216, Pub. L. 91–611 Study. As part of both the Section 216 Study and the Lake Shore Management Plan associated with the Master Plan Update, extensive public meetings were held in 1980. Previous public meetings were also held on the Lake Shore Management Plan in 1975 and 1976. Additional public concerns have been obtained from the transcript of proceedings from three public hearings held in 1983 by the Norfolk District, Corps of Engineers regarding the City of Virginia Beach permit application on the proposed water withdrawal from Gaston Reservoir (located downstream of the John H. Kerr Reservoir). Additional contacts will be made as necessary during preparation of the DEIS.

b. Some significant issues that will be analyzed in depth in the DEIS include fluctuation of reservoir level, reservoir shoreline erosion, water quality, recreational use, fish and wildlife, and water supply.

4. Based on the previous coordination indicated above, a scoping meeting is not proposed.

5. The estimated date the DEIS will be made available to the public is July 1985.

ADDRESS: Questions about the project and DEIS can be answered by: U.S. Army Engineer District, Wilmington, Attn: Frank Yelverton, District Engineer, Post Office Box 1890, Wilmington, North Carolina 28402.

Dated: July 30, 1984.

Wayne A. Hanson,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84-20810 Filed 8-6-84; 8:45 am]

BILLING CODE 3710-GN-M

DEPARTMENT OF ENERGY

Office of the Secretary

Procurement and Assistance Management Directorate; Grant Award

AGENCY: Department of Energy.

ACTION: Notice of a Grant Award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), eligibility for a grant to ramp test and examine reactor fuels has been restricted to Studsvik Energitenknik, A.B., of Sweden.

Background: For several years, the Studsvik laboratory has been managing an internationally-supported project for power ramping of light water reactor fuel rods and for the post-irradiation examination of these rods. The Department has participated in the support of this project. Studsvik has recently proposed a small extension of that ramping to answer specific technical questions that have arisen. The extension is expected to cost the Department about $100,000, which is about 10 percent of the international support.

Solicitation No. DE–RP01–84NE34122.

Scope of Project: Studsvik will report to its international supporters the results of testing three rods of the pressurized water reactor type and from three to nine rods of the boiling water reactor type.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Barbara Sneden, MA–453.2, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–1076.

Issued in Washington, D.C., on July 19, 1984.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 84-20839 Filed 8-6-84; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; Distribution Task Group of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the Distribution Task Group of the Committee on the Strategic Petroleum Reserve will meet in August 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Distribution Task Group will hold it its third meeting on Wednesday, August 15, 1934, starting at 9:00 a.m., in Room 3580, Exxon Company, U.S.A., 800 Bell Street, Houston, Texas.

The tentative agenda for the Distribution Task Group meeting follows:

1. Opening remarks by the Chairman and Government Co-Chairman.

2. Review the progress of Distribution Task Group assignments.

3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Distribution Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Distribution Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353–3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be avaialbe for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on July 27, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 84-20913 Filed 8-6-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[OFC Case No. 52552-9249-20-22; Docket No. ERA-FC-84-012]

Order Granting Sacramento Municipal Utility District Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting Sacramento Municipal Utility District exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On May 16, 1984, the Sacramento Municipal Utility District (SMUD) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant

from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

SMUD requested a permanent peakload exemption under 10 CFR § 503.41 for a simple-cycle combustion turbine generator with a heat input rate of 695.8 million Btu per hour. The proposed unit is to be used as a peakload powerplant at SMUD's installation at the McClellan Air Force Base near Sacramento, California. The powerplant will be capable of burning natural gas or petroleum.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to SMUD a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generator at the McClellan Air Force Base installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on October 6, 1984.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–073L, Washington, D.C. 20585, Phone (202) 252–1774

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252–6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available for inspection upon request at the Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.–4:00 p.m.

SUPPLEMENTARY INFORMATION: SMUD proposes to install a simply-cycle combustion turbine generator using petroleum or natural gas as a primary energy source at its McClellan Air Force Base installation. The unit has a maximum design capacity of 49,000 Kw.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this unit, in the **Federal Register** on June 11, 1984 (49 FR 24053), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of SMUD's petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed July 26, 1984. No comments were received and no hearing was requested.

SMUD certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours." Documentary evidence submitted by SMUD in support of its certification indicates that the maximum design capacity of the proposed combustion turbine generator will be 49,000 Kw and that the maximum generation that will be permitted during any 12-month period for the unit will be 73,500,000 Kwh (49,000 Kw×1,500=73,500,000 Kwh), constituting a "peakload powerplant" operation within the definition.

SMUD has also certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

As ERA determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that SMUD has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants SMUD a permanent exemption for a peakload powerplant to be installed at McClellan Air Force Base near Sacramento, California, permitting the use of natural gas or petroleum as a primary energy source in the unit.

After review by ERA's Office of Fuels Programs, Coal and Electricity Division, of SMUD's completed environmental checklist submitted pursuant to 10 CFR 503.13, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

Pursuant to section 702(c) of the Act and 10 CFR § 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, D.C., on July 27, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84–20636 Filed 8–6–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER84–564–000]

American Electric Power Service Corp.; Filing

August 2, 1984.

The filing Company submits the following:

Take notice that on July 27, 1984, American Electric Power Service Corporation (AEP) on behalf of its affiliate Columbus and Southern Ohio Electric Company (CSOE) tendered for filing the following:

(1) Agreement, dated August 1, 1984, between City of Jackson, Ohio, and CSOE and (2) Supplemental Schedule I, dated August 1, 1984 to Agreement between City of Jackson, Ohio and CSOE.

AEP states that the Agreements set forth terms pursuant to which CSOE

proposes to supply Transmission Service to City of Jackson, Ohio.

AEP proposes an effective date of August 1, 1984, and therefore requests waiver of the Commission's notice requirements.

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 August 20, 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. 84-20903 Filed 8-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-510-000]

Arizona Public Service Co.; Filing

August 2, 1984.

The filing Company submits the following:

Take notice that on June 25, 1984, Arizona Public Servie Company (Arizona) tendered for filing as an initial rate schedule, an Operating Letter between Arizona, Electric District No. 1 (District), and the Arizona Power Authroity (APA), executed on May 31, 1984.

Arizona states that this Operating Letter provides for procedures whereby the District can bank with Arizona, energy generated from the Hoover Dam and contracted for pursuant to the Boulder Canyon Project Act as an entitlement to the State of Arizona.

Arizona requests this Operating Letter become effective sixty days from the date of filing.

Copies of this filing have been served upon the District, the APA, and the Arizona Corporation Commission.

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 August 15, 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. 84-20904 Filed 8-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-565-000]

Iowa-Illinois Gas and Electric Co.; Filing

August 2, 1984.

The filing Company submits the following:

Take notice that on July 27, 1984, Iowa-Illinois Gas and Electric Company (Iowa-Illinois) tendered for filing an Interchange Agreement (Agreement) with Eldridge Electric and Water Utility Board, Eldridge, Iowa (Eldridge) dated July 26, 1984.

Iowa-Illinois states that the Agreement contains schedules reflecting facilities and points of connection; metering; conditions of service and charges associated with emergency energy, short term firm power, economic dispatch replacement energy, and reserve capacity; and, transmission service schedules (including, as an addendum thereto, Transmission Service Schedule No. 1, dated as of the date of the Agreement). The Agreement is proposed effective on the in-service condition of the Eldridge Connection, the initial point of interconnection between the parties, and waiver of the Commission's notice requirement has been requested accordingly.

It is stated that the various schedules, including those in respect of the exchange or furnishing of power and energy, were negotiated by the parties based upon cost reflective and comparable rates or rate methodologies, or to supply a minimum of reliability reserve capacity, or of transmission capacity related to Louisa Generating Station in which each party has an interest; that the parties have incorporated into the Agreement, and affected rate schedules, reference to Iowa-Illinois' effective Offer of Settlement rates from Docket No. ER80-592, *et al.*, consolidated *sub nom.* Allegheny Power System, *et al*, in respect of this Commission's Order No. 84; and that the Agreement addresses Eldridge's ownership in Louisa, or capacity in lieu thereof.

It is further stated Transmission Service Schedule No. 1 provides for utilization by Eldridge, in respect of its share of Louisa Generating Station capacity, if Iowa-Illinois' 345-161-13 kV facilities from Substation 92 to the Eldridge Connection, and incorporates transmission and transformation rates, charges and loss responsibility factors designed to compensate Iowa-Illinois for reflected costs of facilities provided, as the scheduling path, and associated operation and maintenance, and, for transmission and transformation losses for which compensation in kind is provided. Iowa-Illinois notes that independent filings will be made in respect of a transmission scheduling path arrangement for Eldridge between Louisa Generating Station Substation 93 and Substation 92, and in respect of a partial requirements wholesale tariff rate schedule addressing Eldridge's requirements above those provided from Eldridge's Louisa share, or capacity sources in lieu thereof.

Copies of this filing have been mailed to Eldridge, the Iowa State Commerce Commission, and the Illinois Commerce Commission.

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 August 20, 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. 84-20924 Filed 8-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-563-000]

Iowa-Illinois Gas and Electric Co.; Filing

August 2, 1984.

The filing Company submits the following:

Take notice that on July 26, 1984, Iowa-Illinois Gas and Electric Company (Iowa-Illinois) tendered for filing a First Amendment, dated July 25, 1984 to the Interconnection Agreement of October

13, 1981, between Board of Water and Light Trustees, of the City of Muscatine, Iowa, Iowa-Illinois, and Iowa Southern Utilities Company (Iowa Southern), proposed to become effective October 1, 1984.

Iowa-Illinois indicates the First Amendment adopts First Revised Schedule A of the Agreement reflecting editorial changes, deletions in respect of outmoded voice communications facilities, and incorporating, as between Iowa-Illinois and Iowa Southern, the reflection of 161 kV Poweshiek-Hills Substation facilities, formerly an interconnection point between Iowa-Illinois and Iowa Power and Light Company. Iowa-Illinois states that no new facilities are required to effectuate the First Amendment, and no new or modified rates are proposed.

Iowa-Illinois states a copy of the First Amendment has been mailed to each party, to the Iowa State Commerce Commission, and to the Illinois Commerce Commission.

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 (118 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 17, 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 avaialbe for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-20905 Filed 8-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER 84-567-000]

Pacific Power & Light Co.; Filing

August 2, 1984.

The filing Company submits the following:

Take notice that on July 27, PacificCorp, Doing Business As Pacific Power & Light Company (Pacific) tendered for filing Third Revised Sheet No. 5 superseding Second Revised Sheet No. 5 (Index of Purchasers) of the Tariff, and a Service Agreement, dated July 1, 1984 between Pacific and Southern California Edison Company (Edison).

Pacific states that the Service Agreement provides for the sale of firm and nonfirm energy, in accordance with the Energy Only rate specified in Service Schedule PPL-3 under Pacific's Tariff effective November 21, 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 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 August 20, 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. 84-20906 Filed 8-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-560-000]

Union Electric Co.; Filing

August 2, 1984.

The filing Company submits the following:

Take notice that on July 25, 1984, Union Electric Company (Union) tendered for filing proposed changes in its FERC Electric Rate Schedules Nos. W-3, 107, 108, 198, 110, 111, 112, 113, 115, and Electric Tariffs Original Volume Nos. 3 and 4. The proposed changes would consolidate all wholesale tariffs into one tariff entitled FERC Electric W-3/W-4 Wholesale Tariff and would include full and partial requirements rates. The proposed changes would increase revenues from jurisdictional sales and service by $36,971,000 based on the 12 month period ending December 31, 1985.

Union states that its consolidation of rate schedules is a result of the recent merger of its former subsidiaries into Union and is appropriate in order to provide consistent factors in assigning costs to its customers in a fair and equitable manner. Union has proposed to phase-in the requested increase over five years which would be a revenue increase of $12,500,000 or approximately a 25% increase in the first year (1985).

Copies of the filing were served upon the public utility's jurisdictional customers, the Missouri Public Service Commission and the Iowa State Commerce Commission.

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 August 16, 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. 84-20907 Filed 8-6-84; 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 be followed in refunding $155,882 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Hendel's, Inc., a reseller-retailer of motor gasoline located in Waterford, Connecticut.

DATE AND ADDRESS: Comments must be filed by September 6, 1984 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-0089.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, 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 Hendel's, Inc. (Hendel's), which settled possible pricing violations in the firm's sales of motor gasoline to customers during the January 1, 1979 through January 31, 1980 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 Hendel's pursuant to the consent order. The DOE has tentatively decided that the consent order funds should be distributed to those customers of Hendel' who establish that they were injured by Hendel's alleged overcharges. Such customers will receive refunds proportionate to the volume of motor gasoline they purchased from Hendel's. However, 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 26, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Case: Hendel's, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0089.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE 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 ERA filed such a petition on October 13, 1983, requesting that OHA implement special refund proceedings to distribute the funds received pursuant to a Consent Order entered into by the DOE and Hendel's, Inc. (Hendel's).

I. Background

Hendel's is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR 212.31, and is located in Waterford, Connecticut. An ERA audit of Hendel's business records revealed possible pricing violations in the amount of $134,231 with respect to the firm's sales of motor gasoline during the period January 1, 1979 through January 31, 1980 (the audit period). In order to settle all claims and disputes between Hendel's and the DOE regarding the firm's compliance with the price regulations in sales of motor gasoline during the audit period, Hendel's and the DOE entered into a Consent Order on December 31, 1980, in which Hendel's agreed to remit $155,882 to the DOE.(*1*) This sum is currently being held in an interest-bearing escrow account pending distribution by the DOE.

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*).

II. Proposed Refund Procedures

We have considered the ERA petition to implement a Subpart V proceeding with respect to the Hendel's consent order fund and have determined that it is appropriate to establish such a proceeding. In so far as possible, the consent order fund should be distributed to Hendel's customers who were adversely affected by Hendel's alleged overcharges. The ERA audit file identifies a number of customers that purchased motor gasoline directly from Hendel's during the audit period. Their names and, in most cases, their addresses are set forth in the Appendix to the Proposed Decision and Order. While no specific alleged overcharge amounts are listed for these customers, in our view they may well have been adversely affected by any Hendel's overcharges that occurred and should be given notice of this proceeding. We also recognize, however, that there may be other purchasers of Hendel's gasoline who were not mentioned in the ERA audit file and who may claim that they were injured by Hendel's pricing practices during the consent order period.(*2*) We therefore propose to establish a claims procedure in which we will accept applications from Hendel's customers, including those listed in the Appendix, who can demonstrate that they were injured as a result of any alleged overcharges made by Hendel's during the consent order period.

Most of the customers of Hendel's identified in the ERA audit records appear to be petroleum product resellers, i.e., retailers and wholesalers. We propose that these firms and other claimants who resold Hendel's gasoline be required to demonstrate that they did not pass on to their customers the price increases implemented by Hendel's. *See, e.g., Vickers.* In other words, resellers of Hendel's gasoline will be required to demonstrate that during the consent order period they would have maintained their prices for gasoline at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased the motor gasoline from Hendel's, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges to its customers. In addition, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶ 82,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 82,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 82,038 (1982).

We recognize that the type of showing referred to above may be too complicated and burdensome for resellers which purchased relatively small amounts of motor gasoline from Hendel's. For example, some firms may lack all of the records necessary to prove that they did not pass on the alleged overcharges to their customers. Firms also may be discouraged from filing an application where the cost of compiling the necessary information is high relative to the amount of their potential refund. Therefore, after

examining the record in this proceeding to assess the difficulty firms will have in gathering the data necessary to file an application, we propose that a reseller whose average monthly purchases of Hendel's motor gasoline during the consent order period is 50,000 gallons or less not be required to present a detailed showing of injury and be presumed to have been adversely affected by the alleged Hendel's overcharges.(3) *See, e.g., Office of Special Counsel,* 9 DOE ¶ 82,538 (1982); *Vickers.* Under this presumption, to demonstrate injury and to receive a refund such applicants must submit information concerning the amount of motor gasoline purchased from Hendel's during the consent order period in order to establish their injury.(4)

Some of the customers identified in the audit appear to be ultimate consumers (end-users) of the gasoline they purchased from Hendel's. Our experience in prior refund proceedings leads us to believe that this category of customers can also be presumed to have absorbed Hendel's alleged overcharges and thereby been injured, since they did not resell the covered products they purchased, and they were not subject to federal energy regulations. *See Marion Corp.,* 12 DOE ¶ 82,014 (1984); *Union Texas Petroleum Corp.,* 6 Fed. Energy Guidelines ¶ 90,052 (1984) (Proposed Decision); *Standard Oil Co. (Indiana)/ Union Camp Corp.,* 11 DOE ¶ 85,007 (1983). We therefore propose that these applicants only be required to submit information concerning the volume of their gasoline purchases from Hendels during the consent order period in order to demonstrate that they were injured.

We also propose that firms that made only spot purchases from Hendel's be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the 50,000 gallon threshold level. 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 though the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimants who were spot purchasers must submit additional evidence to establish that they were unable to recover the product prices they paid to Hendel's. *See Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,200 (1982) (hereinafter cited as *Amoco*).

III. Calculation of Refund Amounts

We must further determine the proper method for dividing the Hendel's consent order funds among successful applicants. In many Subpart V proceedings we have based the refund amount on the volume of petroleum product which an applicant purchased from the consent order firm. *See Amoco; Vickers.* Under this method, we presume that the alleged overcharges were spread equally among all gallons of product sold which were covered by the consent order. We believe that generally this volumetric approach provides an equitable framework for refunds where the ERA audit file does not list individual overcharge amounts for each of the firm's customers. *See Amoco.* The volumetric method also is easy to administer and allows applicants to compute readily the size of their potential refund and thereby make an informed choice on whether to file an application. Since in the present case the information available in the ERA audit file is insufficient to base refunds on the amount each individual applicant was allegedly overcharged, we propose to use the volumetric method to allocate the Hendel's consent order funds.(5)

To determine the volumetric factor, the $157,911 remitted by Hendel's to the DOE (*see* footnote 1) will be divided by the estimated total volume of motor gasoline sold by Hendel's during the consent order period.(6) This results in a refund amount of $0.008297 (157,911 ÷ 4,392,310 gallons) for each gallon of motor gasoline which an applicant purchased from Hendel's. The interest which has accrued on the money in the escrow account will be distributed to each successful claimant in proportion to its refund amount.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less that $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Amoco; Uban Oil Co.,* 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order in this proceeding. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the Hendel's consent order, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the Federal Register, copies will be provided to the Hendel's customers whose names and addresses we have obtained from the ERA audit file. If necessary, we will also publicize this proceeding in local newspapers in the areas where Hendel's sold motor gasoline.

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in various ways. 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 by other parties of proposals containing alternative distribution schemes.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Hendel's, Inc. pursuant to the Consent Order executed on December 31, 1980 will be distributed in accordance with the foregoing determination.

Footnotes

(1) This amount represents the $134,231 Hendel's allegedly overcharged its customers plus $21,651 in interest accrued through November 30, 1980. Hendel's also paid and additional $2,029 in interest accrued from December 1, 1980 to January 13, 1981, the date payment was made to the DOE. The total amount currently held by the DOE is therefore $157,911, plus interest accrued since January 13, 1981.

(2) In the present case, the consent order period is the same as the audit period, January 1, 1979 through January 31, 1980.

(3) As in prior refund cases, resellers whose average monthly purchases during the period for which a refund is claimed exceed 50,000 gallons may elect to apply for a refund based on the 50,000 threshold amount. We propose that these resellers be presumed to have been injured by Hendel's alleged overcharges at the threshold level.

(4) As stated in previous Decisions, the purpose of the DOE special refund procedures is to provide an efficient and equitable mechanism for refunding money to parties who were injured by adjudicated or alleged overcharges. *See, e.g., Office of Enforcement,* 9 DOE ¶ 82,508 (1981). To this end, the DOE regulations governing special refund procedures provide that:

> 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). The presumption of injury with regard to resellers who purchased small volumes of Hendel's motor gasoline is consistent with these principles. It reduces the amount of information these firms must submit with their applications, operates to distribute refunds as widely as possible to the affected class, and reduces administrative costs of processing small claims. *See Blaylock Oil Co.*, Case No. HEF-0037 (July 12, 1984) (Proposed Decision), slip op. at 3-5.

(5) The volumetric method proposed in this proceeding represents a presumption as to the degree of injury a Hendel's customer sustained. Any applicant that believes it sustained a per gallon injury which is larger than the volumetric factor used may submit information to support its claim. *See Amoco*, 10 DOE at 88,199; *see also Standard Oil Company (Indiana)/Ridge View Standard*, 12 DOE ¶ 85,009 (1984).

(6) Because the Hendel's audit file does not list the volume of motor gasoline the firm sold during the entire consent order period, we have extrapolated this figure from audit data reflecting Hendel's sales for three months of the consent order period (May, June, and July 1979).

Appendix

Blanchard's Chevron, RT 2, Pawcatuck, CT
Bill Bordeau, B & B Chevron Service, 2212 RT 32, Uncasville, CT 06382
Breed's, Groton, CT
Richard H. Brooks, Connecticut Auto Radiator, 651 Broad Street, New London, CT 06320
Burghart Motors
Louis Caldrello, T & M Lathrop, 545 Broad Street, New London, CT 06320
Cobalt Chevron, Cobalt, CT
Rod Coffin, Capitol Tire Company, 555 Nutmeg Road, South Windsor, CT 06074
Community
Connecticut College, Physical Plant Department, Box 1497, New London, CT 06320
Connecticut Gasoline Retailers Association, c/o Thor Crane, Abate, Fox, & Farrel, 607 Bedford St., Stamford, CT 06910
Convenient Foods, a/k/a Highlands Market, 128 Pumpkin Hill Road, Ledyard, CT 06339, Attn: Darlene
Darrow's Marina
Dave's Center Service, Westbrook, CT
Dave's Chevron, Westbrook, CT.
Fred Devine, City Coal Company of New London, Inc., P.O. Box 4701, 410 Bank Street, New London, CT 06320
Dairy Mart, Inc., Gas Department, 240 South Rd., Infield, CT 06082
Dill's
James Donatello, Donatello's Frozen Foods, P.O. Box 1670, New London, CT 06320
Al Dowd, Phoenix Moving & Storage, 74 Foster Road, Waterford, CT 06357
Richard Falvey, Falvey's Service Station, 128 Huntington Street, New London, CT 06385
Federal Paperboard
Tat Finland, Convenient Foods, 528 RT 184, Groton, CT 06340
Paul Fleming, Fleming's Store, RT 165, Preston, CT 06360
Andy Garbardella, Andy's Service Center, 356 Main Street, East Haven, CT 06512
Goldberg, Inc.
Gowan Brothers
Thomas Hardiman, Colonial Tire, 1892 Gold Star Highway, Mystic, CT 06355
Greg Havens, Dan's Shell, 295 Main St., Newington, CT 06111
Hendel's, Hartford Road, Old Saybrook, CT
Hendel's 731 Long Hill Road, Groton, CT
Hendel's Saybrook Road, Oldbrook, CT
Hendel's a/k/a Bridge Chevron, Groton, CT
Hendel's, a/k/a Salem Chevron, Salem, CT
Jack Schoors Chevrolet & Oldsmobile
John's Exxon, Quilford, CT
Eva Jones, Groton Piping Corporation, P.O. Box 158, Gales Ferry, CT 06335
K & L Feed Company
Carlyle Knowlton, Dart & Bogue, P.O. Box 334, Quaker Hill, CT 06375
Long Cove Marina
Macknik Brothers
Marathon, North Bradford, CT
William McCourk, ABCO Welding & Industrial Supply, P.O. Box 296, Waterford, CT 06385
John Millaras, P.O. Box 81, 157 Bloomingdale Road, Quaker Hill, CT 06375
Nick's Mobil, Waterford, CT
William Moher, Drake's Bakeries, 538 Poquonnock Road, Groton, CT 06340
Mystic Chevrolet
New London Sand & Gravel
Pat & Lee's Chevron, Taftville, CT
R. Piarclin, 4 Shawandassee Rd., Waterford, CT 06385
Albert Poole Jr., Woodlawn Filling Station, 168 Lonsdel Ave., Pawtucket, RI 02860
Ragged Rock Marina
Ralston Purina Company
Reynold's Store
Donald Rolfe, E. H. Rolfe & Sons, 7 Sunnycrest Drive, Waterford, CT 06385
Harold Ross, Levin Distributors, P.O. Box 86, 61 Crystal Avenue, New London, CT 06320
H. W. Salmonson, Tri County Distributors, Industrial Park Road, East Lyme, CT 06333
Saybrook Car Wash, Saybrook, CT
Roger Schaller, Roger Motors, 939 Bank Street, New London, CT
Randy Smith, Parts Department, New London Motors, Corner of Broad & Coleman Streets, New London, CT 06320
Martin John Sullivan, Sullivan Chevrolet, a/k/a Butler Motors, 452 Broad Street, New London, CT 06320
S. J. Sylvester, Coleman St., New London, CT 06320
Thomas Moving & Storage
Tine
Geraldine Tom, Barry's Cleaners, 565 Coleman Street, New London, CT 06320
Josephine A. York, Viking Ford, Flanders Corners, East Lyme, CT 06333
Wozniak

[FR Doc. 84-20910 Filed 8-6-84; 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 $68,681.82 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving the Warren Oil Company, a reseller of refined petroleum products located in Providence, Rhode Island.

DATE AND ADDRESS: Comments must be filed September 6, 1984 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SE., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0193.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2094.

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 the Warren Oil Company, which settled possible violations of DOE price controls in the firm's sales of Kerosene, No. 2 Fuel Oil, No. 4 Fuel Oil, and No. 6 Fuel Oil to its customers during the November 1, 1973 through April 30, 1974 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 Warren Oil Company pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Warren Oil Company products 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 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 24, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Petitioner: Warren Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF–0193.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the DOE Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE can not readily ascertain the persons who were injured or the amounts that such persons are eligible to receive as a result of enforcement proceedings. *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 Warren Oil Company, a firm located in Providence, Rhode Island.(*1*) Warren sells No. 2 Heating Oil, Kerosene, No. 4 Fuel Oil, and No. 6 Fuel Oil, and is a "reseller" as that term was defined in 10 CFR 212.31. The firm was subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F until January 28, 1981, when refined petroleum products were exempted from price and allocation controls. Exec. Order No. 12287, 46 FR 9909 (January 30, 1981). As a part of its enforcement responsibilities, the ERA audited Warren's sales of petroleum products from November 1973 through April 1974 (the audit period). In order to settle all claims and disputes between Warren and the DOE regarding the firm's sales of refined petroleum products during the audit period, Warren and DOE entered into a consent order on August 31, 1979, in which Warren agreed to remit $68,681.82 to the DOE.(*2*) The funds were deposited into an interest-bearing escrow account for ultimate distribution to the parties who may have been injured by the alleged overcharges. This Proposed Decision concerns the distribution of the $68,681.82 that was deposited into the escrow account, plus accrued interest, which amounted to $22,183.02 as of June 30, 1984.

II. Proposed Refund Procedures

A. Jurisdiction

We have considered the ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Warren consent order fund. The Subpart V regulations authorize the OHA, upon request by the appropriate enforcement official, to fashion special procedures to distribute funds received as a result of settlement of an enforcement proceeding. 10 CFR 205.281, 205.282. The Subpart V process may be used in situations where DOE is unable to readily identify persons who were injured or to ascertain the amounts that such person are eligible to receive as a result of enforcement proceedings. 10 CFR 205.280; *see also In re The Charter Co.,* 47 FR 16396 (April 16, 1982) (proposed decision); *Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982). The ERA indicated in its petition that those circumstances exist in this case; therefore, we propose to grant ERA's petition and assume jurisdiction over the distribution of the Warren Oil Company consent order funds.

As we have stated in previous decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See generally Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (hereinafter cited as *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 provide refunds to identifiable purchasers of refined petroleum products who may have been injured by Warren's pricing practices during the period November 1, 1973 through April 30, 1974. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary if any funds remain. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

B. Refunds to Identifiable Purchasers

We propose that the Warren consent order funds be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Warren's alleged pricing practices. The ERA has identified by name seven customers of Warren who may have been overcharged in their purchases of No. 6 fuel oil. No addresses are available for these customers, and no information is available on purchasers of other refined petroleum products from Warren.(*3*) Our experience with Subpart V proceedings indicates that the likely claimants in this proceeding, when more fully identified, will fall into two categories: (1) Resellers (including retailers) of petroleum products, and (2) firms, individuals, or organizations that were consumers (end-users) of petroleum products. The petroleum products purchased by these claimants were purchased either directly from Warren or from other firms in a chain of distribution leading back to Warren.

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of Warren petroleum products for the period November 1973 through April 1974. If the product was not purchased directly from Warren, the claimant will be required to include a statement setting forth his or her reasons for believing the product originated with Warren. In addition, a reseller or retailer of refined petroleum products that files a claim generally will be required to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, each reseller or retailer will be required to show that it maintained "banks" of unrecovered increased products costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of Ada Resources, Inc.,* 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to demonstrate that, at the time it purchased refined petroleum products from Warren, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges.

As in many prior special refund cases, we will presume that small resellers and retailers were injured to some extent by the pricing practices that were settled in the Warren consent order. *Standard Oil Company (Indiana)/Ridge View Standard,* 12 DOE ¶ 85,009 at 88,076 (1984); *see also,* 10 CFR 205.282(c) (standards for evaluating special refund claims may be based on appropriate presumptions). A reseller or retailer claimant will not be required to submit

any further proof of injury if its refund claim is based on monthly purchases which are below a threshold level. *See e.g., Ada* at 88,122. The adoption of a threshold level below which a claimant is presumed to have been injured is based upon a balancing of several factors. First, the cost of compiling information sufficient to show injury should be considered. Obviously, difficulties in compiling information about events that occurred at the beginning of the price control period, 1973 and 1974, are considerably greater than the difficulties in compiling information dealing with the end of the period, 1979 and 1980. Second, the per gallon refund amount should be considered in conjunction with the length of the audit period. The larger the per gallon refund and the longer the audit period (and the larger total refund for a particular threshold level), the greater the justification for requiring more detailed information from the applicant to demonstrate injury and the lower the volume threshold should be. Third, the nature of the potential refund applicants' 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 for a particular product should be set to minimize burdens on small businesses who otherwise might be precluded from receiving restitution for their injuries.

In the present case, the foregoing considerations lead us to establish a threshold level of purchases at 75,000 gallons per month (*4*). The Warren audit period was relatively short, six months, and occurred toward the beginning of the price control period, and the per gallon refund amount is rather small. Thus, the threshold level of 75,000 gallons per month represents an equitable balancing of the factors set forth above.

Claimants who were consumers or end-users of Warren petroleum products had no opportunity to pass through the alleged overcharges, and will not be required to submit further evidence of injury in order to qualify for a refund. *See 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) (end-users of various refined petroleum products granted refunds solely on the basis of documented purchase volumes). Therefore, in this proceeding a consumer need only document the specific quantities of Warren petroleum products it purchased during the audit period.

A successful applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of petroleum products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is .0082563 ($68,681.82 received from Warren divided by 8,318,690 gallons of petroleum products sold by Warren during the audit period).

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. As of June 30, 1984, accrued interest will increase the per gallon refund amount by .0026666 for a total per gallon amount of .0109229. Consequently, a successful claimant who purchased 75,000 gallons of Warren petroleum products from each of the months of the audit period will receive a refund of $4,915.31.

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 processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitutions 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. Applications for refunds should *not* be filed until issuance of the 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 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. In addition to publishing notice in the *Federal Register*, notice will be provided to the National Oil Jobbers Council, which may be helpful in advising potential claimants of this proceeding. In addition we are continuing our efforts to obtain a more complete list of the names and addresses of firms and individuals who purchased petroleum products from Warren Oil Company.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after the disposition of all first stage claims, undistributed funds could be distributed in a number of different ways. We will not, however, be in a position to decide what should be done with any remaining funds until the first stage refund procedures is completed. We will therefore reserve this issue for determination at a later date.

It is Therefore Ordered That:

The $68,681.82 refund amount remitted by Warren Oil Company pursuant to the consent order executed on August 31, 1979 will be distributed in accordance with the foregoing Decision.

Notes

(*1*) The Consent Order signed by Warren Oil Company and the Department of Energy also includes Rhode Island Oil Co., Inc., a former Massachusetts corporation dissolved in May 1979 whose retail home heating assets, accounts, and liabilities were acquired by Warren Oil Company.

(*2*) Warren also agreed to refund $21,318.18 in the form of a credit memorandum or check directly to American Hoechst Corporation. Thus, the total amount refunded under the consent order was $90,000.

(*3*) The named customers are What Cheer Laundry, Quincy Dye Works, Carol Wire and Cable Company, Bay Textile Corporation, Imperial Knife Company, Barmal Realty, and Selkirk Packing Company.

(*4*) Resellers whose monthly purchases during the period for which a refund is claimed exceed 75,000 gallons, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the 75,000 gallons per month threshold amount based on the presumption established in this decision without being required to submit any further evidence of injury. *See Vickers* at 85,396; *see also Ada* at 88, 122.

[FR Doc. 84-20911 Filed 8-6-84; 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 $694,919 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving The Hertz Corp., Rent A Car Division.

DATE AND ADDRESS: Comments must be filed September 6, 1984 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 conspicously display a reference to case number HEF–0090.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, 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 the Hertz Corp., Rent A Car Division, which settled possible pricing violations in the firm's sales of motor gasoline to vehicle rental customers during the August 1, 1979 through June 30, 1980 consent order 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 Hertz pursuant to the consent order. The DOE has tantatively decided that refunds should be granted to claimants who satisfactorily demonstrate that they incurred motor gasoline refueling charges from Hertz during the consent order period. Claimants who demonstrate that they incurred refueling charges from Hertz will be presumed to have absorbed the alleged overcharges and will not be required to provide further evidence of injury to qualify for a refund. 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 27, 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: the Hertz Corporation.
Date of Filing: October 13, 1983.
Case Number: HEF–0090.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of violations of 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 pursuant to a settlement agreement or remedial order. The Subpart V process may be used in situations where the DOE is unable readily to ascertain 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 injury. *See Office of Enforcement,* 9 DOE ¶82,553 (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 The Hertz Corporation, Rent-A-Car Division (Hertz) on February 2, 1981. Hertz is engaged in the business of renting motor vehicles. In the course of rental transactions, Hertz levies a refueling charge when a customer returns a vehicle with less motor gasoline than when the vehicle was rented. According to the ERA, the firm was therefore a "retailer" of motor gasoline as that term was defined in 10 CFR 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. An ERA audit to the Hertz' Mid Atlantic Zone during the period August 1, 1979 through June 30, 1980 (the audit period) revealed possible pricing violations of the regulations set forth in 10 CFR Part 212, Subpart F. In order to settle all claims and disputes between Hertz and the DOE regarding the firm's resale of motor gasoline from its nation-wide operations during the audit period, the firm entered into a consent order with the DOE. In the consent order, Hertz agreed to refund $849,918 through a price rollback. Hertz began implementing the price rollback. However, after the decontrol of petroleum prices on January 28, 1981, the price rollback was no longer a valid method of implementing refunds. Therefore, in accordance with the consent order's provisions, Hertz remitted the $694,919 balance of its rollback obligation to the DOE.

II. Proposed Refund Procedures

We have determined that it is appropriate to establish a special refund proceeding under Subpart V with respect to the Hertz consent order fund. Based upon our experience with Subpart V cases, we believe that the distribution of funds to persons who were adversely affected by the alleged overcharges should generally take place in two stages. In the first stage of the process, payment should be made to persons and firms who file applications for refund and demonstrate that they are entitled to a portion of the funds received by the DOE. After meritorious claims are paid in the first stage, the remaining funds will be distributed through a second stage refund procedure to entities which will indirectly benefit persons and firms who were likely injured but who failed to file claims or do not meet the minimum refund threshold. *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); *Standard Oil Co.,* 11 DOE ¶85,185 (1983) (second stage refund procedures established).

With respect to the first stage, we propose that the Hertz consent order fund be distributed to claimants who statisfactorily demonstrate that they were injured by Hertz' pricing practices during the consent order period (which is the same as the audit period, August 1, 1979 through June 30, 1980). In the absence of a showing of a specific level of an alleged overcharge, we propose that refunds from the settlement fund be allocated to injured customers according to a volumetric method.(*1*) Under this method we generally presume that the alleged overcharges were spread equally among all gallons of product sold which were covered by the consent order. In applying the volumetric method, refunds are computed by multiplying an applicant's gallonage by the per gallon volumetric refund amount, which is calculated by dividing the settlement amount by the total volume of covered products sold by the consent firm during the consent order period. In this case, the volumetric amount is $0.01586 ($694,919 remitted to the DOE divided by 43,807,500 gallons of motor gasoline). An eligible applicant will also receive a

proportionate share of the interest accrued on the consent order fund since its remittance to the DOE.

In the present case, we believe that all claimants will be consumers (end-users) of the motor gasoline which Hertz supplied. In previous special refund proceedings, we have presumed that end-users were unable to pass through increased costs resulting from alleged overcharges and therefore incurred injury by purchasing from a firm which settled DOE enforcement claims. *See Marion Corp.*, 12 DOE ¶85,014 (1984) *(Marion); Thornton Oil Corp.*, No. HEF–0497 (June 15, 1984) (proposed decision); *Blaylock Oil Co., Inc.*, No HEF–0037 (July 12, 1984) (proposed decision). Consistent with these precedents, we propose that Hertz' vehicle rental customers need not demonstrate cost absorption and that they must document only the specific quantities of motor gasoline they purchased from Hertz during the consent order period in order to substantiate their claim of injury.(*2*)

We recognize that it is likely that many of the affected customers were individual motorists who purchased very small amounts of gasoline in isolated transactions. As a result, the amount of refunds to which most individual customers will be entitled will be very small. As in prior special refund cases, we propose not to grant 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 which may be achieved. *See Amoco*, 10 DOE at 88,214.(*3*)

Generally in special refund proceedings, we attempt to identify specific customers who may have been injured by the consent order firm's pricing practices and provide those customers with notice of the refund proceeding. However, in the present case, the audit files contain only a few names and addresses of customers. As a result, we are unable at this time to identify with certainty any persons or firms who may have been injured by Hertz' alleged overcharges. Nonetheless, we intend to make additional efforts to identify those persons or firms who may be eligible for a refund. In this regard, we note that it would not be unusual for governmental entities or businesses to patronize regularly a car rental agency, often on a contractual basis. These customers may have purchased sufficient amounts of motor gasoline from Hertz during the consent order period to qualify for a refund. Some of these large volume customers might be identified from Hertz' customer contracts; however, the time, effort, and expense of DOE personnel performing a widespread, unfocussed search through Hertz' records would be substantial. Nonetheless, we believe that Hertz may be able to assist us in locating these large volume customers. We have therefore sought Hertz' cooperation in identifying and apprising such customers of this special refund proceeding.(*4*)

After all meritorious claimants have received the share of the settlement fund to which they are entitled, the settlement fund provided by Hertz pursuant to the consent order, while diminished, may not be exhausted. Any remainder of the settlement funds should be distributed during a second stage of the refund process.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by The Hertz Corporation, Rent-A-Car Division, pursuant to the Consent Order executed on February 2, 1981, will be distributed in accordance with the foregoing Decision.

Footnotes

(*1*) The recovery of a specified amount for each gallon of motor gasoline purchased is, like the other presumptions we are employing in this proceeding, 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 probable injury in excess of the volumetric presumption. *See Amoco*, 10 DOE at 88,199.

(*2*) Hertz' customer receipts do not indicate the number of gallons purchased from Hertz, but merely state the dollar amount of the refueling fee. However, by using an assumed price per gallon, applicants will be able to estimate fairly accurately the gallonage which they purchased from Hertz. Based upon Mid Atlantic Zone price data that Hertz has made available to the DOE, we have calculated that during the period August 1979 through January 1980, Hertz' average refueling charge was $1.06 per gallon. Using this figure, a potential claimant can easily calculate the gallons of motor gasoline it purchased by dividing the total of its refueling fees by $1.06.

(*3*) Using the volumetric factor of $0.01586 per gallon, we calculate that an applicant must have purchased from Hertz at least 946 gallons of motor gasoline in refueling charges in order to qualify for the minimum $15.00 refund. Assuming that ten gallons was the average refueling amount, an applicant would have to have rented approximately 95 vehicles to meet the minimum threshold.

(*4*) In addition to those names which Hertz supplies, we will also include on our service list to this Proposed Decision and Order those persons and firms who filed comments in response to the proposed consent order published in the **Federal Register**, FR 69009 (October 17, 1980).

[FR Doc. 84–20912 Filed 8–6–84; 8:45 am]

BILLING CODE 6450–01–M

Objection to Proposed Remedial Orders Filed; Week of May 14 Through May 18, 1984

During the week of May 14 through May 18, 1984, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: July 26, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Gulfport Oil Co. & James E. Harrigan, Houston, TX; HRO–0229, crude oil

On May 14, 1984, Gulfport Oil Company and James E. Harrigan [collectively referred to as Gulfport], 9626 Richmond, Houston, Texas 77055, filed a Notice of Objection to a Proposed Remedial Order which the DOE Houston District Office of Enforcement issued to the firm on April 18, 1984. In the PRO the Houston District found that during the period March 1978 to September 1978, Gulfport charged prices for crude oil in excess of its actual purchase prices in violation of 10 CFR 212.186, 210.62(c) and 205.202. According to the PRO the Gulfport violation resulted in $1,211,078.21 of overcharges.

MGPC, Inc., Los, Angeles, CA; HRO–0226

On May 14, 1984, MGPC, Inc., 10880 Wilshire Blvd., Los Angeles, California 90024 filed a Notice of Objection to a Revised Proposed Remedial Order which the DOE Dallas Field Office of the Economic Regulatory Administration issued to the firm on May 4, 1984. In the Revised PRO the Dallas Field Office recomputed the overcharges that MGPC, Inc. allegedly received, in compliance with the DOE's Decision and Order in *MGPC, Inc.*, 11 DOE

¶ 83,009 at 86,092 (1983). According to the Revised PRO, MGPC's violations resulted in $1,111,091 of overcharges. The Dallas Field Office found that the revised computations demonstrated that MGPC sold natural gas liquids and natural gas liquid products at prices in excess of those permitted under 10 CFR Part 212.

Petroleum Carrier Co., Inc., et al., Roanoke, TX; HRO-0228

On May 14, 1984, the State of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711, filed a Notice of Objection to a Proposed Remedial Order which the Dallas Field Office of the Economic Regulatory Administration issued to Petroleum Carrier Co., Inc., Max B. Penn and Rodney Siegfried on May 1, 1984. In the PRO the Dallas Field Office found that during the period June 1974 through December 1977, the firm and Messieurs Penn and Siegfried violated the provisions of 10 CFR Part 212 in connection with the resale of crude oil. According to the PRO the violation resulted in $1,163,865.17 of overcharges.

Robison Energy, Inc. et al., Houston TX; HRO-0227

On May 14, 1984, Jerry D. Robison and Robison Energy, Inc., 450 Northeast, Suite 181, Houston, Texas 77060, filed a Notice of Objection to a Proposed Remedial Order which the Houston Office of the DOE economic Regulatory Administration (ERA) issued to the firm on April 12, 1984. In the PRO the ERA alleges that during the period April 1980 through January 1981, Robison Energy, Inc. and Jerry D. Robison violated 10 CFR 212.186, 210.62(c), 205.202, and 212.183 in conection with the resale of crude oil. According to the PRO the Robison Energy, Inc. and Jerry D. Robison violations resulted in $6,024,771.26 of overcharges.

[FR Doc. 84-20908 Filed 8-6-84; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Period July 2 Through July 13, 1984

During the period July 2 through July 13, 1984, the notice of objection to the proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: July 26, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Ozark County Gas, Inc., Branson, MO; HRO-0239

On July 13, 1984, Ozark County Gas, Inc., P.O. Box 1339, Branson, Missouri 65616, filed a Notice of Objection to a Proposed Remedial Order which the DOE Kansas City Office of Special Counsel issued to the firm on June 12, 1984. In the PRO the Kansas City Office found that during the period March 1, 1979 to August 31, 1979, Ozark County Gas, Inc. sold motor gasoline at prices exceeding those permitted by 10 CFR 212.92 and 212.93. According to the PRO the violation resulted in $152,538.41 of overcharges.

[FR Doc. 84-20909 Filed 8-6-84; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-717-DR]

South Dakota; Major Disaster and Related Determinations

Correction

In FR Doc. 84-19733 appearing on page 30119 in the issue of Thursday, July 26, 1984, make the following correction.

In the Second column, under the heading "Notice", paragraph 2, line 4, "Jule" should read "June".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 1, 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 requirements 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 intitial 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 17, 1984.

ADDRESS: Coments, 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, N.W., 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).

Request for extension With Revisions

1. Report title: Change in Bank control Form

Agency form No. FR 2081

OMB docket No 7100-0134.

Frequency: On occasion

Reporters: State member banks

Small Businesses are not affected

General Description of report:

Respondent's obligation to reply is mandatory 12 U.S.C. 1817(j); a pledge of confidentiality is not promised unless the respondent can justify an exemption as per 5 U.S.C. 552.

The form is required by statute and is completed by persons proposing to acquire control of a bank holding company or a state member bank.

Board of Governors of the Federal Reserve Sytem, August 1, 1984.

James McAfee,

Association Secretary of the Board.

[FR Doc. 84-20828 Filed 8-6-84; 8:45 am]

BILLING CODE 6210-01-M

B.M.J. Financial Corp., et al.; Formations of Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (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 29, 1984.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *B.M.J. Financial Corp.*, Bordentown, New Jersey; to acquire 100 percent of the voting shares of Mount Holly State Bank, Mount Holly, New Jersey.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lafayette Bancorporation*, Lafayette, Indiana; to become a bank holding company by aquiring 100 percent of the voting shares of The Lafayette Bank and Trust Company, Lafayette, Indiana.

2. *SBA Bancorp, Inc.*, Ashland, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Ashland, Ashland, Illinois.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166.

1. *First Delta Financial Corporation*, Dermott, Arkansas; to become a bank holding company by acquiring 88 percent of the voting shares of First State Bank of Dermott, Dermott, Arkansas.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Thompson Financial, Ltd.*, Fort Worth, Texas; to acquire 52.19 percent of the voting shares of Texas Security Bancshares, Inc., Forth Worth, Texas, thereby indirectly acquiring Central Bank & Trust, Fort Worth, Texas and North Fort Worth Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, August 1, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-20824 Filed 8-6-84; 8:45 am]

BILLING CODE 6210-01-M

First Moore Bancshares, Inc.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. 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 interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentaton 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 29, 1984.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *First Moore Bancshares, Inc.*, Moore, Oklahoma; to engage *de novo* through its subsidiary, First Property and Casualty Insurance Agency of Moore, Inc., Moore, Oklahoma, in the sale of general insurance by a bank holding company with total assets of $50 million or less, pursuant to section 4(c)(8)(f) of the Bank Holding Company Act of 1956, as amended. Although not listed under section 225.25(b) of Regulation Y, this activity has been approved by Board Order for bank holding companies on an individual basis. (*Whitewater Bancorporation, Inc.*, Federal Reserve Bulletin 815 (1983)). These activities would be conducted in the northern portion of Cleveland County, Oklahoma, including the town of Moore.

Board of Governors of the Federal Reserve System, August 1, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-20825 Filed 8-6-84; 8:45 am]

BILLING CODE 6210-01-M

Firstbank Holding Company of Colorado and Firstbank Holding Co.; 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 outweight 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 27, 1984.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, MO 64198:

1. *Firstbank Holding Company of Colorado and Firstbank Holding Company*, both of Lakewood, Colorado; to engage in the issuance and sale of travelers checks.

Board of Governors of the Federal Reserve System, August 1, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-20826 Filed 8-6-84; 8:45 am]

BILLING CODE 6210-01-M

J.P. Morgan & Co., Inc.; Proposal To Engage in Futures Advisory Activities

J.P. Morgan & Co., Incorporated, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (49 FR 794), for permission to engage in futures advisory activities through its subsidiary, Morgan Futures Corporation ("MFC"), a futures commission merchant ("FCM") that engages in the execution and clearance of futures contracts in bullion, foreign exchange, government securities and money market instruments and options on such futures contracts for nonaffiliated persons on major commodities exchanges. The proposed futures advisory services would relate to the above-mentioned options and futures. The services would be offered worldwide to FCM customers on a non-fee basis in connection with FCM activities and to non-FCM customers on a fee basis.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously found the proposed activities to be permissible for bank holding companies under section 4(c)(8) in *Manufacturers Hanover Corporation*, 70 Federal Reserve Bulletin 369 (1984), and *Citicorp*, 68 Federal Reserve Bulletin 776 (1982).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any person wishing to comment on the application should submit views in writing to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 26, 1984.

Board of Governors of the Federal Reserve System, August 1, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-20827 Filed 8-6-84; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of May 21-22, 1984

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on May 21-22, 1984.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting suggests that growth in real GNP, while moderating from the unusually strong first-quarter pace, remains relatively rapid in the current quarter. In April, industrial production and nonfarm payroll employment rose substantially following decreased growth in March; the civilian unemployment rate was unchanged at 7.8 percent in March and April as the labor force increased appreciably. Retail sales grew rapidly in April afte two months of decline, and housing starts recovered to a rate equaling their first-quarter average. Information on outlays and spending plans generally suggests continuing strength in business fixed investment. Since the beginning of the year, prices and wages have continued to rise at about the same pace as in 1983.

M1 changed little in April on average, but data available for early May suggest a considerable strengthening. In April M2 grew about in line with expectations while M3 expanded more rapidly than anticipated. From the fourth quarter of 1983 through April, M1 grew at a rate a little below the midpoint of the Committee's range for 1984; M2 increased at a rate in the lower part of its longer-run range, while M3 expanded at a rate a bit above the upper limit of its range. Total domestic nonfinancial debt apparently is growing at a pace above the Committee's monitoring range for the year, with borrowing by businesses continuing to be concentrated in the short-term markets. Interest rates have risen considerably further since late March. On April 6, the Federal Reserve announced an increase in the discount rate from 8½ to 9 percent. Recently, day-to-day market conditions have reflected considerable sensitivity to potential liquidity strains, as highlighted by problems of one large bank, and to uncertainties about the financial and budgetary outlook generally.

The foreign exchange value of the dollar against a trade-weighted average of major foreign currencies has risen considerably further since late March to a level close to the peak in early Janaury. The merchandise trade deficit widened further in the first quarter, as a sharp rise in non-oil imports offset a substantial rise in exports.

The Federal Open Marke Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. The Committee established growth ranges for the broader aggregates of 6 to 9 percent for both M2 and M3 for the period from the fourth quarter of 1983 to the fourth quarter of 1984. The Committee also considered that a range of 4 to 8 percent for M1 would be appropriate for

[1] The Record of policy actions of the Committee for the meeting of May 21-22, 1984, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

the same period, taking account of the possibility that, in the light of the changed composition of M1, its relationship to GNP over time may be shifting. Pending further experience, growth in that aggregate will need to be interpreted in the light of the growth in the other monetary aggregates, which for the time being would continue to receive substantial weight. The associated range for total domestic nonfinancial debt was set at 8 to 11 percent for the year 1984.

The Committee understood that policy implementation would require continuing appraisal of the relationships not only among the various measures of money and credit but also between those aggregates and nominal GNP, including evaluation of conditions in domestic credit and foreign exchange markets.

In the short run, the Committee seeks to maintain existing pressures on bank reserve positions. This is expected to be consistent with growth in M1, M2, and M3 at annual rates of around 6½, 8, and 10 percent, respectively, during the period from March to June. Somewhat greater reserve restraint might be acceptable in the event of more substantial growth of the monetary aggregates, while somewhat lesser restraint might be acceptable if growth of the monetary slowed significantly. In either case, such a change would be considered only in the context of appraisals of the continuing strength of the business expansion, inflationary pressures, financial market conditions, and the rate of credit growth. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 7½ to 11½ percent.

By order of the Federal Open Market Committee, July 31, 1984.

Normand Bernard,

Assistant Secretary.

[FR Doc. 84-20823 Filed 8-6-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0235]

Bacterial Vaccines; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing and sponsoring with other government agencies a public meeting to discuss bacterial vaccines and preventive measures for diseases to be held at the National Institutes of Health, Bethesda, MD. The meeting will cover a wide range of topics, including new approaches to bacterial vaccine development (e.g., synthetic vaccines and products of deoxyribonucleic acid (DNA) technology) and immunization of patients.

DATES: The meeting will be held on September 17 through 20, 1984. The meeting will begin on September 17 at 8:15 a.m., on September 18 at 8:30 a.m., on September 19 at 9:30 a.m., and or September 20 at 8:30 a.m.

ADDRESSES: The meeting will be held at the National Institutes of Health, Clinical Center (Bldg. 10), 9000 Rockville Pike, Bethesda, MD 20205. The location for the meeting on September 17, 18, and 20 will be the Jack Masur Auditorium, and for September 19, the Ambulatory Care Research Facility Amphitheater; both locations are in the Clinical Center.

Interested persons may submit written requests for a copy of the agenda of the meeting to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

M. Carolyn Hardegree, Center for Drugs and Biologics (HFN-850), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-1014;

or

John B. Robbins, National Institute of Child Health and Human Development, National Institutes of Health, Bldg. 6, Rm. 416, 9000 Rockville Pike, Bethesda, MD 20205, 301-496-1185.

SUPPLEMENTARY INFORMATION: FDA is announcing and sponsoring in collaboration with other government agencies a forthcoming public meeting concerning pathogenic mechanisms and research into the prevention of bacterial diseases. The meeting is to be held on September 17 through 20, 1984, at the National Institutes of Health (address above). The meeting will be a symposium comprised of many speakers and the topics to be discussed include new approaches to bacterial vaccine development (e.g., synthetic vaccines and products of recombinant DNA technology), adhesins, outer membrane proteins, bacterial toxins, bacterial polysaccharides, and passisve immunization. FDA may use the information provided during the meeting to develop plans for further scientific and regulatory activities related to bacterial vaccines.

Interest persons may obtain a copy of the detailed agenda for the meeting upon written request from the Dockets Management Branch (address above). Such a request should be identified with the docket number found in brackets in the heading of this document. Also, the agenda is available for review at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 31, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs

[FR Doc. 84-120796 Filed 8-6-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84M-0250]

Hydracon Corp.; Premarket Approval of Hydracon® Toric (Methafilcon A) Hydrophilic Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) is announcing its approval of the supplemental application for premarket approval under the Medical Device Amendments of 1976 of the Hydracon® Toric (methafilcon A) Hydrophilic Contact Lens, sponsored by Hydracon Corp., Huntington Beach, CA. The Hydracon® Toric (methafilcon A) Hydrophilic Contact Lens is a modified version of the Hydracon® (methafilcon A) Hydrophilic Contact Lens for which a premarket approval application was approved by FDA on March 2, 1983. After reviewing the recommendation of the Ophthalmic Devices Panel (formerly the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and dental Devices Panel), FDA notified the sponsor that the application was aproved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by September 6, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (HFZ-402), Food and Drug Administration, 8757 Georgia Ave., Sliver Spiring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On March 2, 1983, Hydracon Corp., Huntington Beach, CA 92647, submitted to FDA a supplemental application for premarket approval of the Hydracon® Toric (methafilcon A) Hydrophilic Contact Lens. The Hydracon® (methafilcon A) Hydrophilic Contact

Lens is indicated for daily wear by individuals with eyes that are not-aphakic, nondiseased, and require a lens in the power range from −20.00 to +10.00 diopters (D) for the correction of nearsightedness (myopia) or farsightedness (hyperopia) and who may have refractive astigmatism of 5.00 D or less. The Hydracon® Tonic (methafilcon A) Hydrophilic Contact Lens is to be disinfected using a chemical (not heat) disinfection system only. The supplemental application was reviewed on July 26, 1983, by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. (On April 14, 1984, the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel was terminated. Concurrently, FDA established the Ophthalmic Devices Panel (see 49 FR 17446; April 24, 1984).) On July 11, 1984, FDA approved the application by letter to the sponsor from the Director, Office of Device Evaluation of the Center for Devices and Radiological Health.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such contact lenses were regulatd as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III mdecial devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of the Hydracon® Tonic (methafilcon A) Hydrophilic Contact Lens states that the lens is to be used only with certain solutions in a chemical (not heat) disinfection system. This restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that FDA approves for use with contact lenses made of polymers other than PMMA. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 441–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 6, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the dvice and the docket number found in brackets in the heading of this document. Recived petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Firday.

Dated : July 31, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–20797 Filed 8–6–84; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Meeting; Board of Scientific Counselors, Division of Cancer Prevention and Control

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, October 4–5, 1984, Building 31C, Conference Room 6, Bethesda, Maryland 20205. The entire meeting will be open to the public from 8:30 a.m. on October 4 through adjournment on October 5, to discuss the current and future programs of the Division of Cancer Prevention and Control. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of meetings and rosters of committee members upon request.

The office of Dr. Peter Greenwald, Director, National Cancer Institute, National Institutes of Health, Blair Building, Room 614, Bethesda, Maryland 20205 (301/427–8630) will furnish substantive program information.

Dated : July 31, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-20851 Filed 8-6-84; 8:45 am]

BILLING CODE 4140-01-M

Cancer Education Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Education Review Committee, National Cancer Institute, September 13, 1984, Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814. This meeting will be open to the public on September 13 from 8:30 a.m. to 10:00 a.m., for reports and discussions by the Director, Division of Extramural Activities; Chief, Grants Review Branch; and the Executive Secretary on Committee concerns and to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on September 13, from 10:00 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Robert L. Manning, Executive Secretary, Cancer Education Review Committee, National Cancer Institute, Westwood Building, Room 838, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7721) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Number 13.398, project grants in cancer research manpower)

Dated: July 26, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-20850 Filed 8-6-84; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following sudy sections for September through October 1984, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone 301-496-7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	September-October 1984 meetings	Time	Location
Behavioral and Neurosciences-1, Dr. Bertie Woolf, Rm. A23, Tel. 301-496-7286	Sept. 13-14	8:30	Community Rm, Bldg. 60, Bethesda, MD.
Behavioral and Neurosciences-2, Dr. Bertie Woolf, Rm. A23, Tel. 301-496-7286	Sept. 26	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Behavioral and Neurosciences-3, Dr. Louis Quatrano, Rm. A25, Tel. 301-496-7286	Sept. 24	8:30	Choir Rm, Bldg. 60, Bethesda, MD.
Biomedical Sciences-1, Ms. Joan D. Fredericks, Rm. A10, Tel. 301-496-1067	Oct. 1-2	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Biomedical Sciences-2, Ms. Joan D. Fredericks, Rm. A10, Tel. 301-496-1067	Sept. 17-18	8:30	Linden Hill Hotel, Bethesda, MD.
Biomedical Sciences-3, Dr. Charles Baker, Rm. A10, Tel. 301-496-7150	Sept. 12-13	8:30	Holiday Inn, Georgetown, DC
Biomedical Sciences-4, Dr. Charles Baker, Rm. A10, Tel. 301-496-7150	Sept. 18-19	8:30	Linden Hill Hotel, Bethesda, MD.
Biomedical Sciences-5, Dr. Nicholas Mazarella, Rm. A10, Tel. 301-496-7600	Sept. 11-12	8:30	Community Rm, Bldg. 60, Bethesda, MD.
Clinical Sciences-1, Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301-496-7510	Sept. 18-19	8:30	Dining Rm, Bldg. 60, Bethesda, MD.
Clinical Sciences-2, Dr. Bernice Lipkin, Rm. A19, Tel. 301-496-7477	Sept. 17-18	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Clinical Sciences-3, Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301-496-7510	Sept. 13-14	8:30	Choir Rm, Bldg. 60, Bethesda, MD.
Clinical Sciences-4, Dr. Bernice Lipkin, Rm. A19, Tel. 301-496-7477	Sept. 20-21	8:30	Room 7, Bldg. 31C, Bethesda, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393-13.396, 13.837-13.844, 13.846-13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: July 26, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-20847 Filed 8-6-84; 8:45 am]

BILLING CODE 4140-01-M

Meeting of National Advisory Council on Aging

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, (NIA) on September 13-14, 1984, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Thursday, September 13, from 9:00 a.m. until noon for a status report by the Director, National Institute on Aging, and a report from the Council ad hoc Program Committee. It will be open to the public on Friday, September 14, from 9:00 a.m. until adjournment to review the Biomedical Research and Clinical Medicine and the Behavioral Sciences

Research Programs. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on September 13, from 1:00 p.m. to recess for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary of the National Institute on Aging, National Institutes of Health, Building 31, Room 2C05, Bethesda, Maryland 20205 (Area Code 301/496–5898), will provide a summary of the meeting, a roster of the Council members, and substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: July 26, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–20849 Filed 8–6–84; 8:45 am]

BILLING CODE 4140–01–M

Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 18 and 19, 1984, Building 31, Conference Room 6, Bethesda, Maryland.

This meeting will be open to the public on September 18, 1984, from 8:30 a.m. to 11:00 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 18 from approximately 11:15 a.m. to 6:00 p.m., and on September 19, 1984, from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20205, Telephone: 301, 496–7301 will provide a summary of the meeting and a roster of council members. Dr. Ruth L. Kirschstein, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 926, Bethesda, Maryland 20205, Telephone: 301, 496–7891 will provide substantive program information.

(Catalog of Federal Domestic Assistance Programs Nos. 13–821, Physiology and Biomedical Engineering; 13-859, Pharmacology-Toxicology Research; 13–862, Genetics Research; 13–863, Cellular and Molecular Basis of Disease Research; and 13–880, Minority Access to Research Careers [MARC])

Dated: July 26, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 84–20848 Filed 8–6–84; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Advisory Board Ad Hoc Subcommittee on Innovations in Surgical Oncology; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board Ad Hoc Subcommittee on Innovations in Surgical Oncology, National Cancer Institute, August 19, 1984, Marriott Hotel at Intercontinental Airport, Houston, Texas. The entire meeting will be open to the public from 8:00 a.m. to adjournment, to discuss current and future programs of the National Cancer Institute. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Robert Wittes, Executive Secretary, Ad Hoc Subcommittee on Innovations in Surgical Oncology, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Landow Building, Room 4A22, Bethesda Maryland 20205, (301) 496–6138, will furnish substantive program information.

Date: July 31, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–20861 Filed 8–6–84; 8:45 am]

BILLING CODE 4140–01–M

President's Cancer Panel; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the President's Cancer Panel, October 1, 1984, at the Stuart Auditorium of the Fred Hutchinson Cancer Research Center, 1124 Columbia Street, Seattle, Washington.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items include reports by the Chairman, President's Cancer Panel, and the Director, National Cancer Institute: and discussions to obtain information regarding centers programs supported by the National Cancer Institute. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of Panel members, upon request.

Dr. Elliott Stonehill, Executive Secretary, Presidnet's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda Maryland 20205, (301/496–1148) will furnish substantive program information.

Dated: July 31, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–20860 Filed 8–6–84; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–84–773; FR–2001]

Performance Review Board

AGENCY: Office of the Secretary, Department of Housing and Urban Development.

ACTION: Notice of appointment.

SUMMARY: The Department of Housing and Urban Development announces the appointment of William E. Wynn to the Departmental Performance Review Board. Mr. Wynn is the Deputy Assistant Secretary for Enforcement and Compliance, Office of Fair Housing and Equal Opportunity, Department of

Housing and Urban Development, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Thomas R. Whittleton, Director of Personnel, Department of Housing and Urban Development, Washington, DC 20410, telephone (202) 755–5500. (This is not a toll-free number.)

Date: July 31, 1984.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 84–20857 Filed 8–6–84; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–84–1428]

Mortgage and Loan Insurance Programs Under the National Housing Act; Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning July 1, 1984, is 12 percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was initially endorsed for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1984, is 13⅜ percent.

EFFECTIVE DATE: August 7, 1984.

FOR FURTHER INFORMATION CONTACT: Robert H. Menke, Office of Financial Management, Room 9132, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Telephone (202) 755–1591 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was initially endorsed for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6) and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 1984, is 13⅜ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 13⅜ percent for the six-month period beginning July 1, 1984. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1984.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since July 1, 1975:

Effective rate (percent)	On or after	Prior to
7	July 1, 1975	Jan. 1, 1976.
7⅛	Jan. 1, 1976	July 1, 1976.
7	July 1, 1976	Jan. 1, 1977.
6⅝	Jan. 1, 1977	July 1, 1977
7¼	July 1, 1977	Jan. 1, 1978.
7⅛	Jan. 1, 1978	July 1, 1978.
7¾	July 1, 1978	Jan. 1, 1979.
8	Jan. 1, 1979	July 1, 1979.
8¼	July 1, 1979	Jan. 1, 1980.
9½	Jan. 1, 1980	July 1, 1980.
9⅛	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅝	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to sectin 221(g)(4) during the six-month period beginning July 1, 1984, is 12 percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1985.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.21(a)(15). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 30, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 84–20915 Filed 8–6–84; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. N–84–1427; FR–2017]

Transfer of Physical Assets: Reminder of Review Procedures and Notice of Possible Effect of the Tax Reform Act of 1984

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

ACTION: Notice.

SUMMARY: The recently enacted Tax Reform Act of 1984 (Pub. L. 98–369 July 18, 1984) will have a major impact on tax shelter investments, which could include investment in multifamily projects. Procedures for selling multifamily projects with HUD-held or HUD-insured mortgages (called the Transfer of Physical Assets) include prior approval by HUD. This document is intended to notify current owners of projects of the possible impact of the Tax Reform Act of 1984 and to remind owners of HUD procedures for receiving prior approval of any project transfer. The processing procedures and time frames for receiving HUD approval of Transfer of Physical Assets are specified in a May 4, 1983, memorandum from then Assistant

Secretary for Housing—Federal Housing Commissioner Philip Abrams. These procedures remain in effect. However, unless otherwise acceptable applications are received prior to September 1, 1984, the Department will not guarantee that processing will be completed by December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Jimmy K. Bell, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street, S.W. 20410, Room 6160. Telephone (202) 755–5730. (This is not a toll-free number.)

Dated: July 31, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84–20795 Filed 8–6–84; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14944–B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976)) (ANCSA), will be issued to Tozitna, Limited, for approximately 172 acres. The lands involved are a portion of lots 2 and 3, U.S. Survey No. 5958, Alaska, in the vicinity of Tanana, Alaska.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the TUNDRA TIMES upon issuance of the decision. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by the decision, any agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Lands Appeals, Office of Hearings and Appeals, in accordance with the regulations in 43 CFR Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not end the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested shall have until September 6, 1984 to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of Conveyance Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing such appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is filed, the parties to be served with a copy of the notice of appeal are:

Federal Aviation Administration, Real Estate and Utilities Branch, 701 C Street, Box 14, Anchorage, Alaska 99513

Retained Lands Unit—Easements, Division of Land and Water Management, Alaska Department of Natural Resources, Pouch 7–005, Anchorage, Alaska 99510

Tozitna, Limited, P.O. Box 202, Tanana, Alaska 99777

Doyon, Limited, Resource Department, Doyon Building, 201 First Avenue, Fairbanks, Alaska 99701.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 20683 Filed 8–6–84; 8:45 am]

BILLING CODE 4310–JA–M

[M–59576]

Montana Realty Action; Exchange in Blaine County

AGENCY: Bureau of Land Management; Lewiston District Office, Interior.

ACTION: Notice of Realty Action M–59576—Exchange of public and private lands, in Blaine County, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T. 27 N., R. 22 E.,
Sec. 7, NE¼NE¼;
Sec. 8, E½NW¼, NE¼SW¼.
T. 33 N., R. 23 E.,
Sec. 6, Lots 6, 7, E½SW¼, SE¼.
Aggregating 482.11 acres of public land.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridian Montana

T. 24 N, R. 22 E.,
Sec. 18, Lots, 6, 7, 12, SW¼SE¼;
Sec. 19, Lot 1, NE¼, NE¼SE¼;
Sec. 20, SW½NE¼, NW¼NW¼, S½NW¼, N½SW¼, W½SE¼;
Sec. 29, W½NE¼.
Aggregating 840 acres of private land.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewiston District Office, Airport Road, Lewiston, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the

United States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. Value equalization by cash payment.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with local officials. The purpose of this exchange is to acquire portions of the Nez Perce and Cow Island trails as well as lands with recreation potential in exchange for scattered federal tracts which are uneconomical to manage.

Dated: July 30, 1984.

Glenn W. Freeman,

District Manager.

[FR Doc. 84–20815 Filed 8–6–84; 8:45 am]

BILLING CODE 4310–DN–M

[OR–7282]

Oregon Conveyance of Public Lands; Order Providing For Opening of Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 119,135.03 acres of public lands out of Federal ownership. This action will also open 118,518.24 acres of reconveyed lands to surface entry.

EFFECTIVE DATE: September 14, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., (Telephone 503–231–6905), Oregon State Office, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 119,135.03 acres of lands in Harney and Malheur Counties, Oregon, from Federal to State ownership with a reservation of all minerals to the United States.

2. In the exchange, the following lands have been reconveyed to the United States:

Willamett Meridian, Harney County, Oregon

T. 35 S., R. 35 E.,
Sec. 36.
T. 36 S., R. 35 E.,
Sec. 36.
T. 37 S., R. 35 E.,
Secs. 16 and 36.
T. 26 S., R. 36 E.,
Sec. 36, SW¼SW¼ and E½SE¼.
T. 34 S., R. 36 E.,
Sec. 36.
T. 35 S., R. 36 E.,
Sec. 16;
Sec. 36, W½.
T. 38 S., R. 37 E.,
Sec. 16, Lots 1, 2, 3, and 4, and S½;
Sec. 36.
T. 38 S., R. 38 E.,
Sec. 16, Lots 1, 2, 3, and 4, NW¼SW¼, NE¼SE¼, and S½S½;
Sec. 36.
T. 39 S., R. 38 E.,
Secs. 16 and 36.
T. 40 S., R. 38 E.,
Sec. 25, SE¼SW¼;
Sec. 35, SE¼NE¼;
Sec. 36.

Willamette Meridian, Malheur County, Oregon

T. 18 S., R. 37 E.,
Sec. 16.
T. 19 S., R. 37 E.,
Sec. 36.
T. 20 S., R. 37 E.,
Sec. 36, N½, N½SW¼, and SE¼.
T. 24 S., R. 37 E.,
Sec. 36.
T. 25 S., R. 37 E.,
Sec. 16.
T. 26 S., R. 37 E.,
Secs. 16, and 36.
T. 27 S., R. 37 E.,
Sec. 16.
T. 29 S., R. 37 E.,
Sec. 36.
T. 30 S., R. 37 E.,
Secs. 16 and 36.
T. 30½ S., R. 37 E.,
Sec. 36.
T. 31 S., R. 37 E.,
Sec. 16;
Sec. 36, W½NE¼, SE¼NE¼, W½, and SE¼.
T. 31½ S., R. 37 E.,
Sec. 36.
T. 35 S., R. 37 E.,
Sec. 36.
T. 36 S., R. 37 E.,
Secs. 16 and 36.
T. 37 S., R. 37 E.,
Secs. 16 and 36.
T. 17 S., R. 38 E.,
Sec. 16, NE¼, N½NW¼, SW¼NW¼, and S½SW¼.
Sec. 24, E½;
Sec. 36, E½, NE¼NW¼, SE¼SW¼, and W½W½.
T. 18 S., R. 38 E.,
Sec. 36, N½ and N½SE¼.
T. 19 S., R. 38 E.,
Sec. 16, E½.
T. 20 S., R. 38 E.,
Sec. 36, E½NE¼, S½SW¼, and SE¼.
T. 23 S., R. 38 E.,
Sec. 25, SW¼NE¼ and N½SE¼.
T. 25 S., R. 38 E.,
Sec. 16.
T. 26 S., R. 38 E.,
Sec. 36.
T. 29 S., R. 38 E.,
Sec. 36.
T. 30 S., R. 38 E.,
Sec. 16, E½ except 13.98 acres in highway right-of-way, W½NW¼NW¼, SW¼NW¼, S½SE¼NW¼, and SW¼;
Sec. 36, Except 12.77 acres in highway right-of-way.
T. 30½ S., R. 38 E.,
Sec. 36, except 15.59 acres in highway right-of-way.
T. 31 S., R. 38 E.,
Secs. 16 and 36.
T. 31½ S., R. 38 E.,
Sec. 36.
T. 32 S., R. 38 E.,
Secs. 16 and 36.
T. 33 S., R. 38 E.,
Sec. 36.
T. 34 S., R. 38 E.,
Secs. 16 and 36.
T. 35 S., R. 38 E.,
Secs. 16 and 36.
T. 15 S., R. 39 E.,
Sec. 36, W½E½ and W½.
T. 17 S., R. 39 E.,
Sec. 19;
Sec. 30, Lot 1, N½NE¼, and NE¼NW¼.
T. 18 S., R. 39 E.,
Sec. 16, NE¼, NW¼NW¼, S½NW¼, and S½;
Sec. 36.
T. 29 S., R. 39 E.,
Sec. 36.
T. 30 S., R. 39 E.,
Secs. 16 and 36.
T. 30½ S., R. 39 E.,
Sec. 36.
T. 31 S., R. 39 E.,
Sec. 16, except 5.38 acres in highway right-of-way;
Sec. 36.
T. 32 S., R. 39 E.,
Secs. 16 and 36.
T. 33 S., R. 39 E.,
Sec. 16;
Sec. 36, except 18.37 acres in highway right-of-way.
T. 33½ S., R. 39 E.,
Sec. 36, Lots 1, 2, 3, and 4, and S½ except 11.98 acres in highway right-of-way.
T. 34 S., R. 39 E.,
Sec. 16;
Sec. 36, except 20.16 acres in highway right-of-way.
T. 35 S., R. 39 E.,
Sec. 16;
Sec. 36, except 11.16 acres in highway right-of-way.
T. 38 S., R. 39 E.,
Sec. 16, Lots 1, 2, 3, and 4, and S½;
Sec. 36.
T. 39 S., R. 39 E.,
Secs. 16 and 36.
T. 40 S., R. 39 E.,
Sec. 16, N½NE¼, SW¼NE¼, W½, W½SE¼, and SE¼SE¼.
T. 41 S., R. 39 E.,
Sec. 16, N½, N½SW¼, and SE¼.
T. 18 S., R. 40 E.,
Sec. 36, S½NE¼, N½NW¼, SW¼NW¼, NE¼SW¼, S½SW¼, and SE¼.
T. 20 S., R. 40 E.,
Sec. 19, Lot 3;
Sec. 36, N½S½SE¼, except 9.14 acres in railroad right-of-way.
T. 27 S., R. 40 E.,

Sec. 36.
T. 28 S., R. 40 E.,
Secs. 16 and 36
T. 29 S., R. 40 E.,
Secs. 16 and 36.
T. 30 S., R. 40 E.,
Secs. 16 and 36.
T. 30½ S., R. 40 E.,
Sec. 36.
T. 31 S., R. 40 E.,
Secs. 16 and 36.
T. 32 S., R. 40 E.,
Sec. 16, except 18.24 acres in highway right-of-way.
T. 33 S., R. 40 E.,
Secs. 16 and 36.
T. 33½ S., R. 40 E.,
Sec. 36.
T. 34 S., R. 40 E.,
Secs. 16 and 36.
T. 35 S., R. 40 E.,
Secs. 16 and 36.
T. 36 S., R. 40 E.,
Secs. 16 and 36.
T. 37 S., R. 40 E.,
Sec. 16, Lots 1, 2, 3, and 4, SW¼, N½SE¼, and SE¼SE¼;
Sec. 36.
T. 38 S., R. 40 E.,
Sec. 16, N½, W½SE¼, and SE¼SE¼.
T. 39 S., R. 40 E.,
Secs. 16 and 36.
T. 40 S., R. 40 E.,
Sec. 16.
T. 41 S., R. 40 E.,
Sec. 16, W½NW¼NE¼, NW¼SW¼NE¼, N½SW¼SW¼NE¼, N½NW¼, SW¼NW¼, N½SE¼NW¼, N½S½SE¼NW¼, and NW¼SW¼.
T. 30 S., R. 40½ E.,
Sec. 36.
T. 15 S., R. 41 E.,
Sec. 36.
T. 16 S., R. 41 E.,
Sec. 36, W½ and SE¼.
T. 17 S., R. 41 E.,
Sec. 16;
Sec. 25, S½S½;
Sec. 26, S½SE¼;
Sec. 35, N½NE¼, SE¼NE¼, and SE¼;
Sec. 36.
T. 18 S., R. 41 E.,
Sec. 1, Lots, 1, 2, 3, and 4, S½N½, and N½S½;
Sec. 2, Lot 1, SE¼NE¼, and NE¼SE¼.
T. 28 S., R. 41 E.,
Sec. 16.
T. 29 S., R. 41 E.,
Sec. 16, W½.
T. 35 S., R. 41 E.,
Secs. 16 and 36.
T. 36 S., R. 41 E.,
Sec. 16;
Sec. 36, E½, W½SW¼, and E½W½ except 19 acres in highway right-of-way.
T. 37 S., R. 41 E.,
Secs. 16 and 36.
T. 38 S., R. 41 E.,
Secs. 16 and 36.
T. 39 S., R. 41 E.,
Sec. 16;
Sec. 36, NE¼.
T. 40 S., R. 41 E.,
Secs. 16 and 36.
T. 41 S., R. 41 E.,
Sec. 16.
T. 15 S., R. 42 E.,
Sec. 27, E½NW¼.
T. 16 S., R. 42 E.,
Sec. 1, Lot 4;
Sec. 2, Lot 1.
T. 17 S., R. 42 E.,
Sec. 2, SE¼NW¼.
T. 18 S., R. 42 E.,
Sec. 36.
T. 22 S., R. 42 E.,
Sec. 36, N½, NW¼SW¼, S½SW¼, and NE¼SE¼.
T. 35 S., R. 42 E.,
Secs. 16 and 36.
T. 36 S., R. 42 E.,
Secs. 16 and 36.
T. 37 S., R. 42 E.,
Secs. 16 and 36.
T. 38 S., R. 42 E.,
Sec. 16, except 8.80 acres in highway right-of-way;
Sec. 36, N½N½NE¼, N½NE¼NW¼, SW¼NE¼NW¼, W½NW¼, W½SE¼NW¼, and S½.
T. 39 S., R. 42 E.,
Secs. 16 and 36.
T. 40 S., R. 42 E.,
Sec. 16, W½NW¼ and SW¼.
T. 19 S., R. 43 E.,
Sec. 16, E½.
T. 20 S., R. 43 E.,
Sec. 36.
T. 21 S., R. 43 E.,
Secs. 16 and 36.
T. 22 S., R. 43 E.,
Secs. 16 and 36.
T. 36 S., R. 43 E.,
Secs. 16 and 36.
T. 37 S., R. 43 E.,
Secs. 16 and 36.
T. 38 S., R. 43 E.,
Secs. 16 and 36.
T. 39 S., R. 43 E.,
Secs. 16 and 36.
T. 40 S., R. 43 E.,
Sec. 16, N½ and N½S½;
Sec. 36.
T. 41 S., R. 43 E.,
Sec. 16.
T. 15 S., R. 44 E.,
Sec. 16, NW¼SE¼ and SE¼SE¼.
T. 20 S., R. 44 E.,
Sec. 16, S½NE¼, SW¼NW¼, and S½;
Sec. 36.
T. 21 S., R. 44 E.,
Secs. 16 and 36.
T. 22 S., R. 44 E.,
Sec. 16.
T. 36 S., R. 44 E.,
Secs. 16 and 36.
T. 37 S., R. 44 E.,
Secs. 16 and 36.
T. 38 S., R. 44 E.,
Secs. 16 and 36.
T. 39 S., R. 44 E.,
Secs. 16 and 36.
T. 40 S., R. 44 E.,
Sec. 36, E½ and NW¼.
T. 16 S., R. 45 E.,
Sec. 36, NW¼ and S½.
T. 17 S., R. 45 E.,
Secs. 16 and 36.
T. 20 S., R. 45 E.,
Sec. 16, SE¼NE¼ and S½.
T. 21 S., R. 45 E.,
Sec. 16.
T. 39 S., R. 45 E.,
Sec. 16;
Sec. 36, S½NW¼ and S½.
T. 40 S., R. 45 E.,
Secs. 16 and 36.
T. 41 S., R. 45 E.,
Sec. 16.
T. 39 S., R. 46 E.,
Secs. 16 and 36.
T. 40 S., R. 46 E.,
Secs. 16 and 36.
T. 41 S., R. 46 E.,
Sec. 16.
T. 40 S., R. 47 E.,
Sec. 36.
T. 41 S., R. 47 E.,
Sec. 16.
T. 39 S., R. 48 E.,
Sec. 36.
T. 40 S., R. 48 E.,
Secs. 16 and 36.
T. 41 S., R. 48 E.,
Sec. 16.

Aggregating, after making the aforesaid exceptions, approximately 118,518.24 acres (8,335.95) acres in Harney County and 110,182.29 acres in Malheur County, Oregon).

3. The mineral estate in the following described lands is already in United States ownership and remains open to operation of the United States mining laws and mineral leasing laws:

Willamette Meridian

T. 17 S., R. 38 E.,
Sec. 24, E½.
T. 17 S., R. 39 E.,
Sec. 19, Lots 1, 2, 3, and 4, E½ and E½W½;
Sec. 30, Lot 1, N½NE¼, and NE¼NW¼.
T. 20 S., R. 40 E.,
Sec. 19, Lot 3.
T. 17 S., R. 41 E.,
Sec. 25, S½S½;
Sec. 26, S½SE¼;
Sec. 35, N½NE¼, SE¼NE¼, and SE¼.
T. 18 S., R. 41 E.,
Sec. 1, Lots 1, 2, 3, and 4, S½N½, and N½S½;
Sec. 2, Lot 1, SE¼NE¼, and NE¼SE¼.

The areas described aggregate 2,253.28 acres in Malheur County, Oregon.

4. The mineral estate in the lands described in paragraph 2, except as provided in paragraph 3, was not reconveyed to the United States and remains out of Federal ownership.

5. At 8:30 a.m. on September 14, 1984, the lands described in paragraph 2 will 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 8:30 a.m., on September 14, 1984, will be considered as simultaneously filed at that time.

Those received thereafter will be considered in the order of filing.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

Dated: July 30, 1984.

[FR Doc. 84-20813 Filed 8-6-84; 8:45 am]

BILLING CODE 4310-33-M

Montana; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease M 15450(ND), McKenzie County, North Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Cynthia L. Embretson,

Chief, Fluids Adjudication Section.

[FR Doc. 84-20816 Filed 8-6-84; 8:45 am]

BILLING CODE 4310-84-M

[M-59764]

Realty Action; Sale of Public Land in Toole County, MT

AGENCY: Bureau of Land Management, Lewistown District Office, Interior.

ACTION: Notice of Realty Action M-59764, non-competitive sale of public land in Toole County.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976), at no less than fair market value:

Principal Meridian Montana

T. 35 N., R. 3 W.,

Sec. 14, SW¼NW¼SE¼, NW¼SW¼SE¼.

The area described contains 20 acres.

The land will be offered for sale by non-competitive bidding procedures to John Pelletier at the appraised fair market value of $2,500.00

The subject land is located approximately 7 miles south and west of Sunburst, Montana. This sale will resolve an occupancy trespass. A tract specific analysis has shown that this tract contains no seasonally important deer or antelope habitat. Part of the tract is currently used for livestock grazing and this use will continue until expiration of the lease. This sale is in conformance with the Triangle MFP and State and County Officials have been notified.

Terms and conditions: The terms and conditions of this sale are as follows:

1. The successful bidder agrees that he takes the real estate subject to the existing grazing use of Messrs. Wayne and Butch Gillespie, holder of grazing authorization No. 1898. The authorized grazing use on the 20 acres is for 3 AUMs and will be in accordance with the conditions and terms of grazing authorization No. 1898. This grazing use by Messrs. Wayne and Butch Gillespie shall cease on February 28, 1987. The successful bidder is entitled to receive annual grazing fees for three AUMs on the 20 acres from Messrs. Wayne and Butch Gillespie in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register.**

2. All minerals will be reserved to the United States together with the rights to explore, prospect for, mine, and remove same under applicable law and regulations;

3. A right-of-way for ditches or canals will be reserved to the United States in accordance with 43 U.S.C. 945;

4. The sale of these lands will be subject to all valid existing rights and reservations of record.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Burearu of Land Management (BLM), at the address shown below. Any adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination of the department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the sale, including planning documents, environmental assessment, and the record of public discussions is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

Dated: July 30, 1984.

Glenn W. Freeman,

District Manager.

[FR Doc. 84-20814 Filed 8-6-84; 8:45 am]

BILLING CODE 4310-DN

Minerals Management Service

Development Operations Coordination Document; Mark Producing

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mark Producing has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5348, Block 566, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on July 30, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the

public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments; and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated : July 30, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-20811 Filed 8-6-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Cape Code National Seashore; Notice of Historic Leasing

AGENCY: National Park Service, Interior.

ACTION: Notice of historic leasing; Cape Cod National Seashore.

SUMMARY: Notice of this procedure is required under the National Historic Preservation Act as Amended.

The National Park Service is seeking proposals from private individuals or firms to stabilize, preserve, and lease two historic properties owned by the Service in Cape Cod National Seashore. The properties to be leased are: The Jedediah Higgins House on Higgins Hollow Road, North Truro, Massachusetts and the Ahearn House and Ahearn Summer House, Pamet Point Road, Wellfleet, Massachusetts. Both properties are available for non-commercial, single-family residential uses. Interested parties should address inquiries to Mr. Paul Cotter, Realty Officer, Land Resources Division, North Atlantic Regional Office, National Park Service, 15 State Street, Boston, Massachusetts 02109, (617) 223-3780. Requests for Proposals will be available August 10, 1984. A presubmission meeting is scheduled for August 22, 1984 at Headquarters, Cape Cod National Seashore, South Wellfleet, Massachusetts. The houses will be open for inspection by prospective proposers on August 21, 1984 and August 28, 1984. Proposals will be due no later than 5 p.m., September 24, 1984.

Dated: July 27, 1984.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 84-20892 Filed 8-6-84; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 27, 1984. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washinton, DC 20243. Written coments should be submitted by August 22, 1984.

Carol D. Shull,

Chief of Registration, National Register.

GEORGIA

Thomas County

Thomasville, *Dawson Street Residential Historic District,* Roughly bounded by North Blvd, Madison, Jackson, and Hansell Sts.
Thomasville, *East End Historic District,* Roughly bounded by Metcalf, Loomis, Colton, and Blackshear Sts.
Thomasville, *Paradise Park Historic District,* Roughly bounded by Metfalf Ave., Colton Broad, and Loomis Sts.
Thomasville, *Thomasville Commercial Historic District,* Roughly N. Stevens, N. Madison, N. Broad, Remington, Jackson and Jefferson Sts.
Thomasville, *Tockwooton-Love Place Historic District,* Roughly bounded by McLean Ave., Hansell, Jackson, and Seward Sts.

ILLINOIS

Kane County

Aurora, *G.A.R. Memorial Building,* 23 E. Downer PL.

KENTUCKY

Green County

Greensburg vicinity, *Brents-Lisle House (Green County M R A),* U.S. 68

Owen County

Owenton, *Central Owenton Historic District (Owenton M R A),* Roughly Bryan, Madison, Seminary, and Thomas Sts.
Owenton, *Cox, L.O., House (Owenton M R A),* 311 N Main St.
Owenton, *Ford House (Owenton M R A), 311 S. Main St.*
Owenton, *Gibson House (Owenton M R A),* 120 S. Main St.
Owenton, *Lindsey, William, House (Owenton M R A),* 220 W. Seminary St.
Owenton, *McKay House (Owenton M R A),* 105 E. Adair St.
Owenton, *North Main-North Adams Historic District (Owenton M R A),* N. Main, N. Adams, Bryan, and North Sts.
Owenton, *Settle, E.E., House (Owenton M R A),* 403—405 N. Adams St.

LOUISIANA

Easton Baton Rouge Parish

Baton Rouge, *Planter's Cabin,* 7815 Highland Rd.

MINNESOTA

Hennepin County

Minneapolis, *University of Minnesota Old Campus Historic District,* University Ave., and 15th Ave.

McLeod County

Glencoe, *American House Hotel,* 12th and Ford Sts.
Glencoe, *McLeod County Courthouse,* 830 11th St. E.

Washington County

St. Croix River Access Site,

MISSOURI

St. Louis (Independent City)
Blind Girls' Home, 5235 Page Blvd.
Boyd's , 610 Olive St.
Lennox Hotel, 823–827 Washington Ave.
Louise Apartments, 3900 Lindell Blvd. and Vandeventer Ave.
Robert, Johnson and Rand-International Shoe Company Complex, Mississippi and Hickory Sts.
St. Louis Post-Dispatch Printing Building, 1111 Olive St.

Franklin County

Pacific vicinity, *Grauer, Gustav, Farm,* N of Pacific

Jackson County

Kansas City, *Simpson-Yeomans Country Side Historic District,* Roughly bounded by 51st Terr., Wornall Rd., Wyandotte and 54th Sts.

Marion County

Hannibal, *Hannibal Lime Company Office,* 623 Collier St.

St. Louis County

Ferguson, *Church Street Commercial District,* 2–100 Church St.

NEW YORK

Chemung County

Elmira, *Elmira College Old Campus,* Roughly bounded by College and W. Washington Aves., N. Main St., and Park Pl.
Elmira, *Howell, F.M., and Company,* 79–105 Pennsylvania Ave., 50 Pennsylvania Ave.

Jefferson County

Oxbow, *Benton, Dr. Abner, House,* Main St.

Onondaga County

Syracuse, *Stickley, Gustav, House,* 438 Columbus Ave.

Suffolk County

Montauk, *Montauk Manor*, Fairmont Ave.

Sullivan County

Rockland, *Rockland Mill Complex*, Palen Pl.

OHIO

Cuyahoga County

Cleveland, *Doan School*, 1350 E. 105th St.

Franklin County

Bexley, *Duncan, Robert P., House*, 333 N. Parkview Ave.

Hamilton County

Finneytown, *Smith-Jessop House*, 1038 W. North Bend Rd.

Hardin County

Kenton, *Kenton Courthouse Square Historic District*, Roughly Main, Detroit, Market, Columbus and Franklin Sts.

Jackson County

Petersburg vicinity, *Johnson Road Covered Bridge*, SE of Petersburg

Montgomery County

Dayton, *South Park Historic District*, Roughly bounded by Park, Morton, Hickory, and Wayne Ave.

PENNSYLVANIA

Bucks County

Paxson, Isaiah, Farm,

Cambria County

Ebensburg, *Noon, Philip, House*, 114 E. High St.

Chester County

Rothrock, Joseph, House,

Lehigh County

Allentown, *Americus Hotel*, 541 Hamilton St.

Mifflin County

Lewistown, *Wollner Building*, 16 W. Market St.

Montgomery County

Conshohocken, *Lee Tire and Rubber Company*, 1100 Hector St.

Philadephia County

Philadelphia, *Elk's Lodge BPOE No. 2*, 306–320 N. Broad St.
Philadelphia, *Haines, Hanson, House*, 4801 Springfield Ave.
Philadelphia, *Heywood Chair Factory*, 1010–1014 Race St.

Schuylkill County

Pottsville, *Yuengling, D.G., and Son Brewing Complex*, 5th and Mahantongo Sts.

PUERTO RICO

Guayama County

Barranquitas, *Casa Natal de Luis Munoz Rivera*, Munoz Rivera and Manuel Torres Sts.

San Juan County

Santurce, *Miami Building*, 868 Ashford Ave.

TEXAS

Fannin County

Honey Grove, *Trout, Thomas and Katherine, House*, 705 Poplar St.

Jasper County

Jasper, *Jasper County Courthouse*, Public Square

Potter County

Amarillo, *Atchison, Topeka and Santa Fe Railway Company Depot and Locomotive No. 5000*, 307 S. Grant St.

VERMONT

Caledonia County

Danville, *Whittier House*, Off U.S. 2

Chittenden County

Huntington, *Huntington Lower Village Church*, Richmond-Huntington Rd.

WISCONSIN

Milwaukee County

Wood, *Ward Memorial Hall*, 5000 W. National Ave.

[FR. Doc. 84–20893 Filed 8–6–84; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30474]

Octoraro Railway Inc., Wilmington & Western Railway Corporation and Historic Red Clay Valley Inc.—Exemption—From 49 U.S.C. 10901 and 10903

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval, under 49 U.S.C. 10903, the discontinuance of service by Octoraro Railway Inc. over the 10.2 miles of track owned by Historic Red Clay Valley Inc., subject to standard labor protective conditions, and from the requirements of 49 U.S.C. 10901, the operation by Wilmington & Western Railway Corporation of service over this line. The continuance in control of the latter railroad by Historic Red Clay Valley Inc. is exempt pursuant to 49 CFR 1180.2(d)(3), subject to standard labor protective conditions.

DATES: This exemption will be effective on September 5, 1984. Petitions to stay must be filed by August 17, 1984, and petitions for reconsideration must be filed by August 27, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30474 to:

(1) Office of the Secretary, Case Control Branch, Interestate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Francis G. McKenna, Suite 707, 1000 Connecticut Ave. NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitian area) or toll free (800) 424–5403.

Decided: July 24, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84–20932 Filed 8–6–84; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–18 (Sub-55)]

Chesapeake and Ohio Railway Company—Abandonment—In Newport News, VA; Findings

The Commission has issued a certificate authorizing the Chesapeake and Ohio Railway Company to abandon its 0.52 mile rail line between Point of Switch 11+40 (milepost 0.22) and Valuation Station 38+90 (milepost 0.74), in the city of Newport News, Va. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 84–20980 Filed 8–6–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-7,258]

Dana Corp., Marion, IN; a Further Determination

Pursuant to the U.S. Court of International Trade remand, dated June 6, 1984, in *R.E. Abbott, et al* v. *Secretary of Labor,* (USCIT No. 81-1-00028) concerning service workers at Dana Corporation, Marion, Indiana, the Department makes the following further determination.

In the Department's certification issued in response to petition number TA-W-7,258, workers in plant production departments 225 and 230 producing bearing races and journal crosses were determined to be eligible to apply for trade adjustment assistance. Service workers were denied eligibility because an "important casual nexus" could not be established between increased imports of articles like or directly competitive with journal crosses and bearing races and the separation of the service workers.

In its remand, the Court ordered the Department to afford plaintiffs an opportunity to supply any relevant information and data which will assist in further analysis that the service workers devoted a substantial amount of their activity to plant departments 225 and 230 in which workers are already independently certified and that there was "important casual nexus" between increased imports and the lay-offs of service workers. The Department has used for nearly seven years 25 percent of the workers on-job activity to define the term "substantial amount of their activity". At least that percentage of support workers' activity must be directly related to the production of the import affected article(s).

On remand, the Department asked for and received from Dana Corporation estimated hours spent by non-productive (service) workers directly supporting all production departments. The data was based on the week of January 7, 1980. Those data show a relatively even distribution of service worker support to all the production departments in the plant. Workers in two service departments—millwrights and electricians—provided the highest levels of activity to production departments 225 and 230, but significantly below the 25 percent standard. Millwrights spent 3.9 percent and 6.6 percent of their job activity in production departments 225 and 230, respectively. The range of millwright activity in all production departments was 2.6 to 6.6 percent. Electricians spent 5.0 percent and 10.0 percent of their job activity in production departments 225 and 230, respectively. The range of electrician activity in all production departments was 2.5 to 10.0 percent.

Pursuant to the Court's order, a copy of the information and data received by the Department of Labor from Dana Corporation, concerning the integration of the service departments with the production departments in which workers were independently certified for adjustment assistance was sent by certified mail on June 29, 1984 to counsel for the plaintiffs. Return receipt verified the July 5, 1984 delivery to the addressee. Plaintiffs' counsel failed to submit written comments or provide additional information or data within the 10 days provided by the Court's order. No comments were received as of the date of this document.

Accordingly, the new findings confirm that the contribution of service workers to plant departments 225 and 230 of Dana Corporation's Marion plant accounted for significantly less than 25 percent of their activity. Support activity is not sufficiently integrated into the production of the two import impacted articles; consequently, increased imports did not "contribute importantly" to lay-offs among workers in the service departments.

Conclusion

After reconsideration, I affirm the original denial of eligibility to apply for adjustment assistance to service workers providing ancillary and support activities to plant departments 225 and 230 at the Marion, Indiana plant of Dana Corporation.

Signed at Washington, D.C., this 3rd day of August 1984.

Robert A. Schaerfl,

Director, Office of Program Management, UIS.

[FR Doc. 84-21084 Filed 8-6-84; 10:18 am]

BILLING CODE 4510-26-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 23, 1984–July 27, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,129; Gulf & Western Industries, Inc., Gloucester City, NJ

TA-W-15,246; Mann Manufacturing, Inc., Newark, NJ

TA-W-15,164; Westinghouse Electric Corp., Cheektowaga, NY

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-15,185; Harnischfeger Corp., North Escanaba, MI

TA-W-15,243; Easton Corp., Engine Components Div., Battle Creek, MI

TA-W-15,256; National Iron Co., Duluth, MN

TA-W-15,238; Modine Manufacturing Co., Bloomington, IL

In the following case the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15,222; The Lima Electric Co., Inc., Greenville, AL

The investigation revealed that criterion (1) has not been met. Employment at the Greenville plant did not decrease as required for certification.

Affirmative Determination

TA-W-15,312; United States Shoe Corp., West Liberty, KY

A certification was issued covering all workers separated on or after July 1, 1983.

TA-W-15,221; The Lima Electric Co., Inc., Lima, OH

A certification was issued covering all workers separated on or after February 8, 1983.

TA–W–15,192; Slimmetry, Inc., Newark, NJ

A certification was issued covering all workers separated on or after December 31, 1983 and before January 31, 1984.

TA–W–15,172; Tiffin Crystal By Towle, Tiffin, OH

A certification was issued covering all workers separated on or after November 30, 1983.

TA–W–15,146; Melville Footwear Manufacturing, Boone, NC

A certification was issued covering all workers separated on or after July 1, 1983 and before June 22, 1984.

TA–W–15,157; Melville Footwear Manufacturing, Sparta, NC

A certification was issued covering all workers separated on or after July 1, 1983 and before June 22, 1984.

TA–W–15,190; Melville Footwear Manufacturing, Hot Springs, NC

A certification was issued covering all workers separated on or after March 1, 1984.

TA–W–15,198; Melville Footwear Manufacturing, Wilkesboro, NC

A certification was issued covering all workers separated on or after October 1, 1983.

TA–W–15,261; Atlas Chain Co. (Formerly Renold Power Transmission Corp.), West Pittston, PA

I hereby certify that the aforementioned determinations were issued during the period July 23, 1984–July 27, 1984. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 31, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84–20918 Filed 8–6–84; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefit Programs

[Application Docket No. D–4518 et al.]

Proposed Exemptions; Dr. Steven Misencik; Inc. Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

DATES: Written Comments and Hearing Requests: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefits Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, Apr. 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and respresentations.

Dr. Steven Misencik, Inc. Profit Sharing Plan (the Profit Sharing Plan) and the Dr. Steven Misencik, Inc. Pension Plan (the Pension Plan; Collectively, the Plans) Located in Strongville, Ohio

[Application Nos. D–4518 and D–4519]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, Apr. 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to a proposed loan (the Loan) by the Plans to Dr. Steven Misencik, Inc. (the Employer) of an amount not to exceed $80,000, provided the terms and conditions of the Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans consist of the Profit Sharing Plan and the Pension Plan which provide individual accounts for their participants. As of December 31, 1982, the Profit Sharing Plan had total assets of $178,868 and the Pension Plan had total assets of $150,620. Also on that date, each Plan had five participants who were the same individuals. The assets of the Plans are held by Euclid National Bank of Cleveland, Ohio, as custodian (Euclid). The trustee of the Plans is Dr. Misencik who maintains a dental practice in association with the Employer at 13451 Pearl Road, Strongville, Ohio. Investment decisions for the Plans are made by Dr. Misencik and Dr. Frank Stern.

2. The Employer requests an exemption in order to borrow a total of not more than $80,000 from the Plans ($42,500 from the Profit Sharing Plan and $37,500 from the Pension Plan). The Loan proceeds will be used to defray the costs of making leasehold improvements to a 9,600 square foot office building (the Building) in which the Employer will be one of several lessees. The Building is located at 16363 Pearl Road, Strongville, Ohio and it is owned exclusively by Dr. Misencik. The estimated cost of the Building is $480,000. At present, the

Building is almost complete and rentals are developing.

The Building is being financed primarily by a five year first mortgage loan (the Bank Loan) which was provided by Bank One, Cleveland, NA on June 1, 1983 in the amount of $300,000. The Bank Loan carries interest at the rate of 13 percent per annum and it is for a period of five years. The remainder of the financing has come from Dr. Misencik.

3. The proposed Loan, which will be amortized on the basis of a twenty-five year amortization schedule, will be payable in ten years. The application states that the Loan will carry interest at the prevailing rate for similar-type loans negotiated in the Cleveland area. In a letter dated July 13, 1984, Mr. Roger Buxton, Vice President of AmeriTrust Company of Cleveland, states that his bank would make a second mortgage loan for this Building at a rate of approximately 14 percent. The interest rate at the time of consummation of the transaction will be determined by Mr. Gerald Facciani (Mr. Facciani), who will serve as the independent fiduciary for the Plans with respect to the proposed transaction. In addition, the Loan will require monthly installments of principal and interest, payable to Euclid on behalf of the Plans.

The Loan will be evidenced by a promissory note and secured by a second mortgage on the Building. At all times, the value of the collateral will represent 150 percent of the combined outstanding balance of the Bank Loan and the Loan. Should the value of the collateral fall below the 150 percent level, Mr. Facciani will require that the Employer or Dr. Misencik pledge additional collateral. In addition, Dr. Misencik will insure the Building in amounts necessary to cover both loans. Dr. Misencik will also designate the Plans as loss payees under such insurance as their interests may appear.

4. The Building was appraised at $615,000 on December 14, 1983 by Mr. James T. Caldwell (Mr. Caldwell). Mr. Caldwell is an independent appraiser who is affiliated with the real estate appraisal firm of Buckholz, Caldwell and Associates, Inc. of Bay Village, Ohio.

5. As stated previously, Mr. Facciani will serve as the independent fiduciary for the Loan. Mr. Facciani, a pension consultant and actuary, is the sole owner and president of Professional Plan Administrators, Inc., of Cleveland, Ohio. Mr. Facciani is unrelated to Dr. Misencik and the Employer. Among his numerous duties, Mr. Facciani has assisted plan fiduciaries in the development of investment objectives for pension funds and engaged in the design, installation and administration of such plans. In addition, Mr. Facciani represents that he understands his duties, responsibilities and liabilities under the Act as they relate to the administration of the Loan.

Mr. Facciani has reviewed the terms of the Loan, the assets held by the Plans, the investment history for the Plans, the construction project and other information. Based on his review, Mr. Facciani is of the opinion that the Loan is an appropriate investment for the Plans for the following reasons:

(a) The terms of the Loan are those generally available in an arm's length transaction between unrelated parties.

(b) The Plan's interest in the Loan will be fully protected by: (1) The second mortgage on the Building, (2) the designation of the Plans as beneficiaries of the insurance policy maintained on the Building, (3) the fact that the collateral pledged will at all times represent 150 percent of the combined outstanding balance of the Bank Loan and the Loan, and (4) the fact that the Plans can declare the Loan due and payable in the event of a default.

(c) The Loan provides, as additional security, for the payment of principal and interest to Euclid.

(c) The Loan, which will represent no more than 25 percent of the assets of each Plan, fits into the investment portfolios of the Plans.

As the independent fiduciary, Mr. Facciani will periodically confirm that payments to the Plans are timely made, ensure that the value of the security offered is at all times equal to 150 percent of the combined outstanding balance of the Bank Loan and the Loan and ensure that adequate insurance is maintained on the Building and that the Plans are designated as loss payees. In addition, Mr. Facciani will take whatever actions are necessary and proper should a default occur on the Loan.

6. In summary, it is represented that the proposed transaction will satisfy the requirements of section 408(a) of the Act because: (a) Mr. Facciani, as Plan fiduciary, has determined that the Loan is an appropriate investment for the Plans; (b) the interest rate for the Loan will be determined by Mr. Facciani at the time of closing based upon prevailing market conditions; (c) the Loan will be secured by a second mortgage on certain real property which has an appraised value that is greatly in excess of the Loan; and (d) the Loan will be monitored by Mr. Facciani who will take actions that are necessary and proper to protect the interests of the Plans and their participants and beneficiaries.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

USGA, Inc. (USGA) Located in New York, New York

[Application No. D-4996]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, Apr. 28, 1975):

I. Transactions

A. The restrictions of section 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving mortgage pools (Mortgage Pools) in which employee benefit plans (Plans) will invest:

(1) The direct or indirect sale, exchange or transfer of certificates (Certificates) representing interests in Mortgage Pools in the initial issuance of Certificates between USGA or its affiliates and an investing Plan when USGA or any affiliate, the trustee (the Trustee) of a Mortgage Pool, or a mortgagor of such Mortgage Pool is a party in interest with respect to such plan, provided that the Plan pays no more than fair market value for such Certificates, and provided further that the rights and interests evidenced by such Certificates are not subordinated to the rights and interests evidenced by other Certificates of the same Mortgage Pool; and

(2) The continued holding of Certificates acquired by a Plan pursuant to subsection (1), above.

B. The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and taxes imposed by section 4975 (a) and (b)(2) of the Act and taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to transactions in connection with the servicing and operation of the Mortgage Pool provided that:

(1) Such transactions are carried out in accordance with the terms of a binding servicing agreement (Trust and Servicing Agreement); and

(2) Such Trust and Servicing Agreement is made available to investors before they purchase

Certificates issued by the Mortgage Pool.

C. The restrictions of section 406(a) and 407 of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transaction to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan (or who has a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act), solely because of the ownership of a Certificate evidencing an interest in a Mortgage Pool by such Plan.

II. General Conditions

The relief provided under Part I, above, is available only if the following conditions are met:

A. The Trustee for each Mortgage Pool must not be an affiliate of USGA or its affiliates provided, however, that the Trustee shall not be considered to be an affiliate of USGA or its affiliates, solely because the Trustee has succeeded to the rights and responsibilities of USGA or its affiliates pursuant to the terms of the Trust and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by USGA or its affiliate; and

B. The sum of all payments made to and retained by USGA or any affiliate thereof in connection with a Mortgage Pool and all funds inuring to the benefit of USGA or any affiliate as a result of the administration of the Mortgage Pool must represent not more than adequate consideration for selling the Certificates and underwriting the sale of the Certificates, plus reasonable compensation for services provided by USGA or any affiliate to the Mortgage Pool.

III. Definitions

A. For the purpose of this exemption, the term "Mortgage Pool" means an investment pool the corpus of which:

(1) Is held in trust; and

(2) Consists solely of

(a) Interest bearing obligations secured by multi-family residential property;

(b) Property which had secured such obligations and which has been acquired by foreclosure; and

(c) Undistributed cash.

B. For the purpose of this exemption, the term "Certificate" means a certificate representing a beneficial undivided fractional interest in a Mortgage Pool and entitling the holder of such certificate to pass-through payment of principal and interest from the pooled mortgage loans, less any fees retained by USGA or any affiliate.

C. for the purpose of this exemption, the term "affiliate" of another person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(2) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this section, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(D) For the purpose of this exemption, a person will be "independent of USGA, its affiliates, or the Trustee" only if:

(1) Such person is not an affiliate (as defined in section III(C) of this exemption) of USGA or the Trustee; and

(2) Neither USGA, the Trustee, nor any affiliate thereof, is a fiduciary who has investment management authority or renders investment advice with respect to any of the assets of such person.

E. For the purpose of this exemption, the term "sale" includes a forward delivery commitment (as defined in section F below) by an investing Plan, provided:

(1) for the purposes of section I(A), the terms of the forward delivery commitment contract are no less favorable to the Plan than they would be in an arm's length transaction with an unrelated party; and

(2) for the purpose of section I(B)—

(a) The forward delivery commitment has been expressly approved by a fiduciary independent of USGA or its affiliate or the Trustee who has authority to manage and control those plan assets being committed for investment in such Certificates;

(b) The terms of the forward delivery commitment contract (including any fee paid to the investing Plan) are no less favorable to the Plan than they would be in an arm's length transaction with an unrelated party; and

(c) At the time of delivery, all of the conditions of section I(B) of this exemption are met.

F. For the purpose of this exemption, the terms "forward delivery commitment," and "forward delivery commitment contract" mean a contract for the purchase or sale of one or more Certificates to be delivered at an agreed upon future settlement date, which is more than thirty calendar days after the contract's trade date. The terms include both mandatory contracts (which contemplate obligatory delivery and acceptance of the Certificates) and optional contracts (which give one party the right but not the obligation to deliver Certificates to, or demand delivery of Certificates from, the other party).

Effective Date: If granted, the exemption will be effective June 18, 1984.

Summary of Facts and Representations

1. USGA is engaged in the business of providing diversified financial services, including a broad range of real estate oriented activities. USGA is a qualified Federal Housing Administration (FHA) approved mortgagee and has made purchases of FHA insured mortgage loans through periodic auctions conducted by the Government National Mortgage Association (GNMA) and the Department of Housing and Urban Development (HUD). USGA may acquire a subsidiary which is also in the business of sponsoring Mortgage Pools. Such subsidiary would engage in transactions similar to those in which USGA is currently engaged and which are described below. Accordingly, the Department has drafted the proposed exemption to include similar activities of such an affiliate.

2. First Sentinel Securities, Ltd. (First Sentinel) is a wholly owned subsidiary of USGA incorporated under the laws of New York. First Sentinel is a National Association of Securities Dealers securities firm whose primary purpose is the sale of investment company shares. First Sentinel will act as the underwriter and placement agent for the Certificates. The Trustee for each Mortgage Pool will be either a national bank or trust company or a bank or trust company chartered under state law. The Trustee will have certain ministerial responsibilities in connection with the Certificates and, in general, have duties similar to those of a trustee under a corporate debenture indenture. The term Trustee would include any successor in the event the initially selected trustee is unwilling or unable to continue in that capacity. The Trustee will be independent of USGA or any of its affiliates.

3. GNMA is a government corporation operating under the direction of the Secretary of HUD. GNMA and HUD operate several separate multi-family direct mortgage purchase programs which are designed to make low interest rate, FHA insured mortgage loans (Project Loans) available to multi-family housing projects and certain health care

facilities during periods of monetary stringency. GNMA and HUD accomplish this objective by committing in advance (generally prior to the commencement of construction) to purchase (after completion of construction) such low interest rate Project Loans at prices substantially above prices at which such mortgage loans could otherwise be sold in the private secondary market. The Project Loans generally have a 40-year maturity and an expected life of 18 years. Pursuant to FHA regulations, the loan to value ratio on a Project Loan can be no higher than 90%. Periodically, as the inventory of these loans builds, GNMA or HUD sell the Project Loans in the private market at commercial rates, which may reflect a substantial discount from the face principal amount. The resulting loss is borne by the U.S. Treasury and is, in fact, a housing subsidy program.

4. The sale of Project Loans is accomplished through an auction procedure. Approximately one month prior to the date selected by either GNMA or HUD for such an auction, GNMA or HUD send an auction invitation to all FHA approved mortgagees, such as USGA. GNMA or HUD warrant to each purchaser of a Project Loan that, as of the settlement date with GNMA or HUD, such Project Loan: (a) Is not delinquent under the original or modified terms thereof to the extent of more than one monthly installment of interest, principal or escrow deposits (subject to certain limited exceptions) and is not otherwise in default; (b) is not subject to any defects which would prevent recovery in full or in part against FHA as insured; and (c) is not subject to any outstanding advance or advances by the mortgagee to the mortgagor. The obligation of GNMA or HUD under this warranty is limited to the correction of such defects as shall be specified in a written notice furnished to it by the purchaser within 90 days of the settlement date with GNMA or HUD, or to the repurchase of the related Project Loan in the event that such defects may not be corrected promptly.

The applicant has notified the Department that an auction will occur in late June of this year in which USGA is considering the submission of a bid. Because of the mechanics involved in structuring and marketing the Mortgage Pools the applicant has requested that the proposal for an exemption provide an effective date in advance of this auction date.

5. Upon receipt of an auction invitation, USGA determines which Project Loans it will bid on and selects a trustee or trustees to act as the Trustee of the Mortgage Pool to be formed. USGA carefully reviews each Project Loan under consideration by, among other things, conducting a review of the Project Loan files which are maintained in various regional offices of the Federal National Mortgage Association (FNMA). In reaching an underwriting decision on a Project Loan, USGA considers many factors including the existence of any mortgagor defaults, late payments, legal or construction problems and any other adverse information which its review has revealed. USGA attempts to determine the cause of any of these problems in order to judge whether the problem evidences a trend or is a temporary problem. Once the review is completed and a decision is reached on those Project Loans on which to bid, bids are telephoned to GNMA or HUD in accordance with its auction procedures.

Upon learning which Project Loans it has won, USGA requests a closing date from FNMA on behalf of GNMA or HUD and also requests all pertinent information with respect to such Project Loans including the amortization schedules which are necessary to verify the outstanding principal and interest balances on the Project Loans. Additional consideration is given where it appears that GNMA or HUD will be unable to perform in accordance with their representations and warranties.

Once the Project Loans won in the auction process have been identified, USGA commences its sales effort. USGA maintains adequate safeguards to see that the exemption of the offering from registration requirements imposed by Federal and state securities laws is met. The Trust and Servicing Agreement with respect to the Mortgage Pool in which interests are being offered is made available to all prospective purchasers.

Legal counsel is retained to review each Project Loan for the purpose of determining whether any problems with respect to a Project Loan can be resolved and whether due to any such problems, a Project Loan should be rejected. Once a final decision is made to accept a Project Loan, a closing is scheduled.

After the closing, USGA will transfer and assign all of its right, title and interest in the Project Loans to the Trustee without recourse of the sole benefit of the holders of the Certificates (the Certificateholders) and will deliver the following documents or instruments to the Trustee with respect to each such Project Loan: (1) The original mortgage note (bearing a final endorsement evidencing the FHA mortgage insurance), duly endorsed to the order of the Trustee without recourse; (2) the mortgage, whether the original or a certified true copy thereof and photocopies of any modifications or amendments thereto; and (3) an assignment of the mortgage to the Trustee.

Under the provisions of the Trust and Servicing Agreement, USGA generally has the obligation to record the assignment of the mortgages and to file any instruments necessary to perfect the security interests granted in the personal property and fixtures in all appropriate places, except in those jurisdictions where, in the opinion of counsel acceptable to the Trustee, such recording or filing is not required to protect the Trustee's interest in the Project Loans. USGA also has the obligation to review each Project Loan file to verify that all documents have been duly executed and received and are otherwise in good order.

6. Concurrently, with the transfer and assignment by USGA of the mortgage notes, mortgages and assignments to the Trustee, USGA will issue and the Trustee will authenticate and deliver to USGA the Certificates evidencing in the aggregate the entire ownership of the Mortgage Pool. The Certificates are then sold by USGA to investors, including the Plans, through its affiliate, First Sentinel, for which First Sentinel will receive certain fees and commissions from the investors. Such compensation is for the underwriting, placement or sale of such Certificates, services which are materially different from those provided in connection with the servicing and operation of the Mortgage Pool.

7. The price at which the Certificate will be sold to investing Plans is determined by several factors including reference to the price paid by USGA for the Project Loans underlying the Certificates and the general market for similar securities. The net return to the Plans (Pass-Through Rate) which is based on the interest rate of the Project Loans minus USGA's compensation (discussed below) will be disclosed to potential investors in the Trust and Servicing Agreement.

8. Although the Certificates will not be insured or guaranteed by any agency or instrumentality of the U.S. Government, the Project Loans underlying the Certificates will be insured by the FHA. In addition, the FHA will not insure a mortgage unless it contains a covenant, acceptable to the Commissioner of the FHA, binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other

hazards as the Commissioner may stipulate. The protections afforded investors in a Mortgage Pool which contains FHA insurance include the following features. If a mortgagor defaults on a payment, the mortgagee may either assign the mortgage to the FHA or acquire title through foreclosure proceedings, and convey title to such property to the FHA. If the mortgagee elects to assign the mortgage to the FHA, the insurance benefits payable to the mortgagee (either in cash or FHA debentures which are discussed below) are equal to the sum of (a) the unpaid principal balance of the mortgage plus (b) interest accured from the date of default through the date of payment at the higher of the FHA debenture rate in effect at the time that the commitment for FHA mortgage insurance was issued or the rate at which the Project Loan was initially endorsed for FHA mortgage insurance (whichever is greater), less (a) an assignment fee of 1% of the principal balance and (b) legal costs and other expenses associated with the assignment of the Project Loan. The insurance proceeds may be reduced, according to the terms of a GNMA or HUD Insurance Proceeds Participation Certificate (IPPC) which a winning bidder on a Project Loan must sign. IPPCs provide for the sharing with GNMA or HUD of FHA insurance proceeds according to a formula specified in the IPPC where a default occurs within a specified time period after the purchase of af Project Loan. Currently, that time period is 36 months in the case of a GNMA IPPC and 60 months in the case of a HUD IPPC. IPPCs are designed to prevent a windfall to a mortgagee who purchases a Project Loan at a discount from GNMA or HUD and within a brief period of time receives insurance proceeds based on 100% of the principal of the Project Loan.

In the event that the mortgagee elects to acquire title to the mortgaged property and convey title to such property to the FHA, the insurance benefits payable to the mortgagee are computed as described above, except that they are not subject to the 1% assignment fee. The mortgagee is, however, required to pay the costs of foreclosure.

For defaulted Project Loans, the FHA generally pays 90% of the insurance claim within 15 days of the recordation of the assignment or conveyance (which action may take 30 to 90 days) and the balance of the claim, after completion of an audit, within three to six months after such recordation. The Certificateholders in the event of a default on a Project Loan and its subsequent assignment to the FHA, bear the risk of: (a) The loss of 30 days interest during the grace period; (b) foregoing principal and interest payments pending recovery from the FHA in the event USGA does not advance such payments; (c) the accrual of interest at the FHA debenture rate which is generally lower than the Pass-Through Rate stated on the face of the Certificate; and (d) the incidence of legal and other expenses associated with assignment.

9. A number of the Project Loans will be Section 221 Loans, under which a mortgagee has the right, pursuant to 24 CFR 221.770, to assign such Section 221 Loan to the FHA at the expiration of 20 years from the date of final endorsement of the related mortgage, if the Section 221 Loan is not in default at such time. Such option to assign a Section 221 Loan to the FHA may be exercised at any time during the one-year period following the twentieth anniersary of the final endorsement of the related mortgage.

Any mortgagee electing to assign a Section 221 Loan to the FHA will receive in exchange therefore, FHA debentures having a total face value equal to the then outstanding principal balance of the Section 221 Loan plus accrued interest to the date of assignment. The FHA debentures will mature 10 years from the date of assignment of the related Section 221 Loan and will bear interest at the "going Federal rate" at such date. The "going Federal rate" is defined to be the annual rate of interest specified by the Secretary of the Treasury as applicable for the six month period which includes the issuance date of the debentures.

10. In addition to the sponsoring of Mortgage Pools, USGA may also be involved in the sales of GNMA certificates to a range of investors including the Plans which have purchased Certificates in a Mortgage Pool. Because USGA may have an existing party in interest relationship to such Plans the sale transactions involving GNMA certificates could result in prohibited transactions. However, the Department has previously granted Prohibited Transaction Exemption (PTE) 75–1 (40 FR 50845, October 31, 1975) which may provide relief from the prohibitions of section 406 of the Act and section 4975(c)(1) of the Code for the sale of such government securities.

11. In connection with the mortgage pool investment trusts, USGA agrees to service and administer the Project Loans pursuant to the Trust and Servicing Agreement. As loan servicer, USGA will have the full power and authority, acting alone, to do any and all things in connection with such servicing and loan administration which it may deem necessary or desirable, including consenting to any modification with respect to any Project Loan, provided, however, that USGA may not, without the consent of the Certificateholders which evidence fractional undivided interests aggregating not less than 66⅔% of the trust fund, permit any modification with respect to any Project Loan that would decrease the interest rate, reduce the outstanding principal amount (except for actual payments of principal) or extend the final maturity date on such Project Loan or affect the FHA insurance contract with respect thereto.

Among other things, USGA will make reasonable efforts to collect all payments due under each Project Loan as and when the same may be or become due and payable and will promptly discharge all of the obligations of the mortgagee thereunder, as well as its obligations arising under the Trust and Servicing Agreement. USGA will ascertain and estimate annual taxes, assessments, FHA insurance premiums, fire and hazard insurance premiums, and all other charges that, as regards each Project Loan, will become due and payable, to ensure that the installments payable by the mortgagor on account of such charges will be sufficient to permit USGA to pay all such charges as and when they become due and payable. USGA will use it best efforts to maintain and keep the FHA insurance contracts in full force and effect throughout the term of the Trust and Servicing Agreement and acknowledges its liability to Certificateholders in the event any FHA insurance contract is voided or is reduced, released or adversely affected in any way by reason of any willful misconduct or negligence on the part of USGA.

USGA will establish and maintain with a bank or a savings and loan association whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation (which bank may be the Trustee) one or more non-interest bearing accounts (collectively the Certificate Accounts) for the holding of all deposits and collections received. USGA, from time to time, will charge the Certificate Accounts for the following purposes: (1) To make payments to the Certificateholders in the amount and manner provided for in the Trust and Servicing Agreement; (2) to reimburse itself for advances made pursuant to the

Trust and Servicing Agreement and for its costs in making such advances (including the cost of money), provided, however, that USGA's right to reimburse itself pursuant to this clause is limited to amounts received on particular Project Loans as late recoveries of payments of principal or interest, liquidation proceeds and insurance and condemnation proceeds as defined in and to the extent permitted by the Trust and Servicing Agreement; (3) to reimburse itself for any nonrecoverable advance or advances as defined in and to the extent permitted by the Trust and Servicing Agreement; (4) to reimburse the Trustee for expenses incurred by and reimbursable to it pursuant to the Trust and Servicing Agreement; (5) to reimburse itself for expenses incurred by and reimbursable to it pursuant to the Trust and Servicing Agreement; and (6) to clear and terminate the Certificate Account pursuant to the Trust and Servicing Agreement.

12. On the 25th day of each month, or, if such 25th day is not a business day, the business day immediately following, USGA will distribute by mail to each Certificateholder on the applicable record date such Certificateholder's pro rata share of all amounts in the Certificate Accounts which represent payments of the nature required to be distributed to the Certificateholder on such date pursuant to the Certificate and other amounts, if any, that USGA may have expressly obligated itself to distribute on such date as provided in the Trust and Servicing Agreement. In addition, USGA will furnish to each Certificateholder a statement setting forth (1) the amount of such distribution allocable to principal separately identifying the amount of any voluntary monthly advance included therein; (2) the amount of such distribution allocable to interest separately identifying the amount of any voluntary monthly advance included herein; (3) amount of servicing fees and expenses received by USGA during the distribution period pursuant to the Trust and Servicing Agreement (exclusive of any profit realized by the use of debentures to pay FHA mortgage insurance premiums); (4) the aggregate principal balances of the Project Loans; (5) notice of any defaults known to USGA by any mortgagor; (6) the status of any claims under FHA mortgage insurance; and (7) notice of any Project Loans eligible for conversion into FHA debentures.

Within a reasonable period of time after the end of each calendar year, USGA will furnish a report to each person, who was a Certificateholder at any time during such calendar year as to the aggregate of amounts reported pursuant to (1) and (2) above for such calendar year or, in the event such person was a holder of record during a portion of such calendar year, for the applicable portion of such year.

13. As compensation for its activities pursuant to the Trust and Servicing Agreement, USGA will be entitled to retain from interest payments on each Project Loan the amount by which such payment exceeds interest on such Project Loan at the Pass-Through Rate. In addition to its servicing fee, USGA will be entitled to retain all late payment charges, assumption or substitution fees and other miscellaneous fees and any interest or other benefit from certain liquidation proceeds held in the Certificate Accounts but not required to be distributed to Certificateholders pursuant to the Trust and Servicing Agreement and any profit realized by it through the use of FHA Debentures towards the payment of FHA mortgage insurance premiums.

From such fees USGA must pay reasonable compensation to the Trustee for all services rendered in the execution of the Mortgage Pool and in the execution and performance of any of the powers and duties of the Trustee under the Trust and Servicing Agreement and all expenses incurred by the Trustee in connection with its servicing activities pursuant to such agreement. In addition, USGA must pay all normal and usual expenses incidental to the servicing of the Project Loans. However, USGA will be entitled to reimburse itself out of related FHA insurance proceeds for all necessary and reasonable expenses incurred by it in connection with the realization of such proceeds.

The applicant represents that the sum of all payments made to USGA, First Sentinel or any affiliate in connection with a Mortgage Pool will not be more than adequate consideration for the underwriting and sale of the Certificates, plus reasonable compensation for services provided by USGA or an affiliate to the Mortgage Pool.

14. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The Plan's decision to purchase Certificates will be made by a plan fiduciary independent of USGA, the Trustee or any of their affiliates;

(b) All of the transactions for which USGA seeks exemptive relief will be governed by the same terms of the Trust and Servicing Agreement, which is made available to the Plans' fiduciaries for their review prior to investment;

(c) Investment in the Certificates will represent a sound method by which the Plans may be able to diversify their portfolio to include investments in real estate mortgages;

(d) The applicant emphasizes that the requested exemption is substantially similar to the class exemption granted as PTE 81-7 (46 FR 7520, January 23, 1981, as amended by PTE 83-1, 48 FR 895, January 7, 1983). The principal difference is that the USGA sponsored Mortgage Pools will consist of first mortgages or deeds of trust on multifamily residential property as opposed to single family residential property. The applicant represents that the risk to Plans investing in the Mortgage Pools is no greater than the risk of investing in single family residential property mortgage pools.

Notice to interested persons: Because all plan participants and beneficiaries whose plans participate in the Mortgage Pools could conceivably be interested persons, the Department has determined that the only practical form of notice is by publication in the **Federal Register**.

For Further Information Contact: Paul R. Antsen of the Department, telephone (202) 523-6915. (this is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible,

in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 2nd day of August, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-20902 Filed 8-6-84; 8:45 am]

BILLING CODE 4510-29-M

LIBRARY OF CONGRESS

Copyright Office

Policy Decision on Microfilming of Documents Received in Copyright Office

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of policy decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559; (202) 287-8380.

1. *Background.* By notice published in the **Federal Register** of August 8, 1983, the Copyright Office announced its decision to microfilm documents and other materials submitted for recordation under section 205 of title 17 U.S.C., upon their receipt in the Office. This experimental procedure was made possible by the installation in the Copyright Office of new facilities that enabled the Office, for the first time, to microfilm documents on its premises.

2. *Policy Decision.* During the course of the past year, the Copyright Office has learned that microfilming of documents upon receipt and before recordation is not an effective method of handling these materials. Members of the public experienced difficulty in using the microfilmed documents. Often, material unrelated to a recorded document was microfilmed with the document so that it was not possible to sort out what indeed had been recorded.

In the interest of clarifying the public record of documents pertaining to copyrights, the Copyright Office decided, effective July 9, 1984, to discontinue its practice of microfilming documents and any accompanying material, including transmittal letters, upon their receipt in the Office. On or after July 9th, only recorded documents will be microfilmed by the Copyright Office.

By utilizing the on-site microfilming equipment installed in the past year, the Office expects that recorded documents can be made publicly available on a more timely basis than was possible several years ago. It is expected that processing time will be reduced further when the Office implements the next phase of its planned automation.

3. *Public availability.* Once the recorded documents have been microfilmed, the microfilm copies will be available for public viewing on microfilm reader-printers located in the Copyright Card Catalog area, Room LM-459, Copyright Office, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, D.C.; from 8:30 a.m. to 5 p.m. weekdays.

Dated: July 30, 1984.

David Ladd,

Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

FR Doc. 84-20882 Filed 8-6-84; 8:45 am]

BILLING CODE 1410-03-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-64]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Karyon Scientific, Inc., of Glendale, California, a partially exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,122,158 for a "Automated Clinical System for Chromosome Analysis," which issued on October 24, 1978, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed partially exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, withing 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Cousel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by October 9, 1984.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453-2430.

Dated: July 30, 1984.

S. Neil Hosenball,

General Counsel.

[FR Doc. 84-20786 Filed 8-6-84; 8:45 am]

BILLING CODE 7510-01-M

[Notice 84-65]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Perceptive Systems, Inc., of Glendale, California, a partially exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,122,518 for a "Automated Clinical System for Chromosome Analysis," which issued on October 24, 1978, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed partially exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice,

the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by October 9, 1984.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: July 30, 1984.

S. Neil Hosenball,

General Counsel.

[FR Doc. 84–20789 Filed 8–6–84; 8:45 am]

BILLING CODE 7510–01–M

[Notice 84–66]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Steve Smith of Richmond, California, an exclusive royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 3,659,184 for a "Analog Signal to Discrete Time Internal Converter (ASDTIC)," which issued on April 25, 1972, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by October 9, 1984.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 435–2430.

Dated: July 31, 1984.

S. Neil Hosenball,

General Counsel.

[FR Doc. 84–20790 Filed 8–6–84; 8:45 am]

BILLING CODE 7510–01–M

[Notice 84–67]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Wyle Laboratories of Hampton, Virginia, an exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,413,522 for a "Ride Quality Meter," which issued on November 8, 1983, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by October 9, 1984.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: July 30, 1984.

S. Neil Hosenball,

General Counsel.

[FR Doc. 84–20791 Filed 8–6–84; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–295]

Commonwealth Edison Co. (Zion Nuclear Unit No.1); Request for Action Under 10 CFR 2.206 Regarding Integrated Containment Leak Rate Testing at the Zion Nuclear Unit No. 1

Notice is hereby given that, by a Petition for Emergency Relief dated June 5, 1984, Edward M. Gogol, on behalf of Citizens Against Nuclear Power, sought emergency relief and immediate action to remedy alleged inadequacies in the integrated leak rate test for the Zion Nuclear Unit No. 1 conducted in March 1981. An Affidavit of Zinovy V. Reytblatt in support of the Petition discusses alleged errors in the conduct of the integrated leak rate test. A variety of relief is requested, including immediate retesting at Zion Nuclear Unit No. 1 or, in the alternative, suspension of the facility's operating license. The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations and, accordingly, appropriate action will be taken on the request within a reasonable time. A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., 20555 and at the local public document room for the Zion Station, Unit No. 1, located at Benton Public Library, 2600 Emmans Avenue, Zion, Illinois 60099. Dated at Bethesda, Maryland, this 30th day of July 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84–20691 Filed 8–6–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–329 and 50–330]

Consumers Power Co. (Midland Plant, Units 1 and 2); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a decision concerning a petition dated February 10, 1984, filed by the Government Accountability Project on behalf of the Lone Tree Council and others. The petition had requested that the Nuclear Regulatory Commission take action to require Consumers Power Company to

(1) broaden the ongoing Construction Completion Plan to include other aspects of plant construction; (2) remove Consumers from managerial responsibilities for quality assurance and quality control of Midland and institute an independent third-party in its place; and (3) increase NRC staffing for Midland. The Director, Office of Inspection and Enforcement, has decided to deny the petitioner's request.

The reasons for this decision are explained in a "Director's Decision under 10 CFR 2.206" (DD–84–17), which is available for public inspection in the Commission's public document room, 1717 H Street, N.W., Washington, D.C., and in the local public document room for the Midland Plant at the Grace A. Dow Memorial Library, 1910 W. St. Andrews Road, Midland, Michigan 48640.

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 24th day of July 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84–20890 Filed 8–6–84; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Medical Determinations Related to Employability of Individuals With Diabetes Mellitus

AGENCY: Office of Personnel Management.

ACTION: Notice

SUMMARY: This notice sets forth the Office of Personnel Management's intention to publish a revision to Federal Personnel Manual Supplement 339–31 on policies on the employability of individuals with diabetes mellitus. Although this material will constitute policy guidance, and is therefore not subject to the formal review period of the Administrative Procedures Act, the Office of Personnel Management is seeking comments before publishing the guidance. The opinions and views of the medical community and agency personnel and legal officials are considered significant to the achievement of a policy consensus in this sensitive area of employment of the handicapped. The text is shown below.

DATE: Comments must be received by September 6, 1984.

ADDRESS: Send or deliver comments to Richard B. Post, Associate Director for Staffing, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Nancy R. Kingsbury, 202/632–6013.

SUPPLEMENTARY INFORMATION: Text of FPM Letter.

a. The Office of Personnel Management has been examining its existing guidance on the impact of physical and medical conditions on employability in the Federal Government, and will be extensively revising much of that guidance during the coming months.

b. We have determined that the current guidance on the employment of individuals with diabetes mellitus (Federal Personnel Management Supplement 339–31, Subchapter 1–3(c)(1)) should be revised to reflect more accurately current standards of medical practice. Although FPM Supplement 339–31 is clearly not intended as mandatory proscriptive regulation, agencies have inappropriately relied solely on that guidance to exclude from employment individuals suffering from diabetes mellitus who require a certain level of insulin for treatment, regardless of whether there are or are not specific side effects or symptoms which would affect job performance or pose some risk to the individual or others in the work setting. Such exclusions are clearly improper, without consideration of the specific characteristics of the individual's medical condition.

c. In consultation with medical specialists in the impact of diabetes on employment, we have adopted the following alternative policy statement on the employment of individuals with diabetes. Adoption of this policy does not affect qualification requirements for those occupations for which specific consideration of diabetes has been addressed as a part of a published physical and medical qualifications standard.

FPM Supplement 339–31, Subchapter 1–3(c)(1):

Diabetes Mellitus

The diagnosis of diabetes mellitus does not, per se, preclude placement in positions in the Federal service provided there are no chronic complications of the condition which would interfere with performance of an agency's mission. In each case, the applicant's or employee's medical condition should be individually assessed with respect to the tasks, duties, working conditions and environment of the position. In general:

(a) Nonhazardous Positions

There is no restriction on placement of individuals with diabetes mellitus in these positions, although there may be special considerations with respect to placement of insulin-requiring individuals in jobs with irregular hours, rotating shifts, or in geographical areas where medical care is not readily available.

(b) Hazardous Positions

There is no restriction on placement of individuals with diabetes mellitus in these positions when current medical evidence and work history indicate that the person has been able to perform satisfactorily and without significant risk to him/herself or to others in a position or other life activities with physical demands and environmental factors similar to those of the position under consideration. The diabetic condition may be considered to pose no additional risk if there have been no significant complications (e.g., cardiovascular, visual, renal, neurological) and:

(i) the condition is controlled by diet alone, exercise alone, diet and exercise, or by oral medication, *or*

(ii) if the condition is insulin-requiring, there has been no evidence of serious hypoglycemic insulin reactions (e.g., alteration of consciousness) during the past year.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84–20792 Filed 8–6–84; 8:45 am]

BILLING CODE 6325–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Economic Forecasting Advisory Committee; Establishment

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council [Northwest Power Planning Council].

ACTION: Notice of establishment of Economic Forecasting Advisory Committee.

SUMMARY: On June 7, 1984, in a public meeting in Portland, Oregon, the Northwest Power Planning Council established an Economic Forecasting Advisory Committee [Committee] as an advisory committee to the Council. This notice describes the Committee, provides information on how to obtain notices of Committee meetings, and explains how to request copies of the Committee's advisory committee charter.

ADDRESSES: Individual and entities wishing to receive notices of Committee meetings or copies of the Committee's advisory committee charter should contact Michele Sterling by writing her at the Council's central office, Suite 200, 700 Southwest Taylor Street, Portland, Oregon 97205, or by calling her at [toll free] 1–800–222–3355, from Montana, Idaho, Washington and California; [toll free] 1–800–452–2324 in Oregon; or (503) 222–5161, from other states. The charter is also available for inspection and copying in the public reading room of the Council's central office, Suite 200, 700 Southwest Taylor Street, Portland, Oregon, on weekdays between 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Terry Morlan, Manager of Demand Forcasting at [toll free] 1–800–222–3355 from Montana, Idaho, Washington and California; [toll free] 1–800–452–2324 in Oregon; or (503) 222–5161 from other states.

SUPPLEMENTARY INFORMATION: The Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501, 16 U.S.C. 839 *et seq.* ("Act"), in section 4.(e)(3)(D), requires the Pacific Northwest Electric Power and Conservation Planning Council ("Council") to develop ". . . a demand forecast of at least twenty years . . ." as part of its regional conservation and electric power plans ("Plan"). The most important determinant of future electric demands is the growth of the regional economy. This growth is also highly uncertain and therefore plays a key role in developing the Council's range of demand forecasts for planning purposes. It is the intent of the Council to develop a range of economic assumptions for its 1985 Plan revision in consultation with interested parties in the region. Successful development of the economic forecasts requires the collection of views and information from many regional experts. The Economic Forecasting Advisory Committee is being established to help fullfill these requirements. This advisory committee is established as part of a network of advisory committees satisfying the Council's obligation under the Act to establish a Scientific and Statistical Advisory Committee. 16 U.S.C. 839(c)(11). Under section 4(a)(4) of the Act, the terms of the Federal Advisory Committee Act, 5 U.S.C. Appendix I, sections 1–14, apply "to the extent appropriate" to the Council's advisory committees. 16 U.S.C. 839(a)(4).

The Council established the Economic Forecasting Advisory Committee a public meeting on June 7, 1984, in Portland Oregon. The charter describes the objectives and activities of the Committee, its authority, and related matters. It also contains rules for Committee procedures on meeting notices, public participation, minutes, records, conflicts of interest and reimbursement of certain Committee members expenses. Requests for copies of the charter or meeting notices and for additional information may be made as provided above in this notice.

Edward Sheets,

Executive Director.

[FR Doc. 84–20802 Filed 8–6–84; 8:45 am]

BILLING CODE 0000–01–M

Establishment: Meeting; State Agency Advisory Committee

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council.

ACTION: Notice of establishment and first meeting of State Agency Advisory Committee.

SUMMARY: On June 7, 1984, in Portland, Oregon, the Northwest Power Planning Council established a State Agency Advisory Committee as an advisory committee to the Council. This notice describes the Committee, provides information on how to obtain notices of Committee meetings, explains how to request copies of the Committee's charter, and announces the Committee's first meeting.

Dates and Addresses

The first meeting of the Committee will be held at the Council's central office (see address below) beginning at 2:00 p.m. on Thursday, August 2, 1984. The Council has determined that Council business requires holding the meeting on less than 10 days' notice. The meeting's agenda will include:

I. BPA's Intertie Access Policy and Council comments
II. Status of Long-Term Sale to California
III. Public comment
IV. Next meeting agenda

Individuals and entities wishing to receive notices of Committee meetings or copies of the Committee's advisory committee charter should contact Michele Sterling by writing her at the Council's central office, Suite 200, 700 S.W. Taylor Street, Portland, Oregon 97205, or by calling her at (toll-free) 1–800–222–3355, from Montana, Idaho, Washington and California; (toll-free) 1–800–452–2324 in Oregon; or (503) 222–5161. The charter also is available for inspection and copying in the public reading room of the Council's central office, Suite 200, 700 S.W. Taylor Street, Portland, Oregon, on weekdays between 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Wallace Gibson, Manager of System Analysis and Rates, at (toll-free) 1–800–222–3355 from Montana, Idaho, Washington and California; (toll-free) 1–800–452–2324 in Oregon; or (503) 222–5161 from other states.

SUPPLEMENTARY INFORMATION: On April 27, 1983, the council adopted the first Northwest Conservation and Electric Power Plan (the Plan), as required by the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501, 16 U.S.C. 839 (the Act). In developing the Plan, the Council adopted a regional perspective for evaluation of resource costs and benefits. A planning method based on the regional perspective is the most direct apprach to developing a resource plan which minimizes cost to the entire region. However, the Council realizes that the various state utility commissions necessarily have perspectives and concerns in some areas that differ from the Council's. In addition, these agencies have an important role to play in carrying out the Council's Plan. A state agency advisory committee has been formed by the Council to include the utility commissions in the next revision of the Plan (scheduled for 1985) and to provide a forum for the exchange of information and ideas between the Council and the agencies related to the implementation of the Plan.

The Council established the State Agency Advisory Committee, selected a Committee chairman, and adopted a charter for the Committee in a public meeting held on June 7, 1984, in Portland, Oregon. The charter describes the objectives and activities of the Committee, its authority, and related matters. It also contains rules for Committee procedures on meeting notices, public participation, minutes, records, conflicts of interest, and reimbursement of certain committee member expenses. Under section 4(a)(4) of the Act, the terms of the Federal Advisory Committee Act, 5 U.S.C. App. I, sections 1–14, apply "to the extent appropriate" to the Council's advisory committees.

Edward Sheets,

Executive Director.

[FR Doc. 84–20801 Filed 8–6–84; 8:45 am]

BILLING CODE 0000–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of 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 15Ba2–6

No. 270–92

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 15Ba2–6 (17 CFR 240.15Ba2–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) which mandates the expiration of an application filed on behalf of a successor municipal securities dealer by a predecessor 30 days after the effective date of the application unless the successor adopts the application as its own. The potential affected persons are approximately 1 registered municipal securities dealer per year. 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.

Dated: July 27, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–20932 Filed 8–6–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–21191; File No. SR–NASD–84–18]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Proposed Fee Applicable to Use of Level 1 Data Stream for Automated Execution Systems

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 18, 1984 the National Association of Securities Dealers, 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 establishes a new rate of $2,000 per month, applicable to the receipt of the Level 1 Data Stream for processing and use in an automated execution system.

II. Self-Regulatory Organization's Statement Regarding the Proposed Change

In is filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C), below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The existing rate of $500 per month applicable to processing of Level 1 data directly into a subscriber's computer system for its own analysis, was previously approved by the Commission and has simply been repositioned within the schedule of charges with minor stylistic changes made to comport with its new positioning. This rate was intended to cover a narrow category of use by subscribers, namely the internal processing of the information for use in the development of stock and portfolio analyses as opposed to the subscriber use of such information for display on terminal devices for recall purposes.

The proposed rate of $2000 per month covers a use of the information, which the NASD believes is far broader in terms of its value to the subscriber, nature of use, and potential number of users of the service generated from the information received from a single Level 1 Data Stream. Such information may be processed for use either within a particular subscriber or for use by other parties which may enter into contractual arrangements with subscriber, for participation in an automated execution system. Unlike the existing charge for the Level 1 Data Stream, discussed above, no separate charge will be imposed for terminals because no display of the information processed is received by the subscriber. The NASD believes that a flat charge is consistent with its existing charge structure for computer interface with the Level 1 Data Stream and the only viable charge methodology where identification and verification of the actual use made of the information is not feasible. Furthermore, the flat charge permits the subscriber greater flexibility in the design of any rates which it may impose on a user linked to its system and encourages expansion of the system offered at a decreasing unit cost to additional users. Thus, a subscriber is not limited to per terminal charges for its automated execution service, but may also select per transaction, per subscriber or some form of bundled charges applicable to use of such service.

Section 15A(b)(5) of the Act provides that the rules of a national securities association must provide for "the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility which the association operates or controls." The NASD believes that this rule change is consistent with that statutory mandate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The filing establishes a fee to be charged for a new use of Level 1 information which the NASD believes has a value greater than that processed for display purposes alone. Unlike the existing charge for receipt of information for internal processing, no additional charge is being imposed for terminals displaying processed information, and no practical means are available to measure the use made of the information subscriber. A flat charge of $2,000 under these circumstances is believed to be a fair and reasonable means of structuring a fee for this service.

In addition the value placed on the information to be processed for use in an automated execution system is representative of and commensurate with the historical value attributed to this information as reflected by the charges imposed under the CQ Plan for similar use of quotation information.

The use to be made of this information entails major capital investments on the part of subscribers to design and operate automated quotation systems. Small firms will presumably choose to participate in automated execution systems designed and operated by others, rather than expending the sums necessary to develop such systems independently.

The imposition of a flat charge will permit those subscribers capable of undertaking such a development and operational effort to offer the service to

a broader range of potential customers, which will include those small firms unable to develop such a system on their own, at a decreasing unit cost on the basis of either transactions executed or customers served.

Accordingly, the Association does not believe that the rule proposal would impose a burden upon competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The Association did not solicit nor did it receive comments on the proposed amendments.

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

The NASD's proposed rule change raises a number of issues regarding the pricing of market information. In reviewing the fee, the Commission is guided by a number of relevant statutory provisions. Section 15A(b)(5) of the Act requires that the NASD's rules "provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls." In addition, section 15A(b)(6) of the Act requires that the NASD's rules "remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, . . . to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers." [1]

To aid the Commission in determining whether the rule change is consistent with the Act, commentators are invited to submit any comments concerning the proposed rule change. The Commission also solicits comments on a number of specific issues concerning the proposed rule change.

The NASD states that the fee will be imposed for use of the information "either within a particular subscriber or for use by other parties which may enter into contractual arrangements with subscriber, for participation in an automated execution system." It appears, therefore, that the fee will be imposed on those integrated broker-dealer firms operating in-house automated trading systems for executing retail orders, as well as automated trading systems being developed or operated by a number of entities for attracting external order flow (*e.g.*, Institutional Networks Corporation's ("Instinet") OTC service, Troster Singer's Rothchild Steven's "Inside," Transaction Services, Inc.'s "TRAN," and Herzog Heine Geduld's "Continuous On-Line Trading").

The NASD has indicated that it will offer its own small order execution system ("SOES") in December 1984. The Commission understands that, like the aforementioned automatic execution systems, SOES will price orders off NASDAQ Level 1 information. In this regard, it appears that the NASD will be in direct competition with those subscribers of NASDAQ Level 1 service offering similar automated execution services for OTC stocks. Accordingly, the Commission requests comment on the issues raised by the NASD, the exclusive processor of NASDAQ Level 1 service, proposing to assess than charge on those NASDAQ subscribers which use that information in connection with automatic execution systems that compete with the NASD's SOES.

Specifically, the Commission solicits comment on whether this competitive situation has any parallels to the fee dispute involving the NASD and Instinet.[2] In that Dispute, Instinet challenged the charges the NASD sought to impose on vendors and their subscribers for quotation information that the NASD also sells on a retail level. The Commission, in that dispute, held that where the NASD both provided information and offered a service in competition to those purchasing the information from the NASD, the NASD's fees had to be cost-based.[3] The fee now being proposed for market making programs, however, appears to be based solely on value-of-service, not cost.[4]

The Commission also notes that the Consolidated Tape Association ("CTA") and Consolidated Quotation System ("CQS") participants charge subscribers a flat $3,000 to use CTA or CQS Network A information (data on stocks listed on the New York Stock Exchange) in market making programs and a flat $1,000 to use CTA or CQS Network B information (data on stocks listed on the American Stock Exchange and regional exchanges) in such programs.[5] The Commission requests comment on the relationship, if any, between these fees [6] and the proposed NASD fee.

Publication of notice of the proposed rule change is expected to be made in the **Federal Register** during the week of August 6, 1984. In order to assist the Commission in determining whether to approve the proposed rule change, interested persons are invited to submit written comments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons submitting written comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments should refer to File No. SR-NASD-84-18.

Copies of the submission and all related items other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for a inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C.

---

[1] *See also* sections 11A(b)(5)(B) and (c)(1)(D).

[2] *See* Securities Exchange Act Release No. 20874 (April 17, 1984), 49 FR 17640 ("Instinet Order").

[3] Specifically, the Commission held that:

[t]o ensure that a processor's services are made available on reasonable and non-discriminatory terms, the Commission believes that, at least in the circumstances where an exclusive processor supplies information to other vendors and competes with those vendors in providing information and terminal services to end-users, the exclusive processor's fees should be based strictly on the expenses it incurs in providing the information to vendors.

Instinet Order, *id.*, 49 FR at 17647.

[4] The Commission also notes that in the Instinet-NASD fee dispute the Commission believed that the level of the proposed fee could act as a practical denial of access to Instinet and its customers receiving the service in question. Instinet Order, *supra* note 2, 49 FR at 17644-5. The Commission requests comment on whether the NASD's proposed market making fee raises similar concerns.

[5] These charges are in addition to charges to professional subscribers of between $50.00 and $77.50 to receive information in listed securities. These charges apply to each subscriber's first terminal. Additional terminals are each charged between $5.00 and $7.75.

[6] The predecessor of the Network A fees were New York Stock Exchange, Inc. ("NYSE") fees that had become effective upon filing with the Commission pursuant to Rule 19(b)(3)(A). *See* Securities Exchange Act Release No. 12211 (March 16, 1976). These fees were incorporated later into the CTA and CQS Plans. The Network B CTA fee was approved by the Commission after the effective date of the CTA Plan. The Network B CQS fee was based on a pre-existing American Stock Exchange, Inc. fee that was incorporated into the CQS Plan.

Copies of the filing and of any subsequent amendments also will be available at the NASD.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: July 31, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-20921 Filed 8-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21193; SR-AMEX-84-21]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

August 1, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 25, 1984, the American Stock Exchange, Incorporated ("Amex"), 86 Trinity Place, New York, New York 10006, filed with the Securities and Exchange Commission the proposed rule change described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would eliminate from the Interest Rate Options Qualification Examination ("Test Series Five")[1] questions concerning those interest rate options products which currently are not listed for trading on any exchange; that is, options on Government National Mortgage Association ("GNMA") securities and options on the smaller denomination U.S. Treasury Bills, Bonds and Notes ($200,000, $20,000, and $20,000, respectively). At the time that Test Series Five was written, the Chicago Board Options Exchange, Incorporated ("CBOE") contemplated trading options on GNMA securities and options on $20,000 U.S. Treasury Bonds. Similarly, Amex contemplated trading options on $200,000 U.S. Treasury Bills and $20,000 U.S. Treasury Notes. However, the GNMA options never began trading on CBOE, and although options on the U.S. Treasury securities did trade on Amex and CBOE, trading on those debt options subsequently ceased.

At present, the examination has 50 questions in the following subject areas: Interest Rate Theory (6), the Underlying Securities (13), The Interest Rate Options Markets (10), Options Trading Practices (12), and Sales Practice Rules (9). The proposed rule change would replace the five GNMA options questions included in the Options Trading Practices category with two additional questions on Interest Rate Options Markets and three additional questions on Sales Practice Rules. In addition, the proposal authorizes Amex to replace those examination questions concerning options on the smaller denomination U.S. Treasury Bills, Bonds, and Notes with questions on the larger-sized contracts.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-Amex-8 4-21.

Copies of the submission, all subsequent amendments all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments will also be available for inspection at the principal office of the American Stock Exchange, Incorporated.

By assuring that the questions on Test Series Five relate to the current trading environment, the proposed rule change should enable Amex, through use of the modified examination, to better ensure a minimum level of competency among its members with regard to those interest rate options products currently available for trading. In its filing, Amex asserts that the proposed rule change is consistent with section 6(b)(5) of the Act which provides, in pertinent part, that the rules of the exchange be designed to promote just and equitable principles of trade and to protect the investing public.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in that the Exchange is merely proposing technical changes to conform the Interest Rate Options Qualification Examination to the current trading environment. Accordingly, the Commission finds additional notice to be unnecessary.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-20919 Filed 8-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21190; SR-PSE-84-15]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc. Filing and Order Granting Accelerated Approval of Proposed Rule Change

July 31, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 19, 1984, the Pacific Stock Exchange, Inc. ("PSE"), 618 South Spring Street, Los Angeles, CA 90014, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The PSE proposes to make a policy change allowing the introduction of new index options series until the beginning of the month in which they would expire. Because index options expire on the Saturday following the third Friday of the month, this would allow the introduction of new index options with as few as 16 days left to expiration. The Exchange's current policy in this area requires that an index option series have at least 45 days left to expiration upon its introduction. The PSE states that the purpose of the proposed rule change is to make the exchange's policy regarding the introduction of new series of index options symmetrical with the policy for the introduction of new series of individual stock options. PSE's policy for individual stock options allows the introduction of new series if the series has at least 45 days left to expiration. Forty five days is the mid-point between the time when a particular expiration

---

[7] 17 CFR § 200.30-3(a)(12).

[1] Test Serices Five is the industry qualification examination concerning interest rate (or debt) options products. Passing this examination qualifies member firm employees to trade the options products covered on the examination.

month of an individual stock option becomes nearest-term (individual stock options expire quarterly) and the time when the option expires. The proposed 16-days policy for index options would similarly establish the cut-off point for the introduction of new series of index options at the approximate half-way point between the time an index option becomes nearest-term (index options expire in consecutive months rather than quarterly) and the time when the option expires. The PSE states that the proposed rule change would increase the utility of index options to market participants by assuring the availability of at-the-money options in the expiring month. The PSE also notes that the proposal is substantially identical to New York Stock Exchange, Inc. ("NYSE") and American Stock Exchange, Inc. ("Amex") proposals recently approved by the Commission.[1] The PSE states that the statutory basis for the proposed rule change is section 6(b)(5) of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, D.C. 20549. Reference should be made to File No. SR–PSE–84–15.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the PSE.

The Commission finds that the proposed rule change is identical to NYSE and Amex proposals recently approved by the Commission.[2] For the reasons identified in the order approving the NYSE proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements, of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed rule change is identical to the Amex proposal mentioned above, which was published for comment prior to its approval by the Commission.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changed referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

FR Doc. 84–20920 Filed 8–6–84; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* File No. SR–NYSE–84–2, Securities Exchange Act Release No. 21067, June 19, 1984, 49 FR 26173; and File No. SR-Amex-84/20, Securities Exchange Act Release No. 21110, June 27, 1984, 49 FR 27391.

[2] *Id*

[Release No. 14075; 812–5880]

Forest City Investment Partners I Limited Partnership and Forest City Dillion, Inc.; Filing of an Application for an Order Pursuant to Section 6(c) of the Act for Exemption From all Provisions of the Act

August 1, 1984.

Notice is hereby given that Forest City Investment Partners I Limited Partnership (the "Partnership"), 10800 Brookpark Road, Cleveland, Ohio 44130, a District of Columbia limited partnership, and its general partner, Forest City Dillion, Inc. (the "General Partner") (collectively with the Partnership, "Applicants"), filed an application on June 25, 1984, for an order, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting the Partnership from all provisions of the Act and the rules and regulations thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below, and to the act and the rules thereunder for the text of all applicable provisions.

According to the application, the Partnership intends to offer 90 units of limited partnership interest (the "Units") at $89,555 per unit, subject to adjustment and payable in 7 installments over 6 calendar years. Applicants state that the Partnership will invest as a limited partner in up to three Ohio Limited partnerships (the "Operating Partnerships") which each separately own and operate an apartment project rented to low and moderate income elderly persons. Applicants further state that all of the Operating Partnerships are receiving mortgage insurance and rental subsidies from the Department of Housing and Urban Development under section 221(d)(4) and section 8 programs.

Applicants state that the Partnership will own a 99% interest as the sole limited partner in each Operating Partnership and that Forest City Dillion, Inc., and certain of its affiliates will serve as the general partners for the Operating Partnerships. Applicants further state that the Partnership and the Operating Partnership will not acquire interests in any other entities or property.

Applicants represent that the Partnership is organized as a limited partnership because a limited partnership is the only form of organization which provides investors with both the ability to claim on their individual tax returns the tax benefits arising from the Partnership's investment in the Operating Partnerships and liability limited to their investment. Applicants represent that the investment in the projects is organized as a "two tier" investment, i.e., the Partnership investing in the Operating Parnerships, to facilitate an offering involving numerous investors and acquisitions of interests in three projects.

The application states that the Partnership will be controlled by the General Partner and that the limited partners, consistent with their limited liability status, will not be entitled to participate in the control of the Partnership's business. Applicants assert however, that a majority in interest of the limited partners will have the right to sell, exchange or dispose of the Partnership's interest in an Operating Partnership, amend the Partnership Agreement, dissolve the Partnership, remove any general partners (for cause) and elect a replacement therefor (the limited partners may also remove a general partner without cause by unanimous written consent), and continue the Partnership upon the death, insanity, retirement or bankruptcy of a general partner that is the sole general partner, provided that counsel opines or a court of competent jurisdiction determines that such rights will not adversely affect the tax status of the Partnership or limited liability status of the limited

partners. Applicants represent that under the Partnership Agreement, each limited partner is entitled to review all books and records of the Partnership during reasonable business hours upon 3 days' prior written notice to the General Partner and that copies of the list of the names and addresses of the limited partners, including the number of Units owned by each of them, will be available to the limited partners.

Applicants state that any subscriptions for units in the partnership must be approved by the General Partner, which approval shall be conditioned upon representations as to the suitability of the investment for the subscriber, including a representation in writing that:

(1) He either (i) has a net worth per Unit or fraction thereof of at least the greater of (1) twice the subscription price of his Units or (2) $200,000 (exclusive of home, home furnishings and automobiles) or (ii) is an "accredited" investor under Regulation D under the Securities Act of 1933;

(2) He has and anticipates that he will have taxable income for federal income tax purposes which will be subject to a marginal tax rate of at least 45% from 1984 through 1990;

(3) His overall commitment to investments, including Unit(s), which are not readily marketable, is not disproportionate to his net worth; and

(4) He, either alone or together with his advisor, has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of this investment.

Applicants anticipate that the Partnership will have $7,362,044 available for investment, after the payment of selling commissions and offering expenses, from all proceeds of the offering.

Applicants state that the Partnership Agreement and Private Placement memorandum ("Memorandum") contain numerous provisions designed to ensure fair dealing by the General Partner with the limited partners. Applicants further states that all compensation to be paid to the General Partner and its affiliates is specified under "Compensation and Fees" in the Memorandum and in the Partnership Agreement, and no compensation will be payable to the General Partner or its affiliates not so specified. Applicants represent that all such compensation is fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. Applicants assert that the compensation arrangement meets all applicable guidelines necessary to permit its respective units to be offered and sold in the various states which prescribe such guidelines, including, without limitation, the statement of policy adopted by the North American Securities Administrators Association, Inc., with respect to real estate programs.

Applicants, without conceding that either the Partnership or the General Partner is an "investment company" as that term is defined in the Act, request that the Partnership be exempt from all provisions of the Act. Applicants assert that the requested exemption is both necessary and appropriate in the public interest and would be consistent with the protection of investors and the purposes and policies underlying the Act. Applicants state that investment in low and moderate income housing involving several housing projects is not feasible without the tax and organizational advantages of the limited partnership form and that this limited partnership form of organization is incompatible with the operational framework of the Act.

Notice is further given that any interested persons wishing to request a hearing on the application may, not later than August 27, 1984, at 5:50 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-20922 Filed 8-6-84; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 858-2524.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Title of Information Collection: Energy Management Surveys

Frequency of Use: Non-recurring

Type of Affected Public: State or local governments, farms, businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 5,000

Estimated Total Annual Burden Hours: 7,500

Estimated Annual Cost from Appropriated Funds: 0

Need For and Uses of Information: This information collection satisfies the need for information from commercial and industrial power customers who request energy management surveys. Analysis of these voluntary surveys, coupled with program data, will improve consumer's energy utilization while reducing TVA's fuel costs and systems peak demand.

Dated: July 30, 1984.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 84-20809 Filed 8-6-84; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular on "Use of Alternate Grades of Aviation Gasoline for Grade 80/87 and Use of Automotive Gasoline"; Availability of

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advisory Circular (AC) Availability.

SUMMARY: This AC, which revises AC No. 91–33 dated October 6, 1971, provides information relating to the use of alternate grades of gasoline when Grade 80/87 aviation gasoline is not available, and the use of automotive gasoline in aircraft engines.

FOR FURTHER INFORMATION CONTACT: Mr. Locke Easton, Engine and Propeller Standards Staff, ANE–110, Aircraft Certification Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7330.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of the AC by writing to: Federal Aviation Administration, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

Background

Aviation gasoline demand has decreased steadily to a relatively insignificant portion of the total oil market. Escalating production costs and other factors have caused the oil industry to improve its economics by providing a single grade of aviation gasoline, Grade 100 low lead (100LL), which would be suitable for most current and projected piston aircraft engines. As a result, Grade 80 aviation gasoline has become increasingly difficult to obtain and this situation is expected to become more critical in the near future. The shortage, and perhaps eventual disappearance, of Grade 80 aviation gsoline affects those reciprocating engines which were originally certificated on 80/87 octane or lower grade fuel. The AC provides information relating to the use of alternate grades of gasoline when Grade 80/87 aviation gasoline is not available and to the resultant effects of the use of alternate fuels which have higher TEL (tetraethyl lead) content. This Circular also provides suggestions for added safety in the use of automotive gasoline in those aircraft engines and aircraft approved to use automotive gasoline. This AC revises AC No. 91–33 dated October 6, 1971.

This AC was originally issued as a draft AC on March 1, 1984, in the **Federal Register** with a request for comments. Interested parties commented on the draft AC and the final AC incorporates changes based on those comments. The AC and comments received may be inspected at the office of the Aircraft Certification Division, Engine and Propeller Standards Staff (ANE–110), Room 408, 12 New England Executive Park, Burlington, Massachusetts, betweeen the hours of 8:00 a.m. and 4:30 p.m. on weekdays, except Federal holidays.

Issued in Burlington, Massachusetts, on July 18, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84–20807 Filed 8–6–84; 8:45 am]

BILLING CODE 4910–13–M

Advisory Circular on Installation of Plastic Foam and Metallic Mesh in Fuel Tanks of Helicopters and Small Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Date Advisory Circular (AC) Availability and Request for Comments.

SUMMARY: This AC provides information and guidance concerning the installation of plastic foam and metallic mesh in fuel tanks of helicopters and small airplanes.

DATE: Commenters must identify File AC 20–XX; Subject: Installation of Plastic Foam and Metallic Mesh in Fuel Tanks of Helicopters and Small Airplanes, and comments must be received on or before September 21, 1984

ADDRESS: Send all comments on the proposed draft AC to: Federal Aviation Administration, ATTN: Regulations and Policy Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Yotter, Aerospace Engineer, Regulations and Policy Office (ACE–110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Commercial Telephone (816) 374–6941, or FTS 758–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited:

Interested parties are invited to submit comments on the proposed draft AC. The proposed draft AC and comments received may be inspected at the offices of the Regulations and Policy Office (ACE–110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

Background

The Federal Aviation Regulations (FAR's) do not require any device be installed in the fuel tanks specifically to prevent fire or to suppress explosion, however, protection against fire and explosion can be improved by installing baffles in the tanks. Plastic foam and metallic mesh are available for installation in aircraft fuel tanks to form baffles or a baffling system. These materials "fill" the tanks with dense-appearing, lightweight baffles which displace and retain only a small quantity or fuel (2 percent to 6 percent total). These baffles allow fuel, vapor, and air to flow throughout the tank while impeding slosh and slowing the rapid expulsion and misting of fuel in case of tank rupture caused by crash impact. In the case of ignition of a flammable mixture in a fuel tank from any source, the baffles mechanically interfere with propagation of the flame while the material absorbs heat and cools the combustion process. This allows any pressure buildup to dissipate and vent overboard before the pressure damages the tank.

Issued in Kansas City, Missouri.

Barry D. Clements,

Manager, Aircraft Certification Division.

[FR Doc. 84–20803 Filed 8–6–84; 8:45 am]

BILLING CODE 4910–13–M

New General Aviation Reliever Airport Fremont, CA.; Environmental Impact Statement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for a new general aviation reliever airport to be located at Fremont, California.

FOR FURTHER INFORMATION CONTACT: Herbert W. Hyatt Airport Planner, AWP–611.2, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009; Telephone (213) 536–6534.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the City of

Fremont, California, will prepare an Environmental Impact Statement (EIS) for a new general aviation reliever airport. The following projects will be evaluated in the EIS.

—Construction of parallel 3,000 foot and 3,500 foot runways
—Construction of a general aviation terminal
—Construction of aircraft parking aprons
—Construction of aircraft hangars
—Construction of aircraft taxiways
—Airport ground access
—Parking facilities
—Land acquisition
—Airport site preparation

The objective of the project is to provide a new general aviation reliever airport in order to relieve congestion and contribute to the safety of air travel to and from the San Francisco Bay area. The proposed project assumes industrial development of surrounding privately owned land. The proposed 286 acre airport site is located west of State Highway 17 within the area bounded by Durham Road, the Southern Pacific Railroad, Cushing Road and Pacific Gas and Electric Company transmission lines, in Fremont, California. Alternatives to the proposed action which will be examined include (1) development of the site for general or light industrial uses, (2) the no project alternative, and (3) consideration of other sites for airport development.

Scoping: To effect scoping, the Federal Aviation Administration (FAA) hereby solicits comments for consideration and possible incorporation in the Draft EIS. To ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments and suggestions should be sent to the FAA not later than August 31, 1984. Interested parties are invited to attend a scoping meeting at 10 a.m., Wednesday, August 15, 1984, City Government Building, 39700 Civic Center Drive, Fremont, California.

Issued in Hawthorne, California on July 13, 1984.

Russel S. Hathaway

Manager, Safety and Standards Branch Airports Division, FAA, Western-Pacific Region.

[FR Doc. 84-20808 Filed 8-6-84; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 23634]

Regulatory Negotiation Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C., App. I), notice is hereby given of the next meeting of the Regulatory Negotiation Advisory Committee for flight and duty time rulemaking to be held September 11-13, 1984, at the Quality Inn Pentagon City, 300 Army Navy Drive, Arlington, Virginia, commencing at 9:00 a.m.

The agenda for the meeting is as follows: the Committee will review comments received on Notice of Proposed Rulemaking (NPRM) 84-3, Flight Time Limitations and Rest Requirements for Flight Crewmembers (49 FR 12136; March 28, 1984), to determine whether it should recommend that the proposal be modified. Any necessary changes to the proposal would be negotiated by the Committee in the same manner as the NPRM.

The Committee should strive to resolve any remaining issues at this meeting as the Federal Aviation Administration intends to dissolve the Committee and proceed with prompt development of any rule changes as necessary based on Notice 84-3, comments received on that notice, and any additional recommendations provided by the Committee.

Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact Mr. William J. Sullivan, Executive Secretary, Regulatory Negotiation Advisory Committee, Office of Associate Administrator for Aviation Standards, 800 Independence Avenue, S.W., Washington, D.C. 20591, telephone 202-426-7815.

Based on the assumption that the Committee will resolve any remaining issues and recommend responses to the comments received on Notice 84-3 during the September meeting, one additional meeting would be required to review the draft final rule. Every attempt will be made to publish notice of such meeting as soon as practicable.

Issued at Washington, D.C., on August 1, 1984.

Fred Laird,

Acting Executive Secretary, U.S. Regulatory Negotiation Advisory Committee.

[FR Doc. 84-20805 Filed 8-6-84; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. EX80-1; Notice 2]

Lafer S.A.; Mootness of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards

This notice terminates action by the National Highway Traffic Safety Administration (NHTSA) on the petition by Lafer S.A. of Sao Paulo, Brazil, for a temporary exemption of its MP model from certain Federal motor vehicle safety standards on grounds of substantial economic hardship.

Notice of the petition was published on January 28, 1980 (45 FR 6531) and an opportunity afforded for comment. No comments were received on the petition.

Shortly after the due date for comments the petitioner informally asked the agency to defer a decision as, were an exemption granted at that point, Lafer would be unable immediately to take advantage of it. The U.S. agent for Lafer and its then-president, who filed the petition in 1979, informed NHTSA in June 1983 that he was no longer either its president or agent, and had not served in either capacity since June 1982. In May 1984, the consultant who assisted Lafer in preparing its exemption petition stated that he was unaware of any other organization representing Lafer and recommended that the agency close its files in this manner.

This notice reflects the agency's decision to terminate without decision further action on Lafer's petition for temporary exemption. This action, of course, is without prejudice to the company's right to submit a further petition requesting temporary exemptions.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); delegation of authority at 49 CFR 1.50)

Issued on August 2, 1984.

Diana K. Steed,

Administrator.

[FR Doc. 84-20928 Filed 8-6-84; 8:45 am]

BILLING CODE 4910-59-M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92-463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue, NW.,

Washinton, D.C. on September 12, 1984, at 8:30 a.m. The purpose of the meeting will be to assemble and analyze information concerning toxicological issues for which the Veterans Administration needs to formulate appropriate medical policy and procedures in the interest of veterans who may have encountered herbicidal chemicals used during the Vietnam Conflict.

The meeting will be open to the public up to the seating capacity of the room. Members of the public may direct questions, in writing only, to the Chairman, Barclay M. Shepard, M.D., and submit prepared statement for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Transcripts of the proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Agent Orange Projects Office (10A7), Department of Medicine and Surgery, Veterans Administration Central Office, Washington, D.C. 20420. (Telephone: (202) 376–7528).

Dated: July 30, 1984.

By direction of the Administrator.

Rosal Maria Fontanez,
Committee Management Officer.

[FR Doc. 84–20880 Filed 8–6–84; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 153
Tuesday, August 7, 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

	Item
Civil Aeronautics Board	1
Consumer Product Safety Commission	2, 3
Federal Reserve System	4, 5
Overseas Private Investment Corporation	6
Postal Rate Commission	7

1

CIVIL AERONAUTICS BOARD

[M-409 Amdt. 1, 8/1/84]

Notice of Deletion of Items From the August 2, 1984 Meeting

TIME AND DATE: 10:00 a.m., August 2, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

6. Docket 32484, Recovery of the Federal income tax allowances paid carriers under class Rate IX of the Local Service Class Subsidy Rate. (Memo 1928-A, BDA, OCCCA, OGC, OC)

18. Docket 42171, Application of Key Airlines, Inc., (Memo 2432, BIA, OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, [202] 673-5068.

[FR Doc. 84-20929 Filed 8-3-84; 9:07 am]
Billing Code 6320-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 49-31191.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Wednesday, August 8, 1984.

CHANGES IN THE MEETING: Revised to delete previous item 3 (FY '86 Priorities, rescheduled for 8/9/84) and add items 3 and 4.

Listed below is the revised agenda:

Commission Meeting, Wednesday, August 8, 1984, 10:00 a.m.
Third Floor Hearing Room, 1111—18th Street NW., Washington, D.C.

Open to the Public

1. Mattress Standard Amendment: Final Rule

The staff will brief the Commission on the draft final amendments to the Mattress Flammability Standard, 16 CFR, Part 1632.

Closed to the Public

2. Technical Advisory Panel on Allergic Sensitization: Membership Selection

The Commission will consider candidates for membership on the Technical Advisory Panel on Allergic Sensitization.

3. Enforcement Matter OS# 3520

The staff will brief the Commission on Enforcement Matter OS# 3520.

4. Enforcement Matter OS# 4560

The Commission will consider Enforcement Matter OS# 4560.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301—492-6800.

Sadye E. Dunn,
Secretary OS/CPSC

[FR Doc. 84-21006 Filed 8-3-84; 2:54 pm]
BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 49-31191.

PREVIOUSLY ANNOUNCED TIME AND PLACE OF MEETING: Thursday, August 9, 1984.

CHANGES IN THE MEETING: Revised to add item 1, and to delete previous items 2 and 3 (Enforcement Matters, rescheduled for 8/8/84).

Listed below is the revised agenda:

Commission Meeting, Thursday, August 9, 1984, 10:00 a.m.
Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

Open to the Public

1. FY 86 Priorities

The Commission will consider Fiscal Year 1986 priorities.

2. Export Policy, CPSA & FHSA; Proposed Codification

The staff will brief the Commission on a draft **Federal Register** notice concerning the Commission's policy with regard to export of noncomplying, banned and misbranded products. The draft notice proposes the statement of export policy and the factors to be considered when acting on requests for exception and solicits written comments from all interested parties.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301—492-6800.

Sadye E. Dunn,
Secretary, OS/CPSC

[FR Doc. 84-21007 Filed 8-3-84; 8:45 am]
BILLING CODE 6355-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Friday, August 10, 1984, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph H. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 2, 1984.

William W. Wiles,
Secretary of the Board.

[FR Doc. 84-20948 Filed 8-3-84; 10:35 am]
BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

TIME AND DATE: 10:00 a.m., Friday, August 10, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed extension of Uniform Form for Registration as a Transfer Agent (Form TA–1.)
2. Proposed extension and revisions of the Consumer Satisfaction Questionnaire (FR 1379.)

Discussion Agenda:

3. Proposed issuance of two papers by the Federal Reserve concerning: (1) Its role in the payment system; and (2) standards related to its priced services activities.
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: August 2, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84–20975 Filed 8–3–84; 11:58 am]

BILLING CODE 6210–01–M

6

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors.

TIME AND DATE: 9 a.m. (closed portion), 10 a.m. (open portion). Tuesday, August 14, 1984.

PLACE: Offices of the Corporation, seventh floor Board Room, 1129 20th Street NW., Washington D.C.

STATUS: The first part of the meeting from 9 a.m. to 10 a.m. will be closed to the public. The open portion of the meeting will start at 10 a.m.

MATTERS TO BE CONSIDERED: (Closed to the public 9 a.m. to 10 a.m.).

1. Finance Project in South American Country.
2. Insurance Project in Middle East Country.
3. Insurance Project in South American Country.
4. Insurance Project in East Asian Country.
5. Proposed OPIC Budget for FY 86 and Proposed Amendments for FY 85.
6. Claims Report.
7. Information Report: Finance Projects.
8. Information Reports: General.
9. China Projects Report.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 10 a.m.).

1. Approval of the Minutes of the Previous Meeting.
2. Confirmation of Scheduled Board Meetings.
3. Personnel Matters.
4. Allocation of Retained Earnings.
5. Financial Statements.
6. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 653–2925.

August 2, 1984.

Elizabeth A. Burton,

Corporate Secretary.

[FR Doc. 84–20971 Filed 8–3–84; 11:45 am]

BILLING CODE 3210–01–M

7

POSTAL RATE COMMISSION

TIME AND DATE: Periodic meetings scheduled on short notice during the business day in the period August 6–17, 1984.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The interlocutory matters in Docket No. R84–1, Postal Rate and Fee Changes.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone (202) 254–3880.

Charles L. Clapp,

Secretary.

[FR Doc. 84–20965 Filed 8–3–84; 11:34 pm]

BILLING CODE 7715–01–M

federal register

Tuesday
August 7, 1984

Part II

General Services Administration

Department of Defense

Department of Housing and Urban Development

Postal Service

Uniform Federal Accessibility Standards

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

POSTAL SERVICE

Uniform Federal Accessibility Standards

AGENCIES: General Services Administration, Department of Defense, Department of Housing and Urban Development, United States Postal Service.

ACTION: Uniform Federal Accessibility Standards document.

SUMMARY: This document presents uniform standards for the design, construction, and alteration of buildings so that physically handicapped persons will have ready access to and use of them in accordance with the Architectural Barriers Act, 42 U.S.C. 4151–4157. Issuance of this document follows consideration of public comments received on proposed uniform standards and involved close cooperation with the staff of the Architectural and Transportation Barriers Compliance Board. The document reflects an agreed way to minimize the differences between the standards adopted by the four agencies (the General Services Administration, Departments of Housing and Urban Development and Defense, and United States Postal Service) authorized to issue standards under the Architectural Barriers Act, and between those standards and the access standards recommended for nonFederally funded and constructed facilities. This document meets or exceeds the requirements in the ATBCB's Minimum Guidelines and Requirements for Accessible Design, 36 CFR Part 1190.

FOR FURTHER INFORMATION CONTACT: Kathleen Fields, General Services Administration (GSA), 18th and F Streets, NW, Room 3044, Washington, D.C. 20405, 202–566–0038; Judith Gilliom, Department of Defense (DOD), Equal Opportunity and Safety Policy, Room 3E317, The Pentagon, Washington, D.C. 20301, 202–697–8661; Margaret Milner, Department of Housing and Urban Development (HUD), 451 7th Street, SW, Room 9220, Washington, D.C. 20410, 202–755–6454; and Louis E. Childers, Real Estate and Buildings Department, U.S. Postal Service (USPS), 475 L'Enfant Plaza West, SW, Washington, D.C. 20260–6415, 202–245–4226. For TDD communication, call Margaret Milner (HUD), 202–755–7149 or 755–6132. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. Background

An invitation for public comment on a proposed Uniform Federal Accessibility Standards (UFAS) document was published in the **Federal Register** on April 29, 1983 (48 FR 19610). The proposal grew out of an effort by the four agencies named above to establish greater uniformity in the standards they promulgate under the Architectural Barriers Act (the Barriers Act), 42 U.S.C. 4151–4157, for the design, construction, or alteration of Federal and Federally-funded buildings and other facilities, so as to make them readily accessible to and usable by physically handicapped persons.

The Barriers Act was the first Federal legislation requiring certain Federal and Federally-funded building construction to be readily accessible. It designated the four agencies as standard-setting agencies, requiring each of them to establish and enforce standards for design, construction and alteration of particular types of buildings and facilities. The General Services Administration (GSA) prescribes standards for all buildings subject to the Act that are not covered by standards issued by the other three standard-setting agencies; the Department of Defense (DOD) prescribes standards for DOD installations; the Department of Housing and Urban Development (HUD), for residential structures covered by the Barriers Act; and the U.S. Postal Service, for postal facilities. Each of the four agencies issues standards in accordance with its statutory authority (GSA, 41 CFR 101–19.6; DOD, Department of Defense Construction Criteria Manual, DOD 4270.1–M; HUD, 24 CFR Part 40; and USPS, Handbook RE–4/Nov. 1979, Standards for Facility Accessibility by the Physically Handicapped").

To ensure compliance with the standards, Congress established the Architectural and Transportation Barriers Compliance Board (ATBCB) in Section 502 of the Rehabilitation Act of 1973 (The Rehabilitation Act), 29 U.S.C. 792. The ATBCB comprises members representing eleven Federal agencies (the four standard-setting agencies, the Department of Education, Health and Human Services, Interior, Justice, Labor and Transportation, and the Veterans Administration), and eleven members appointed by the President from the general public. A 1978 amendment to Section 502 of the Rehabilitation Act added to the ATBCB's functions the responsibility to issue minimum guidelines and requirements (Guidelines) for the standards established by the four standard-setting agencies. The final rule establishing the Guidelines now in effect was published in the **Federal Register** on August 4, 1982 (47 FR 33862) and is codified at 36 CFR Part 1190.

The four standard-setting agencies initiated their effort to develop a uniform set of standards for use by all the agencies several years ago. In support of this effort, the Director of the Office of Management and Budget on June 22, 1981, requested the head of each of the four standard-setting agencies, the ATBCB, and the other Federal agency members of the ATBCB to designate a representative to participate in a Task Force. The Task Force determined that the proposed uniform standards would, wherever possible, be consistent with the standards published by the American National Standards Institute (ANSI) for general use while complying with the Guidelines adopted by the ATBCB.

ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's standards for barrier-free design are developed by a committee made up of 52 organizations representing associations of handicapped people, rehabilitation professionals, design professionals, builders and manufacturers. The standards, which are called ANSI A117.1., "Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People," are developed using the consensus process. The original ANSI A117.1, adopted in 1961, formed the technical basis for the first accessibility standards adopted by the Federal government and most state governments. The current edition, ANSI A117.1–1980, is based on research funded by HUD. It has generally been accepted by the private sector and has been recommended for use in model state and local building codes by the Council of American Building Officials.

In keeping with the agencies' objective to secure uniformity between Federal requirements and those commonly used in private practice or by state and local governments, the UFAS follows ANSI A117.1–1980 in format. Both the UFAS scope provisions, which establish the minimum number of elements and spaces required to comply with standards, and UFAS technical requirements meet or exceed the comparable provisions contained in the Guidelines.

B. Provisions of the Proposal

The UFAS consists of nine parts and an appendix. This organization reflects some changes in certain elements of the format as published in the proposed standard. Proposed Parts 11, *Historic Preservation*, and 12, *Alterations*, have been incorporated in section 4.1, *Minimum Requirements*, of part 4, *Accessible Elements and Spaces: Scope and Technical Requirements*. They now appear as 4.1.6, *Accessible Buildings: Alternations*, and 4.1.7, *Accessible Buildings: Historic Preservation*. A new 4.1.5, *Accessible Buildings: Additions*, has been added to incorporate provisions on this subject consistent with those contained in the Guidelines. *Transportation*, part 6 in the proposed standards, has been deleted from the final document pending further efforts by the Department of Transportation and the ATBCB to recommend appropriate specifications for a Federal standard for pedestrian grade separations. In addition, proposed subsection 4.1.1 has been revised to eliminate certain items that duplicated provisions of 4.1.2.

The first part of the final UFAS document briefly states the reasons for developing the UFAS and the intent of achieving uniformity with ANSI A117.1–1980. Here and throughout the document the text has been underlined wherever it differs from, or adds to, ANSI A117.1–1980. Captions on figures which differ from ANSI are in italics.

The second part identifies the authority under which the standard-setting agencies have jointly issued the document.

The third part contains miscellaneous instructions and definitions to facilitate use of the standards. In general, this part is the same as ANSI. For greater clarity, several definitions have been included which are not contained in ANSI.

Parts four through nine contain the scope and technical provisions of the uniform standards. The technical provisions are based on the ANSI A117.1–1980. The departures from ANSI in the UFAS reserve certain parts, modify certain parts, and add certain requirements which either reflect the unique nature of certain buildings and facilities subject to the Act or which are in the interest of improved safety or access for handicapped people.

Reserved provisions include window requirements, external door opening force limits, and the use of tactile warnings other than at doors to hazardous areas. There are no provisions on these subjects in the Guidelines because they either require additional research, possibly could be replaced by more cost-effective provisions, or could impose serious administrative or design problems.

In some instances, the UFAS contains specifications that are not included in the Guidelines to present additional details necessary for designers. The principal areas reserved by the Guidelines but covered by UFAS are 4.10.8, *Elevators*, and 4:30, *Signage* (36 CFR 1190.31(p), *Signage*, and 1190.100(c)(2), *Elevator door operation*, in the Guidelines).

While the agencies support the ATBCB decision to reserve those portions of the Guidelines pending further research, they also believe that these important and, in the case of elevators, essential, elements need to be subject to uniform standards in the interim. Therefore the UFAS prescribes criteria consistent with those now in effect in both Federal standards and major model building codes as well as in most state and local codes. These criteria are all based on ANSI A117.1–1980. These provisions can be amended, if necessary, after provisions on these subjects are included within the Guidelines.

In addition, the Guidelines reserve Supart E, *Special Building and Facility Types and Elements*, for future development. The Barriers Act recognizes the particular expertise of each of the four standard-setting agencies for specific building types, and the ATBCB has stated its intention to accept the UFAS standards until such time as the ATBCB has developed Guidelines for Subpart E. Accordingly, the four standard-setting agencies, with the participation of other agency members of the ATBCB and the ATBCB staff, have developed provisions to govern design of special building and facility types, and have incorporated those provisions into the UFAS.

C. Response to Public Comment

Sixty-five comments concerning the proposed standards were received. The largest single group of comments, fifteen in all, was received from members or employees of the three branches of the federal government—one comment from the judiciary branch, two from members of Congress, and the remaining 12 from exectutive agencies. Twelve comments were received from agencies of State and local governments, and another six from State and local government offices for handicapped people.

Representatives of Business and professional interests, including manufacturers, associations of builders and building managers, and similar organizations, submitted 12 comments. Ten organizations of or for handicapped people responded to the invitation, and five individuals commented (one individual submitted two separate comments). Three associations concerned with building codes or compliance commented, one commenting twice.

1. General

Forty-four comments concerned individual items in proposed subsection 4.1.4, *Use Groups*. Specific technical provisions were commented on a total of 137 times. The remainder of the comments were general in nature, with the majority expressing support for the UFAS.

Two individuals generally opposed the UFAS for not addressing sufficiently the needs of handicapped people, but they did not propose specific changes. One individual opposed UFAS for being excessively costly. Another individual submitted statistical information from Federal sources in support of the position that the proposed required percentages of accessible elements such as parking spaces and dwelling units were disproportionately high.

The standard-setting agencies believe that the uniform standards in this document will result in buildings and facilities that uniformly will provide ready access and usability for handicapped people. The fact that opposing comments were divided between those seeking more stringent accesibility requirements and those seeking less, suggests that the UFAS represents a balanced position. The legitimate access needs of handicapped people must be met at the same time as other construction requirements, such as fire protection, energy conservation, or sanitation, are observed, all within the budget constraints that face each funding agency.

Almost one-third of the commenters specaifically supported the concept of a uniform standard for Federal agencies and the format in which UFAS was proposed. Many commenters specifically supported the proposal of the agencies to follow ANSI's format, and encouraged further efforts to align the Federal standards with private and State standards. In this document, as in the proposal, the departures from the ANSI standards as limited to changes necessary either for consistency with the ATBCB Guidelines or to address concerns specific to Federal construction.

Some commenters were concerned that the proposed UFAS might not comply with the ATBCB Guidelines. As noted earlier, the standard-setting

agencies had been joined by other agencies (all Federal members of the ATBCB) and representatives of the ATBCB staff in developing the proposal. After publication of the proposal, extensive comments from the ATBCB staff were received and reviewed. The standard-setting agencies worked closely with ATBCB staff to resolve outstanding issues. Members of the ATBCB, in committees and as a Board, reviewed and approved the staff resolution of issues.

A number of comments recommended changes that would have conflicted with the Guidelines. None of these comments were adopted. All will be referred to the ATBCB for future consideration.

Several commenters requested clarification of particular drawings, including figures 9 (illustrating 4.6.3, *Parking)* and 27 (illustrating 4.15, *Drinking Fountains).* These and other similar change have been made.

Some comments questioned certain aspects of the application or scope of the standards. One category of these comments concerned the extent of application to leased buildings. UFAS consists of design and construction standards to be applied to new construction or alterations. Thus, if a leased building covered by the Barriers Act is altered, applicable provisions of these standards would apply. The determination of whether or when a leased buliding must be altered is outside the cope of the UFAS design standards. The ATBCB Guidelines express no position of this issue. Coverage of leased buildings will be addressed by each of the standard-setting agencies in their implementing directives or regulations.

Other comments suggested the UFAS should include provisions determining when existing buildings or their elements must be made accessible and which elements of such buildings are essential to access. Such determinations are not made under the Barriers Act because it requires buildings and facilities or their elements to be made accessible at the time of construction or alteration. To the extent that such determination must be made under other legislation, such as Section 504 of the Rehabilitation Act, provisions regulating them should be included in the appropriate implementing regulations rather than UFAS.

Another category in this group of comments recommended that waiver procedures and criteria be included in the uniform standards. This is a matter that also does not relate to design standards. Waiver procedures are established by each agency in implementing regulations or directives.

The State of Alaska contended that some provisions should not apply in Alaska because of its unique climate and terrain. For the time being, the agencies have decided not to complicate UFAS with exceptions of the charter proposed. Any such situation can be appropriately handled by modification or waiver on a case-by-case basis.

2. Technical Comments

Definitions (3.5). Thirteen comments were received on individual definitions. Changes in definitions reflect comments received. Several regional, State, and local transportaion authorities endorsed the proposed definition of "facility," which excluded an element of a transportation system (such as a stairway or bridge) that was constructed independently of buildings, structures, or areas in the system unless the element provided the sole means of access to such facility. The ATBCB objected to this exclusion because they believed it to be inconsistent with the Architectural Barriers Act Coverage of fixed transportation facilities. As a result, the definition has been changed. The agencies and the ATBCB will continue to work with the Department of Transportation to develop access standards for these system elements.

Occupancy Categories (4.1.4). This provision, entitled *Use Groups* in the proposed standard, was revised to conform to the model format developed by the Board for Coordination of the Model Codes of the Council of American Building Officials (CABO) and to incorporate editorial revisions that were requested by the ATBCB.

Several comments were received questioning the proposed exceptions for military facilities. The language pertaining to military family housing has been revised to reflect DOD's policy of altering such housing as needed. The exclusions, in both the proposed and the final document, for certain military facilities used primarily be able-bodied personnel, is based on the specific language in section 1 of the Barriers Act.

The only departure from the format recommended by CABO is in 4.1.4(8), *Institutional,* which corresponds to 4.1.4(5), *Health Care,* in the proposed document. This was done in order to accommodate the need for terminology and classifications that would be consistent with ongoing programs in the three Federal agencies (DOD, VA and HHS) concerned with institutional construction.

Provisions for residential occupancies in 4.1.4(10) (proposed as 4.1.4(7), *Housing*) were the subject of ten comments. Some objected to the percentage requirements for accessible units, with one national organization and one of its local chapters recommending that ten pecent of the units in all elevator projects be accessible and that the remainder of the units be adapatable so that they could readily be made accessible. Section 4.34, *Dwelling Units,* esablishes that either an accessible or an adaptable unit will fulfill the requirements of 4.1.4(10). The legislative history of the Barriers Act clearly acknowledges that, in residential construction, only a portion of the units in any building would be expected to conform with accessibility standards. Five percent, or at least one unit, is believed to be an appropriate requirement in view of the fact that wheelchair users, the single group most likely to require the full range of accessibility features, constitute less than one percent of the entire population (excluding people confined to institutions).

One study, based on the 1977 National Health Interview Survey, estimated that 645,000 people use wheelchairs, about half of them all of the time. A 1977 Department of Transportation study estimated wheelchair users at 409,200, while a November 28, 1979 paper developed by staff at the then-Department of Health, Education, and Welfare postulated a population of one million wheelchair users, two-thirds of whom were over 65. Since our national population exceeds 200 million, the percentage of accessible units required by the UFAS thus far exceeds, in relativie terms, the actual percentage of our total population that needs accessible dwelling units.

The majority of handicapped people do not need the full range of features required in a unit that complies with accessibility standards. Particular adaptations needed by people with sight or hearing impairments, for example, can be made in any unit.

Other comments concerned the provision which allows the number of accessible dwelling units to be determined by assessments of local needs. The proposal was acceptable to most commenters if such assessments were subject to approval by an administrative authority. The final standards incorporate revisions to establish a requirement for Federal approval of local needs assessments. It was also proposed in this regard that advocacy groups might conduct such assessments when the unit of local government did not. The term "conducted by local government bodies or states" in the final document is not intended to preclude studies done either by organizations serving handicapped

people or other private groups on behalf of or in cooperation with units of local government.

In 1981 the Comptroller General issued a Report to Congress (B–197756, June 19, 1981) entitled "Weaknesses in the Planning and Utilization of Rental Housing or Persons in Wheelchairs." The report found that only 27 percent of the 847 accessible housing units surveyed were occupied by individuals using wheelchairs. A principal recommendation of the report called for the numbers of accessible units in housing projects to be determined by local market analysis rather than a fixed percentage requirement.

Since estimates of the population using wheelchairs indicate that five percent of dwelling units provides accommodation in excess of the actual representation of the group in the total population, and since many units of government may not have the necessary resources or capacity to conduct adequate needs assessments, the five percent option in the final document allows governing bodies to choose the approach most appropriate to local circumstances. To assist those who choose to conduct local needs assessments, HUD has awarded a contract for development of a resource guide that will evaluate various approaches to assessing housing needs and provide guidance on selecting methodologies and conducting the assessments.

Historic Preservation (4.1.7). Based on comments by the National Trust for Historic Preservation and the ATBCB, the proposed part 11 has been revised to provide that the Advisory Council on Historic Preservation will advise the agency concerned when the normal application of an accessibility requirement to an element would threaten or destroy the architectural integrity of the historic structure.

Design Criteria (4.2–4.34 and 5–9). The agencies did not adopt any of the suggestions they received which would have required them to depart from their decision to align the UFAS with the Guidelines. For example, comments from the elevator industry asserted that there were technical problems with the prohibition against recessed car control and hall call buttons in 4.10, *Elevators.* The industry suggested that a better approach to ensuring operability is to specify instead the maximum depression required to activate the control, thus allowing recessed buttons. However, recessed buttons would not be consistent with the Guidelines. All such public comments will be referred to the ATBCB for consideration in future revisions to the Guidelines.

Another comment, written by an individual with impaired vision, objected to the adequacy of many of the provisions that provide warnings to visually impaired people. For example, the proposed 27-inch maximum height from the floor for objects protruding into corridor space was felt to permit protrusions that were too high to be detected by a person using a cane. Research for the ANSI concerning the use of long canes established that cane users could detect objects up to 27 inches above the floor. This maximum height is consistent with other current codes and standards. Until such time as further research supports a change, the agencies believe that the maximum height now in use, and contained in these standards, should continue to be prescribed.

Other commenters objected to the proposed reservation of certain provisions, concerning tactile warnings, windows, and exterior door opening forces, because they considered these elements to be too important to omit. These areas continue to be reserved. Tactile warnings are reserved because of questions concerning the safety and effectiveness of certain applications of such warnings. The ATBCB currently is funding research on this topic which is expected to provide some guidance for future development of specifications for tactile warnings. Window specifications are reserved because of lack of research, and exterior door opening forces because of conflicting research findings.

Furnishings. Two commenters urged that the standards specifically exlcude custom-designed furniture and movable furnishings in order to make clear that such items are not covered by the Barriers Act. In light of two decisoins by administrative law judges reasoning that furnishings which are not part of the building are not covered by the Barriers Act, the agencies considered this to be a valid point and have revised the appropriate sections accordingly.

D. Implementation

Each standard-setting agency intends to take appropriate action, in accordance with its own procedures, including internally-prescribed rulemaking and the Administrative Procedure Act where applicable, to incorporate the UFAS in its own standards, regulations, or other directives. In separate publications elsewhere in this issue of the **Federal Register**, HUD is issuing a final rule amending 24 CFR Part 40 to reference these standards, and GSA is publishing a similar amendment to the Federal Property Management Regulations, 41 CFR Part 101–19. DOD and USPS intend to take timely administrative action to adopt the UFAS.

In addition, agencies choosing to apply Barriers Act standards to any design, construction, or alteration of buildings and facilities used in programs or activities required to be conducted without discrimination by Section 504 of the Rehabilitiation Act may wish to adopt UFAS as a part of their regulations under that section. If agencies choose to take such action, Parts 3, *Miscellaneous Instructions and Definitions*, 4, *Accessible Elements and Spaces: Scope and Technical Requirements* and 5 through 9, covering special facility types, should be used as technical standards. Parts 1 and 2 would of course need to be adapted by the individual agencies to suit the programs and activities conducted under their own authority.

E. Conclusion

In view of the foregoing considerations, the four standard-setting agencies issue this Uniform Federal Accessibility Standards document.

Dated: August 2, 1984.

Ray Kline,

Acting Administrator, General Services Administration.

Lawrence J. Korb,

Assistant Secretary of Defense for Manpower, Installations and Logistics, Department of Defense.

Philip Abrams,

Under Secretary, Department of Housing and Urban Development.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration, Law Department, United States Postal Service.

BILLING CODE 6820-23-M, 3810-01-M, 4210-32-M, 7710-12-M

UNIFORM FEDERAL ACCESSIBILITY STANDARDS

1. PURPOSE

2. GENERAL

2.1 Authority
2.2 Provisions for Adults and Children

3. MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS

3.1 Graphic Conventions
3.2 Dimensional Tolerances
3.3 Notes
3.4 General Terminology
3.5 Definitions

4. ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS.

4.1 Minimum Requirements

4.1.1 Accessible Sites and Exterior Facilities: New Construction.
4.1.2 Accessible Buildings: New Construction.
4.1.3 Accessible Housing.
4.1.4 Occupancy Classifications.
4.1.5 Accessible Buildings: Additions.
4.1.6 Accessible Buildings: Alterations.
4.1.7 Accessible Buildings: Historic Preservation.

4.2 Space Allowances and Reach Ranges
4.3 Accessible Route
4.4 Protruding Objects
4.5 Ground and Floor Surfaces
4.6 Parking and Passenger Loading Zones
4.7 Curb Ramps
4.8 Ramps
4.9 Stairs
4.10 Elevators
4.11 Platform Lifts
4.12 Windows
4.13 Doors
4.14 Entrances
4.15 Drinking Fountains and Water Coolers
4.16 Water Closets
4.17 Toilet Stalls
4.18 Urinals
4.19 Lavatories and Mirrors
4.20 Bathtubs
4.21 Shower Stalls
4.22 Toilet Rooms
4.23 Bathrooms, Bathing Facilities, and Shower Rooms
4.24 Sinks
4.25 Storage
4.26 Handrails, Grab Bars, and Tub and Shower Seats

4.27 Controls and Operating Mechanisms
4.28 Alarms
4.29 Tactile Warnings
4.30 Signage
4.31 Telephones
4.32 Seating, Tables, and Work Surfaces
4.33 Assembly Areas
4.34 Dwelling Units

5. Restaurants and Cafeterias

6. Health Care

7. Mercantile

8. Libraries

9. Postal Facilities

APPENDIX

1. PURPOSE

This document sets standards for facility accessibility by physically handicapped persons for Federal and federally-funded facilities. These standards are to be applied during the design, construction, and alteration of buildings and facilities to the extent required by the Architectural Barriers Act of 1968, as amended.

The technical provisions of these standards are the same as those of the American National Standard Institute's document A117.1-1980, except as noted in this text by underscoring and on figures by italics.

2. GENERAL

2.1 AUTHORITY. These standards are jointly developed by the General Services Administration, the Department of Housing and Urban Development, the Department of Defense, and the United States Postal Service, under the authority of sections 2, 3, 4, and 4a, respectively, of the Architectural Barriers Act of 1968, as amended, Pub. L. No. 90-480, 42 U.S.C. 4151-4157.

2.2 PROVISIONS FOR ADULTS. The specifications in these standards are based upon adult dimensions and anthropometrics.

3. MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS.

3.1 GRAPHIC CONVENTIONS. Graphic conventions are shown in Table 1. Dimensions that are not marked "minimum" or "maximum" are absolute, unless otherwise indicated in the text or captions.

3.2 DIMENSIONAL TOLERANCES. All dimensions are subject to conventional building industry tolerances for field conditions.

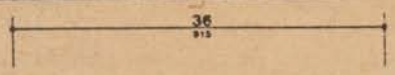
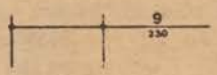
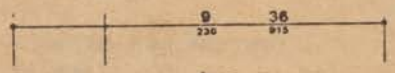
3.3 NOTES. The text of these standards does not contain notes or footnotes. Additional information, explanations, and advisory materials are located in the Appendix. Paragraphs marked with an asterisk have related, nonmandatory material in the Appendix. In the Appendix, the corresponding paragraph numbers are preceded by an A.

3.4 GENERAL TERMINOLOGY.

Comply with. Meet one or more specifications of this standard.

if, if...then. Denotes a specification that applies only when the conditions described are present.

Table 1
Graphic Conventions

Convention	Description
	Typical dimension line showing U.S. customary units (in inches) above the line and SI units (in millimeters) below
	Dimensions for short distances indicated on extended line
	Dimension line showing alternate dimensions required
	Direction of approach
max	Maximum
min	Minimum
.....	Boundary of clear floor area
	Centerline

may. Denotes an option or alternative.

shall. Denotes a mandatory specification or requirement.

should. Denotes an advisory specification or recommendation.

3.5 DEFINITIONS. The following terms shall, for the purpose of these standards, have the meaning indicated in this section.

Access Aisle. An accessible pedestrian space between elements such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

Accessible. Describes a site, building, facility, or portion thereof that complies with these standards and that can be approached, entered, and used by physically disabled people.

Accessible Element. An element specified by these standards (for example, telephone, controls, and the like).

Accessible Route. A continuous unobstructed path connecting all accessible elements and spaces in a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts.

Accessible Space. Space that complies with these standards.

Adaptability. The ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of either disabled or nondisabled persons, or to accommodate the needs of persons with different types or degrees of disability.

Addition. An expansion, extension, or increase in the gross floor area of a building or facility.

Administrative Authority. A governmental agency that adopts or enforces regulations and standards for the design, construction, or operation of buildings and facilities.

Alteration. As applied to a building or structure, means a change or rearrangement in the structural parts or elements, or in the means of egress, or in moving from one location or position to another. It does not include normal maintenance and repair, reroofing, interior decoration, or changes to mechanical and electrical systems.

Assembly Area. A room or space accommodating fifty or more individuals for religious, recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink, including all connected rooms or spaces with a common means of egress and ingress. Such areas as conference rooms would have to be accessible in accordance with other parts of this standard but would not have to meet all of the criteria associated with assembly areas.

Automatic Door. A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch mounted on or near the door itself (see power-assisted door).

Circulation Path. An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

Clear. Unobstructed.

Common Use. Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, residents of an apartment building, the occupants of an office building, or the guests of such residents or occupants).

Cross Slope. The slope that is perpendicular to the direction of travel (see running slope).

Curb Ramp. A short ramp cutting through a curb or built up to it.

Dwelling Unit. A single unit of residence which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. A single family home is a dwelling unit, and dwelling units are to be found in such housing types as townhouses and apartment buildings.

Egress, means of. An accessible route of exit that meets all applicable code specifications of the regulatory building agency having jurisdiction over the building or facility.

Element. An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, water closet.

Entrance. Any access point to a building or portion of building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s). The principal entrance of a building or facility is the main door through which most people enter.

Essential Features. Those elements and spaces that make a building or facility usable by, or serve the needs of, its occupants or users. Essential features include but are not limited to entrances, toilet rooms, and accessible routes. Essential features do not include those spaces that house the major activities for which the building or facility is intended, such as classrooms and offices.

Extraordinary repair. The replacement or renewal of any element of an existing building or facility for purposes other than normal maintenance.

Facility. All or any portion of a building, structure, or area, including the site on which such building, structure or area is located, wherein specific services are provided or activities performed.

Full and Fair Cash Value. Full and fair cash value is calculated for the estimated date on which work will commence on a project and means:

(1) The assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation, or
(2) The replacement cost, or
(3) The fair market value.

Functional Spaces. The rooms and spaces in a building or facility that house the major activities for which the building or facility is intended.

Housing. A building, facility, or portion thereof, excluding inpatient health care facilities, that contains one or more dwelling units or sleeping accommodations. Housing may include, but is not limited to, one and two-family dwellings, apartments, group homes, hotels, motels, dormitories, and mobile homes.

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

Multifamily Dwelling. Any building containing more than two dwelling units.

Operable Part. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, pushbutton, handle).

Physically handicapped. An individual who has a physical impairment, including impaired sensory, manual, or speaking abilities, which results in a functional limitation in access to and use of a building or facility.

Power-assisted Door. A door used for human passage with a mechanism that helps to open the door, or relieve the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself. If the switch or door is released, such doors immediately begin to close or close completely within 3 to 30 seconds (see automatic door).

Public Use. Describes interior or exterior

rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

Ramp. A walking surface in an accessible space that has a running slope greater than 1:20.

Running Slope. The slope that is parallel to the direction of travel (see cross slope).

Service Entrance. An entrance intended primarily for delivery of services.

Signage. Verbal, symbolic, tactile, and pictorial information.

Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Site Improvement. Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

Sleeping Accommodations. Rooms in which people sleep, for example, dormitory and hotel or motel guest rooms.

Space. A definable area, e.g., toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.

Structural impracticability. Changes having little likelihood of being accomplished without removing or altering a load-bearing structural member and/or incurring an increased cost of 50 percent or more of the value of the element of the building or facility involved.

Tactile. Describes an object that can be perceived using the sense of touch.

Tactile Warning. A standardized surface texture applied to or built into walking surfaces or other elements to warn visually impaired people of hazards in the path of travel.

Temporary. Applies to facilities that are not of permanent construction but are extensively used or essential for public use for a given (short) period of time, for example, temporary classrooms or classroom buildings at schools and colleges, or facilities around a major construction site to make passage accessible, usable, and safe for everybody. Structures directly associated with the actual processes of major construction, such as porto potties, scaffolding, bridging, trailers, and the like, are not included. Temporary as applied to elements means installed for less than 6 months and not required for safety reasons.

Vehicular Way. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

4. ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS.

4.1 MINIMUM REQUIREMENTS.

4.1.1 ACCESSIBLE SITES AND EXTERIOR FACILITIES: NEW CONSTRUCTION. An accessible site shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading zones if provided, and public streets or sidewalks to an accessible building entrance.

(2) At least one accessible route complying with 4.3 shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(3) All objects that protrude from surfaces or posts into circulation paths shall comply with 4.4.

(4) Ground surfaces along accessible routes and in accessible spaces shall comply with 4.5.

(5) (a) If parking spaces are provided for employees or visitors, or both, then accessible spaces,

complying with 4.6, shall be provided in each such parking area in conformance with the following table:

Total Parking in Lot	Required Minimum number of accessible spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	*
1001 and over	**

* 2 percent of total.
** 20 plus 1 for each 100 over 1000.

EXCEPTION: The total number of accessible parking spaces may be distributed among parking lots, if greater accessibility is achieved.

EXCEPTION: This does not apply to parking provided for official government vehicles owned or leased by the government and used exclusively for government purposes.

(b) If passenger loading zones are provided, then at least one passenger loading zone shall comply with 4.6.5.

(c) Parking spaces for side lift vans are accessible parking spaces and may be used to meet the requirements of this paragraph.

(d) Parking spaces at accessible housing complying with Section 4.6 shall be provided in accordance with the following:

(1) Where parking is provided for all residents, one accessible parking space shall be provided for each accessible dwelling unit; and

(2) Where parking is provided for only a portion of the residents, an accessible parking space shall be provided on request of the occupant of an accessible dwelling unit;

(3) Where parking is provided for visitors, 2% of the spaces, or at least one, shall be accessible.

(e) Parking spaces at health care facilities complying with Section 4.6 shall be provided in accordance with the following:

(1) General health care facilities, employee and visitor parking: Comply with Table 4.1.1(5)(a);

(2) Outpatient facilities: 10% of the total number of parking spaces provided;

(3) Spinal cord injury facilities, employee and visitor parking: 20% of total parking spaces provided.

(6) If toilet facilities are provided on a site, then each such public or common use toilet facility shall comply with 4.22. If bathing facilities are provided on a site, then each such public or common use bathing facility shall comply with 4.23.

EXCEPTION: These provisions are not mandatory for single user portable toilet or bathing units clustered at a single location; however, at least one toilet unit complying with 4.22 or one bathing unit complying with 4.23 should be installed at each location whenever standard units are provided.

(7) All signs shall comply with 4.30. Elements and spaces of accessible facilities which shall be identified by the International Symbol of Accessibility are:

(a) Parking spaces designated as reserved for physically handicapped people;
(b) passenger loading zones;

(c) accessible entrances;
(d) accessible toilet and bathing facilities.

4.1.2 ACCESSIBLE BUILDINGS: NEW CONSTRUCTION. Accessible buildings and facilities shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility.

(2) All objects that overhang circulation paths shall comply with 4.4.

(3) Ground and floor surfaces along accessible routes and in accessible rooms and spaces shall comply with 4.5.

(4) Stairs connecting levels that are not connected by an elevator shall comply with 4.9.

(5) One passenger elevator complying with 4.10 shall serve each level in all multi-story buildings and facilities. If more than one elevator is provided, each elevator shall comply with 4.10.

EXCEPTION: Elevators pits, elevator penthouses, mechanical rooms, piping or equipment catwalks are excepted from this requirement.

EXCEPTION: Accessible ramps complying with 4.8 or, if no other alternative is feasible, accessible platform lifts complying with 4.11 may be used in lieu of an elevator.

(6) Windows. Reserved.

(7) Doors:

(a) At each accessible entrance to a building or facility, at least one door shall comply with 4.13.

(b) Within a building or facility, at least one door at each accessible space shall comply with 4.13.

(c) Each door that is an element of an accessible route shall comply with 4.13.

(d) Each door required by 4.3.10, Egress, shall comply with 4.13.

EXCEPTION: In multiple story buildings and facilities where at-grade egress from each floor is impossible, either of the following is permitted:

(1) The provision within each story of approved fire and smoke partitions that create horizontal exits; or

(2) The provision within each floor of areas of refuge approved by agencies having authority for safety.

(8) At least one principal entrance at each grade floor level to a building or facility shall comply with 4.14, Entrances. When a building or facility has entrances which normally serve any of the following functions: transportation facilities, passenger loading zones, accessible parking facilities, taxi stands, public streets and sidewalks, or accessible interior vertical access, then at least one of the entrances serving each such function shall comply with 4.14, Entrances. Because entrances also serve as emergency exits, whose proximity to all parts of buildings and facilities is essential, it is preferable that all or most exits be accessible.

(9) If drinking fountains or water coolers are provided, approximately 50% of those provided on each floor shall comply with 4.15 and shall be on an accessible route. If only one drinking fountain or water cooler is provided on any floor, it shall comply with 4.15.

(10) If toilet facilities are provided, then each public and common use toilet room shall comply with 4.22. Other toilet rooms shall be adaptable. If bathing facilities are provided, then each public and common use bathroom shall comply with 4.23. Accessible

toilet rooms and bathing facilities shall be on an accessible route.

(11) If storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions shown in Fig. 38.

(12) Controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements (for example, light switches and dispenser controls) shall comply with 4.27.

(13) If emergency warning systems are provided; then they shall include both audible alarms complying with 4.28.2 and visual alarms complying with 4.28.3. In facilities with sleeping accommodations, the sleeping accommodations shall have an alarm system complying with 4.28.4. Emergency warning systems in health care facilities may be modified to suit standard health care alarm design practice.

(14) Tactile warnings shall be provided at hazardous conditions as specified in 4.29.3.

(15) If signs are provided, they shall comply with 4.30. In addition, permanent signage that identifies rooms and spaces shall also comply with 4.30.4 and 4.30.6.

EXCEPTION: The provisions of 4.30.4 are not mandatory for temporary information on room and space signage, such as current occupant's name, provided the permanent room or space identification complies with 4.30.4.

(16) Public Telephones:

(a) If public telephones are provided, then accessible public telephones shall comply with 4.31, Telephones, and the following table:

Number of public telephones provided on each floor:	Number of telephones required to be accessible:*
1 or more single unit installations	1 per floor
1 bank**	1 per floor
2 or more banks**	1 per bank. Accessible unit may be installed as a single unit in proximity (either visible or with signage) to the bank. At least one public telephone per floor shall meet the requirements for a forward reach telephone.***

* Additional public telephones may be installed at any height. Unless otherwise specified, accessible telephones may be either forward or side reach telephones.

** A bank consists of two or more adjacent public telephones, often installed as a unit.

*** EXCEPTION: For exterior installations only, if dial tone first service is not available, then a side reach telephone may be installed instead of the required forward reach telephone (i.e., one telephone in proximity to each bank shall comply with 4.31).

(b) At least one of the public telephones complying with 4.31, Telephones, shall be equipped with a volume control. The installation of additional volume controls is encouraged and these may be installed on any public telephone provided.

(17) If fixed or built-in seating, tables, or work surfaces are provided in accessible spaces, at least 5 percent, but always at least one, of seating spaces, tables, or work surfaces shall comply with 4.32.

(18) Assembly areas:

(a) If places of assembly are provided, they shall comply with the following table:

Capacity of Seating & Assembly Areas	Number of Required Wheelchair Locations
50 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	*
over 1,000	**

* 2 percent of total
** 20 plus 1 for each 100 over 1,000.

(b) Assembly areas with audio-amplification systems shall have a listening system complying with 4.33 to assist a reasonable number of people but no fewer than two, with severe hearing loss. For assembly areas without amplification systems and for spaces used primarily as meeting and conference rooms, a permanently installed or portable listening system shall be provided. If portable systems are used for conference or meeting rooms, the system may serve more than one room.

4.1.3 ACCESSIBLE HOUSING. Accessible housing shall comply with the requirements of sections 4.1 and 4.34 except as noted below:

(1) Elevators: Where provided, elevators shall comply with section 4.10. Elevators or other accessible means of vertical movement are not required in residential facilities when:

(a) No accessible dwelling units are located above or below the accessible grade level; and

(b) At least one of each type of common area and amenity provided for use of residents and visitors is available at the accessible grade level.

(2) Entrances: Entrances complying with Section 4.14 shall be provided as necessary to achieve access to and egress from buildings and facilities.

EXCEPTION: In projects consisting of one-to-four family dwellings where accessible entrances would be extraordinarily costly due to site conditions or local code restrictions, accessible entrances are required only to those buildings containing accessible dwelling units.

(3) Common Areas: At least one of each type of common area and amenity in each project shall be accessible, and shall be located on an accessible route to any accessible dwelling unit.

4.1.4 OCCUPANCY CLASSIFICATIONS.

Buildings and facilities shall comply with these standards to the extent noted in this section for various occupancy classifications, unless otherwise modified by a special application section. Occupancy classifications, and the

facilities covered under each category, include but are not necessarily limited to the listing which follows:

(1) General Exceptions: Accessibility is not required to elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, lookout galleries, electrical and telephone closets, and general utility rooms.

(2) Military Exclusions.

The following facilities need not be designed to be accessible, but accessibility is recommended since the intended use of the facility may change with time.

(a) Unaccompanied personnel housing, closed messes, vehicle and aircraft maintenance facilities, where all work is performed by able-bodied military personnel, and, in general, all facilities which are intended for use or occupancy by able-bodied military personnel only.

(b) Those portions of Reserve and National Guard facilities which are designed and constructed primarily for use by able-bodied military personnel. This exclusion does not apply to those portions of a building or facility which may be open to the public or which may be used by the public during the conduct of normal business or which may be used by physically handicapped persons employed or seeking employment at such building or facility. These portions of the building or facility shall be accessible.

(c) Where the number of accessible spaces required is determined by the design capacity of a facility (such as parking or assembly areas), the number of able-bodied military persons used in determining the design capacity need not be counted when computing the number of accessible spaces required.

(3) Military Housing.

In the case of military housing, which is primarily available for able-bodied military personnel and their dependents, at least 5% of the total but at least one unit (on an installation-by-installation basis) of all housing constructed will be designed and built to be either accessible or readily and easily modifiable to be accessible, but in any event, modification of individual units (including the making of adaptations), will be accomplished on a high priority basis when a requirement is identified. Common areas such as walks, streets, parking and play areas, and common entrances to multi-unit facilities shall be designed and built to be accessible.

(4) Assembly.

Assembly occupancy includes, among others, the use of a building or structure, or a portion thereof, for the gathering together of persons for purposes such as civic, social or religious functions, recreation, food or drink consumption, or awaiting transportation. A room or space used for assembly purposes by less than fifty (50) persons and accessory to another occupancy shall be included as a part of that major

occupancy. For purposes of these standards, assembly occupancies shall include the following:

Facilities			Application
Amusement arcades		Gymnasiums	All areas for which the intended use will require public access or which may result in employment of physically handicapped persons.
Amusement park structures		Grandstands	
Arenas		Motion picture theaters	
Armories		Indoor & outdoor swimming pools	
Art galleries		Indoor & outdoor tennis courts	
Auditoriums		Lecture halls	
Banquet halls	*	Libraries	
Bleachers		Museums	
Bowling alleys		Night clubs	
Carnivals		Passenger stations	
Churches		Poll & billard halls	
Clubs		Taverns & bars	
Community halls		Television studios admitting audiences	
Courtrooms (public areas)		Theaters	
Dance halls	**	Restaurants	
Drive-in theaters		Skating rinks	
Exhibition halls		Stadiums	
Fairs			
Funeral parlors			

* See Part 8 for special applications.
** See Part 5 for special applications.

(5) Business.

Business occupancy includes, among others, the use of a building or structure, or a portion thereof, for office, professional or service type transactions, including storage of records and accounts.

Facilities			Application
Animal hospitals, kennels, pounds		Fire stations	All areas for which the intended use will require public access or which may result in employment of physically handicapped persons.
Automobile and other motor vehicle showrooms		Florists & nurseries	
Banks		Laboratories; testing & research	
Barber shops		Laundries	
Beauty shops		Motor vehicle service stations	
Car wash		Police stations	
Civic administration	*	Post offices	
Clinic, outpatient		Print shops	
Dry cleaning		Professional services; attorney, dentist, physician, engineer, etc.	
Educational above 12th grade		Radio & T.V. stations	
Electronic data processing		Telephone exchanges.	

* See Part 9 for special applications.

(6) Educational.

Educational occupancy includes, among others, the use of a building or structure, or portion thereof, by six or more persons at any time for educational purposes through the 12th grade.

Schools for business or vocational training shall conform to the requirements of the trade, vocation or business taught.

Facilities		Application
Academies Kindergarten	Nursery schools Schools.	All areas shall comply.

(7) Factory Industrial.

Factory industrial occupancy includes, among others, the use of a building or structure, or portion thereof, for assembling, disassembling, fabricating, finishing, manufacturing, packaging, processing or other operations that are not classified as a Hazardous Occupancy.

Facilities		Application
Aircraft Appliances Athletic equip. Automobile and other motor vehicle Bakeries Beverages Bicycles Boats, building Brick and masonry Broom or brush Business machines Canvas or similar Cameras and photo equipment Carpets & rugs, including cleaning Ceramic products Clothing Construction & agricultural machinery Disinfectants Dry cleaning & dyeing Electronics Engines, including rebuilding Film, photographic Food processing Foundaries Furniture	Glass products Gypsum Hemp products Ice Jute products Luandries Leather products Machinery Metal Motion pictures & television film Musical instruments Optical goods Paper products Plastic products Printing or publishing Recreational vehicles Refuse incineration Shoes Soaps & detergents Steel products; fabrication, assembly Textiles Tobacco Trailers Upholstering Wood, distribution Millwork Woodworking, cabinet * Postal mail: processing facilities	All areas for which the intended use will require public access or which may result in employment of physically handicapped persons.

* See Part 9 for special applications.

(8) Hazardous.

Hazardous occupancy includes, among others, the use of a building or structure, or a portion thereof, that involves the manufacturing, processing, generation or storage of corrosive, highly toxic, highly combustible, flammable or explosive materials that constitute a high fire or explosive hazard, including loose combustible fibers, dust and unstable materials.

Facilities		Application
Combustible dust Combustible fibers Combustible liquid Corrosive liquids Explosive material Flammable liquid	Flammable gas Liquified petroleum gas Nitromethane Oxidizing materials Organic peroxide	All areas for which the intended use will require public access or which may result in employment of physically handicapped persons.

(9) Institutional.

Institutional occupancy includes, among others, the use of a building or structure, or any portion thereof, in which people having physical or medical treatment or care, or in which the liberty of the occupants is restricted. Institutional occupancies shall include the following subgroups:

(a) Institutional occupancies for the care of children, including:

Facilities	Application
Child care facilities	All public use, common use, or areas which may result in employment of physically handicapped persons.

(b) Institutional occupancies used for medical or other treatment or care of persons, some of whom are suffering from physical or mental illness, disease or infirmity including:

Facilities	Application
Long Term Care Facilities: (including Skilled Nursing Facilities, Intermediate Care Facilities, Bed & Care, and Nursing Homes).	At least 50% of patient toilet and bedrooms; all public use, common use, or areas which may result in employment of physically handicapped persons.
Outpatient Facilities:	All patient toilet and bedrooms, all public use, common use, or areas which may result in employment of physically handicapped persons.

Hospital*:

General Purpose Hospital:	At least 10% of patient toilet and bedrooms, all public use, common use, or areas which may result in employment of physically handicapped persons.
Special Purpose Hospital: (Hospitals that treat conditions that affect mobility).	All patient toilet and bedrooms, all public use, common use, or areas which may result in employment of physically handicapped persons.

* See Part 6 for special applications.

(c) Institutional occupancies where the occupants are under some degree of restraint or restriction for security reasons including:

Facilities		Application
Jails Prisons	Reformatories Other detention or correctional facilities.	5% of residential units available, or at least one unit, whichever is greater; all common use, visitor use, or areas which may result in employment of physically handicapped persons.

(10) Mercantile*.

Mercantile occupancy includes, among others, all buildings and structures or parts thereof, for the display and sale of merchandise, and involving stocks of goods, wares or merchandise incidental to such purposes and accessible to the public.

Facilities		Application
Department stores Drug stores Markets	Retail stores Shopping centers Sales rooms	All areas for which the intended use will require public access or which may result in employment of physically handicapped persons.

* See Part 7 for special applications.

(11) Residential.

Residential occupancy includes, among others, the use of a building or structure, or portion thereof, for sleeping accommodations when not classed as an institutional occupancy. Residential occupancies shall comply with the requirements of sections 4.1 and 4.34 except as follows:

(a) Residential occupancies where the occupants are primarily transient in nature (less than 30 days) including:

Facilities	Application
Hotels Motels Boarding houses	5% of the total units, or at least one, whichever is greater, and all public use, common use, and areas which may result in employment of physically handicapped persons.

(b) Residential occupancies in multiple dwellings where the occupants are primarily permanent in nature, including:

Facilities	Application
Multifamily housing (Apartment houses):	
Federally assisted	5% of the total, or at least one unit, whichever is greater, in projects of 15 or more dwelling units, or as determined by the appropriate Federal agency following a local needs assessment conducted by local government bodies or states under applicable regulations.
Federally owned	5% of the total, or at least one unit, whichever is greater.
Dormitories	5% of the total, or at least one unit, whichever is greater.

(c) Residential occupancies in one (1) and two (2) family dwellings where the occupancies are primarily permanent in nature and not classified as preceding residential categories or as institutional.

Facilities	Application
One and two family dwelling:	
Federally assisted, rental	5% of the total, or at least one unit, whichever is greater, in projects of 15 or more dwelling units, or as determined by the appropriate Federal agency

	following a local needs assessment conducted by local government bodies or states under applicable regulations.
Federally assisted, homeownership	To be determined by home buyer.
Federally owned	5% of the total, or at least one unit, whichever is greater.

(12) Storage.

Storage occupany includes, among others, the use of a building or structure, or portion thereof, for storage that is not classified as a hazardous occupancy.

Facilities		Application
Metal desks	Frozen foods	All areas for which the intended use will require public access or which may result in employment of physically handicapped persons shall comply.
Electrical coils	Meats	
Electrical motors	Fresh fruits and vegetables	
Dry cell batteries	Dairy products	
Metal parts	Beer or wine up to 12% alcohol	
Empty cans	Distribution transformers	
Stoves	Cement in bags	
Washers & Dryers	Electrical insulators	
Metal cabinets	Gypsum board	
Glass bottles with noncom. liquid	Inert pigments	
Mirrors	Dry insecticides	
Foods in noncom. containers		

(13) Utility and Miscellaneous.

Utility and miscellaneous occupancies include among others, accessory buildings and structures, such as:

Facilities	Application
Fences over 6 ft high	All areas for which the intended use will require public access or which may result in employment of physically handicapped persons shall comply.
Tanks	
Cooling towers	
Retaining walls	
Buildings of less than 1,000 sq. ft. such as:	
Private garages	
Carports	
Sheds	
Agricultural buildings	

4.1.5 ACCESSIBLE BUILDINGS: ADDITIONS. Each addition to an existing building shall comply with 4.1.1 to 4.1.4 of Section 4.1, Minimum Requirements, except as follows:

(1) Entrances. If a new addition to a building or facility does not have an entrance, then at least one entrance in the existing building or facility shall comply with 4.14, Entrances.

(2) Accessible route. If the only accessible entrance to the addition is located in the existing building or facility, then at least one accessible route shall comply with 4.3, Accessible Route, and shall provide access through the existing building or facility to all rooms, elements, and spaces in the new addition.

(3) Toilet and bathing facitities. If there are no toilet rooms and bathing facilities in the addition and these facilities are provided in the existing building, then at least one toilet and bathing facility in the existing building shall comply with 4.22, Toilet Rooms, or 4.23, Bathrooms, Bathing Facilities, and Shower Rooms.

(4) Elements spaces, and common areas. If elements, spaces, or common areas are located in the existing building and they are not provided in the addition, then consideration should be given to making those elements, spaces, and common areas accessible in the existing building.

EXCEPTIONS: Mechanical rooms, storage areas, and other such minor additions which normally are not frequented by the public or employees of the facility are excepted from 4.1.6.

(5) Housing: (Reserved).

4.1.6 ACCESSIBLE BUILDINGS: ALTERATIONS.

(1) General. Alterations to existing buildings or facilities shall comply with the following:

(a) If existing elements, spaces, essential features, or common areas are altered, then each such altered element, space, feature, or area shall comply with the applicable provisions of 4.1.1 to 4.1.4 of Section 4.1, Minimum Requirements.

(b) If power-driven vertical access equipment (e.g., escalator) is planned or installed where none existed previously, or if new stairs (other than stairs installed to meet emergency exit requirements) requiring major structural changes are planned or installed where none existed previously, then a means of accessible vertical access shall be provided that complies with 4.7, Curb Ramps; 4.8, Ramps; 4.10, Elevators; or 4.11, Platform Lifts; except to the extent where it is structurally impracticable in transit facilities.

(c) If alterations of single elements when considered together, amount to an alteration of a space of a building or facility, the entire space shall be made accessible.

(d) No alteration of an existing element, space, or area of a building shall impose a requirement for greater accessibility than that which would be required for new construction. For example, if the elevators and stairs in a building are being altered and the elevators are in turn being made accessible, then no accessibility modifications are required to the stairs connecting levels connected by the elevator.

(e) If the alteration work is limited solely to the electrical, mechanical, or plumbing system and does not involve the alteration of any

elements and spaces required to be accessible under these standards, then 4.1.6(3) does not apply.

(f) No new accessibility alterations will be required of existing elements or spaces previously constructed or altered in compliance with earlier standards issued pursuant to the Architectural Barriers Act of 1968, as amended.

(g) Mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6.

(2) Where a building or facility is vacated and it is totally altered, then it shall be altered to comply with 4.1.1 to 4.1.5 of Section 4.1, Minimum Requirements, except to the extent where it is structurally impracticable.

(3) Where substantial alteration occurs to a building or facility, then each element or space that is altered or added shall comply with the applicable provisions of 4.1.1 to 4.1.4 of Section 4.1, Minimum Requirements, except to the extent where it is structurally impracticable. The altered building or facility shall contain:

(a) At least one accessible route complying with 4.3, Accessible Route, and 4.1.6(a);

(b) At least one accessible entrance complying with 4.14, Entrances. If additional entrances are altered then they shall comply with 4.1.6(a); and

(c) The following toilet facilities, whichever is greater:

(i) At least one toilet facility for each sex in the altered building complying with 4.22, Toilet Rooms, and 4.23, Bathrooms, Bathing Facilities, and Shower Rooms.

(ii) At least one toilet facility for each sex on each substantially altered floor, where such facilities are provided, complying with 4.22, Toilet Rooms; and 4.23, Bathrooms, Bathing Fcailities, and Shower Rooms.

(d) In making the determination as to what constitutes "substantial alteration," the agency issuing standards for the facitity shall consider the total cost of all alterations (including but not limited to electrical, mechanical, plumbing, and structural changes) for a building or facility within any twelve (12) month period. For guidance in implementing this provision, an alteration to any building or facilty is to be considered substantial if the total cost for this twelve month period amounts to 50% or more of the full and fair cash value of the building as defined at 3.5.

EXCEPTION. If the cost of the elements and spaces required by 4.1.6(3)(a), (b), or (c) exceeds 15% of the total cost of all other alterations, then a schedule may be established by the standard-setting and/or funding agency to provide the required improvements within a 5 year period.

EXCEPTION. Consideration shall be given to providing accessible elements and spaces in each altered building or facility complying with:

(i) 4.6, Parking and Passenger Loading Zones,
(ii) 4.15, Drinking Fountains and Water Coolers,
(iii) 4.25, Storage,
(iv) 4.28, Alarms,
(v) 4.31, Telephones,
(vi) 4.32, Seating, Tables, and Work Surfaces,
(vii) 4.33, Assembly Areas,

(4) Special technical provisions for alterations to existing buildings or facilities:

(a) RAMPS. Curb ramps and ramps to be constructed on existing sites or in existing buildings or facilities may have slopes and rises as shown in Table 2 if space limitations prohibit the use of a 1:12 slope or less.

Table 2
Allowable Ramp Dimensions for Construction in Existing Sites, Buildings, and Facilities

Slope*	Maximum Rise		Maximum Run	
	in	mm	ft	m
Steeper than 1:10 but no steeper than 1:8	3	75	2	0.6
Steeper than 1:12 but no steeper than 1:10	6	150	5	1.5

*A slope steeper than 1:8 not allowed.

(b) STAIRS. Full extension of stair handrails shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

(c) ELEVATORS.

(i) If a safety door edge is provided in existing automatic elevators, then the automatic door reopening devices may be omitted (see 4.10.6).

(ii) Where existing shaft or structural elements prohibit strict compliance with 4.10.9, then the minimum floor area dimensions may be reduced by the minimum amount necessary, but in no case shall they be less than 48 in by 48 in (1220 mm by 1220 mm).

(d) DOORS.

(i) Where existing elements prohibit strict compliance with the clearance requirements of 4.13.5, a projection of 5/8 in (16 mm) maximum will be permitted of the latch side door stop.

(ii) If existing thresholds measure 3/4 in (19 mm) high or less, and are beveled or modified to provide a beveled edge on each side, then they may be retained.

(e) TOILET ROOMS. Where alterations to existing facilities make strict compliance with 4.22 and 4.23 structurally impracticable, the addition of one "unisex" toilet per floor containing one water closet complying with 4.16 and one lavatory complying with 4.19, located adjacent to existing toilet facilities will be acceptable in lieu of making existing toilet facilities for each sex accessible.

EXCEPTION: In instances of alteration work where provision of a standard stall (Fig. 30(a)) is structurally impracticable or where plumbing code requirements prevent combining existing stalls to provide space, an alternate stall (Fig. 30(b)) may be provided in lieu of the standard stall.

(f) ASSEMBLY AREAS.

(i) In alterations where it is structurally impracticable to disperse seating throughout the assembly area, seating may be located in collected areas as structurally feasible. Seating shall adjoin an accessible route that also serves as a means of emergency egress.

(ii) In alterations where it is structurally impracricable to alter all performing areas to be on an accessible route, then at least one of each type shall be made accessible.

(5) Housing. (Reserved).

4.1.7 ACCESSIBLE BUILDINGS: HISTORIC PRESERVATION.

(1) APPLICABILITY.

(a) As a general rule, the accessibility provisions of part 4 shall be applied to "qualified" historic buildings and facilities. "Qualified" buildings or facilities are those buildings and facilities that are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate state or local government body. Comments of the Advisory Council on Historic Preservation shall be obtained when required by Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 and 36 CFR Part 800, before any alteration to a qualified historic building.

(b) The Advisory Council shall determine, on a case-by-case basis, whether provisions required by part 4 for accessible routes (exterior and interior), ramps, entrances, toilets, parking, and displays and signage, would threaten or destroy the historic significance of the building or facility.

(c) If the Advisory Council determines that any of the accessibility requirements for features listed in 4.1.7(1) would threaten or destroy the historic significance of a building or facility, then the special application provisions of 4.1.7(2) for that feature may be utilized. The special application provisions listed under 4.1.7(2) may only be utilized following a written determination by the Advisory Council that application of a requirement contained in part 4 would threaten or destroy the historic integrity of a qualified building or facility.

(2) HISTORIC PRESERVATION: MINIMUM REQUIREMENTS.

(a) At least one accessible route complying with 4.3 from a site access point to an accessible entrance shall be provided.

EXCEPTION: A ramp with a slope no greater than 1:6 for a run not to exceed 2 ft (610 mm) may be used as part of an accessible route at an entrance.

(b) At least one accessible entrance which is used by the public complying with 4.14 shall be provided.

EXCEPTION: If it is determined that no entrance used by the public can comply with 4.14, then access at any entrance not used by the general public but open (unlocked) with directional signs at the primary entrance may be used.

(c) If toilets are provided, then at least one toilet facility complying with 4.22 and 4.1.6 shall be provided along an accessible route that complies with 4.3. Such toilet facility may be "unisex" in design.

(d) Accessible routes from an accessible entrance to all publicly used spaces on at least the level of the accessible entrance shall be provided. Access should be provided to all levels of a building or facility in compliance with 4.1 whenever practical.

(e) Displays and written information, documents, etc., should be located where they can be seen by a seated person. Exhibits and signage displayed horizontally, e.g., books, should be no higher than 44 in (1120 mm) above the floor surface.

Technical Provisions

4.2: SPACE ALLOWANCE AND REACH RANGES

4.2.1* WHEELCHAIR PASSAGE WIDTH. The minimum clear width for single wheelchair passage shall be 32 in (815 mm) at a point and 36 in (915 mm) continuously (see Fig. 1 and 24(e).

4.2.2 WIDTH FOR WHEELCHAIR PASSING. The minimum width for two wheelchairs to pass is 60 in (1525 mm) (see Fig. 2).

4.2.3* WHEELCHAIR TURNING SPACE. The space required for a wheelchair to make a 180 degree turn is a clear space of 60 in (1525 mm) diameter (see Fig. 3(a)) or a T-shaped space (see Fig. 3(b)).

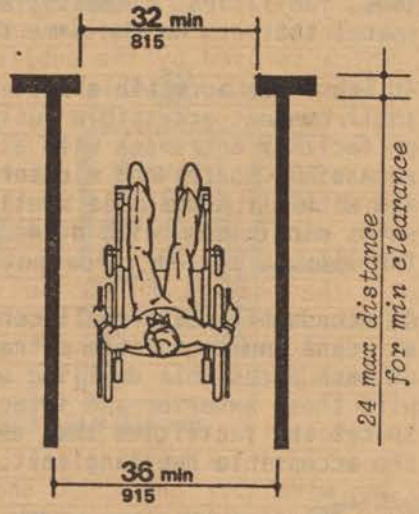


Fig. 1
Minimum Clear Width
for Single Wheelchair

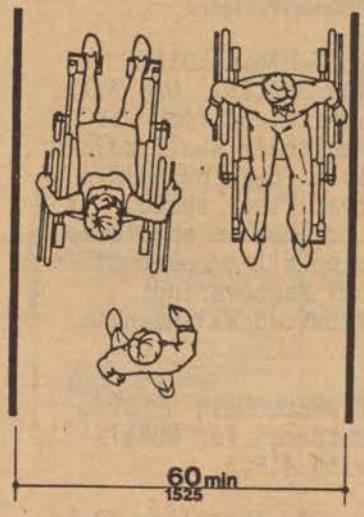
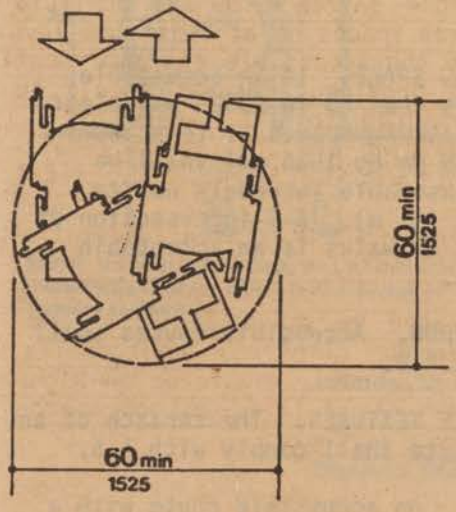
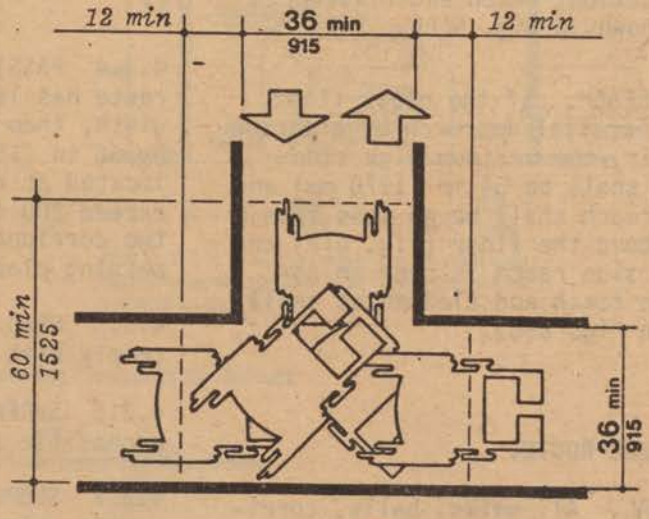


Fig. 2
Minimum Clear Width
for Two Wheelchairs



(a)
60-in (1525-mm) -Diameter Space



(b)
T-Shaped Space for 180° Turns

Fig. 3
Wheelchair Turning Space

4.2.4* CLEAR FLOOR OR GROUND SPACE FOR WHEELCHAIRS.

4.2.4.1 SIZE AND APPROACH. The minimum clear floor or ground space required to accommodate a single, stationary wheelchair occupant is 30 in by 48 in (760 mm by 1220 mm) (see Fig. 4(a)). The minimum clear floor or ground space for wheelchairs may be positioned for forward or parallel approach to an object (see Fig. 4(b) and (c)). Clear floor or ground space for wheelchairs may be part of the knee space required under some objects.

4.2.4.2 RELATIONSHIP OF MANEUVERING CLEARANCE TO WHEELCHAIR SPACES. One full unobstructed side of the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route or adjoin another wheelchair clear floor space. If a clear floor space is located in an alcove or otherwise confined on all or part of three sides, additional maneuvering clearances shall be provided as shown in Figs. 4(d) and (e).

4.2.4.3 SURFACES FOR WHEELCHAIR SPACES. Clear floor or ground spaces for wheelchairs shall comply with 4.5.

4.2.5* FORWARD REACH. If the clear floor space only allows forward approach to an object, the maximum high forward reach allowed shall be 48 in (1220 mm) (see Fig. 5(a)). The minimum low forward reach is 15 in (380 mm). If the high forward reach is over an obstruction, reach and clearances shall be as shown in Fig. 5(b).

4.2.6* SIDE REACH. If the clear floor space allows parallel approach by a person in a wheelchair, the maximum high side reach allowed shall be 54 in (1370 mm) and the low side reach shall be no less than 9 in (230 mm) above the floor (Fig. 6(a) and (b)). If the side reach is over an obstruction, the reach and clearances shall be as shown in Fig. 6(c).

4.3: ACCESSIBLE ROUTE.

4.3.1* GENERAL. All walks, halls, corridors, aisles, and other spaces that are part of an accessible route shall comply with 4.3.

4.3.2 LOCATION.

(1) At least one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve.

(2) At least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(3) At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility.

(4) An accessible route shall connect at least one accessible entrance of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit.

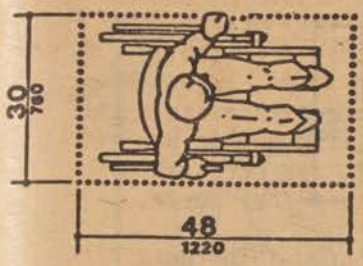
4.3.3 WIDTH. The minimum clear width of an accessible route shall be 36 in (915 mm) except at doors (see 4.13.5). If a person in a wheelchair must make a turn around an obstruction, the minimum clear width of the accessible route shall be as shown in Fig. 7.

4.3.4 PASSING SPACE. If an accessible route has less than 60 in (1525 mm) clear width, then passing spaces at least 60 in by 60 in (1525 mm by 1525 mm) shall be located at reasonable intervals not to exceed 200 ft (61 m). A T-intersection of two corridors or walks is an acceptable passing place.

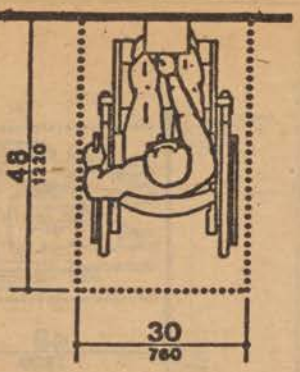
4.3.5 HEAD ROOM. Accessible routes shall comply with 4.4.2.

4.3.6 SURFACE TEXTURES. The surface of an accessible route shall comply with 4.5.

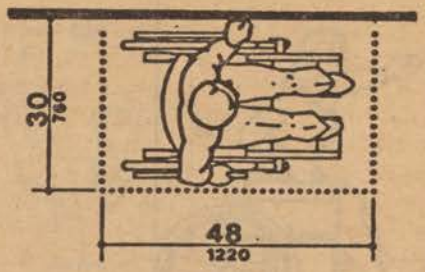
4.3.7 SLOPE. An accessible route with a running slope greater than 1:20 is a ramp and shall comply with 4.8. Nowhere shall the cross slope of an accessible route exceed 1:50.



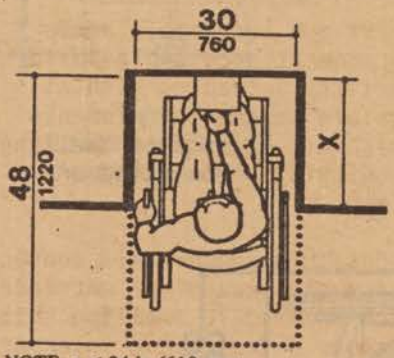
(a)
Clear Floor Space



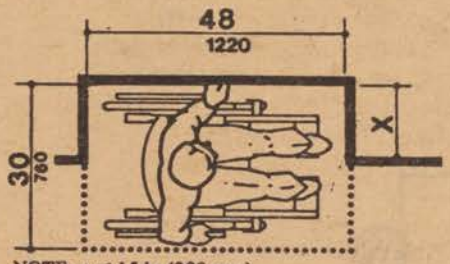
(b)
Forward Approach



(c)
Parallel Approach

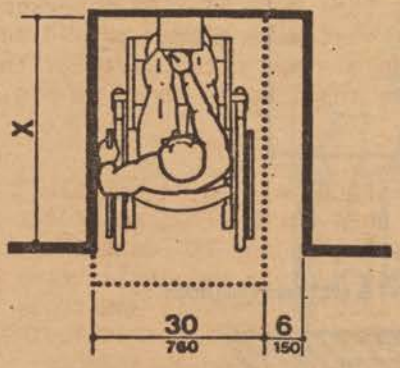


NOTE: x ≤ 24 in (610 mm).

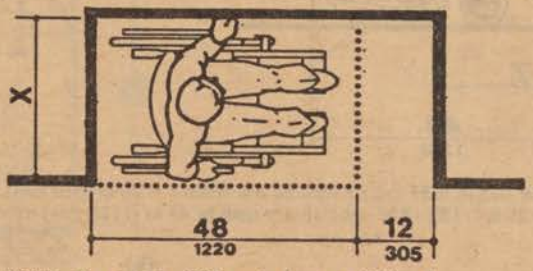


NOTE: x ≤ 15 in (380 mm).

(d)
Clear Floor Space in Alcoves



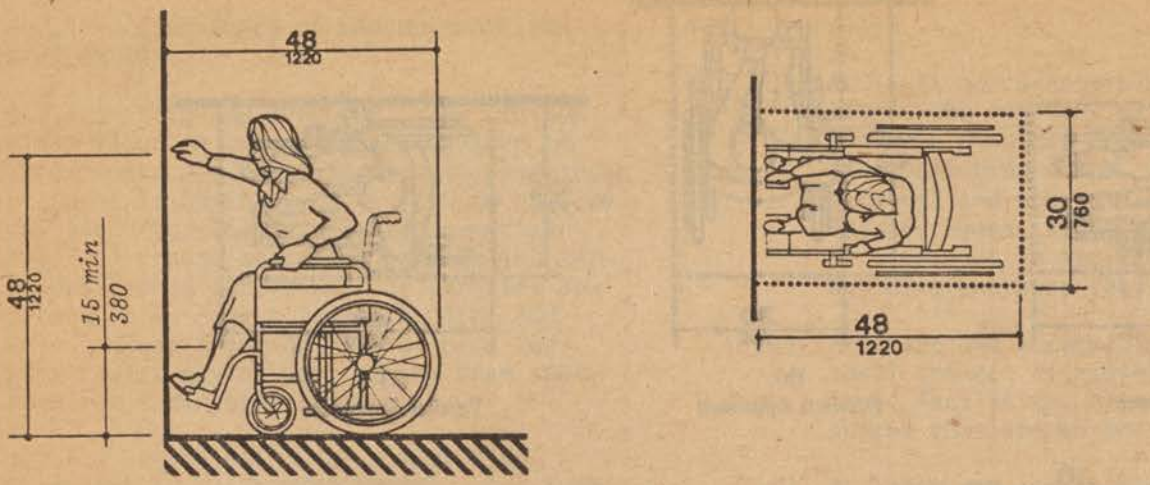
NOTE: If x > 24 in (610 mm), then an additional maneuvering clearance of 6 in (150 mm) shall be provided as shown.



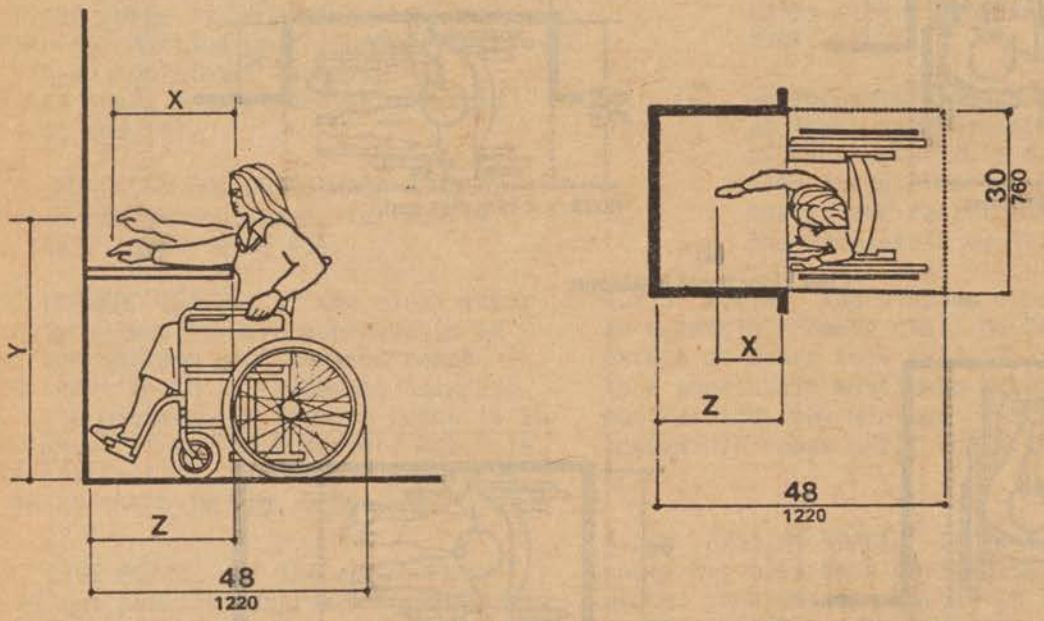
NOTE: If x > 15 in (380 mm), then an additional maneuvering clearance of 12 in (305 mm) shall be provided as shown.

(e)
Additional Maneuvering Clearances for Alcoves

Fig. 4
Minimum Clear Floor Space for Wheelchairs



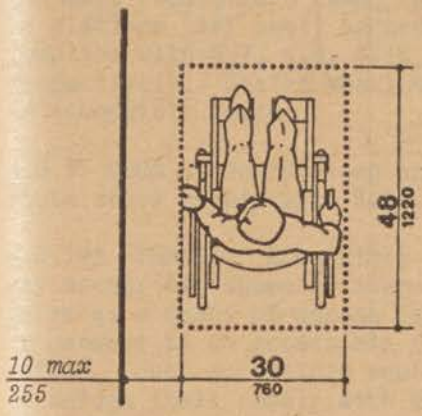
(a)
High Forward Reach Limit



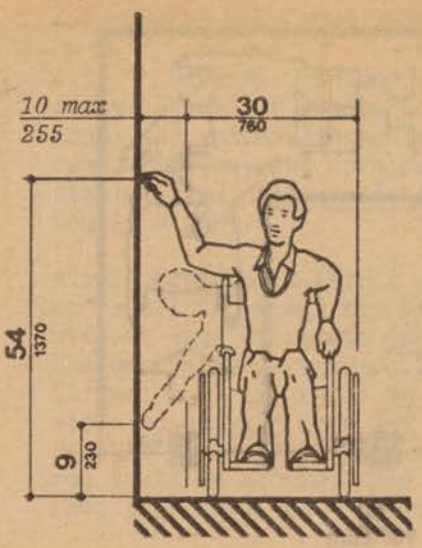
NOTE: x shall be ≤25 in (635 mm); z shall be ≥x. When x < 20 in (510 mm), then y shall be 48 in (1220 mm) maximum. When x is 20 to 25 in (510 to 635 mm), then y shall be 44 in (1120 mm) maximum.

(b)
Maximum Forward Reach over an Obstruction

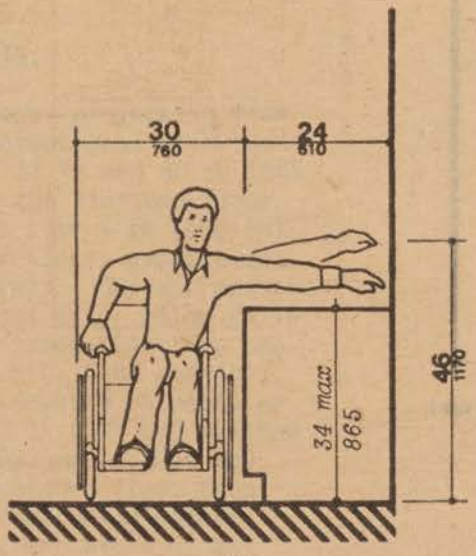
Fig. 5
Forward Reach



(a)
Clear Floor Space
Parallel Approach

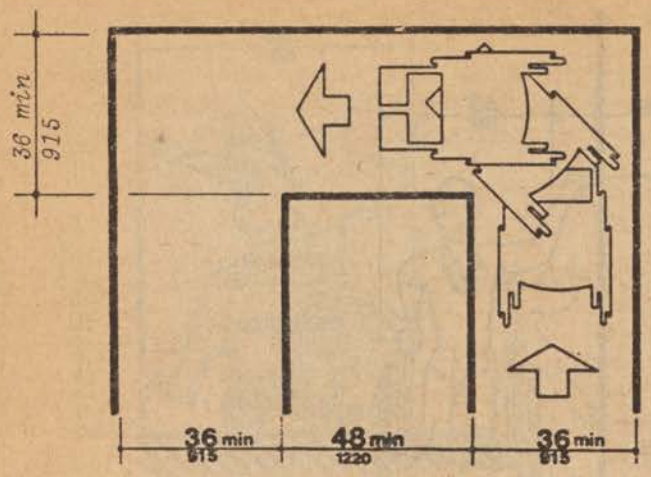


(b)
High and Low
Side Reach Limits

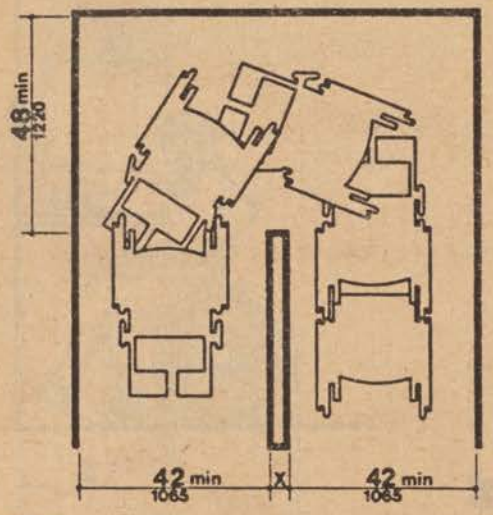


(c)
Maximum Side Reach
over Obstruction

Fig. 6
Side Reach



(a)
90° Turn



NOTE: Dimensions shown apply when x < 48 in (1220 mm).

(b)
Turns around an Obstruction

Fig. 7
Width of Accessible Route

4.3.8 CHANGES IN LEVELS. Changes in levels along an accessible route shall comply with 4.5.2. If an accessible route has changes in level greater than 1/2 in (13 mm), then a curb ramp, ramp, elevator, or platform lift shall be provided that complies with 4.7, 4.8, 4.10, or 4.11, respectively. Stairs shall not be part of an accessible route.

4.3.9 DOORS. Doors along an accessible route shall comply with 4.13.

4.3.10* EGRESS. Accessible routes serving any accessible space or element shall also serve as a means of egress for emergencies or connect to an accessible place of refuge. Such accessible routes and places of refuge shall comply with the requirements of the administrative authority having jurisdiction. Where fire code provisions require more than one means of egress from any space or room, then more than one accessible means of egress shall also be provided for handicapped people. Arrange egress so as to be readily accessible from all accessible rooms and spaces.

4.4 PROTRUDING OBJECTS.

4.4.1* GENERAL. Objects projecting from walls (for example, telephones) with their leading edges between 27 in and 80 in (685 mm and 2030 mm) above the finished floor shall protrude no more than 4 in (100 mm) into walks, halls, corridors, passageways, or aisles (see Fig. 8(a)). Objects mounted with their leading edges at or below 27 in (685 mm) above the finished floor may protrude any amount (see Fig. 8(a) and (b)). Free-standing objects mounted on posts or pylons may overhang 12 in (305 mm) maximum from 27 in to 80 in (685 mm to 2030 mm) above the ground or finished floor (see Fig. 8(c) and (d)). Protruding objects shall not reduce the clear width of an accessible route or maneuvering space (see Fig. 8(e)).

4.4.2 HEAD ROOM. Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have 80 in (2030 mm) minimum clear head room (see Fig. 8(a)). If vertical clearance of an area adjoining an accessible route is reduced to less than 80 in (nominal dimension), a barrier to warn blind or visually-impaired persons shall be provided (see Fig. 8(c).

4.5 GROUND AND FLOOR SURFACES.

4.5.1* GENERAL. Ground and floor surfaces along accessible routes and in accessible rooms and spaces, including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, slip-resistant, and shall comply with 4.5.

4.5.2 CHANGES IN LEVEL. Changes in level up to 1/4 in (6 mm) may be vertical and without edge treatment (see Fig. 7(c)). Changes in level between 1/4 in and 1/2 in (6 mm and 13 mm) shall be beveled with a slope no greater than 1:2 (see Fig. 7(d)). Changes in level greater than 1/2 in (13 mm) shall be accomplished by means of a ramp that complies with 4.7 or 4.8.

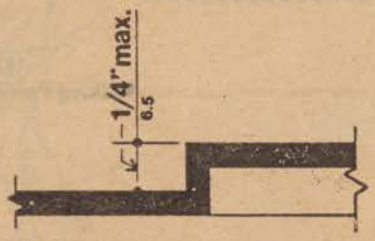


Fig. 7(c)
Changes in level

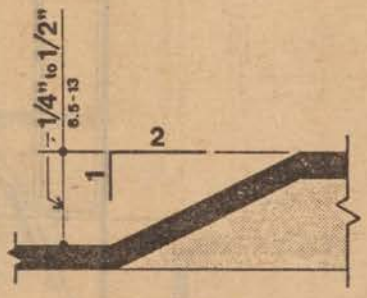


Fig. 7(d)
Changes in level

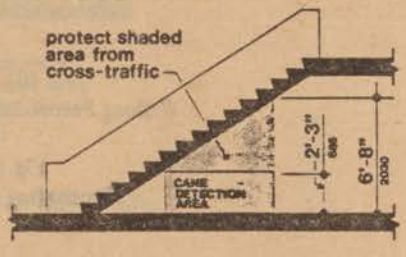
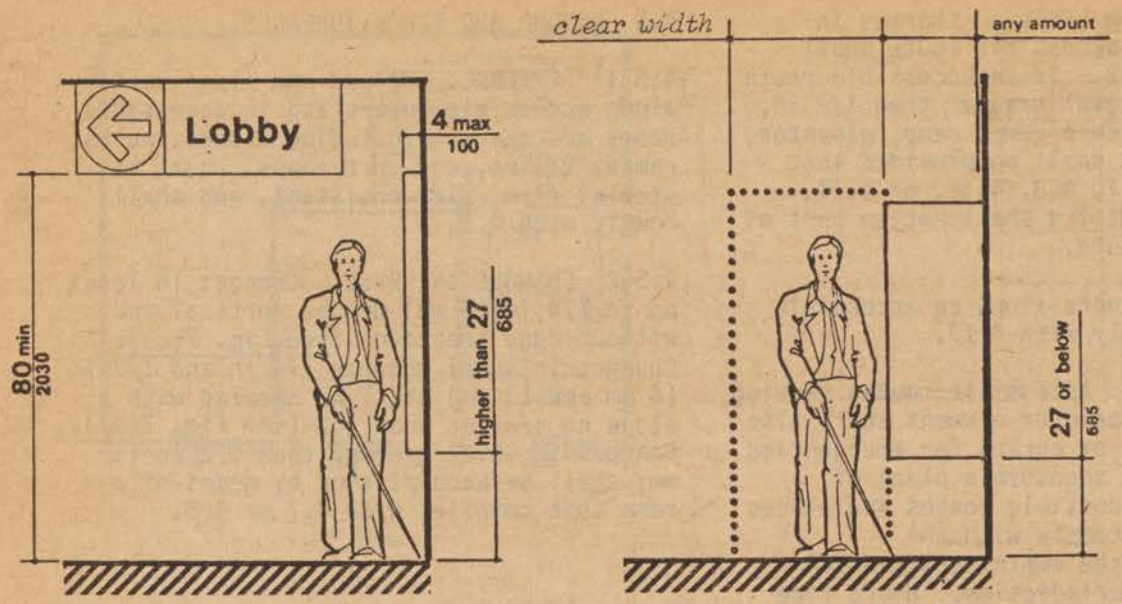
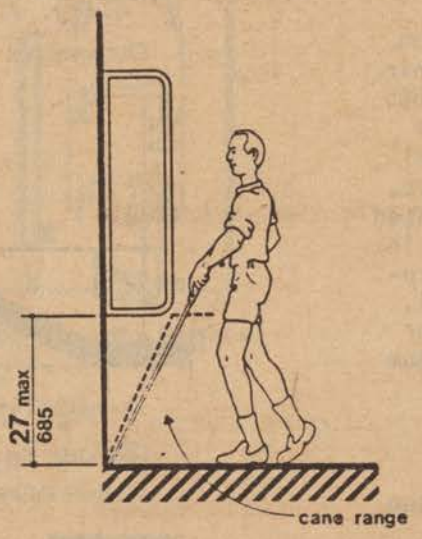


Fig. 8(c)
Overhead Hazards

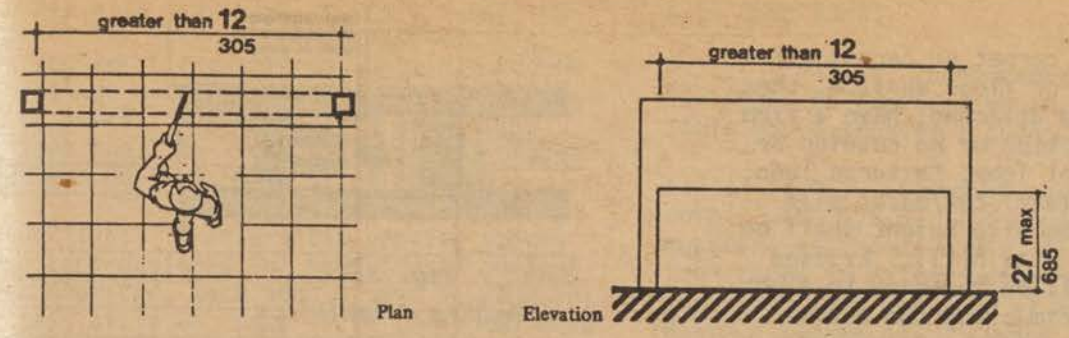


(a)
Walking Parallel to a Wall

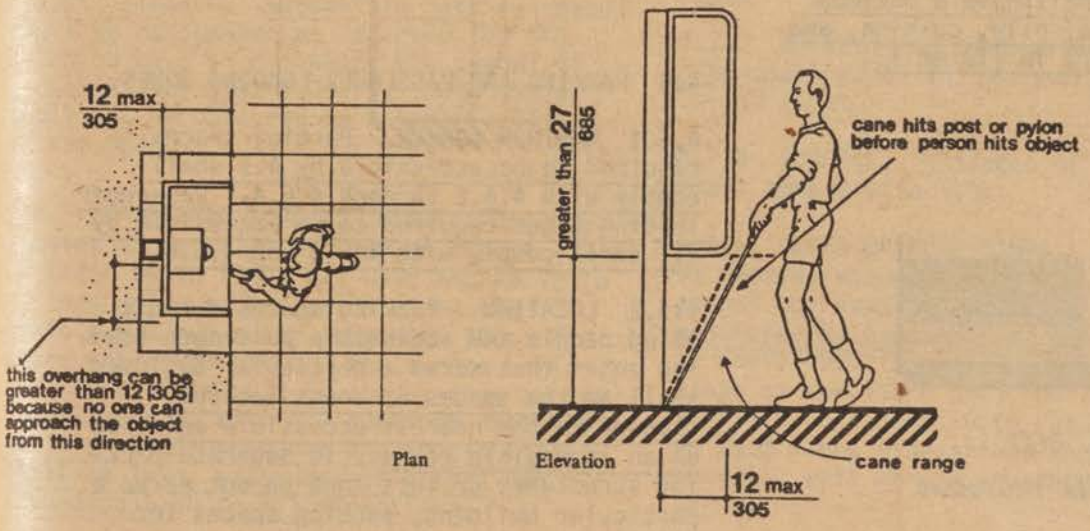


(b)
Walking Perpendicular to a Wall

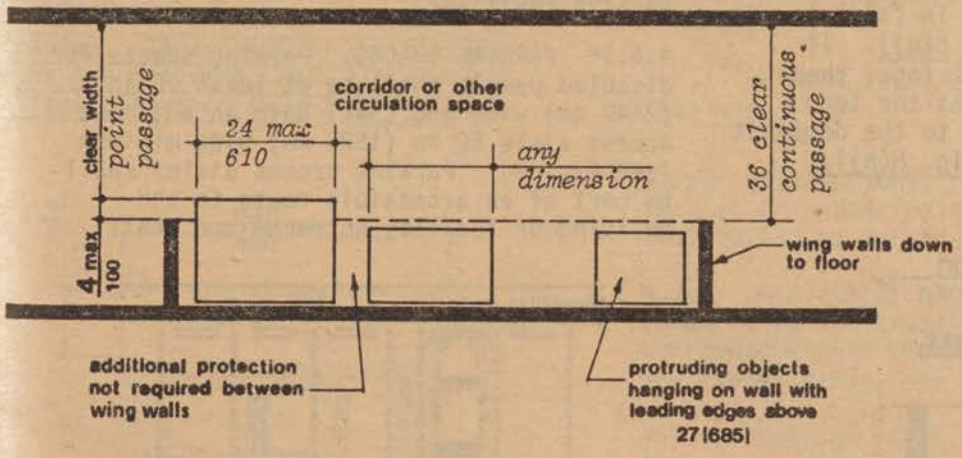
Fig. 8
Protruding Objects



(c)
Free-Standing Overhanging Objects



(d)
Objects Mounted on Posts or Pylons



(e)
Example of Protection around Wall-Mounted Objects and Measurements of Clear Widths

Fig. 8
Protruding Objects (*Continued*)

4.5.3* CARPET. If carpet or carpet tile is used on a ground or floor surface, then it shall be securely attached; have a firm cushion, pad, or backing or no cushion or pad; and have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. The maximum pile height shall be 1/2 in (13 mm) (see Fig. 8(f)). Exposed edges of carpet shall be fastened to floor surfaces and have trim along the entire length of the exposed edge. Carpet edge trim shall comply with 4.5.2. If carpet tile is used on an accessible ground or floor surface, it shall have a maximum combined thickness of pile, cushion, and backing height of 1/2 in (13 mm).

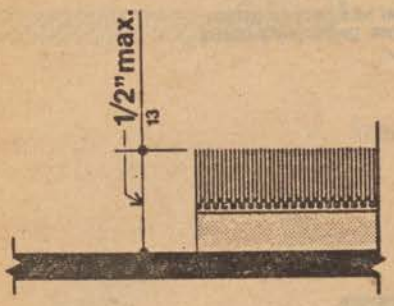


Fig. 8(f)
Carpet Tile Thickness

4.5.4 GRATINGS. If gratings are located in walking surfaces, then they shall have spaces no greater than 1/2 in (13 mm) wide in one direction (see Fig. 8(g)). If gratings have elongated openings, then they shall be placed so that the long dimension is perpendicular to the dominant direction of travel (see Fig. 8(h)).

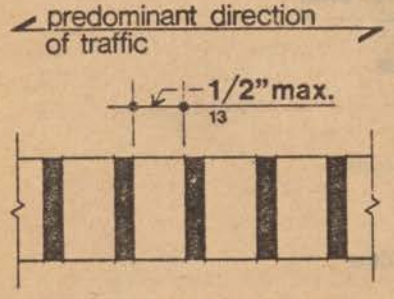


Fig. 8(g)
Gratings

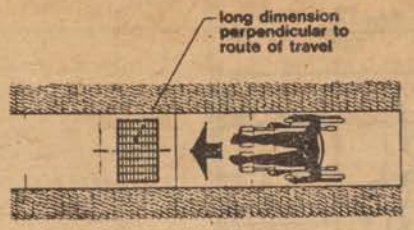


Fig. 8(h)
Grating Orientation

4.6 PARKING AND PASSENGER LOADING ZONES.

4.6.1 MINIMUM NUMBER. Parking spaces required to be accessible by 4.1 shall comply with 4.6.2 through 4.6.4. Passenger loading zones required to be accessible by 4.1 shall comply with 4.6.5 and 4.6.6.

4.6.2 LOCATION. Parking spaces for disabled people and accessible passenger loading zones that serve a particular building shall be the spaces or zones located closest to the nearest accessible entrance on an accessible route. In separate parking structures or lots that do not serve a particular building, parking spaces for disabled people shall be located on the shortest possible circulation route to an accessible pedestrian entrance of the parking facility.

4.6.3* PARKING SPACES. Parking spaces for disabled people shall be at least 96 in (2440 mm) wide and shall have an adjacent access aisle 60 in (1525 mm) wide minimum (see Fig. 9). Parking access aisles shall be part of an accessible route to the building or facility entrance and shall

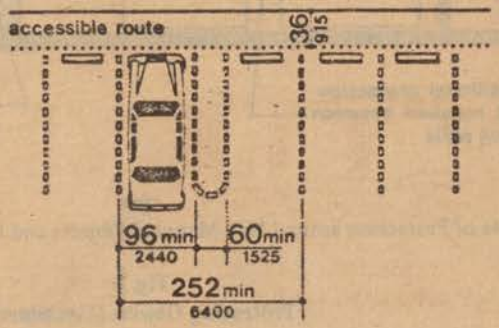


Fig. 9
Dimensions of Parking Spaces

comply with 4.3. Two accessible parking spaces may share a common access aisle. Parked vehicle overhangs shall not reduce the clear width of an accessible circulation route. Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50 in all directions.

EXCEPTION: If accessible parking spaces for vans designed for handicapped persons are provided, each should have an adjacent access aisle at least 96 in (2440 mm) wide complying with 4.5, Ground and Floor Surfaces.

4.6.4* SIGNAGE. Accessible parking spaces shall be designated as reserved for the disabled by a sign showing the symbol of accessibility (see 4.30.5). Such signs shall not be obscured by a vehicle parked in the space.

4.6.5 PASSENGER LOADING ZONES. Passenger loading zones shall provide an access aisle at least 60 in (1525 mm) wide and 20 ft (6 m) long adjacent and parallel to the vehicle pull-up space (see Fig. 10). If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with 4.7 shall be provided. Vehicle standing spaces and access aisles shall be level with surface slopes not exceeding 1:50 in all directions.

4.6.6 VERTICAL CLEARANCE: Provide minimum vertical clearances of 114 in at accessible passenger loading zones and along vehicle access routes to such areas from site entrances. If accessible van parking spaces are provided, then the minimum vertical clearance should be 114 in.

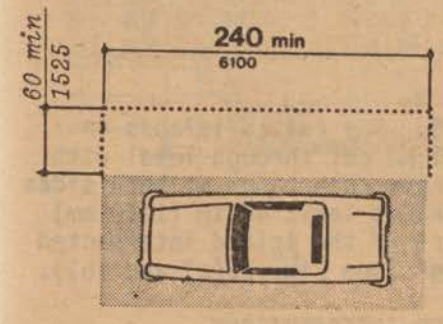


Fig. 10
Access Aisle at Passenger Loading Zones

4.7 CURB RAMPS.

4.7.1 LOCATION. Curb ramps complying with 4.7 shall be provided wherever an accessible route crosses a curb.

4.7.2 SLOPE. Slopes of curb ramps shall comply with 4.8.2. The slope shall be measured as shown in Fig. 11. Transitions from ramps to walks, gutters, or streets shall be flush and free of abrupt changes. Maximum slopes of adjoining gutters, road surface immediately adjacent to the curb ramp, or accessible route shall not exceed 1:20.

4.7.3 WIDTH. The minimum width of a curb ramp shall be 36 in (915 mm), exclusive of flared sides.

4.7.4 SURFACE. Surfaces of curb ramps shall comply with 4.5.

4.7.5 SIDES OF CURB RAMPS. If a curb ramp is located where pedestrians must walk across the ramp, or where it is not protected by handrails or guardrails, then it shall have flared sides; the maximum slope of the flare shall be 1:10 (see Fig. 12(a)). Curb ramps with returned curbs may be used where pedestrians would not normally walk across the ramp (see Fig. 12(b)).

4.7.6 BUILT-UP CURB RAMPS. Built-up curb ramps shall be located so that they do not project into vehicular traffic lanes (see Fig. 13).

4.7.7 WARNING TEXTURES. Removed and Reserved.

4.7.8 OBSTRUCTIONS. Curb ramps shall be located or protected to prevent their obstruction by parked vehicles.

4.7.9 LOCATION AT MARKED CROSSINGS. Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides (see Fig. 15).

4.7.10 DIAGONAL CURB RAMPS. If diagonal (or corner type) curb ramps have returned curbs or other well defined edges, such edges shall be parallel to the direction of pedestrian flow. The bottom of diagonal curb ramps shall have 48 in (1220 mm) minimum clear space as shown in Figs. 15 (c)

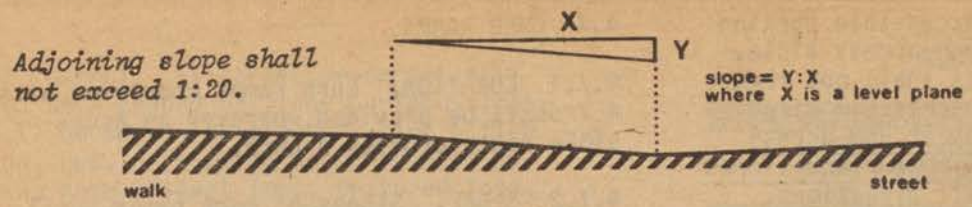
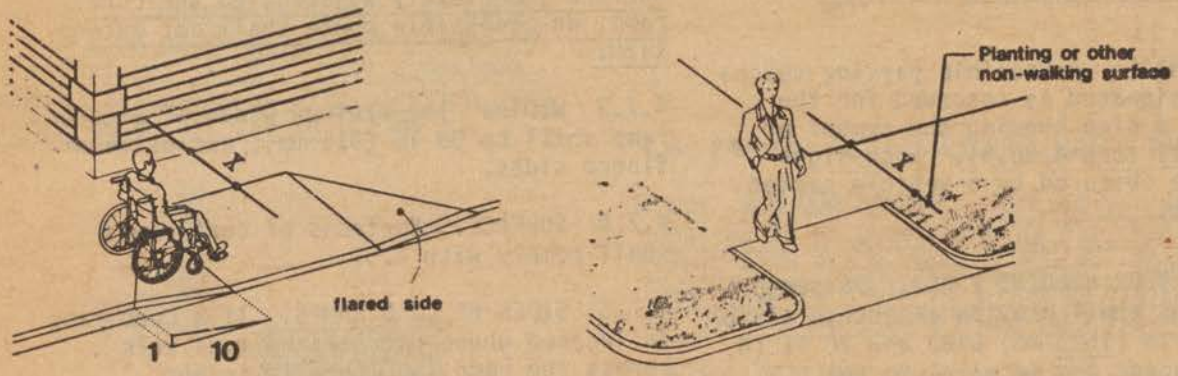


Fig. 11
Measurement of Curb Ramp Slopes



(a)
Flared Sides

(b)
Returned Curb

Fig. 12
Sides of Curb Ramps

If X is less than 48 in, then the slope of the flared side shall not exceed 1:12.

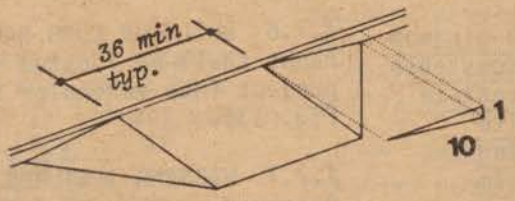
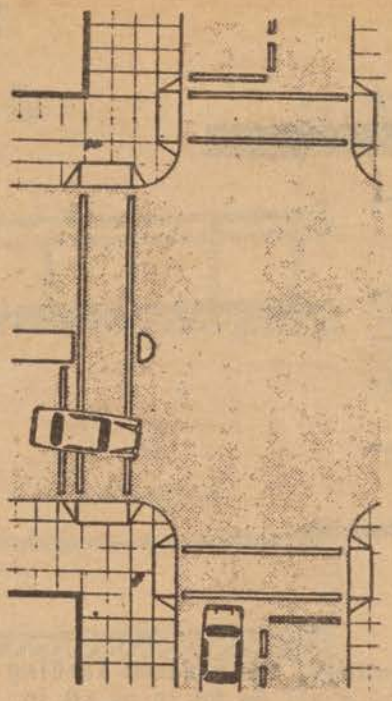


Fig. 13
Built-Up Curb Ramp

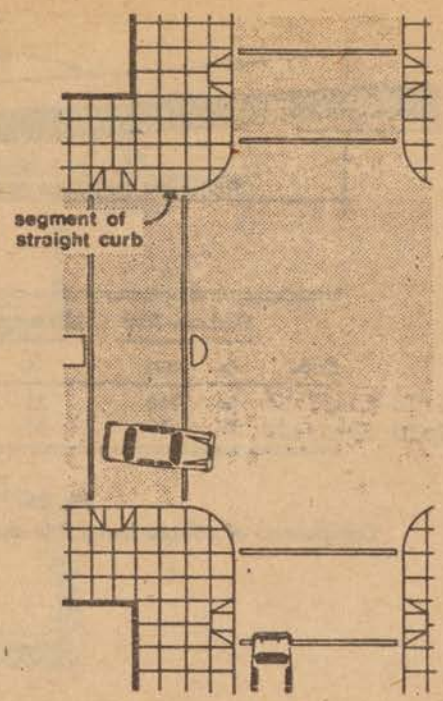
and (d). If diagonal curb ramps are provided at marked crossings, the 48 in (1220 mm) clear space shall be within the markings (see Figs. 15(c) and (d)). If diagonal curb ramps have flared sides, they shall also have at least a 24 in (610 mm) long segment of straight curb located on each side of the curb ramp and within the marked crossing (see Fig. 15(c)).

4.7.11 ISLANDS. Any raised islands in crossings shall be cut through level with the street or have curb ramps at both sides and a level area at least 48 in (1220 mm) long in the part of the island intersected by the crossings (see Fig. 15(a) and (b)).

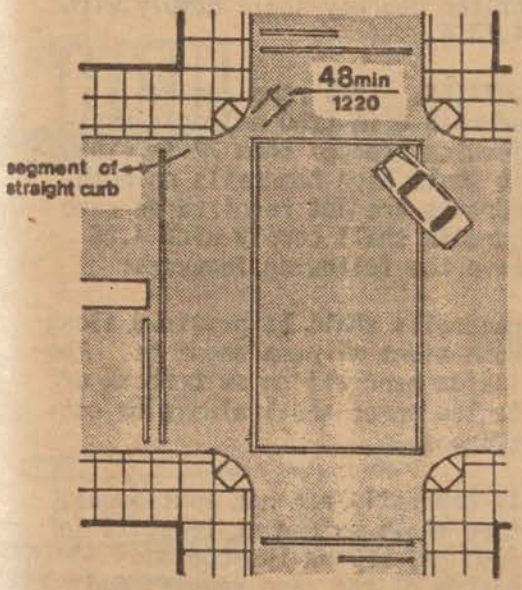
4.7.12 UNCURBED INTERSECTIONS. Removed and reserved.



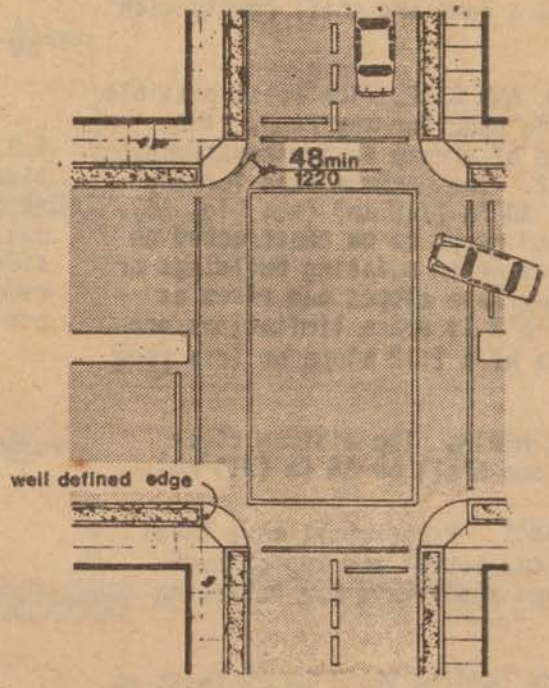
(a)



(b)

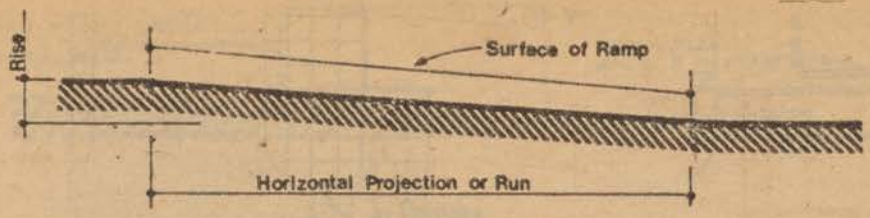


(c)



(d)

Fig. 15
Curb Ramps at Marked Crossings



	Maximum Rise		Maximum Horizontal Projection	
Slope	in	mm	ft	m
1:12 to < 1:16	30	760	30	9
1:16 to < 1:20	30	760	40	12

Fig. 16
Components of a Single Ramp Run and Sample Ramp Dimensions

4.8 RAMPS.

4.8.1* GENERAL. Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with 4.8.

4.8.2* SLOPE AND RISE. The least possible slope shall be used for any ramp. The maximum slope of a ramp in new construction shall be 1:12. The maximum rise for any run shall be 30 in (760 mm) (see Fig. 16). Curb ramps and ramps to be constructed on existing sites or in existing buildings or facilities may have slopes and rises as shown in Table 2 if space limitations prohibit the use of a 1:12 slope or less (see 4.1.6).

4.8.3 CLEAR WIDTH. The minimum clear width of a ramp shall be 36 in (915 mm).

4.8.4 LANDINGS. Ramps shall have level landings at the bottom and top of each run. Landings shall have the following features:

(1) The landing shall be at least as wide as the ramp run leading to it.

(2) The landing length shall be a minimum of 60 in (1525 mm) clear.

(3) If ramps change direction at landings, the minimum landing size shall be 60 in by 60 in (1525 mm by 1525 mm).

(4) If a doorway is located at a landing, then the area in front of the doorway shall comply with 4.13.6.

4.8.5* HANDRAILS. If a ramp run has a rise greater than 6 in (250 mm) or a horizontal projection greater than 72 in (1830 mm), then it shall have handrails on both sides. Handrails are not required on curb ramps. Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be provided along both sides of ramp segments. The inside handrail on switchback or dogleg ramps shall always be continuous.

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground surface.

(3) The clear space between the handrail and the wall shall be 1-1/2 in (38 mm).

(4) Gripping surfaces shall be continuous.

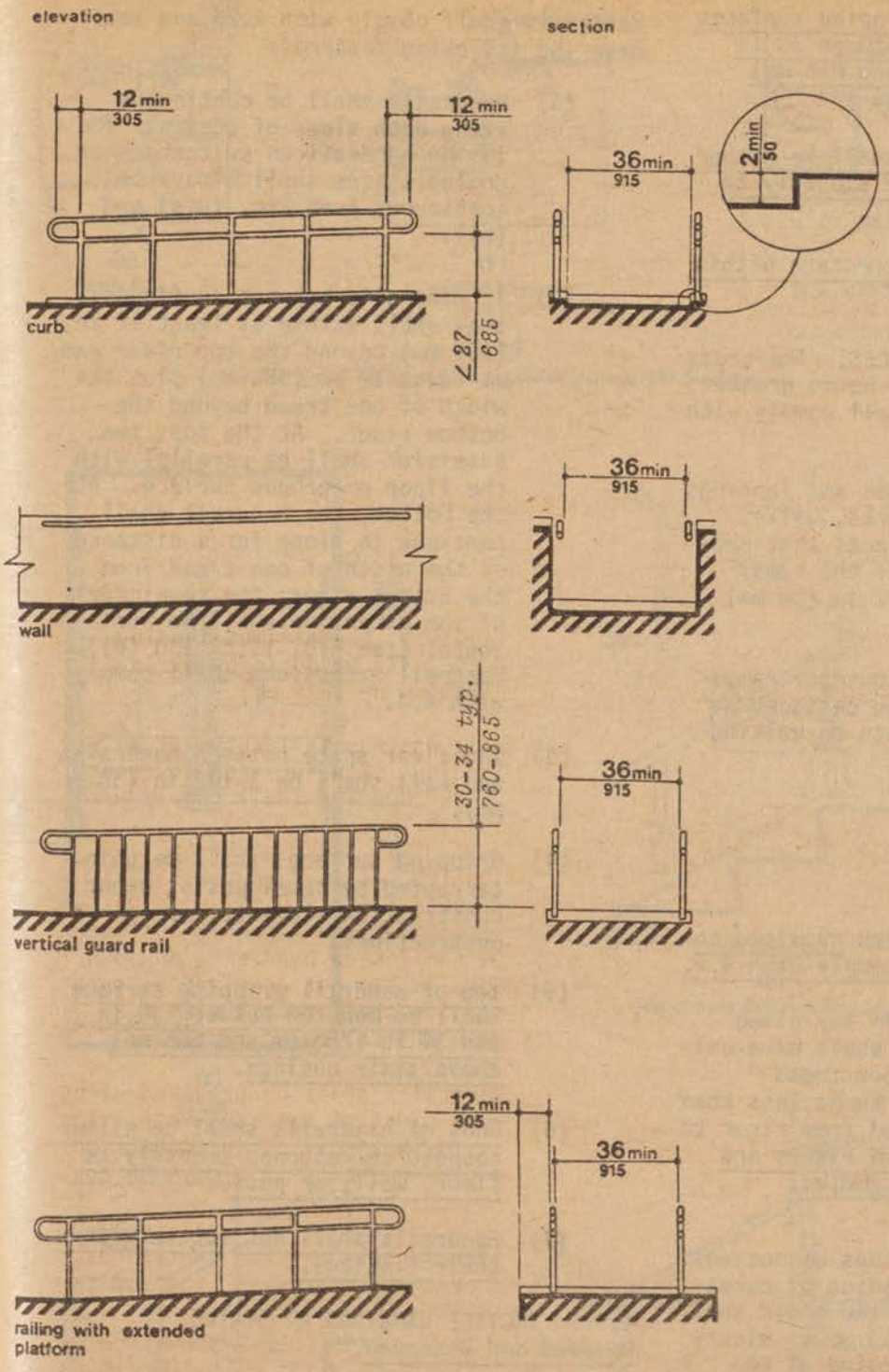


Fig. 17
Examples of Edge Protection and Handrail Extensions

(5) Top of handrail gripping surfaces shall be mounted between 30 in and 34 in (760 mm and 865 mm) above ramp surfaces.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall, or post.

(7) Handrails shall not rotate within their fittings.

4.8.6 CROSS SLOPE AND SURFACES. The cross slope of ramp surfaces shall be no greater than 1:50. Ramp surfaces shall comply with 4.5.

4.8.7 EDGE PROTECTION. Ramps and landings with drop-offs shall have curbs, walls, railings, or projecting surfaces that prevent people from slipping off the ramp. Curbs shall be a minimum of 2 in (50 mm) high (see Fig. 17).

4.8.8 OUTDOOR CONDITIONS. Outdoor ramps and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.9 STAIRS.

4.9.1 MINIMUM NUMBER. Stairs required to be accessible by 4.1 shall comply with 4.9.

4.9.2 TREADS AND RISERS. On any given flight of stairs, all steps shall have uniform riser heights and uniform tread widths. Stair treads shall be no less than 11 in (280 mm) wide, measured from riser to riser (see Fig. 18(a)). Open risers are not permitted on accessible routes.

4.9.3 NOSINGS. The undersides of nosings shall not be abrupt. The radius of curvature at the leading edge of the tread shall be no greater than 1/2 in (13 mm). Risers shall be sloped or the underside of the nosing shall have an angle not less than 60 degrees from the horizontal. Nosings shall project no more than 1-1/2 in (38 mm) (see Fig. 18).

4.9.4 HANDRAILS. Stairways shall have handrails at both sides of all stairs. Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be continuous along both sides of stairs. The inside handrail on switchback or dogleg stairs shall always be continuous (see Fig. 19(a) and (b)).

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top riser and at least 12 in (305 mm) plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal (see Fig. 19(c) and (d)). Handrail extensions shall comply with 4.4.

(3) The clear space between handrails and wall shall be 1-1/2 in (38 mm).

(4) Gripping surfaces shall be uninterrupted by newel posts, other construction elements, or obstructions.

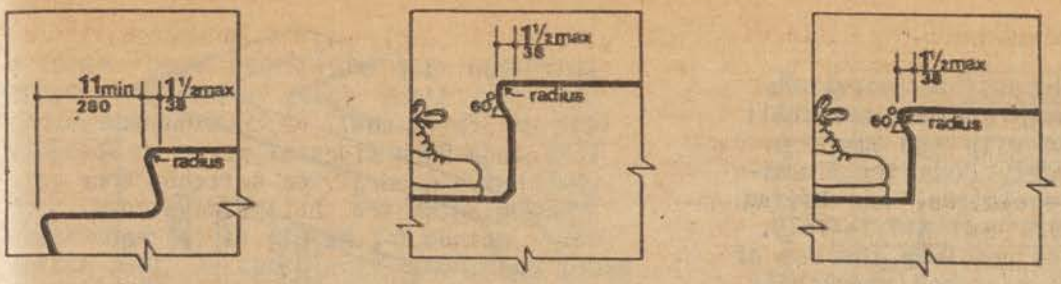
(5) Top of handrail gripping surface shall be mounted between 30 in and 34 in (760 mm and 865 mm) above stair nosings.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall, or post.

(7) Handrails shall not rotate within their fittings.

4.9.5 TACTILE WARNINGS AT STAIRS. Removed and Reserved.

4.9.6 OUTDOOR CONDITIONS. Outdoor stairs and their approaches shall be designed so that water will not accumulate on walking surfaces.

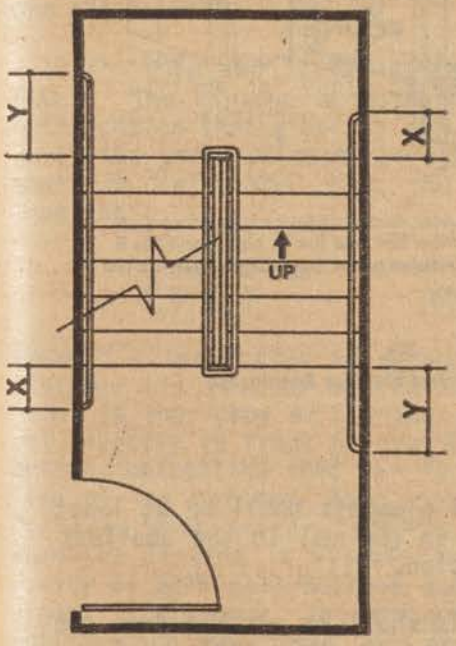


(a)
Flush Riser

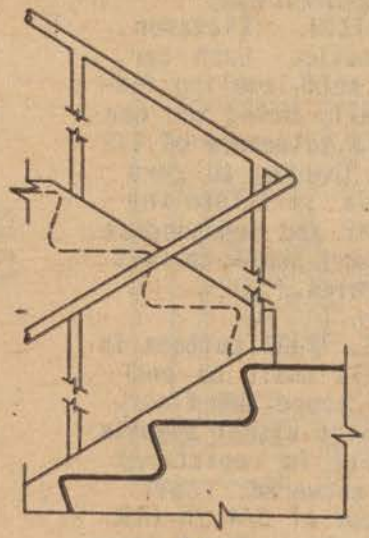
(b)
Angled Nosing

(c)
Rounded Nosing

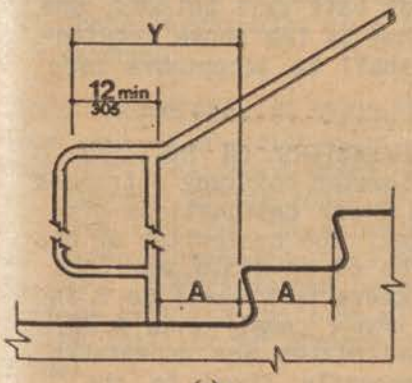
Fig. 18
Usable Tread Width and Examples of Acceptable Nosings



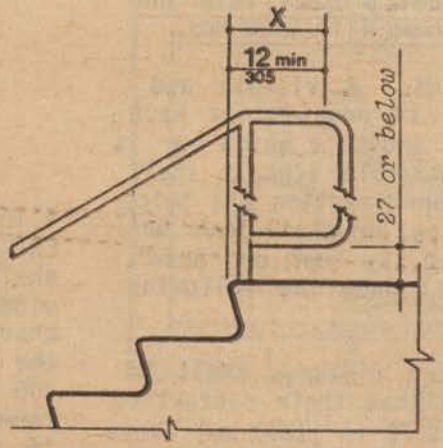
(a)
Plan



(b)
Elevation of Center Handrail



(c)
Extension at Bottom of Run



(d)
Extension at Top of Run

Fig. 19
Stair Handrails

4.10 ELEVATORS.

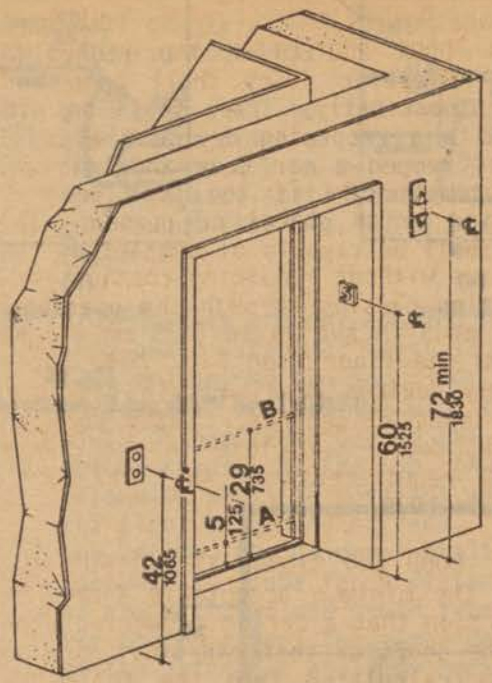
4.10.1 GENERAL. Accessible elevators shall be on an accessible route and shall comply with 4.10 and with the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ANSI A17.1-1978 and A17.1a-1979. This standard does not preclude the use of residential or fully enclosed wheelchair lifts when appropriate and approved by administrative authorities. Freight elevators shall not be considered as meeting the requirements of this section, unless the only elevators provided are used as combination passenger and freight elevators for the public and employees.

4.10.2 AUTOMATIC OPERATION. Elevator operation shall be automatic. Each car shall be equipped with a self-leveling feature that will automatically bring the car to floor landings within a tolerance of 1/2 in. (13 mm) under rated loading to zero loading conditions. This self-leveling feature shall be automatic and independent of the operating device and shall correct the overtravel or undertravel.

4.10.3 HALL CALL BUTTONS. Call buttons in elevator lobbies and halls shall be centered at 42 in (1065 mm) above the floor. Such call buttons shall have visual signals to indicate when each call is registered and when each call is answered. Call buttons shall be a minimum of 3/4 in (19 mm) in the smallest dimension. The button designating the up direction shall be on top (see Fig. 20). Buttons shall be raised or flush. Objects mounted beneath hall call buttons shall not project into the elevator lobby more than 4 in (100 mm).

4.10.4 HALL LANTERNS. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call. Audible signals shall sound once for the up direction and twice for the down direction, or shall have verbal annunciators that say "up" or "down". Visible signals shall have the following features.

(1) Hall lantern fixtures shall be mounted so that their centerline is at least 72 in (1830 mm) above the lobby floor.



NOTE: The automatic door reopening device is activated if an object passes through either line A or line B. Line A and line B represent the vertical locations of the door reopening device not requiring contact.

Fig. 20
Hoistway and Elevator Entrances

(2) Visual elements shall be at least 2-1/2 in (64 mm) in the smallest dimension.

(3) Signals shall be visible from the vicinity of the hall call button. In-car lanterns located in cars, visible from the vicinity of hall call buttons, and conforming to the above requirements, shall be acceptable (see Fig. 20).

4.10.5 RAISED CHARACTERS ON HOISTWAY ENTRANCES. All elevator hoistway entrances shall have raised floor designations provided on both jambs. The centerline of the characters shall be 60 in (1525 mm) from the floor. Such characters shall be 2 in (50 mm) high and shall comply with 4.30. Permanently applied plates are acceptable if they are permanently fixed to the jambs. (See Fig. 20).

4.10.6* DOOR PROTECTIVE AND REOPENING DEVICE. Elevator doors shall open and close automatically. They shall be provided with a reopening device that will stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person. The device shall be capable of completing these operations without requiring contact for an obstruction passing through the opening at heights of 5 in and 29 in (125 mm and 735 mm) from the floor (see Fig. 20). Door reopening devices shall remain effective for at least 20 seconds. After such an interval, doors may close in accordance with the requirements of ANSI A17.1-1978 and A17.1a-1979.

4.10.7* DOOR AND SIGNAL TIMING FOR HALL CALLS. The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from the following equation:

$$T = \frac{D}{1.5\ ft/s} \quad \text{or} \quad T = \frac{D}{445\ mm/s}$$

where T = total time in seconds and D = distance (in feet or millimeters) from a point in the lobby or corridor 60 in (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoistway door (see Fig. 21). For cars with in-car lanterns, T begins when the lantern is visable from the vicinity of hall call buttons and an audible signal is sounded. The minimum acceptable notification time shall be 5 seconds.

4.10.8 DOOR DELAY FOR CAR CALLS. The minimum time for elevator doors to remain fully open in response to a car call shall be 3 seconds.

4.10.9 FLOOR PLAN OF ELEVATOR CARS. The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown in Fig. 22. The clearance between the car platform sill and the edge of any hoistway landing shall be no greater than 1-1/4 in (32 mm).

4.10.10 FLOOR SURFACES. Floor surfaces shall comply with 4.5.

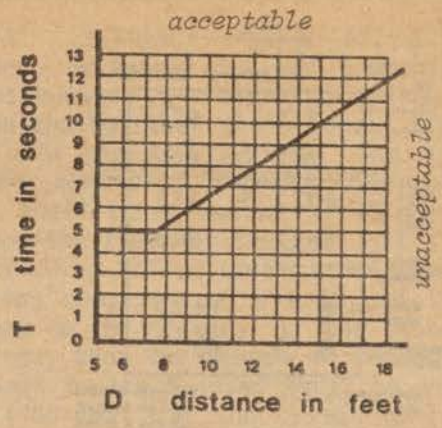
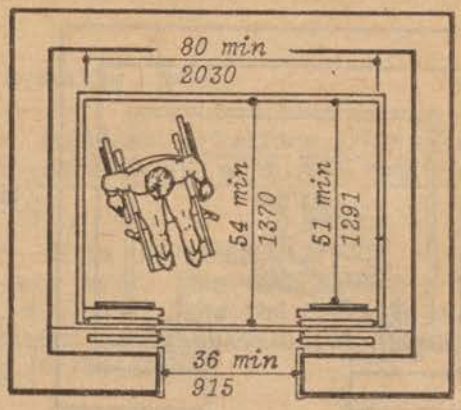


Fig. 21
Graph of Timing Equation



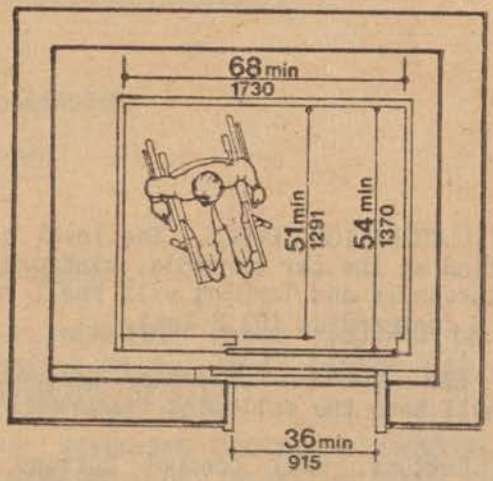
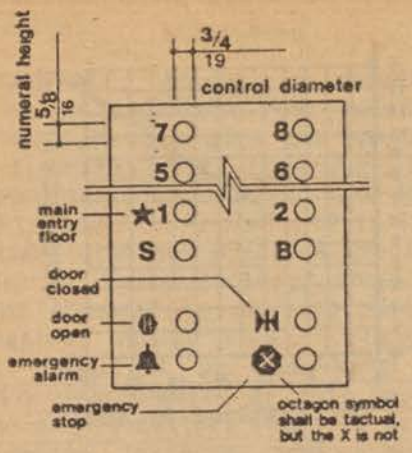
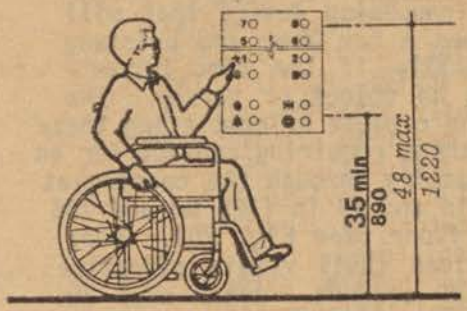


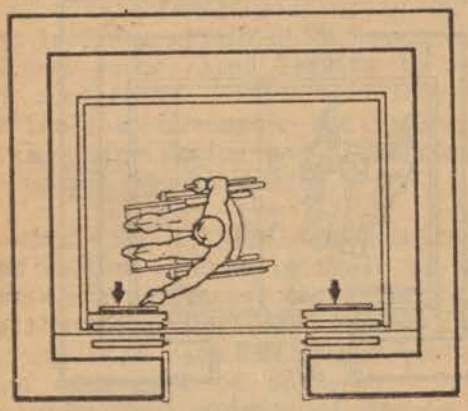
Fig. 22
Minimum Dimensions of Elevator Cars



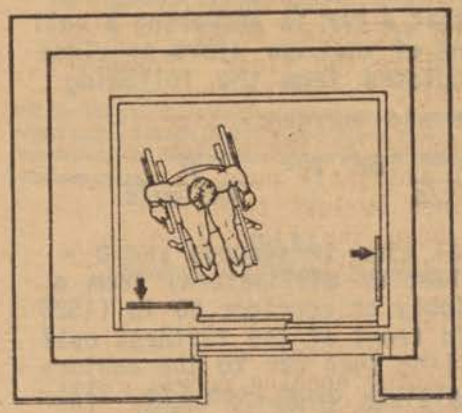
(a)
Panel Detail



(b)
Control Height



(c)
Alternate Locations of Panel
with Center Opening Door



(d)
Alternate Locations of Panel
with Side Opening Door

Fig. 23
Car Controls

4.10.11 ILLUMINATION LEVELS. The level of illumination at the car controls, platform, and car threshold and landing sill shall be at least 5 footcandles (53.8 lux).

4.10.12* CAR CONTROLS. Elevator control panels shall have the following features:

(1) Buttons. All control buttons shall be at least 3/4 in (19 mm) in their smallest dimension. They may be raised or flush.

(2) Tactile and Visual Control Indicators. All control buttons shall be designated by raised standard alphabet characters for letters, arabic characters for numerals, or standard symbols as shown in Fig. 23(a), and as required in ANSI A17.1-1978 and A17.1a-1979. Raised characters and symbols shall comply with 4.30. The call button for the main entry floor shall be desig-

nated by a raised star at the left of the floor designation (see Fig. 23(a)). All raised designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered.

(3) Height. All floor buttons shall be no higher than 48 in (1220 mm), unless there is a substantial increase in cost, in which case the maximum mounting height may be increased to 54 in (1370 mm), above the floor. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the buttom of the panel and shall have their centerlines no less than 35 in (890 mm) above the floor (see Fig. 23(a) and (b)).

(4) Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors (see Fig. 23(c) and (d)).

4.10.13* CAR POSITION INDICATORS. In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numerals shall illuminate and an audible signal shall sound. Numerals shall be a minimum of 1/2 in (13 mm) high. The audible signal shall be no less than 20 decibels with a frequency no higher than 1500 Hz. An automatic verbal announcement of the floor number at which a car stops or which a car passes may be substituted for the audible signal.

4.10.14* EMERGENCY COMMUNICATIONS. If provided, emergency two-way communication systems between the elevator and a point outside the hoistway shall comply with ANSI A17.1-1978 and A17.1a-1979. The highest operable part of a two-way communication system shall be a maximum of 48 in (1220 mm) from the floor of the car. It shall be identified by raised or recessed symbol and lettering complying with 4.30 and located adjacent to the device. If the system uses a handset, then the length of the cord from the panel to the handset shall be at least 29 in (735 mm). If the system is located in a closed compartment, the compartment door hardware shall conform to 4.27, Controls and Operating Mechanisms. The emergency intercommunication system shall not require voice communication.

4.11 PLATFORM LIFTS.

4.11.1 LOCATION. Platform lifts permitted by 4.1 shall comply with the requirements of 4.11.

4.11.2 OTHER REQUIREMENTS. If platform lifts are used, they shall comply with 4.2.4, 4.5, 4.27, and the applicable safety regulations of administrative authorities having jurisdiction.

4.11.3 ENTRANCE. If platform lifts are used, then they should facilitate unassisted entry and exit from the lift in compliance with 4.11.2.

4.12 WINDOWS.

RESERVED.

4.13 DOORS.

4.13.1 GENERAL. Doors required to be accessible by 4.1 shall comply with the requirements of 4.13.

4.13.2 REVOLVING DOORS AND TURNSTILES. Revolving doors or turnstiles shall not be

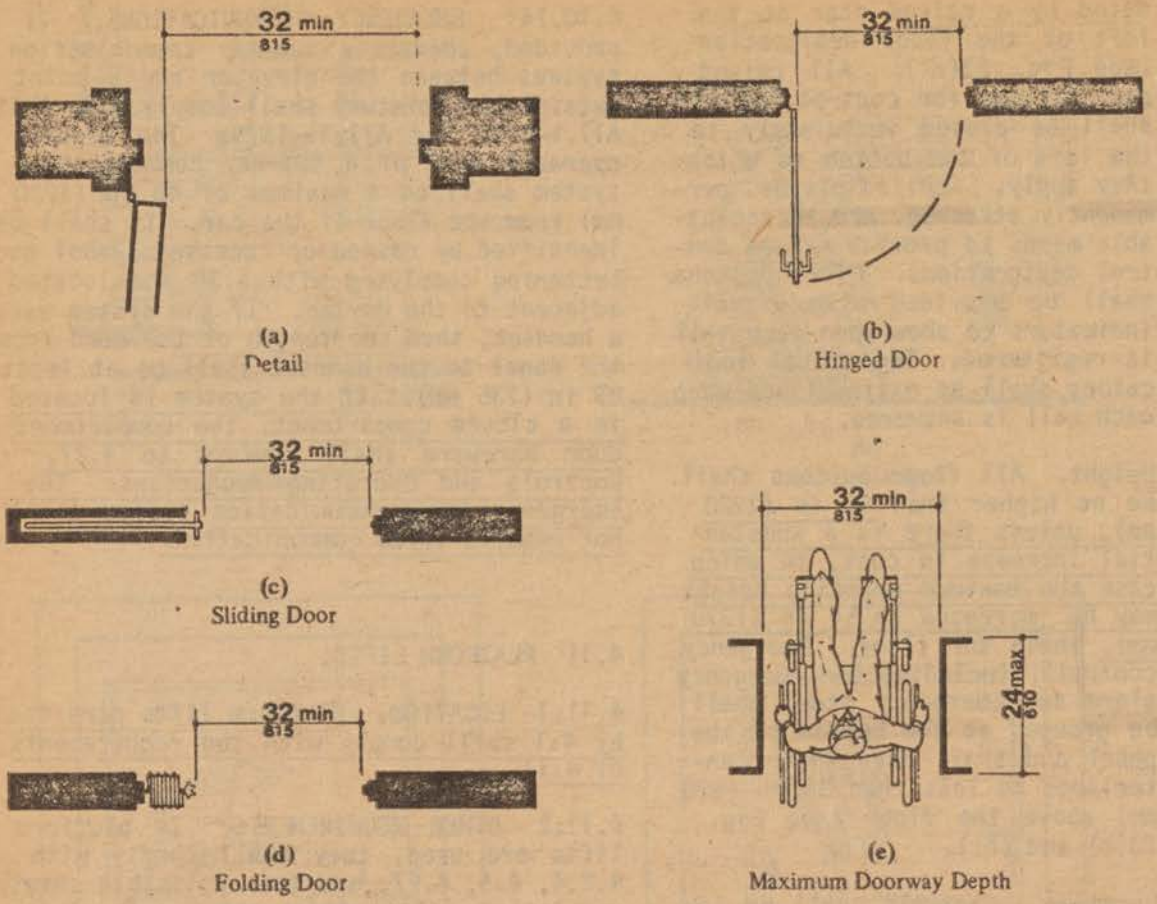


Fig. 24
Clear Doorway Width and Depth

the only means of passage at an accessible entrance or along an accessible route. An accessible gate or door shall be provided adjacent to the turnstile or revolving door and shall be so designed as to facilitate the same use pattern.

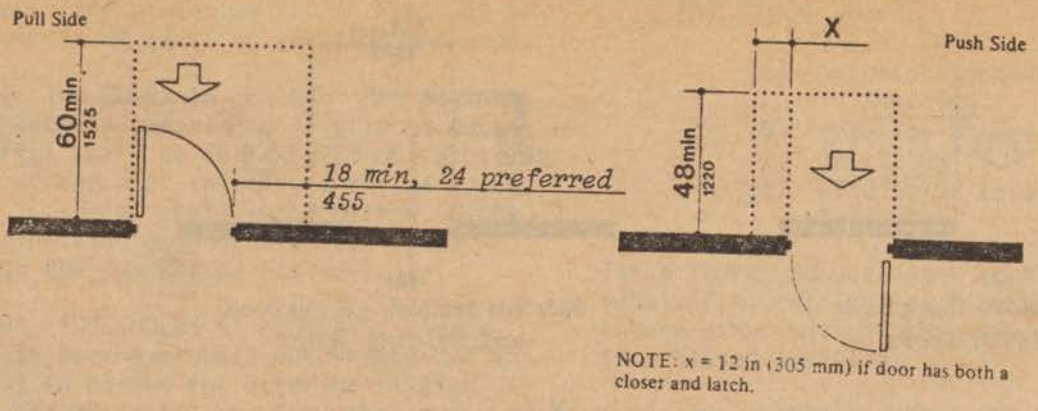
4.13.3 GATES. Gates, including ticket gates, shall meet all applicable specifications of 4.13.

4.13.4 DOUBLE-LEAF DOORWAYS. If doorways have two independently operated door leaves, then at least one leaf shall meet the specifications in 4.13.5 and 4.13.6. That leaf shall be an active leaf.

4.13.5 CLEAR WIDTH. Doorways shall have a minimum clear opening of 32 in (815 mm) with the door open 90 degrees, measured between the face of the door and the stop (see Fig. 24(a), (b), (c), and (d)). Openings more than 24 in (610 mm) in depth shall comply with 4.2.1 and 4.3.3 (see Fig. 24(e)).

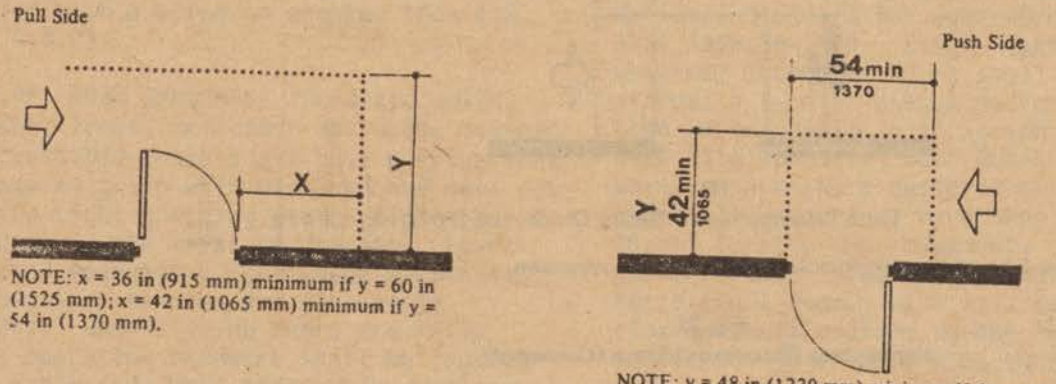
EXCEPTION: Doors not requiring full user passage, such as shallow closets, may have the clear opening reduced to 20 in. (510 mm) minimum.

4.13.6 MANEUVERING CLEARANCES AT DOORS. Minimum maneuvering clearances for doors that are not automatic or power assisted shall be as shown in Figs. 25. The floor or ground area within the required clearances shall be level and clear. Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement for space at the latch side of



NOTE: x = 12 in (305 mm) if door has both a closer and latch.

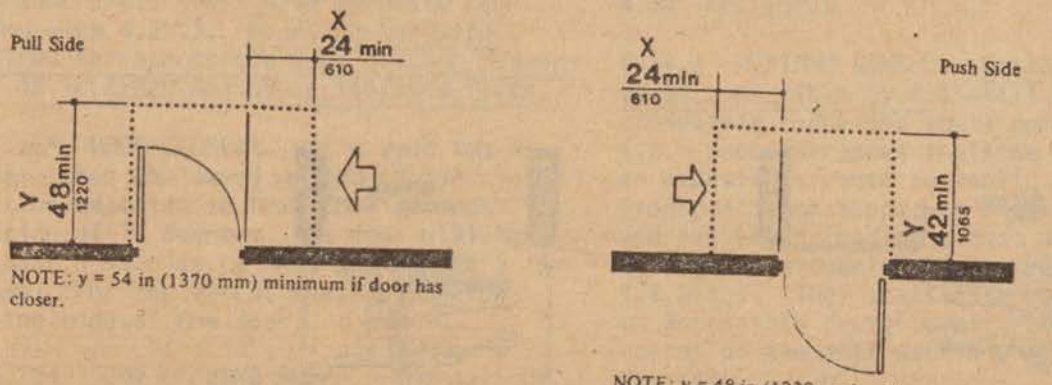
(a)
Front Approaches – Swinging Doors



NOTE: x = 36 in (915 mm) minimum if y = 60 in (1525 mm); x = 42 in (1065 mm) minimum if y = 54 in (1370 mm).

NOTE: y = 48 in (1220 mm) minimum if door has both a latch and closer.

(b)
Hinge Side Approaches – Swinging Doors



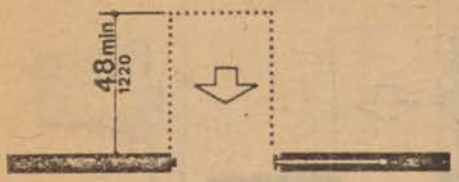
NOTE: y = 54 in (1370 mm) minimum if door has closer.

NOTE: y = 48 in (1220 mm) minimum if door has closer.

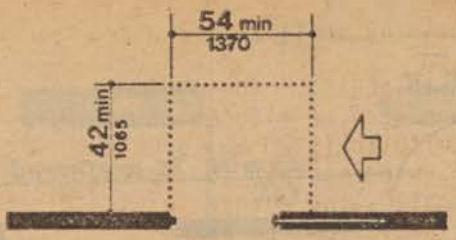
(c)
Latch Side Approaches – Swinging Doors

NOTE: All doors in alcoves shall comply with the clearances for front approaches.

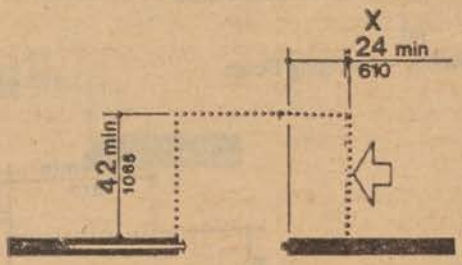
Fig. 25
Maneuvering Clearances at Doors



(d)
Front Approach – Sliding Doors
and Folding Doors



(e)
Slide Side Approach – Sliding Doors
and Folding Doors



(f)
Latch Side Approach – Sliding Doors *and Folding Doors*

NOTE: All doors in alcoves shall comply with the clearances for front approaches.

Fig. 25
Maneuvering Clearances at Doors (*Continued*)

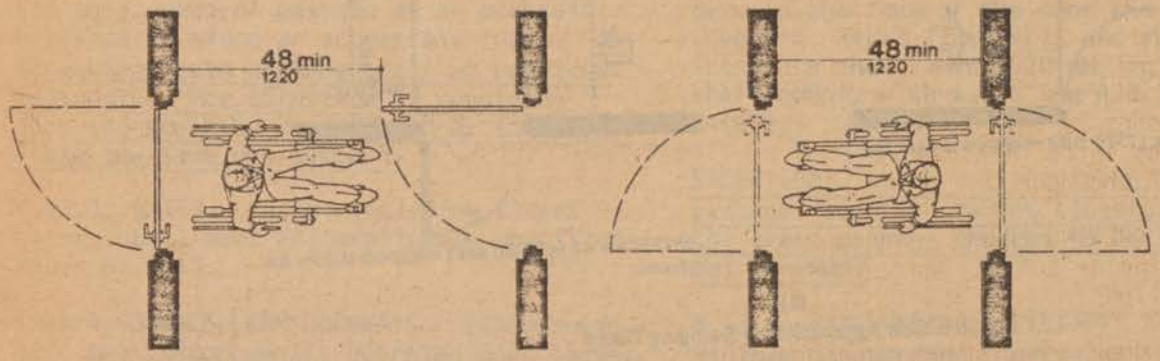


Fig. 26
Two Hinged Doors in Series

the door (see dimension "x" in Fig. 25) if the door is at least 44 in (1120 mm) wide.

4.13.7 TWO DOORS IN SERIES. The minimum space between two hinged or pivoted doors in series shall be 48 in (1220 mm) plus the width of any door swinging into the space. Doors in series shall swing either in the same direction or away from the space between the doors (see Fig. 26).

4.13.8* THRESHOLDS AT DOORWAYS. Thresholds at doorways shall not exceed 3/4 in (19 mm) in height for exterior sliding doors or 1/2 in (13 mm) for other types of doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2 (see 4.5.2).

4.13.9* DOOR HARDWARE. Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors are fully open, operating hardware shall be exposed and usable from both sides. In dwelling units, only doors at accessible entrances to the unit itself shall comply with the requirements of this paragraph. Doors to hazardous areas shall have hardware complying with 4.29.3. Mount no hardware required for accessible door passage higher than 48 in (1220 mm) above finished floor.

4.13.10* DOOR CLOSERS. If a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of 70 degrees, the door will take at least 3 seconds to move to a point 3 in (75 mm) from the latch, measured to the leading edge of the door.

4.13.11* DOOR OPENING FORCE. The maximum force for pushing or pulling open a door shall be as follows:

(1) Fire doors shall have the minimum opening force allowable by the appropriate administrative authority.

(2) Other doors.

(a) exterior hinged doors; Reserved.
(b) interior hinged doors: 5 lb (2.3kg)
(c) sliding or folding doors: 5 lb (2.3kg)

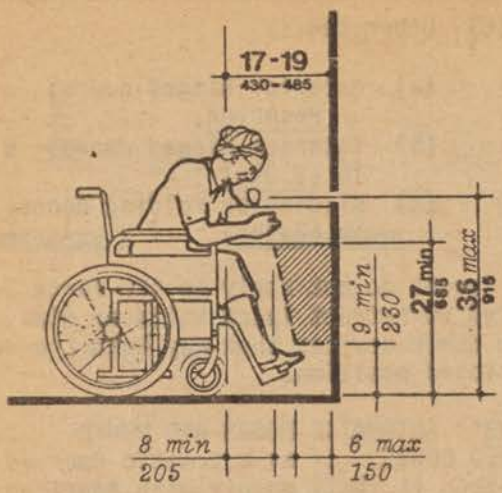
These forces do not apply to the force required to retract latch bolts or disengage other devices that may hold the door in a closed position.

4.13.12* AUTOMATIC DOORS AND POWER-ASSISTED DOORS. If an automatic door is used, then it shall comply with American National Standard for Power-Operated Doors, ANSI A156.10-1979. Slowly opening, low-powered, automatic doors shall be considered a type of custom design installation as described in paragraph 1.1.1 of ANSI A156.10-1979. Such doors shall not open to back check faster than 3 seconds and shall require no more than 15 lbf (6.8K) to stop door movement. If a power-assisted door is used, its door-opening force shall comply with 4.13.11 and its closing shall conform to the requirements in section 10 of ANSI A156.10-1979.

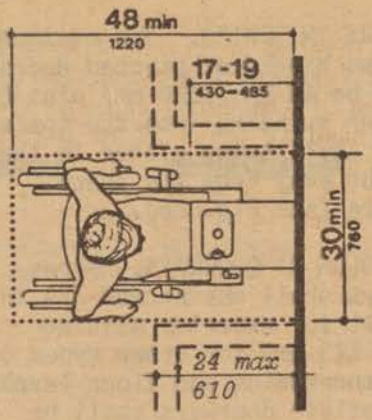
4.14 Entrances.

4.14.1 MINIMUM NUMBER. Entrances required to be accessible by 4.1 shall be part of an accessible route and shall comply with 4.3. Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available (see 4.3.2(1)). They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility.

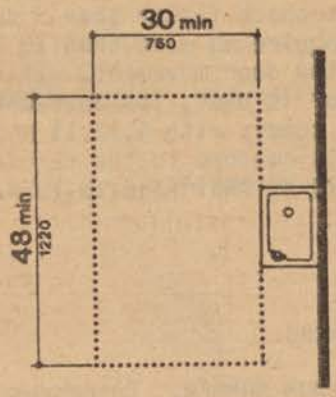
4.14.2 SERVICE ENTRANCES. A service entrance shall not be the sole accessible entrance unless it is the only entrance to a building or facility (for example, in a factory or garage).



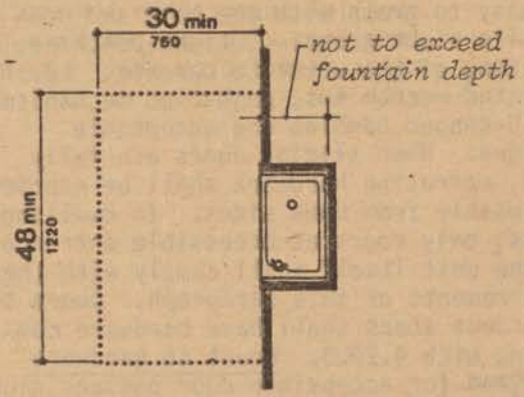
(a)
Spout Height and
Knee Clearance
equipment permitted in shaded area



(b)
Clear Floor Space



(c)
Free-Standing
Fountain or Cooler



(d)
Built-In
Fountain or Cooler

Fig. 27
Drinking Fountains and Water Coolers

4.15 DRINKING FOUNTAINS AND WATER COOLERS.

4.15.1 MINIMUM NUMBER. Drinking fountains or water coolers required to be accessible by 4.1 shall comply with 4.15.

4.15.2* SPOUT HEIGHT. Spouts shall be no higher than 36 in (915 mm), measured from the floor or ground surfaces to the spout outlet (see Fig. 27(a)).

4.15.3 SPOUT LOCATION. The spouts of drinking fountains and water coolers shall be at the front of the unit and shall direct the water flow in a trajectory that is parallel or nearly parallel to the front of the unit. The spout shall provide a flow of water at least 4 in (100 mm) high so as to allow the insertion of a cup or glass under the flow of water.

4.15.4 CONTROLS. Controls shall comply with 4.27.4. Unit controls shall be front mounted or side mounted near the front edge.

4.15.5 CLEARANCES.

(1) Wall- and post-mounted cantilevered units shall have a clear knee space between the bottom of the apron and the floor or ground at least 27 in (685 mm) high, 30 in (760 mm) wide, and 17 in to 19 in (430 mm to 485 mm) deep (see Fig. 27(a) and (b)).

Such units shall also have a minimum clear floor space 30 in by 48 in (760 mm by 1220 mm) to allow a person in a wheelchair to approach the unit facing forward.

(2) Free-standing or built-in units not having a clear space under them shall have a clear floor space at least 30 in by 48 in (760 mm by 1220 mm) that allows a person in a wheelchair to make a parallel approach to the unit (see Fig. 27(c) and (d)). This clear floor space shall comply with 4.2.4.

4.16 WATER CLOSETS.

4.16.1 GENERAL. Accessible water closets shall comply with 4.16. For water closets in accessible dwelling units, see 4.34.5.2.

4.16.2 CLEAR FLOOR SPACE. Clear floor space for water closets not in stalls shall comply with Fig. 28. Clear floor space may be arranged to allow either a left-handed or right-handed approach.

4.16.3* HEIGHT. The height of water closets shall be 17 in to 19 in (430 mm to 485 mm), measured to the top of the toilet seat (see Fig. 29). Seats shall not be sprung to return to a lifted position.

4.16.4* GRAB BARS. Grab bars for water closets not located in stalls shall comply with Fig. 29 and 4.26.

4.16.5 FLUSH CONTROLS. Flush controls shall be hand operated or automatic and shall comply with 4.27.4. Controls for flush valves shall be mounted on the wide side of toilet areas no more than 44 in (1120 mm) above the floor.

4.16.6 DISPENSERS. Toilet paper dispensers shall be installed within reach, as shown in Fig. 29(b). Dispensers that control delivery or that do not permit continuous paper flow, shall not be used.

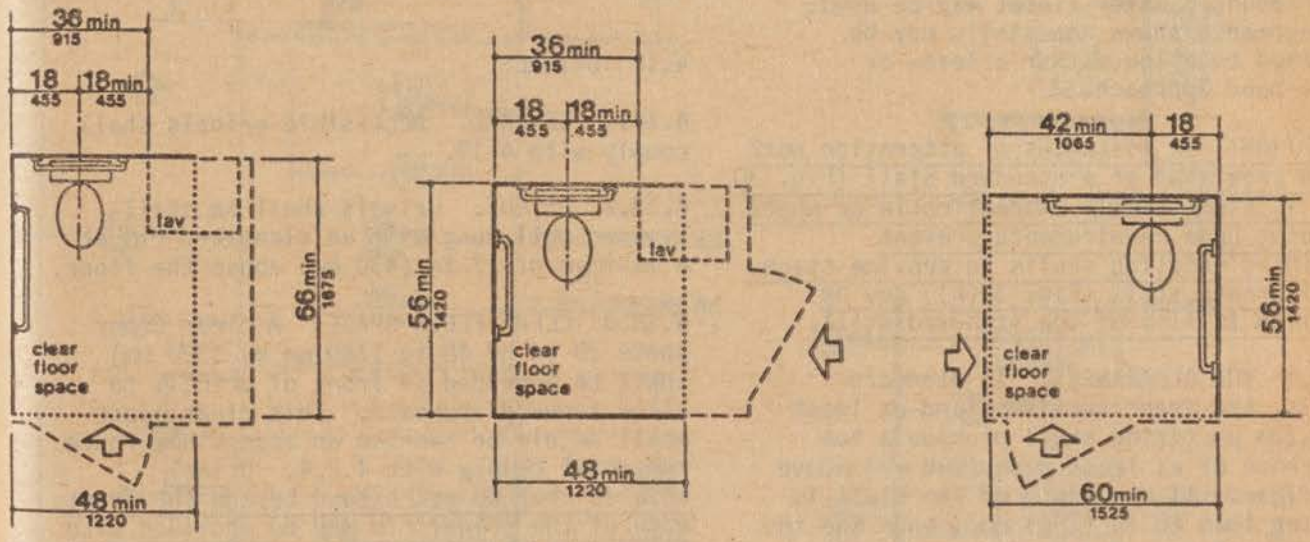
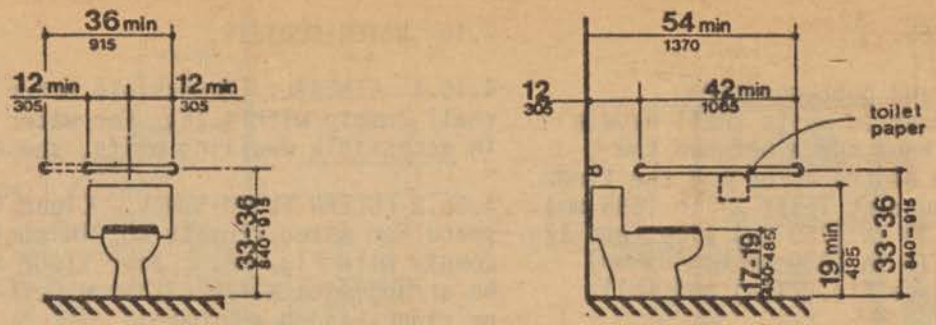


Fig. 28
Clear Floor Space at Water Closets

Possible wall locations ----



(a) Back Wall

(b) Side Wall

Fig. 29
Grab Bars at Water Closets

4.17 TOILET STALLS.

4.17.1 LOCATION. Accessible toilet stalls shall be on an accessible route and shall meet the requirements of 4.17.

4.17.2 WATER CLOSETS. Water closets in accessible stalls shall comply with 4.16.

4.17.3 SIZE AND ARRANGEMENT. The size and arrangement of toilet stalls shall comply with Fig. 30(a). Toilet stalls with a minimum depth of 56 in (1420 mm) (see Fig. 30(a)) shall have wall-mounted water closets. If the depth of toilet stalls is increased at least 3 in (75 mm), then a floor-mounted water closet may be used. Arrangements shown for stalls may be reversed to allow either a left- or right-hand approach.

EXCEPTION: In instances of alteration work where provision of a standard stall (Fig. 30 (a)) is structurally impracticable or where plumbing code requirements prevent combining existing stalls to provide space, an alternate stall (Fig. 30(b)) may be provided in lieu of the standard stall.

4.17.4 TOE CLEARANCES. In standard stalls, the front partition and at least one side partition shall provide a toe clearance of at least 9 in (230 mm) above the floor. If the depth of the stall is greater than 60 in (1525 mm), then the toe clearance is not required.

4.17.5* DOORS. Toilet stall doors shall comply with 4.13. If toilet stall approach is from the latch side of the stall door, clearance between the door side of the stall and any obstruction may be reduced to a minimum of 42 in (1065 mm).

4.17.6 GRAB BARS. Grab bars complying with the length and positioning shown in Fig. 30(a), (b), (c), and (d) shall be provided. Grab bars may be mounted with any desired method as long as they have a gripping surface at the locations shown and do not obstruct the required clear floor area. Grab bars shall comply with 4.26.

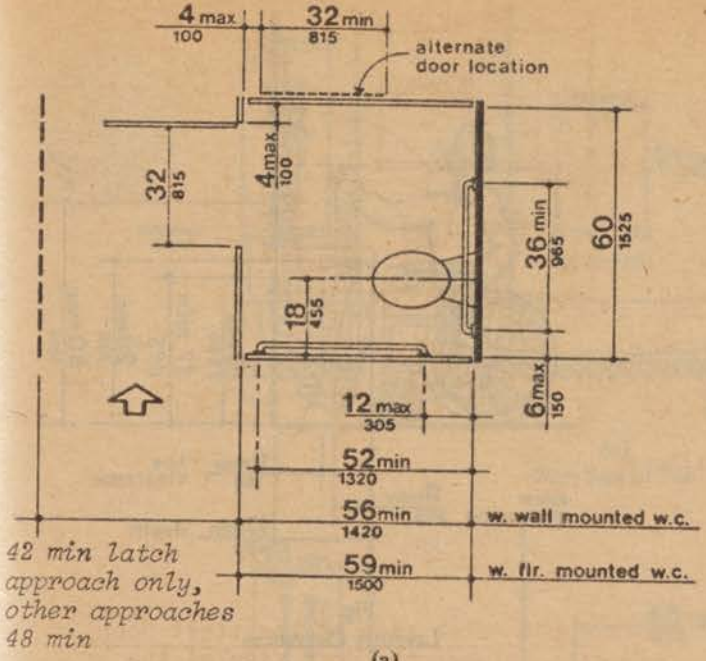
4.18 URINALS.

4.18.1 GENERAL. Accessible urinals shall comply with 4.18.

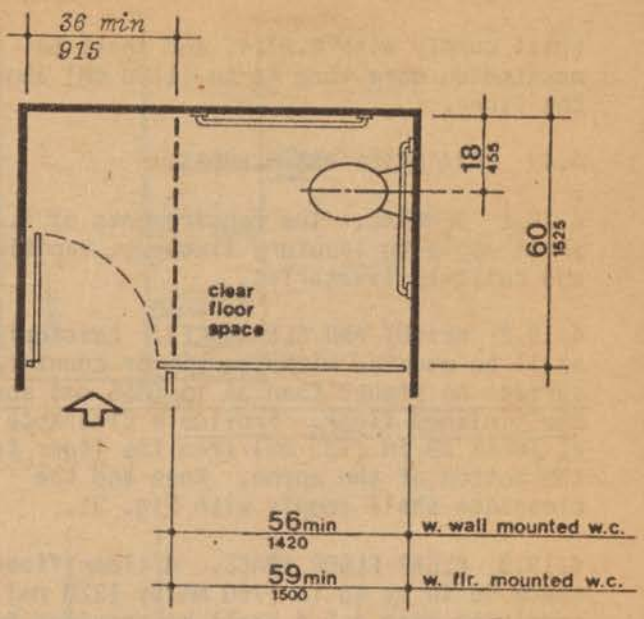
4.18.2 HEIGHT. Urinals shall be stall-type or wall-hung with an elongated rim at a maximum of 17 in (430 mm) above the floor.

4.18.3 CLEAR FLOOR SPACE. A clear floor space 30 in by 48 in (760 mm by 1220 mm) shall be provided in front of urinals to allow forward approach. This clear space shall adjoin or overlap an accessible route and shall comply with 4.2.4. Urinal shields that do not extend beyond the front edge of the urinal rim may be provided with 29 in (735 mm) clearance between them.

4.18.4 FLUSH CONTROLS. Flush controls shall be hand operated or automatic, and



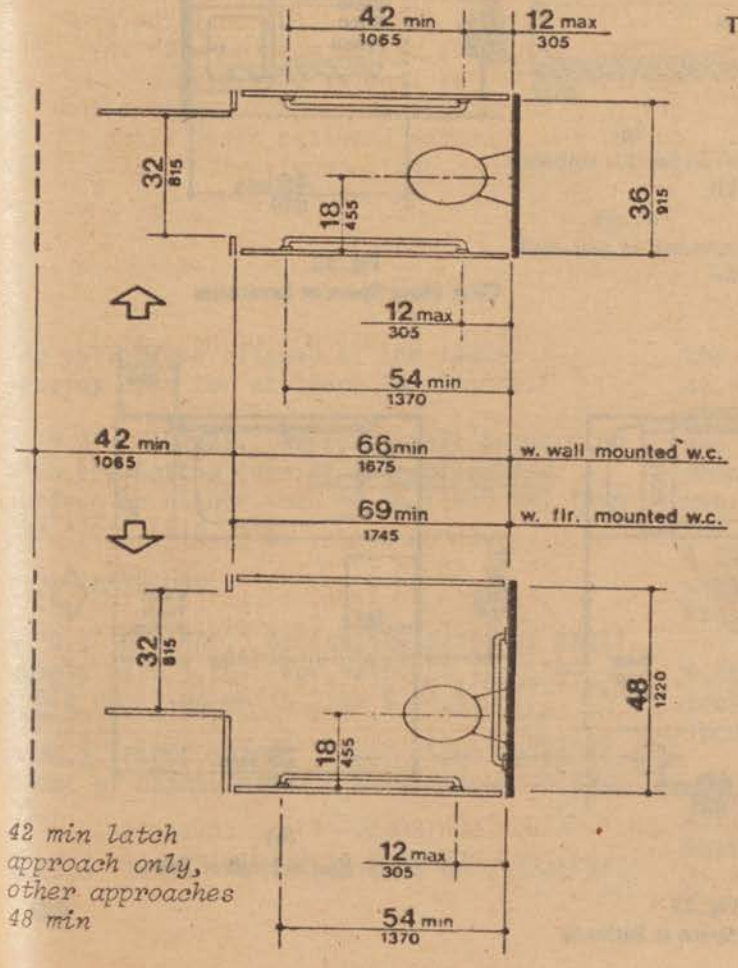
(a)
Standard Stall

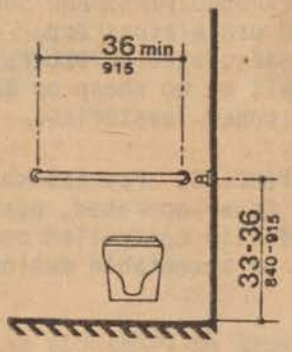


Standard Stall (end of row)

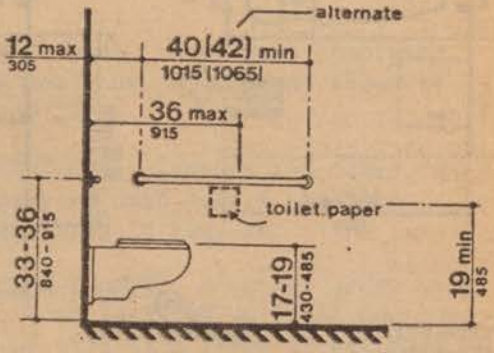
(b)
Alternate Stalls (below)

Fig. 30
Toilet Stalls





(c)
Rear Wall of Standard Stall



(d)
Side Walls

shall comply with 4.27.4, and shall be mounted no more than 44 in (1120 mm) above the floor.

4.19 LAVATORIES AND MIRRORS.

4.19.1 GENERAL. The requirements of 4.19 shall apply to lavatory fixtures, vanities, and built-in lavatories.

4.19.2 HEIGHT AND CLEARANCES. Lavatories shall be mounted with the rim or counter surface no higher than 34 in (865 mm) above the finished floor. Provide a clearance of at least 29 in (735 mm) from the floor to the bottom of the apron. Knee and toe clearance shall comply with Fig. 31.

4.19.3 CLEAR FLOOR SPACE. A clear floor space 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a lavatory to allow forward approach. Such clear floor space shall adjoin or overlap an accessible route and shall extend a maximum of 19 in (485 mm) underneath the lavatory (see Fig. 32).

4.19.4 EXPOSED PIPES AND SURFACES. Hot water and drain pipes under lavatories shall be insulated or otherwise covered. There shall be no sharp or abrasive surfaces under lavatories.

4.19.5 FAUCETS. Faucets shall comply with 4.27.4. Lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs. Self-clos-

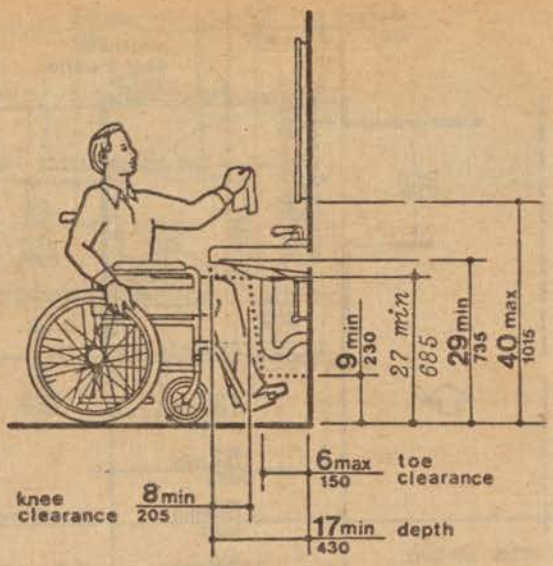


Fig. 31
Lavatory Clearances

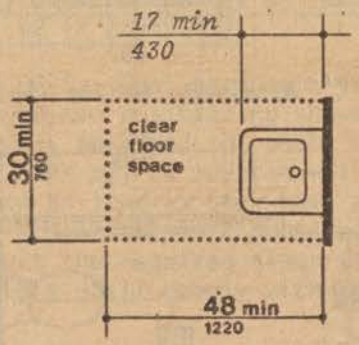
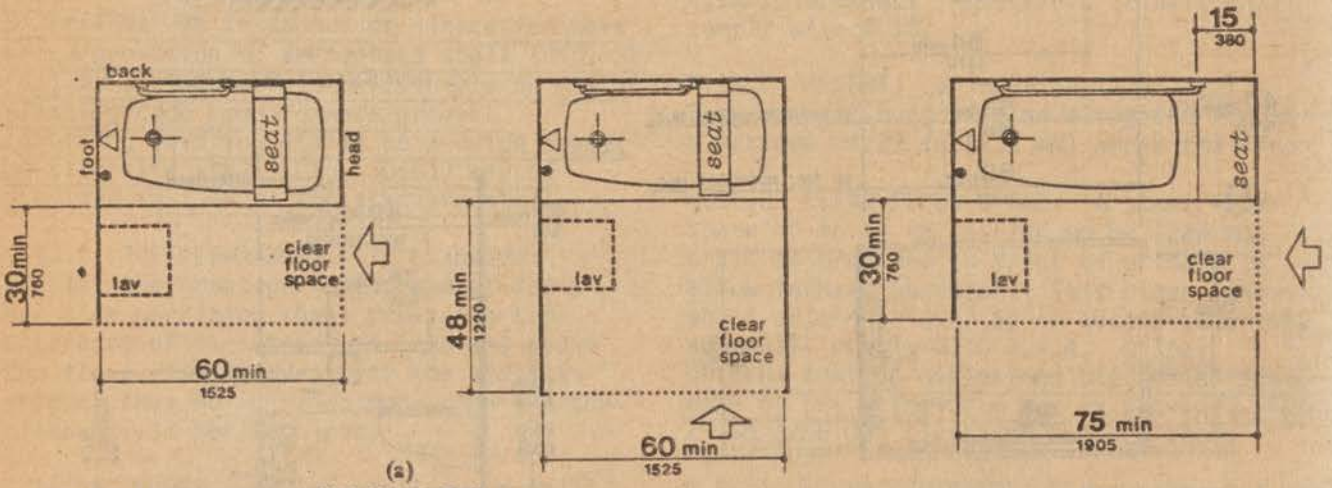


Fig. 32
Clear Floor Space at Lavatories

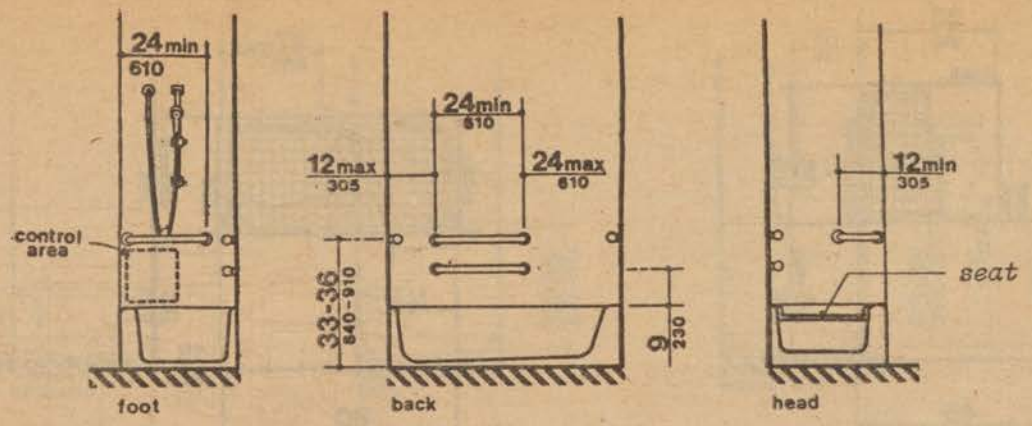


(a)
With Seat in Tub

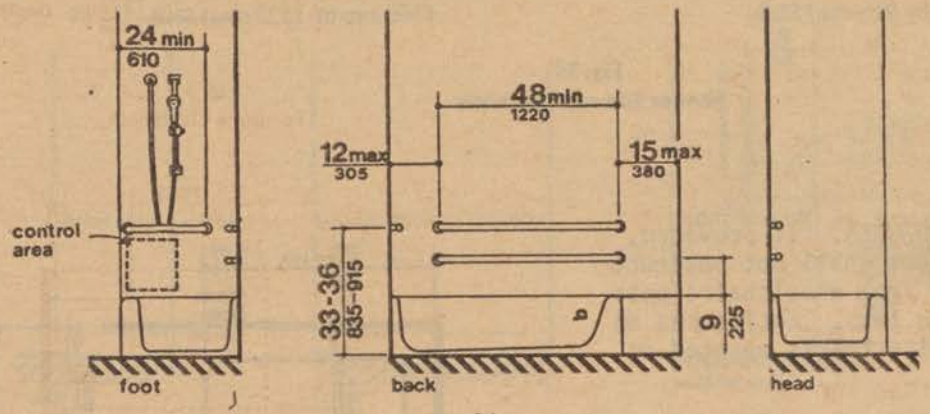
(b)
With Seat at Head of Tub

SYMBOL KEY:
● Shower controls
◁ Shower head
⊕ Drain

Fig. 33
Clear Floor Space at Bathtubs



(a)
With Seat in Tub



(b)
With Seat at Head of Tub

Fig. 34
Grab Bars at Bathtubs

ing valves are allowed if the faucet remains open for at least 10 seconds.

4.19.6* MIRRORS. Mirrors shall be mounted with the bottom edge of the reflecting surface no higher than 40 in (1015 mm) from the floor (Fig. 31).

4.20 BATHTUBS.

4.20.1 GENERAL. Accessible bathtubs shall comply with 4.20. For bathtubs in accessible dwelling units, see 4.34.5.4.

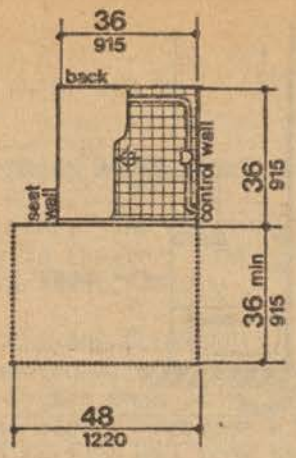
4.20.2 FLOOR SPACE. Clear floor space in front of bathtubs shall be as shown in Fig. 33.

4.20.3 SEAT. An in-tub seat or a seat at the head end of the tub shall be provided as shown in Fig. 33 and 34. The structural strength of seats and their attachments shall comply with 4.26.3. Seats shall be mounted securely and shall not slip during use.

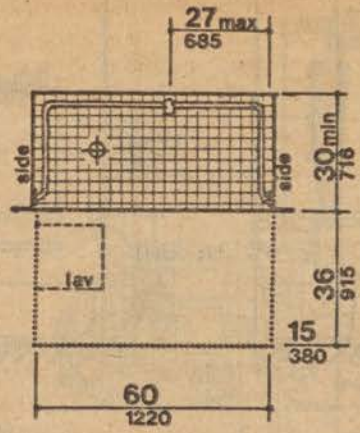
4.20.4 GRAB BARS. Grab bars complying with 4.26 shall be provided as shown in Fig. 33 and 34.

4.20.5 CONTROLS. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 34.

4.20.6 SHOWER UNIT. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head or as a hand-held shower shall be provided.



(a)
36-in by 36-in
(915-mm by 915-mm) Stall



(b)
30-in by 60-in
(760-mm by 1525-mm) Stall

Fig. 35
Shower Size and Clearances

4.20.7 BATHTUB ENCLOSURES. If provided, enclosures for bathtubs shall not obstruct controls or transfer from wheelchairs onto bathtub seats or into tubs. Enclosures on bathtubs shall not have tracks mounted on their rims.

4.21 SHOWER STALLS.

4.21.1* GENERAL. Accessible shower stalls shall comply with 4.21. For shower stalls in accessible dwelling units, see 4.34.5.5.

4.21.2 SIZE AND CLEARANCES. Shower stall size and clear floor space shall comply with Fig. 35(a) or (b). The shower stall in Fig. 35(a) shall be 36 in by 36 in (915 mm by 915 mm). The shower stall in Fig. 35(b) will fit into the space required for a bathtub.

4.21.3 SEAT. A seat shall be provided in shower stalls 36 in by 36 in (915 mm by 915 mm) and shall be as shown in Fig. 36. The seat shall be mounted 17 in to 19 in (430 mm to 485 mm) from the bathroom floor and shall extend the full depth of the stall. The seat shall be on the wall opposite the controls. The structural strength of seats and their attachments shall comply with 4.26.3.

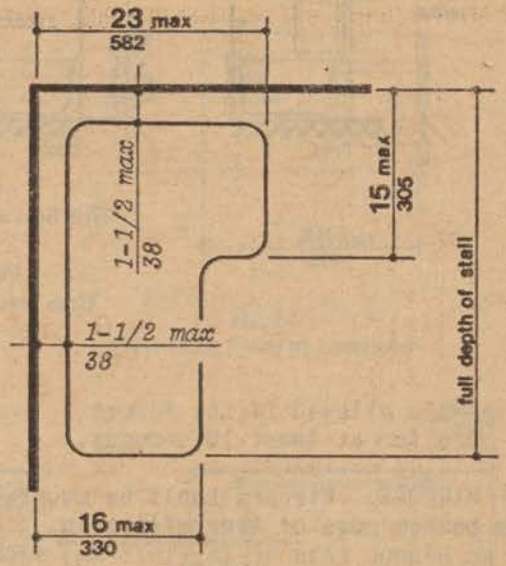
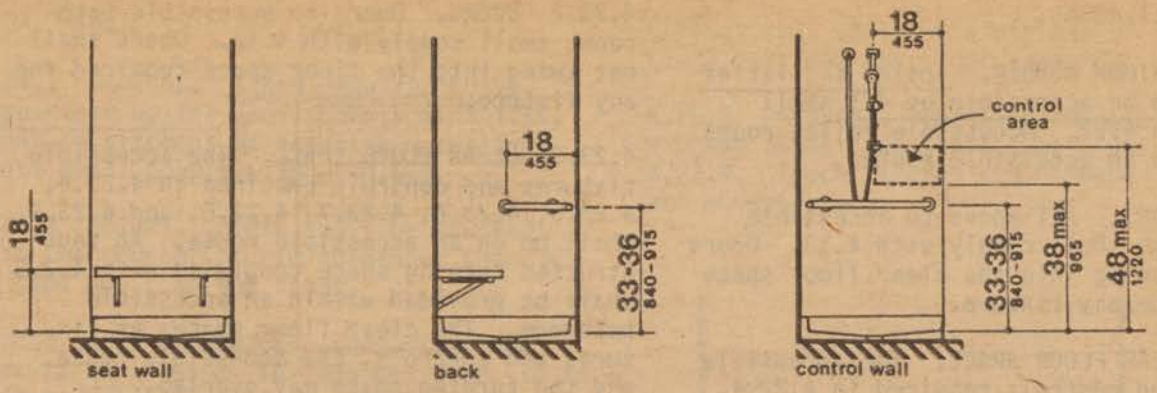


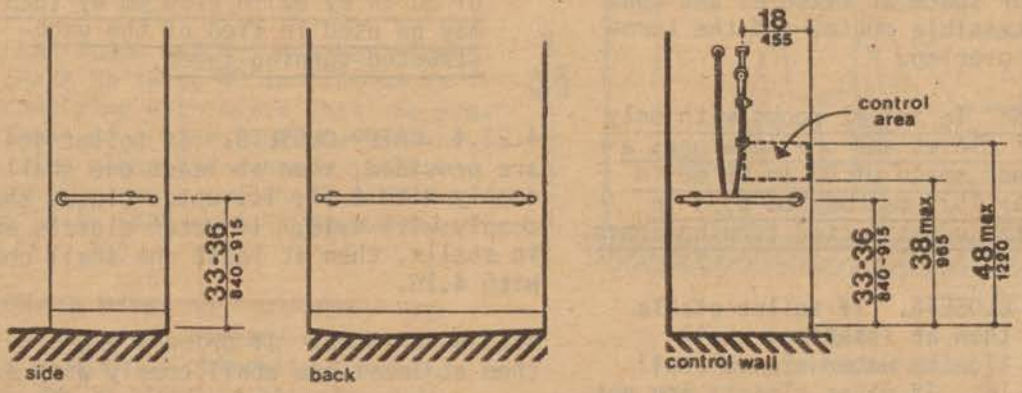
Fig. 36
Shower Seat Design

4.21.4 GRAB BARS. Grab bars complying with 4.26 shall be provided as shown in Fig. 37.

4.21.5 CONTROLS. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 37. In shower



(a)
36-in by 36-in (915-mm by 915-mm) Stall



(b)
30-in by 60-in (760-mm by 1525-mm) Stall

Fig. 37
Grab Bars at Shower Stalls

stalls 36 in by 36 in (915 mm by 915 mm), all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

4.21.6 SHOWER UNIT. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head or as a hand-held shower shall be provided.

EXCEPTION: In unmonitored facilities where vandalism is a consideration, a fixed shower head mounted at 48 in (1220 mm) above the shower floor may be used in lieu of a hand-held shower head.

4.21.7 CURBS. If provided, curbs in shower stalls 36 in by 36 in (915 mm by 915 mm) shall be no higher than 1/2 in (13 mm). Shower stalls that are 30 in by 60 in (760 mm by 1525 mm) shall not have curbs.

4.21.8 SHOWER ENCLOSURES. If provided, enclosures for shower stalls shall not obstruct controls or obstruct transfer from wheelchairs onto shower seats.

4.22 TOILET ROOMS.

4.22.1 MINIMUM NUMBER. Toilet facilities required to be accessible by 4.1 shall comply with 4.22. Accessible toilet rooms shall be on an accessible route.

4.22.2 DOORS. All doors to accessible toilet rooms shall comply with 4.13. Doors shall not swing into the clear floor space required for any fixture.

4.22.3 CLEAR FLOOR SPACE. The accessible fixtures and controls required in 4.22.4, 4.22.5, 4.22.6, and 4.22.7 shall be on an accessible route. An unobstructed turning space complying with 4.2.3 shall be provided within an accessible toilet room. The clear floor space at fixtures and controls, the accessible route, and the turning space may overlap.

EXCEPTION: In toilet rooms with only one water closet and one lavatory, a clear floor space of 30 in by 60 in (815 mm by 1525 mm) may be used in lieu of the unobstructed turning space.

4.22.4 WATER CLOSETS. If toilet stalls are provided, then at least one shall comply with 4.17; its water closet shall comply with 4.16. If water closets are not in stalls, then at least one shall comply with 4.16.

4.22.5 URINALS. If urinals are provided, then at least one shall comply with 4.18.

4.22.6 LAVATORIES AND MIRRORS. If lavatories and mirrors are provided, then at least one of each shall comply with 4.19.

4.22.7 CONTROLS AND DISPENSERS. If controls, dispensers, receptacles, or other equipment is provided, then at least one of each shall be on an accessible route and shall comply with 4.27.

4.23 BATHROOMS, BATHING FACILITIES, AND SHOWER ROOMS.

4.23.1 MINIMUM NUMBER. Bathrooms, bathing facilities, or shower rooms required to be accessible by 4.1 shall comply with 4.23 and shall be on an accessible route. For adaptable bathrooms in accessible dwelling units, see 4.34.5.

4.23.2 DOORS. Doors to accessible bathrooms shall comply with 4.13. Doors shall not swing into the floor space required for any fixture.

4.23.3 CLEAR FLOOR SPACE. The accessible fixtures and controls required in 4.23.4, 4.23.5, 4.23.6, 4.23.7, 4.23.8, and 4.23.9 shall be on an accessible route. An unobstructed turning space complying with 4.2.3 shall be provided within an accessible bathroom. The clear floor spaces at fixtures and controls, the accessible route, and the turning space may overlap.

EXCEPTION: In bathrooms with only one water closet, one lavatory, and one bathtub or shower, a clear floor space of 30 in by 60 in (760 mm by 1525 mm) may be used in lieu of the unobstructed turning space.

4.23.4 WATER CLOSETS. If toilet stalls are provided, then at least one shall comply with 4.17; its water closet shall comply with 4.16. If water closets are not in stalls, then at least one shall comply with 4.16.

4.23.5 URINALS. If urinals are provided, then at least one shall comply with 4.18.

4.23.6 LAVATORIES AND MIRRORS. If lavatories and mirrors are provided, then at least one of each shall comply with 4.19.

4.23 CONTROLS AND DISPENSERS. If controls, dispensers, receptacles, or other equipment is provided, then at least one of each shall be on an accessible route and shall comply with 4.27.

4.23.8 BATHING AND SHOWER FACILITIES. If tubs or showers are provided, then at least one accessible tub that complies with 4.20 or at least one accessible shower that complies with 4.21 shall be provided.

4.23.9* MEDICINE CABINETS. If medicine cabinets are provided, at least one shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor space. The floor space shall comply with 4.2.4.

4.24 SINKS.

4.24.1 GENERAL. Sinks required to be accessible by 4.1 shall comply with 4.24. Sinks in kitchens of accessible dwelling units shall comply with 4.34.6.5.

4.24.2 HEIGHT. Sinks shall be mounted with the counter or rim no higher than 34 in (865 mm) from the floor.

4.24.3 KNEE CLEARANCE. Knee clearance that is at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided underneath sinks.

4.24.4 DEPTH. Each sink shall be a maximum of 6-1/2 in (165 mm) deep.

4.24.5 CLEAR FLOOR SPACE. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a sink to allow forward approach. The clear floor space shall be on an accessible route and shall extend a maximum of 19 in (485 mm) underneath the sink (see Fig. 32).

4.26.6 EXPOSED PIPES AND SURFACES. Hot water and drain pipes exposed under sinks shall be insulated or otherwise covered. There shall be no sharp or abrasive surfaces under sinks.

4.24.7 FAUCETS. Faucets shall comply with 4.27.4. Lever-operated, push-type, touch-type, or electronically controlled mechanisms are acceptable designs.

4.25 STORAGE.

4.25.1 GENERAL. Fixed storage facilities such as cabinets, shelves, closets, and drawers required to be accessible by 4.1 shall comply with 4.25.

4.25.2 CLEAR FLOOR SPACE. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.

4.25.3 HEIGHT. Accessible storage spaces shall be within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Clothes rods shall be a maximum of 54 in (1370 mm) from the floor (see Fig. 38).

4.25.4 HARDWARE. Hardware for accessible storage facilities shall comply with 4.27.4. Touch latches and U-shaped pulls are acceptable.

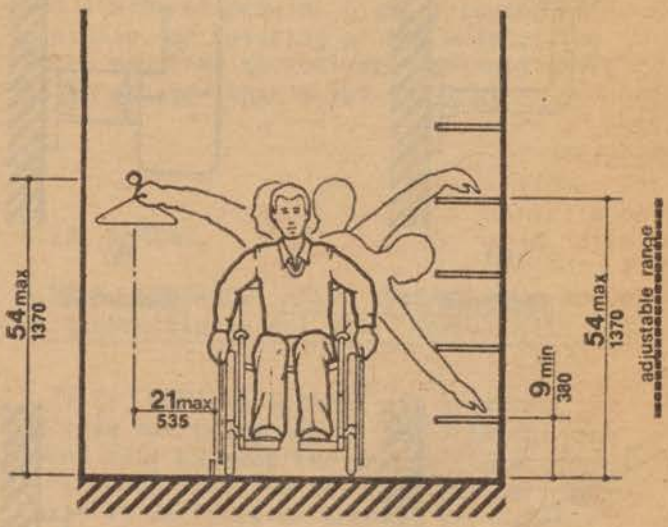


Fig. 38
Storage Shelves and Closets

4.26 HANDRAILS, GRAB BARS, AND TUB AND SHOWER SEATS.

4.26.1* GENERAL. All handrails, grab bars, and tub and shower seats required to be accessible by 4.1, 4.8, or 4.9 shall comply with 4.26.

4.26.2* SIZE AND SPACING OF GRAB BARS AND HANDRAILS. The diameter or width of the gripping surfaces of a handrail or grab bar shall be 1-1/4 in to 1-1/2 in (32 mm to 38 mm), or the shape shall provide an equivalent gripping surface. If handrails or grab bars are mounted adjacent to a wall, the space between the wall and the grab bar shall be 1-1/2 in (38 mm) (see Fig. 39(a), (b), and (c)). Handrails may be located in a recess if the recess is a maximum of 3 in (75 mm) deep and extends at least 18 in (455 mm) above the top of the rail (see Fig. 39(d)).

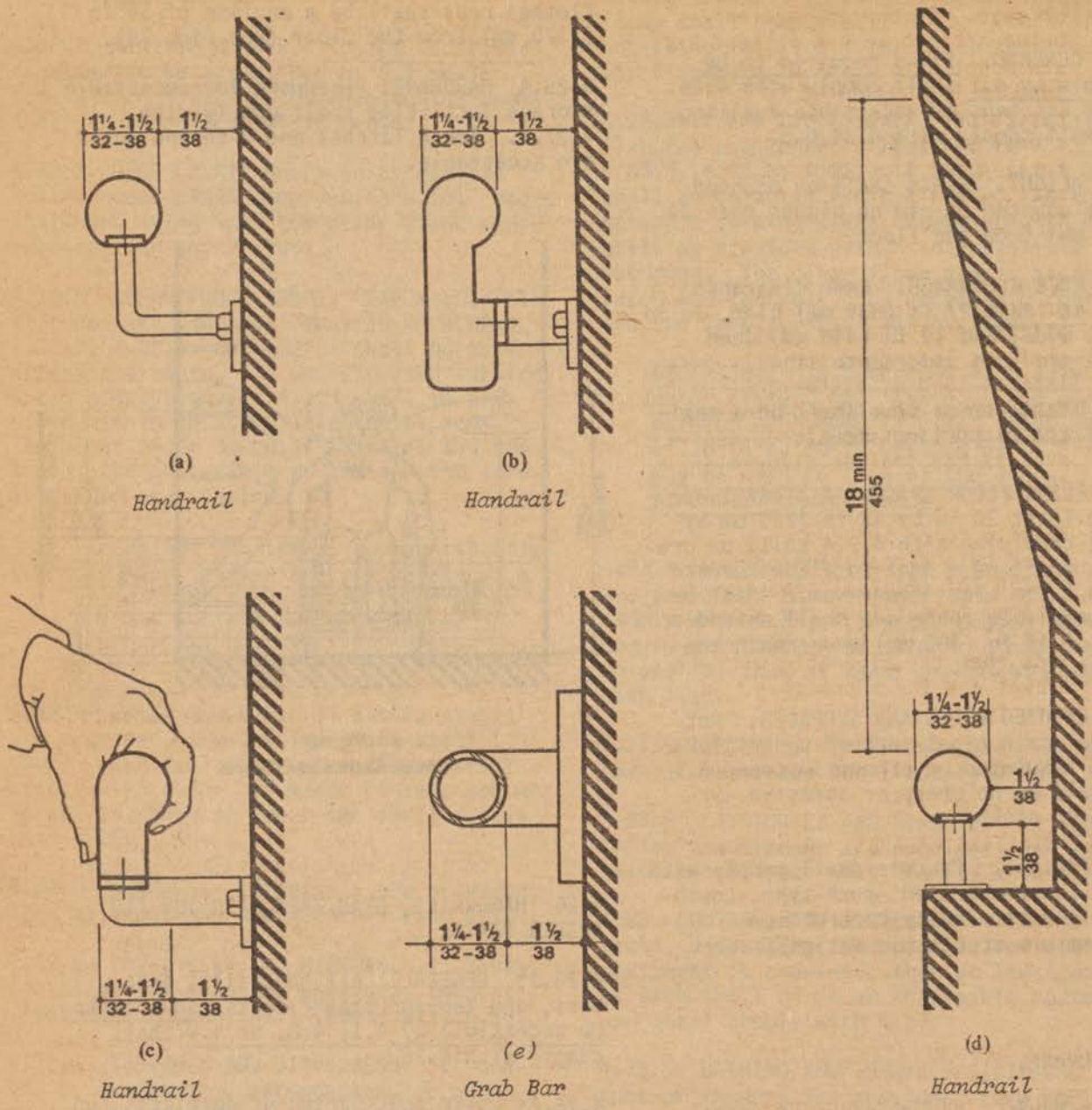


Fig. 39
Size and Spacing of Handrails and Grab Bars

4.26.3 STRUCTURAL STRENGTH. The structural strength of grab bars, tub and shower seats, fasteners, and mounting devices shall meet the following specification:

(1) Bending stress in a grab bar or seat induced by the maximum bending moment from the application of 250 lbf (1112 N) shall be less than the allowable stress for the material of the grab bar or seat.

(2) Shear stress induced in a grab bar or seat by the application of 250 lbf (1112 N) shall be less than the allowable shear stress

for the material of the grab bar or seat. If the connection between the grab bar or seat and its mounting bracket or other support is considered to be fully restrained, then direct and torsional shear stresses shall be totaled for the combined shear stress, which shall not exceed the allowable shear stress.

(3) Shear force induced in a fastener or mounting device from the application of 250 lbf (1112 N) shall be less than the allowable lateral load of either the fastener or mounting device or the supporting structure, whichever is the smaller allowable load.

(4) Tensile force induced in a fastener by a direct tension force of 250 lbf (1112 N) plus the maximum moment from the application of 250 lbf (1112 N) shall be less than the allowable withdrawal and the supporting structure.

(5) Grab bars shall not rotate within their fittings.

4.26.4 ELIMINATING HAZARDS. A handrail or grab bar and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of 1/8 in (3.2 mm).

4.27 CONTROLS AND OPERATING MECHANISMS.

4.27.1 GENERAL. Controls and operating mechanisms required to be accessible by 4.1 shall comply with 4.27.

4.27.2 CLEAR FLOOR SPACE. Clear floor space complying with 4.2.4 that allows a forward or a parallel approach by a person using a wheelchair shall be provided at controls, dispensers, receptacles, and other operable equipment.

4.27.3* HEIGHT. The highest operable part of all controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Except where the use of special equipment dictates otherwise, electrical and communications system receptacles on walls shall be mounted no less than 15 in (380 mm) above the floor.

4.27.4 OPERATION. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N).

4.28 ALARMS.

4.28.1 GENERAL. Alarm systems required to be accessible by 4.1 shall comply with 4.28.

4.28.2* AUDIBLE ALARMS. If provided, audible emergency alarms shall produce a sound that exceeds the prevailing equivalent sound level in the room or space by at least 15 decibels or exceeds any maximum sound level with a duration of 30 seconds by 5 decibels, whichever is louder. Sound levels for alarm signals shall not exceed 120 decibels.

4.28.3* VISUAL ALARMS. If provided, electrically powered internally illuminated emergency exit signs shall flash as a visual emergency alarm in conjunction with audible emergency alarms. The flashing frequency of visual alarm devices shall be less than 5 Hz. If such alarms use electricity from the building as a power source, then they shall be installed on the same system as the audible emergency alarms.

EXCEPTIONS:

(1) Visual alarm devices that are mounted adjacent to emergency exit signs may be used in lieu of flashing exit signs.

(2) Specialized systems utilizing advanced technology may be substituted for the visual systems specified above if equivalent protection is afforded handicapped users of the building or facility.

4.28.4* AUXILIARY ALARMS. Accessible sleeping accommodations shall have a visual alarm connected to the building emergency alarm system or shall have a standard 110-volt electrical receptacle into which such an alarm could be connected. Instructions for use of the auxiliary alarm or connection shall be provided.

4.29 TACTILE WARNINGS.

4.29.1 GENERAL. Tactile warnings required to be accessible by 4.1 shall comply with 4.29.

4.29.2* TACTILE WARNINGS ON WALKING SURFACES. Reserved.

4.29.3* TACTILE WARNINGS ON DOORS TO HAZARDOUS AREAS. Doors that lead to areas that might prove dangerous to a blind person (for example, doors to loading platforms, boiler rooms, stages, and the like) shall be made identifiable to the touch by a textured surface on the door handle, knob, pull, or other operating hardware. This textured surface may be made by knurling or roughing or by a material applied to the contact surface. Such textured surfaces shall not be provided for emergency exit doors or any doors other than those to hazardous areas.

4.29.4 TACTILE WARNINGS AT STAIRS. Reserved.

4.29.5* TACTILE WARNINGS AT HAZARDOUS VEHICULAR AREAS. Reserved.

4.29.6* TACTILE WARNINGS AT REFLECTING POOLS. Reserved.

4.29.7* STANDARDIZATION. Textured surfaces for tactile door warnings shall be standard within a building, facility, site, or complex of buildings.

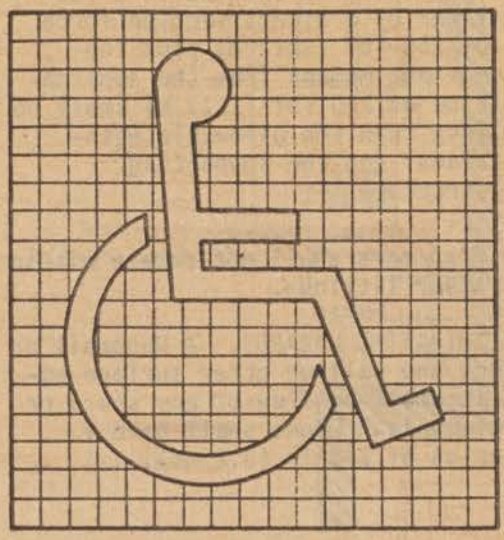
4.30 SIGNAGE.

4.30.1* GENERAL. Signage required to be accessible by 4.1 shall comply with 4.30.

4.30.2* CHARACTER PROPORTION. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10.

4.30.3* COLOR CONTRAST. Characters and symbols shall contrast with their background - either light characters on a dark background or dark characters on a light background.

4.30.4* RAISED OR INDENTED CHARACTERS OR SYMBOLS. Letters and numbers on signs shall be raised or incised 1/32 in (0.8 mm) minimum and shall be sans serif characters. Raised characters or symbols shall be at least 5/8 in (16 mm) high, but no higher than 2 in (50 mm). Indented characters or symbols shall have a stroke width of at least 1/4 in (6 mm). Symbols or



(a)
Proportions



(b)
Display Conditions

Fig. 43
International Symbol of Accessibility

pictographs on signs shall be raised or indented 1/32 in (0.8 mm) minimum.

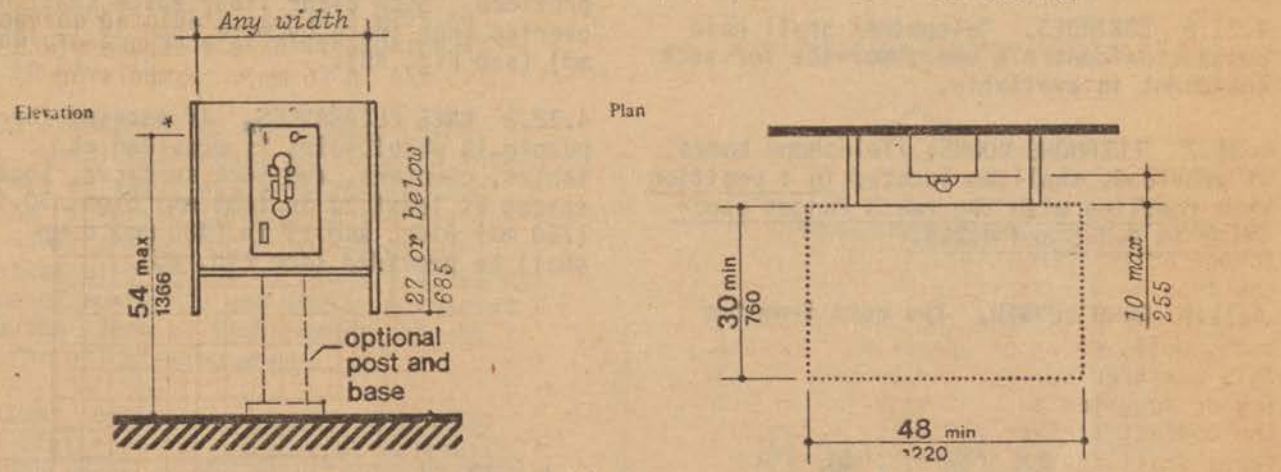
4.30.5 SYMBOLS OF ACCESSIBILITY. Accessible facilities required to be identified by 4.1, shall use the international symbol of accessibility. The symbol shall be displayed as shown in Fig. 43.

4.30.6 MOUNTING LOCATION AND HEIGHT. Interior signage shall be located alongside the door on the latch side and shall be mounted at a height of between 54 in and 66 in (1370 mm and 1675 mm) above the finished floor.

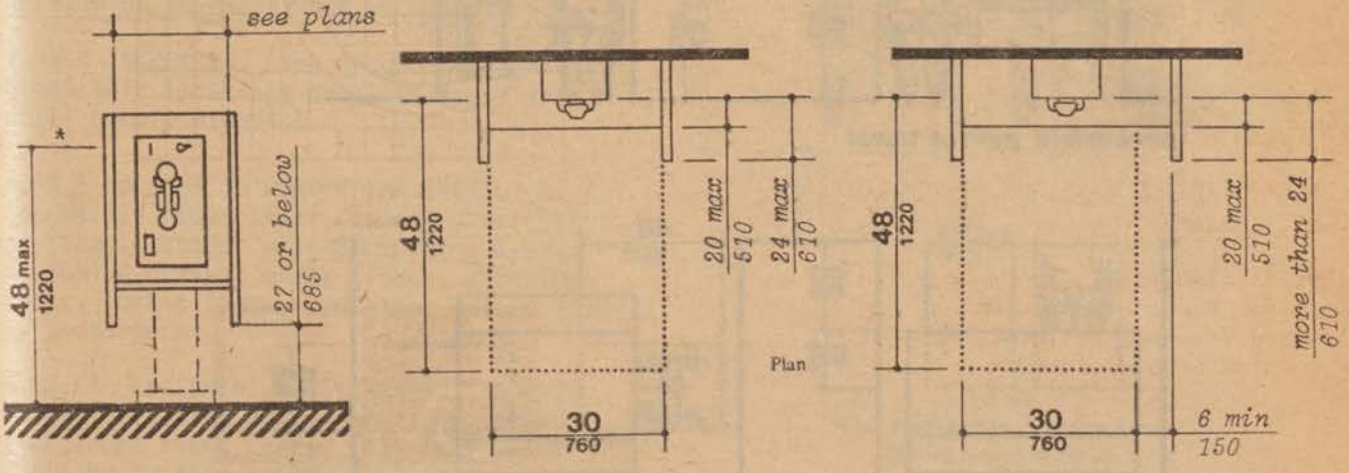
4.31 TELEPHONES.

4.31.1 GENERAL. Public telephones required to be accessible by 4.1 shall comply with 4.31.

4.31.2 CLEAR FLOOR OR GROUND SPACE. A clear floor or ground space at least 30 in by 48 in (760 mm by 1220 mm) that allows either a forward or parallel approach by a person using a wheelchair shall be provided at telephones (see Fig 44). The clear floor or ground space shall comply with 4.2.4. Bases, enclosures, and fixed seats shall not impede approaches to telephones by people who use wheelchairs.



(a)
Side Reach Possible



(c)
Forward Reach Required

* *Height to highest operable parts which are essential to basic operation of telephone.*

Fig. 44
Mounting Heights and Clearances for Telephones

4.31.3 MOUNTING HEIGHT. The highest operable part of the telephone shall be within the reach ranges specified in 4.2.5 or 4.2.6.

4.31.4 PROTRUDING OBJECTS. Telephones shall comply with 4.4.

4.31.5* EQUIPMENT FOR HEARING IMPAIRED PEOPLE. Telephones shall be equipped with a receiver that generates a magnetic field in the area of the receiver cap. Volume controls shall be provided in accordance with 4.1.2.

4.31.6 CONTROLS. Telephones shall have pushbutton controls where service for such equipment is available.

4.31.7 TELEPHONE BOOKS. Telephone books, if provided, shall be located in a position that complies with the reach ranges specified in 4.2.5 and 4.2.6.

4.31.8 CORD LENGTH. The cord from the telephone to the handset shall be at least 29 in (735 mm) long.

4.32 SEATING, TABLES, AND WORK SURFACES.

4.32.1 MINIMUM NUMBER. Fixed or built-in seating, tables, or work surfaces required to be accessible by 4.1 shall comply with 4.32.

4.32.2 SEATING. If seating spaces for people in wheelchairs are provided at tables, counters, or work surfaces, clear floor space complying with 4.2.4 shall be provided. Such clear floor space shall not overlap knee space by more than 19 in (485 mm) (see Fig. 45).

4.32.3 KNEE CLEARANCES. If seating for people in wheelchairs is provided at tables, counters, and work surfaces, knee spaces at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided (see Fig. 45).

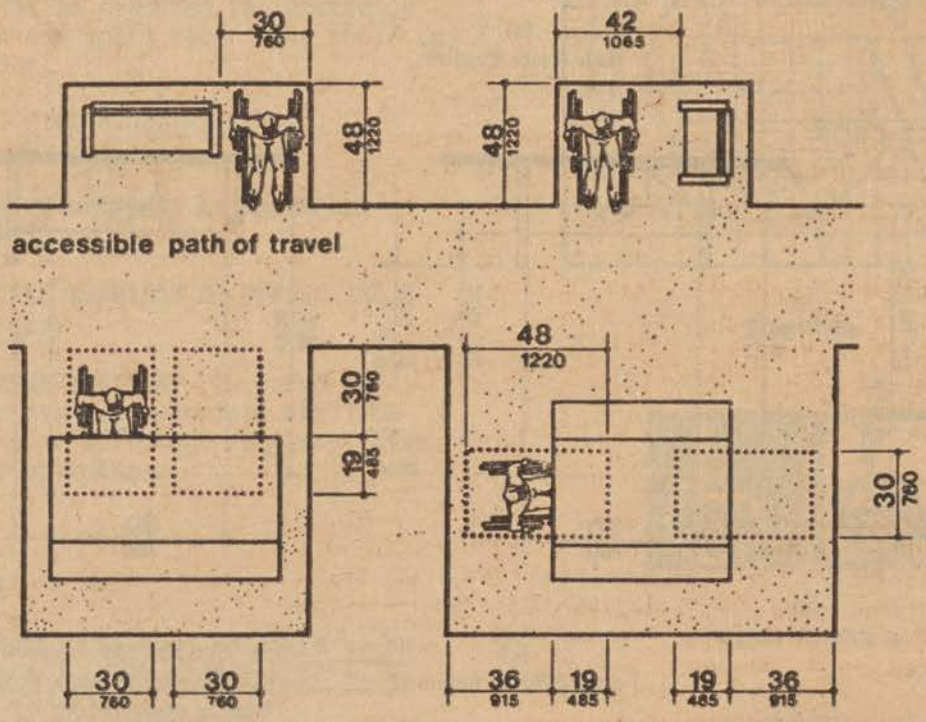


Fig. 45
Minimum Clearances for Seating and Tables

4.32.4* HEIGHT OF WORK SURFACES. The tops of tables and work surfaces shall be from 28 in to 34 in (710 mm to 865 mm) from the floor or ground.

4.33 ASSEMBLY AREAS.

4.33.1 MINIMUM NUMBER. Assembly and associated areas required to be accessible by 4.1 shall comply with 4.33.

4.33.2* SIZE OF WHEELCHAIR LOCATIONS. Each wheelchair location shall provide minimum clear ground or floor spaces as shown in Fig. 46.

4.33.3* PLACEMENT OF WHEELCHAIR LOCATIONS. Wheelchair areas shall be an integral part of any fixed seating plan and shall be dispersed throughout the seating area. They shall adjoin an accessible route that also serves as a means of egress in case of emergency and shall be located to provide lines of sight comparable to those for all viewing areas.

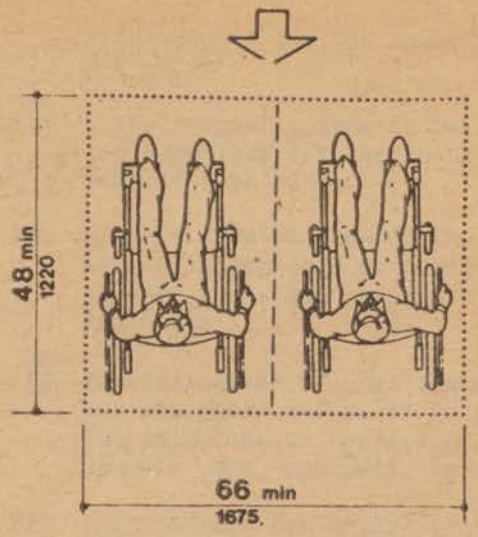
EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require slopes of greater than 5%. Equivalent accessible viewing positions may be located on levels having accessible egress.

4.33.4 SURFACES. The ground or floor at wheelchair locations shall be level and shall comply with 4.5.

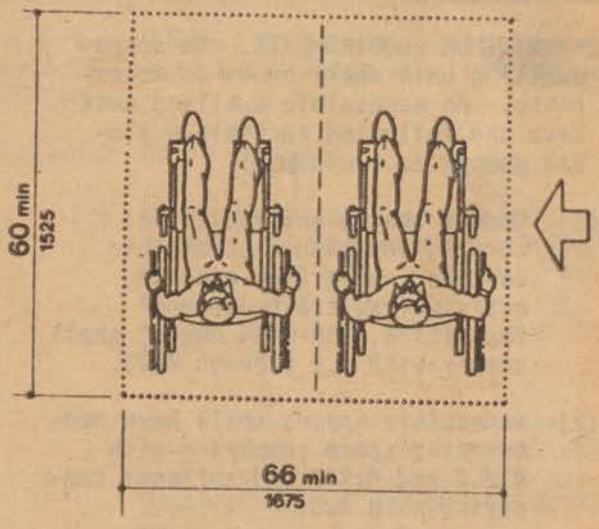
4.33.5 ACCESS TO PERFORMING AREAS. An accessible route shall connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.33.6* PLACEMENT OF LISTENING SYSTEMS. If the listening system provided serves individual fixed seats, then such seats shall be located within a 50 ft (15 m) viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

4.33.7* TYPES OF LISTENING SYSTEMS. Audio loops and radio frequency systems are two acceptable types of listening systems.



(a)
Forward or Rear Access



(b)
Side Access

Fig. 46
Space Requirements for Wheelchair Seating Spaces in Series

4.34 DWELLING UNITS.

4.34.1 GENERAL. The requirements of 4.34 apply to dwelling units required to be accessible by 4.1.

4.34.2* MINIMUM REQUIREMENTS. An accessible dwelling unit shall be on an accessible route. An accessible dwelling unit shall have the following accessible elements and spaces as a minimum:

(1) Common spaces and facilities serving individual accessible dwelling units (for example, entry walks, trash disposal facilities, and mail boxes) shall comply with 4.2 through 4.33.

(2) Accessible spaces shall have maneuvering space complying with 4.2.2 and 4.2.3 and surfaces complying with 4.5.

(3) At least one accessible route complying with 4.3 shall connect the accessible entrances with all accessible spaces and elements within the dwelling units.

(4) See 4.1.1(5)(d) - Parking.

(5) Removed and Reserved.

(6) Doors to and in accessible spaces that are intended for passage shall comply with 4.13, except that the provisions of 4.13.9 apply only to the doors at accessible entrances to the unit itself.

(7) At least one accessible entrance to the dwelling unit shall comply with 4.14.

(8) Storage in accessible spaces in dwelling units, including cabinets, shelves, closets, and drawers, shall comply with 4.25.

(9) All controls in accessible spaces shall comply with 4.27. Those portions of heating, ventilating, and air-conditioning equipment requiring regular, periodic maintenance and adjustment by the resident of a dwelling shall be accessible to people in wheelchairs. If air distribution registers must be placed in or close to ceilings for proper air circulation, this specification shall not apply to the registers.

(10) Emergency alarms as required by 4.1 and complying with 4.28.4 shall be provided in the dwelling unit.

(11) Removed and reserved.

(12) At least one full bathroom shall comply with 4.34.5. A full bathroom shall include a water closet, a lavatory, and a bathtub or a shower.

(13) The kitchen shall comply with 4.34.6.

(14) If laundry facilities are provided, they shall comply with 4.34.7.

(15) The following spaces shall be accessible and shall be on an accessible route:

(a) The living area.

(b) The dining area.

(c) The sleeping area, or the

bedroom in one bedroom dwelling units, or at least two bedrooms or sleeping spaces in dwelling units with two or more bedrooms.

(d) Patios, terraces, balconies, carports, and garages, if provided with the dwelling unit.

4.34.3 ADAPTABILITY. The specifications for 4.34.5 and 4.34.6 include the concept of adaptability. Accessible dwelling units may be designed for either permanent accessibility or adaptability.

4.34.4 CONSUMER INFORMATION. To ensure that the existence of adaptable features will be known to the owner or occupant of a dwelling, the following consumer information shall be provided in each adaptable dwelling unit available for occupancy.

(1) Notification of the alternate heights available for the kitchen counter and sink, and the existence of removable cabinets and bases, if provided, under counters, sinks, and lavatories.

(2) Notification of the provisions for the installation of grab bars at toilets, bathtubs, and showers.

(3) Notification that the dwelling unit is equipped to have a visual emergency alarm installed.

(4) Identification of the location where information and instructions are available for changing the height of counters, removing cabinets and bases, installing a visual emergency alarm system, and installing grab bars.

(5) Notification that the dwelling unit has been designed in accordance with this Uniform Federal Accessibility Standard.

In addition, the parties who will be responsible for making adaptations shall be provided with the following information:

(1) Instructions for adjusting or replacing kitchen counter and sink heights and for removing cabinets.

(2) A scale drawing showing methods and locations for the installation of grab bars.

(3) A scale drawing showing the location of adjustable or replaceable counter areas and removable cabinets.

(4) Identification of the location of any equipment and parts required for adjusting or replacing counter tops, cabinets, and sinks.

(5) Instructions for installing a visual emergency alarm system, if the dwelling unit is equipped for such an installation.

4.34.5* BATHROOMS. Accessible or adaptable bathrooms shall be on an accessible route and shall comply with the requirements of 4.34.5.

4.34.5.1 DOORS. Doors shall not swing into the clear floor space required for any fixture.

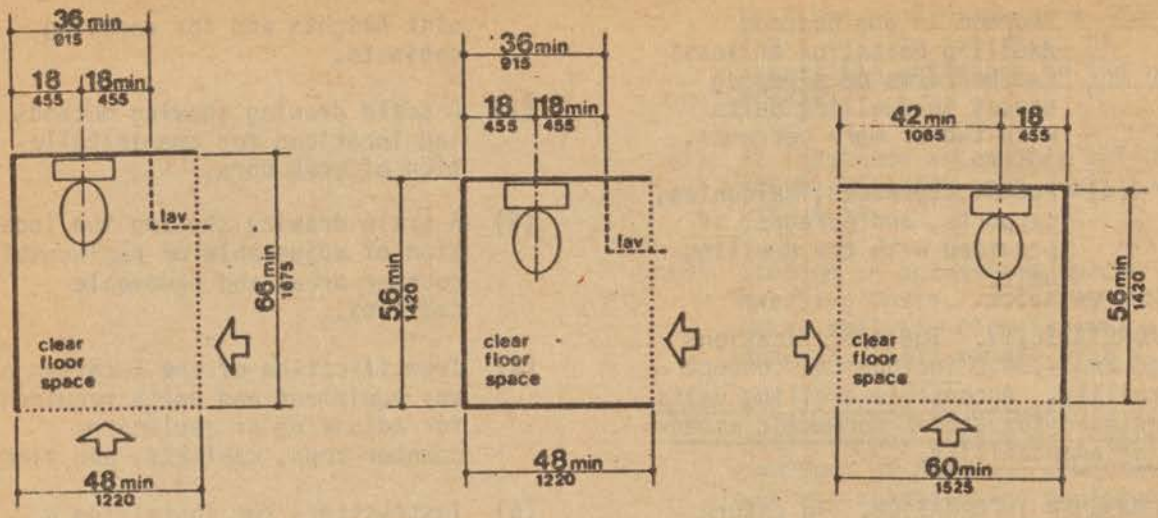
4.34.5.2 WATER CLOSETS.

(1) Clear floor space at the water closet shall be as shown in Fig. 47(a). The water closet may be located with the clear area at either the right or left side of the toilet.

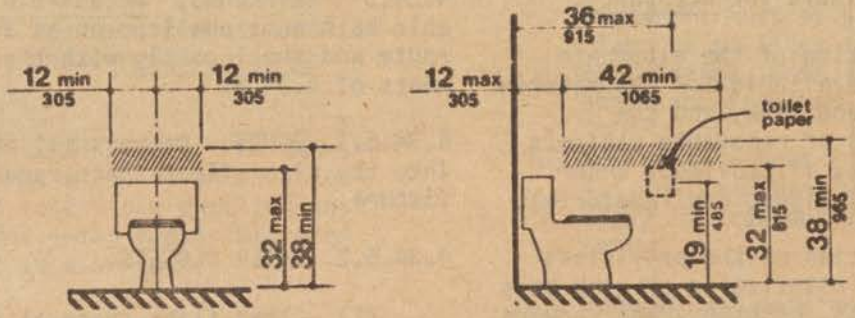
(2) The height of the water closet shall be at least 15 in (380 mm), and no more than 19 in (485 mm), measured to the top of the toilet seat.

(3) Structural reinforcement or other provisions that will allow installation of grab bars shall be provided in the locations shown in Fig. 47(b). If provided, grab bars shall be installed as shown in Fig. 29 and shall comply with 4.26.

(4) The toilet paper dispenser shall be installed within reach as shown in Fig. 47(b).



(a)
Clear Floor Space for Adaptable Bathrooms



NOTE: The hatched areas are reinforced to receive grab bars.

(b)
Reinforced Areas for Installation of Grab Bars

Fig. 47
Water Closets in Adaptable Bathrooms

4.34.5.3 LAVATORY, MIRRORS, AND MEDICINE CABINETS.

(1) The lavatory and mirrors shall comply with 4.22.7.

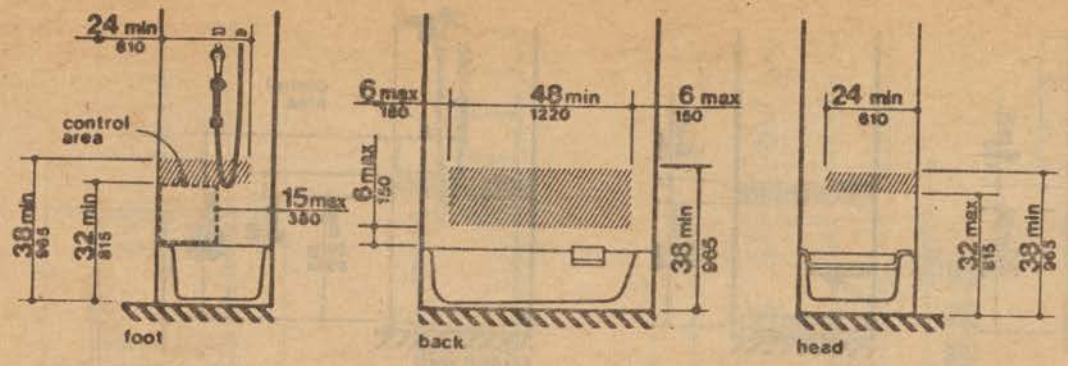
(2) If a cabinet is provided under the lavatory in adaptable bathrooms, then it shall be removable to provide the clearances specified in 4.22.7.

(3) If a medicine cabinet is provided above the lavatory, then the bottom of the medicine cabinet shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor.

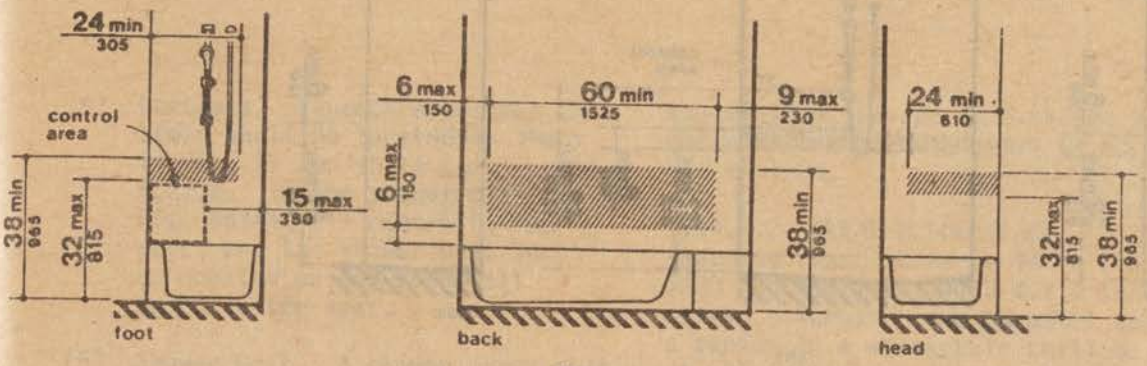
4.34.5.4 BATHTUBS. If a bathtub is provided, then it shall have the following features:

(1) Floor space. Clear floor space at bathtubs shall be as shown in Fig. 33.

(2) Seat. An in-tub seat or a seat



(a)
With Seat in Tub



(b)
With Seat at Head of Tub

NOTE: The hatched areas are reinforced to receive grab bars.

Fig. 48
Location of Grab Bars and Controls of Adaptable Bathtubs

at the head end of the tub shall be provided as shown in Figs. 33 and 34. The structural strength of seats and their attachments shall comply with 4.26.3. Seats shall be mounted securely and shall not slip during use.

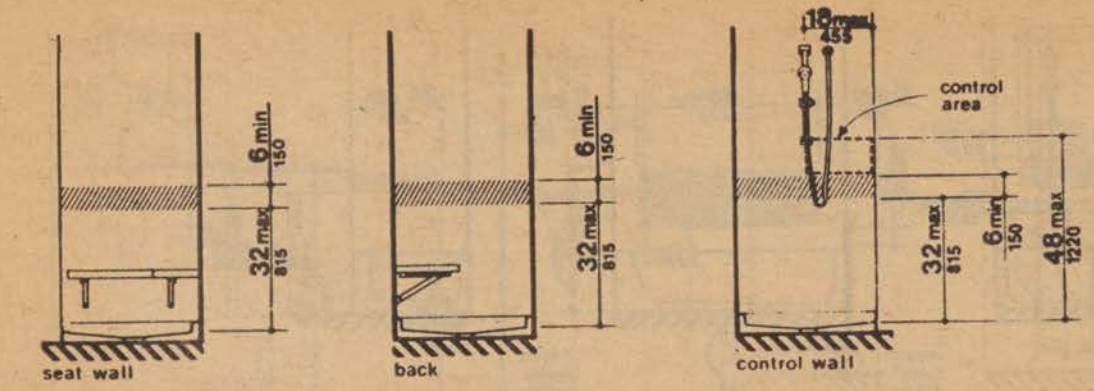
(3) Grab bars. Structural reinforcement or other provisions that will allow installation of grab bars shall be provided in the locations shown in Fig. 48. If provided, grab bars shall be installed as shown in Fig. 34 and shall comply with 4.26.

(4) Controls. Faucets and other controls shall be located as shown in Fig. 34 and shall comply with 4.27.4.

(5) Shower Unit. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head or as a hand-held shower shall be provided.

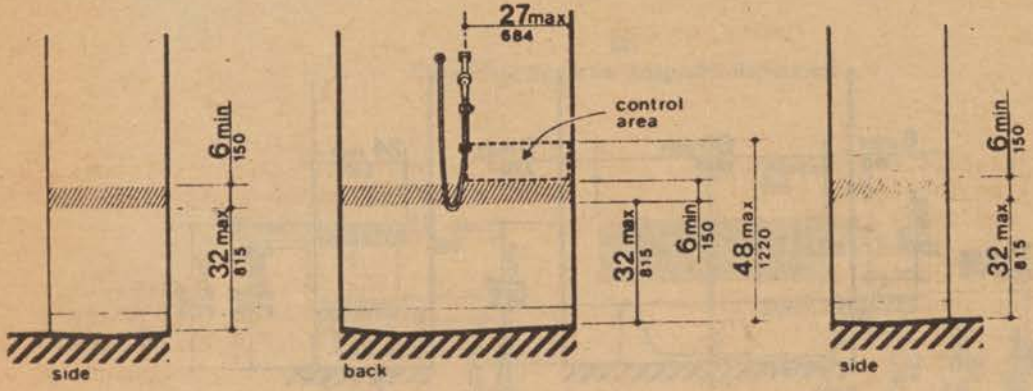
4.34.5.5 SHOWERS. If a shower is provided, it shall have the following features:

(1) Size and Clearances. Shower stall size and clear floor space



(a)

36-in by 36-in (915-mm by 915-mm) Stall



(b)

30-in by 60-in (750-mm by 1525-mm) Stall

NOTE: The hatched areas are reinforced to receive grab bars.

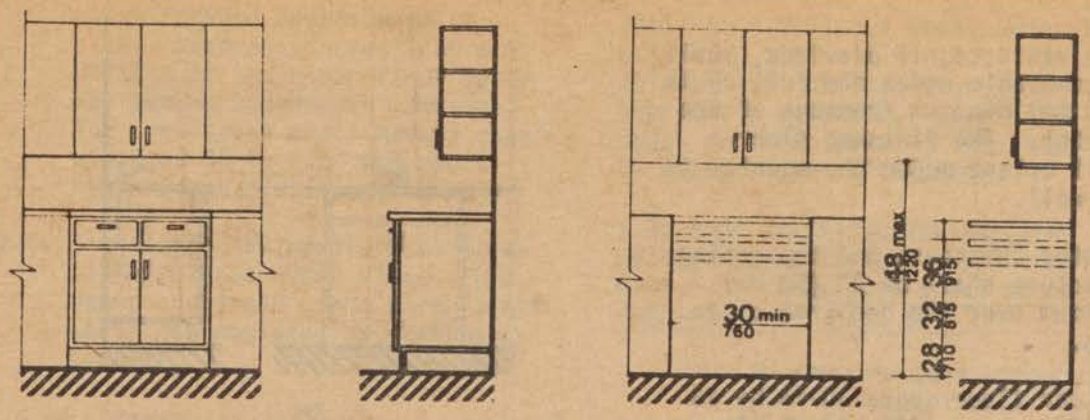
Fig. 49

Location of Grab Bars and Controls of Adaptable Showers

shall comply with either Fig. 35(a) or (b). The shower stall in Fig. 35(a) shall be 36 in by 36 in (915 mm by 915 mm). The shower stall in Fig. 35(b) will fit into the same space as a standard 60 in (1525 mm) long bathtub.

(2) Seat. A seat shall be provided in the shower stall in Fig. 35(a) as shown in Fig. 36. The seat shall be 17 in to 19 in (430 mm to 485 mm) high measured from the bathroom floor and shall extend the full depth of the stall. The seat shall be on the wall opposite the controls. The structural strength of seats and their attachments shall comply with 4.26.3. Seats shall be mounted securely and shall not slip during use.

(3) Grab Bars. Structural reinforcement or other provisions that will allow installation of grab bars shall be provided in the locations shown in Fig. 49. If provided, grab bars shall be installed as shown in Fig. 37 and shall comply with 4.26.



(a)
Before Removal of Cabinets and Base

(b)
Cabinets and Base Removed and Height Alternatives

Fig. 50
Counter Work Surface

(4) Controls. Faucets and other controls shall be located as shown in Fig. 37 and shall comply with 4.27.4. In the shower stall in Fig. 35(a), all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

(5) Shower Unit. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head at various heights or as a hand-held shower shall be provided.

4.34.5.6 BATHTUB AND SHOWER ENCLOSURES. Enclosures for bathtubs or shower stalls shall not obstruct controls or transfer from wheelchairs onto shower or bathtub seats. Enclosures on bathtubs shall not have tracks mounted on their rims.

4.34.5.7 CLEAR FLOOR SPACE. Clear floor space at fixtures may overlap.

4.34.6 KITCHENS. Accessible or adaptable kitchens and their components shall be on an accessible route and shall comply with the requirements of 4.34.6.

4.34.6.1* CLEARANCE. Clearances between all opposing base cabinets, counter tops, appliances, or walls shall be 40 in (1015 mm) minimum, except in U-shaped kitchens, where such clearance shall be 60 in (1525 mm) minimum.

4.34.6.2 CLEAR FLOOR SPACE. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or a parallel approach by a person in a wheelchair shall be provided at all appliances in the kitchen, including the range or cooktop, oven, refrigerator/freezer, dishwasher, and trash compactor. Laundry equipment located in the kitchen shall comply with 4.34.7.

4.34.6.3 CONTROLS. All controls in kitchens shall comply with 4.27.

4.34.6.4 WORK SURFACES. At least one 30 in (760 mm) section of counter shall provide a work surface that complies with the following requirements (see Fig. 50):

(1) The counter shall be mounted at a maximum height of 34 in (865 mm) above the floor, measured from the floor to the top of the counter surface, or shall be adjustable or replaceable as a unit to provide alternative heights of 28 in, 32 in, and 36 in (710 mm, 815 mm, and 915 mm), measured from the top of the counter surface.

(2) Base cabinets, if provided, shall be removable under the full 30 in (760 mm) minimum frontage of the counter. The finished floor shall extend under the counter to the wall.

(3) Counter thickness and supporting structure shall be 2" (50 mm) maximum over the required clear area.

(4) A clear floor space 30 in by 48 in (760 mm by 1220 mm) shall allow a forward approach to the counter. Nineteen inches (485 mm) maximum of the clear floor space may extend underneath the counter. The knee space shall have a minimum clear width of 30 in (760 mm) and a minimum clear depth of 19 in (485 mm).

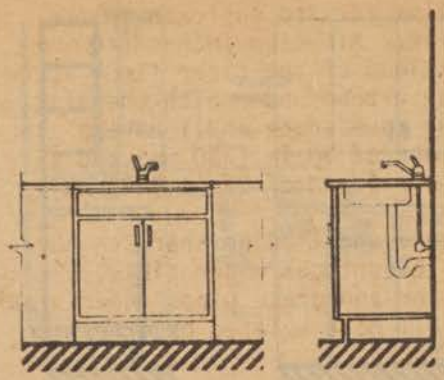
(5) There shall be no sharp or abrasive surfaces under such counters.

4.34.6.5* SINK. The sink and surrounding counter shall comply with the following requirements (see Fig. 51).

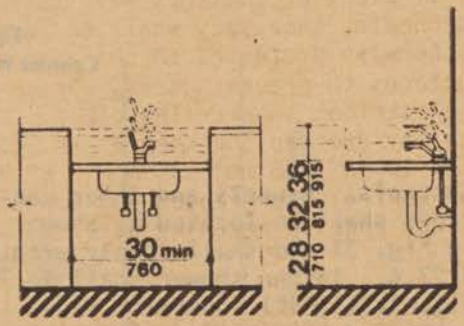
(1) The sink and surrounding counter shall be mounted at a maximum height of 34 in (865 mm) above the floor, measured from the floor to the top of the counter surface, or shall be adjustable or replaceable as a unit to provide alternative heights of 28 in, 32 in, and 36 in (710 mm, 815 mm, and 915 mm), measured from the floor to the top of the counter surface or sink rim. The total width of sink and counter area shall be 30 in (760 mm).

(2) Rough-in plumbing shall be located to accept connections of supply and drain pipes for sinks mounted at the height of 28 in (710 mm).

(3) The depth of a sink bowl shall be no greater than 6-1/2 in (165 mm). Only one bowl of double- or triple-bowl sinks needs to meet this requirement.



(a)
Before Removal of Cabinets and Base



(b)
Cabinets and Base Removed and Height Alternatives

Fig. 51
Kitchen Sink

(4) Faucets shall comply with 4.27.4. Lever-operated or push-type mechanisms are two acceptable designs.

(5) Base cabinets, if provided, shall be removable under the full 30 in (760 mm) minimum frontage of the sink and surrounding counter. The finished flooring shall extend under the counter to the wall.

(6) Counter thickness and supporting structure shall be 2 in (50 mm) maximum over the required clear space.

(7) A clear floor space 30 in by 48 in (760 mm by 1220 mm) shall

allow forward approach to the sink. Nineteen inches (485 mm) maximum of the clear floor space may extend underneath the sink. The knee space shall have a clear width of 30 in (760 mm) and a clear depth of 19 in (485 mm).

(8) There shall be no sharp or abrasive surfaces under sinks. Hot water and drain pipes under sinks shall be insulated or otherwise covered.

4.34.6.6* RANGES AND COOKTOPS. Ranges and cooktops shall comply with 4.34.6.2 and 4.34.6.3. If ovens or cooktops have knee spaces underneath, then they shall be insulated or otherwise protected on the exposed contact surfaces to prevent burns, abrasions, or electrical shock. The clear floor space may overlap the knee space, if provided, by 19 in (485 mm) maximum. The location of controls for ranges and cooktops shall not require reaching across burners.

4.34.6.7* OVENS. Ovens shall comply with 4.34.6.2 and 4.34.6.3. Ovens shall be of the self-cleaning type or be located adjacent to an adjustable height counter with knee space below (see Fig. 52). For side-opening ovens, the door latch side shall be next to the open counter space, and there shall be a pull-out shelf under the oven extending the full width of the oven and pulling out not less than 10 in (255 mm) when fully extended. Ovens shall have controls on front panels; they may be located on either side of the door.

4.34.6.8* REFRIGERATOR/FREEZER. Refrigerator/freezers shall comply with 4.34.6.3. Provision shall be made for refrigerators which are:

(1) Of the vertical side-by-side refrigerator/freezer type; or

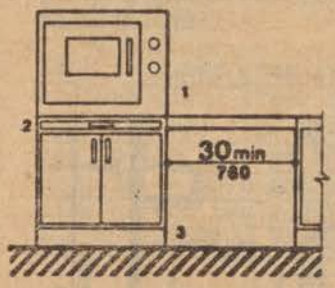
(2) Of the over-and-under type and meet the following requirements:

(a) Have at least 50 percent of the freezer space below 54 in (1370 mm) above the floor.

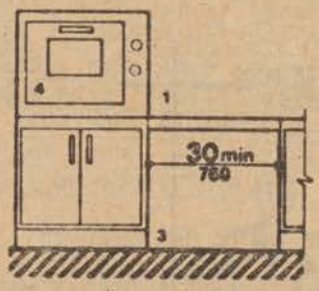
(b) Have 100 percent of the refrigerator space and controls below 54 in (1370 mm).

Freezers with less than 100 percent of the storage volume within the limits specified in 4.2.5 or 4.2.6 shall be the self-defrosting type.

4.34.6.9 DISHWASHERS. Dishwashers shall comply with 4.34.6.2 and 4.34.6.3. Dishwashers shall have all rack space accessible from the front of the machine for loading and unloading dishes.



(a)
Side-Hinged Door



(b)
Bottom-Hinged Door

SYMBOL KEY:
1. Countertop or wall-mounted oven.
2. Pull-out board preferred with side-opening door.
3. Clear open space.
4. Bottom-hinged door.

Fig. 52
Ovens without Self-Cleaning Feature

4.34.6.10* KITCHEN STORAGE. Cabinets, drawers, and shelf areas shall comply with 4.25 and shall have the following features:

(1) Maximum height shall be 48 in (1220 mm) for at least one shelf of all cabinets and storage shelves mounted above work counters (see Fig. 50).

(2) Door pulls or handles for wall cabinets shall be mounted as close to the bottom of cabinet doors as possible. Door pulls or handles for base cabinets shall be mounted as close to the top of cabinet doors as possible.

4.34.7 LAUNDRY FACILITIES. If laundry equipment is provided within individual accessible dwelling units, or if separate laundry facilities serve one or more accessible dwelling units, then they shall meet the requirements of 4.34.7.1 through 4.34.7.3.

4.34.7.1 LOCATION. Laundry facilities and laundry equipment shall be on an accessible route.

4.34.7.2 WASHING MACHINES AND CLOTHES DRYERS. Washing machines and clothes dryers in common use laundry rooms shall be front loading.

4.34.7.3 CONTROLS. Laundry equipment shall comply with 4.27.

5. RESTAURANTS AND CAFETERIAS.

5.1 GENERAL. In addition to the requirements of 4.1 to 4.33, the design of at least 5% of all fixed seating or tables in a restaurant or cafeteria shall comply with 4.32. Access aisles between tables shall comply with 4.3. Where practical, accessible tables should be distributed throughout the space or facility. In restaurants or cafeterias where there are mezzanine levels, loggias, or raised platforms, accessibility to all such spaces is not required providing that the same services and decorative character are provided in spaces located on accessible routes.

5.2 FOOD SERVICE LINES. Food service lines shall have a minimum clear width of 36 in (915 mm), with a preferred clear width of 42 in (1065 mm) where passage of stopped wheelchairs by pedestrians is desired. Tray slides shall be mounted no higher than 34 in (865 mm) above the floor. If self-service shelves are provided, a reasonable portion must be within the ranges shown in Fig. 53.

5.3 TABLEWARE AREAS. Install tableware, dishware, condiment, food and beverage display shelves, and dispensing devices in compliance with 4.2 (see Fig. 54).

5.4 VENDING MACHINES. Install vending machines in compliance with 4.27.

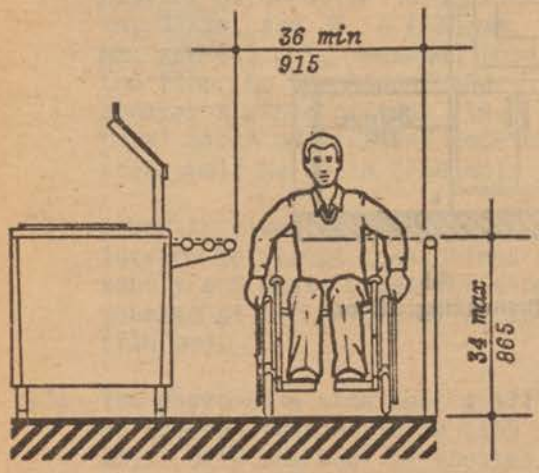


Fig. 53

Food Service Lines

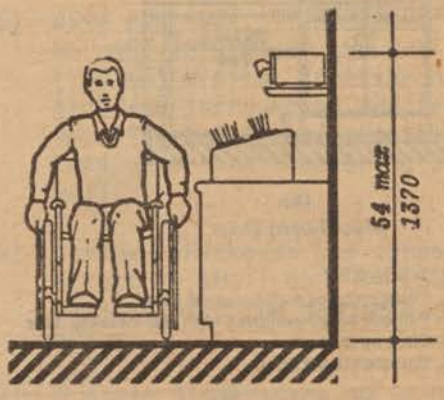


Fig. 54

Tableware Areas

6. HEALTH CARE.

6.1 GENERAL. In addition to the requirements of 4.1 to 4.33, Health Care buildings and facilities shall comply with 6.

6.2 ENTRANCES. At least one accessible entrance that complies with 4.14 shall be protected from the weather by canopy or roof overhang. Such entrances shall incorporate a passenger loading zone that complies with 4.6.5 (see 4.13.6).

6.3 PATIENT BEDROOMS. Provide accessible patient bedrooms in compliance with 4. Accessible patient bedrooms shall comply with the following:

(1) Each bedroom shall have a turning space that complies with 4.2.3, and preferably that is located near the entrance.

(2) Each one-bed room shall have a minimum clear floor space of 36 in (915 mm) along each side of the bed, and 42 in (1065 mm) between the foot of the bed and the wall.

(3) Each two-bed room shall have a minimum clear floor space of 42 in (1065 mm), preferably 48 in (1220 mm), between the foot of the bed and the wall; 36 in (915 mm) between the side of the bed and the wall; and 48 in (1220 mm) between beds.

(4) Each four-bed room shall have a minimum clear floor space of 48 in (1220 mm) from the foot of the bed to the foot of the opposing bed; 36 in (915 mm) between the side of the bed and the wall; and 48 in (1220 mm) between beds.

(5) Each bedroom shall have a door that complies with 4.13.

6.4 PATIENT TOILET ROOMS. Provide each patient bedroom that is required to be accessible with an accessible toilet room that complies with 4.22 or 4.23.

7. MERCANTILE.

7.1 GENERAL. In addition to the requirements of 4.1 to 4.33, the design of all areas used for business transactions with the public shall comply with 7.

7.2 SERVICE COUNTERS. Where service counters exceeding 36 in (915 mm) in height are provided for standing sales or distribution of goods to the public, an auxiliary counter or a portion of the main counter shall be provided with a maximum height of between 28 in to 34 in (710 mm to 865 mm) above the floor in compliance with 4.32.4.

7.3 CHECK-OUT AISLES. At least one accessible check-out aisle shall be provided in buildings or facilities with check-out aisles. Clear aisle width shall comply with 4.2.1 and maximum adjoining counter height shall not exceed 36 in (915 mm) above the floor.

7.4 SECURITY BOLLARDS. Any device used to prevent the removal of shopping carts from store premises shall not prevent access or egress to those in wheelchairs. An alternate entry that is equally convenient to that provided for the ambulatory population is acceptable.

8. LIBRARIES.

8.1 GENERAL. In addition to the requirements of 4.1 to 4.33, the design of all public areas of a library shall comply with 8, including reading and study areas, stacks, reference rooms, reserve areas, and special facilities or collections. As provided, elements such as public toilet rooms, telephones, and parking shall be accessible.

8.2 READING AND STUDY AREAS. At least 5% or a minimum of one of each element of fixed seating, tables, or study carrels should comply with 4.2 and 4.32. Clearances between fixed accessible tables and study carrels shall comply with 4.3.

8.3 CHECK-OUT AREAS. At least one lane at each check-out area shall comply with 4.32. Any traffic control or book security gates or turnstiles shall comply with 4.13.

8.4 CARD CATALOGS. Minimum clear aisle space at card catalogs, magazine displays, or reference stacks shall comply with Fig. 55. Maximum reach height shall comply with 4.2, with a maximum height of 54 in (1370 mm) preferred, irrespective of reach allowed.

8.5 STACKS. Minimum clear aisle width between stacks shall comply with 4.3, with a minimum clear aisle width of 42 in (1065 mm) preferred where possible. Shelf height in stack areas is unrestricted (see Fig. 56).

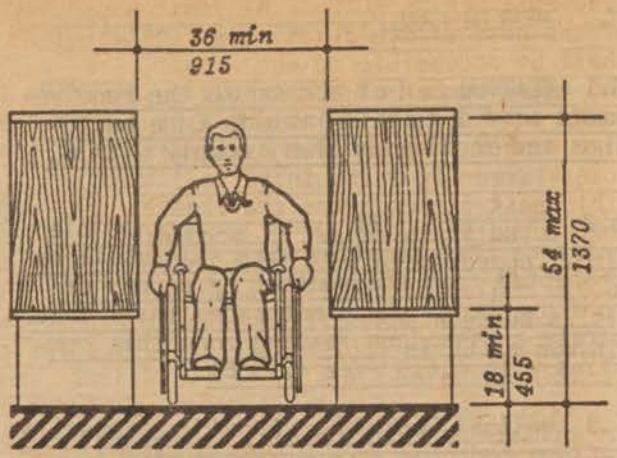


Fig. 55

Card Catalog

9. POSTAL FACILITIES.

9.1 GENERAL. In addition to the requirements of 4.1 to 4.33, the design of U.S. Postal Facilities shall comply with the requirements of 9. In addition, employee toilet rooms, water fountains, lunchrooms, lounges, attendance-recording equipment, medical treatment rooms, emergency signals, and switches and controls shall be made accessible or adaptable in accordance with the requirements of these standards.

9.2* POST OFFICE LOBBIES. Where writing desks or tables are provided, a minimum of at least one writing desk or table that complies with 4.32 must be provided. Clear passageways in front of customer service counters shall be not less than 48 in (I220 mm) clear width to permit maneuvering of a wheelchair. Letter drops shall be mounted at heights that comply with 4.2.

(1) All fixed partitions must be installed to withstand a 250-pound force applied at any point and from any direction. Avoid designs that call for, or may necessitate non-fixed partitions in circulation routes of handicapped people.

(2) Walls where handrails are provided for handicapped people must be capable of supporting handrails designed to support a 250-pound pull force in any direction.

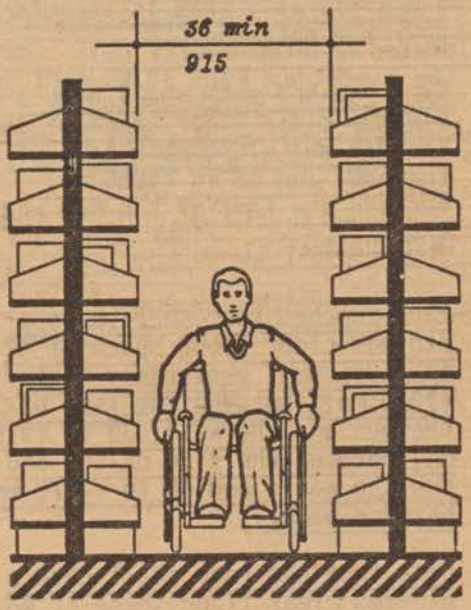


Fig. 56

Stacks

9.3 SELF-SERVICE POSTAL CENTERS. Parcel post depositories, stamp vending machines, multi-commodity vending machines, and currency-coin changing machines shall be installed so that the operating mechanisms of all machines comply with 4.2 and 4.27. All mechanisms must be installed to permit close parallel approach by a wheelchair.

9.4 POST OFFICE BOXES. At least 5 percent of the post office boxes in a facility shall be accessible to wheelchair users. The total number of accessible post office boxes provided shall include a representative number of each of the standard USPS boxes currently being installed. Accessible post office boxes shall be located in the second or third set of modules from the floor, approximately 12 in to 36 in (305 mm to 915 mm) above the finished floor. Aisles between post office boxes shall be a minimum of 66 in (1675 mm) clear width.

9.5 LOCKER ROOMS. Lockers in easily accessible areas must be provided for use by handicapped people. When double-tier lockers are used, only the bottom row of lockers may be assigned for use by wheelchair users. When full length lockers are used, all hooks, shelves, etc., intended for use by people in wheelchairs shall be located no higher than 48 in (1220 mm) above the finished floor. Lockers intended for use by handicapped people shall be equipped with latches and latch handles that comply with 4.27. Unobstructed aisle space in front of lockers used by handicapped people shall be a minimum of 42 in (1065 mm) clear width.

9.6 ATTENDANCE-RECORDING EQUIPMENT. Time clocks, card racks, log books, and other work assignment or attendance-recording equipment used by people in wheelchairs must be installed at a height no more than 48 in (1220 mm) above the finished floor. Counter space at check-in areas must be no more than 36 in (915 mm) above the finished floor.

APPENDIX

This appendix contains additional information that should help the designer to understand the minimum requirements of the standard or to design buildings or facilities for greater accessibility. The paragraph numbers correspond to the sections or paragraphs of the standard to which the material relates and are therefore not consecutive (for example, A4.2.1 contains additional information relevant to 4.2.1). Sections for which additional material appears in this appendix have been indicated by an asterisk.

A4.2 SPACE ALLOWANCES AND REACH RANGES.

A4.2.1 WHEELCHAIR PASSAGE WIDTH

(1) Space requirements for wheelchairs. Most wheelchair users need a 30 in (760 mm) clear opening width for doorways, gates, and the like, when the latter are entered head-on. If the wheelchair user is unfamiliar with a building, if competing traffic is heavy, if sudden or frequent movements are needed, or if the wheelchair must be turned at an opening, then greater clear widths are needed. For most situations, the addition of an inch of leeway on either side is sufficient. Thus, a minimum clear width of 32 inches (815 mm) will provide adequate clearance. However, when an opening or a restriction in a passageway is more than 24-inches (610 mm) long, it is essentially a passageway and must be at least 36 inches (915 mm) wide.

(2) Space Requirements for Use of Walking Aids. Although people who use walking aids can maneuver through clear width openings of 32 inches (815 mm), they need 36 in (915 mm) wide passageways and walks for comfortable gaits. Crutch tips, often extending down at a wide angle, are a hazard in narrow passageways where they might not be seen by other pedestrians. Thus, the 36 in (915 mm) width provides a safety allowance both for the disabled person and for others.

(3) Space Requirements for Passing. Able-bodied people in winter clothing, walking straight ahead with arms swinging, need 32 in (815 mm) of width, which includes 2 in (50 mm) on either side for sway, and another 1 in (25 mm) tolerance on either side for clearing nearby objects or other pedestrians. Almost all wheelchair users and those who use walking aids can also manage within this 32 in (815 mm) width for short distances. Thus, two streams of traffic can pass in 64 in (1625 mm) in a comfortable flow. Sixty inches (1525 mm) provides a minimum width for a somewhat more restricted flow. If the clear width is less than 60 in (1525 mm) two wheelchair users will not be able to pass but will have to seek a wider place for passing. Forty-eight inches (1220 mm) is the minimum width needed for an ambulatory person to pass a nonambulatory or semiambulatory person. Within this 48 in (1220 mm) width, the ambulatory person will have to twist to pass a wheelchair user, a person with a seeing eye dog, or a semiambulatory person. There will be little leeway for swaying or missteps (see Fig. A1).

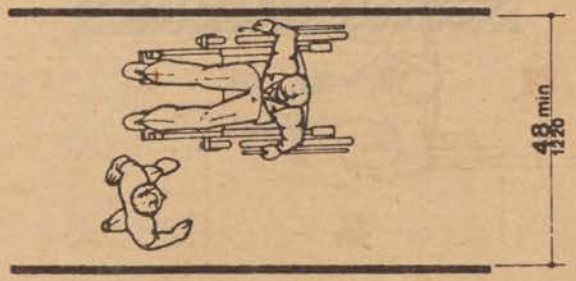


Fig. A1
Minimum Passage Width for One Wheelchair and One Ambulatory Person

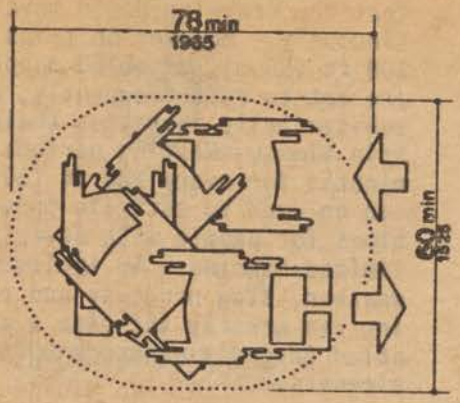
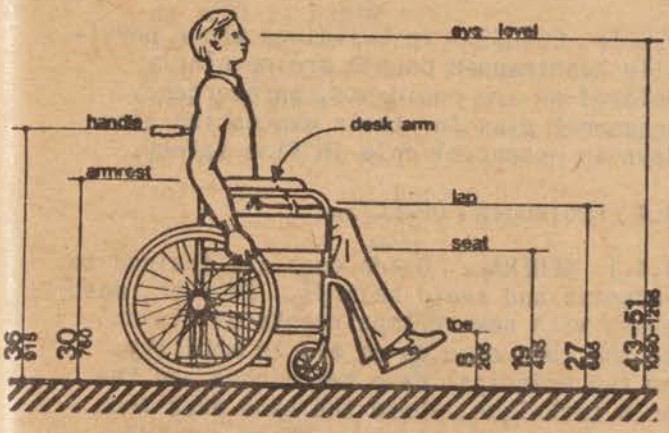
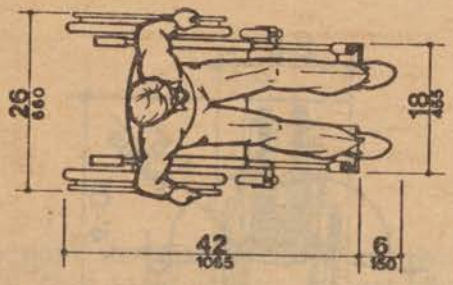


Fig. A2
Space Needed for Smooth U-Turn in a Wheelchair





NOTE: Footrests may extend further for very large people.

Fig. A3
Dimensions of Adult-Sized Wheelchairs

A4.2.3 Wheelchair Turning Space. This standard specifies a minimum space of 60 in (1525 mm) diameter for a pivoting 180-degree turn of a wheelchair. This space is usually satisfactory for turning around, but many people will not be able to turn without repeated tries and bumping into surrounding objects. The space shown in Fig. A2 will allow most wheelchair users to complete U-turns without difficulty.

A4.2.4 Clear Floor or Ground Space for Wheelchairs. The wheelchair and user shown in Fig. A3 represent typical dimensions for a large adult male. The space requirements in this standard are based upon maneuvering clearances that will accommodate most larger wheelchairs. Fig. A3 provides a uniform reference for design not covered by this standard.

A4.2.5 & A4.2.6 REACH. Reach ranges for persons seated in wheelchairs may be further clarified by Fig. A3(a). These drawings approximate in the plan view information shown in Figs. 4, 5, and 6 in other views.

A4.3 ACCESSIBLE ROUTE.

A4.3.1 GENERAL.

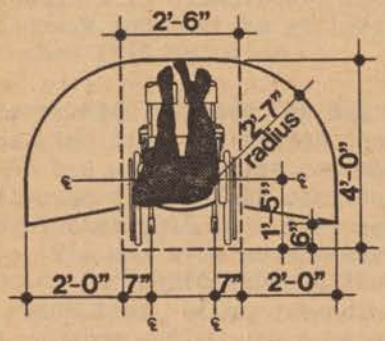
(1) Travel Distances. Many disabled people can move at only very slow speeds; for many, traveling 200 ft (61 m) coult take about 2 minutes. This assumes a rate of about 1.5 ft/s (455 mm/s) on level ground. It also assumes that the traveler would move continuously. However on trips over 100 ft (30 m), disabled people are apt to rest frequently, which substantially increases their trip times. Resting periods of 2 minutes for every 100 ft (30 m) can be used to estimate travel times for people with severly limited stamina. In inclement weather, slow progress and resting can greatly increase a disabled person's exposure to the elements.

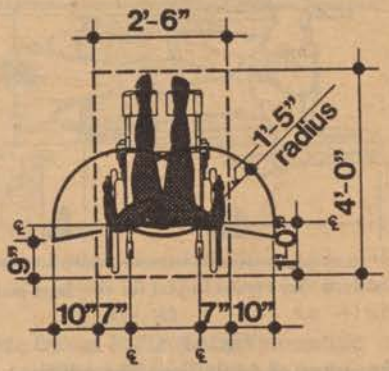
(2) Sites. Level, indirect routes or those with running slopes lower than 1:20 can sometimes provide more convenience than direct routes with maximum allowable slopes or with ramps.

A4.3.10 EGRESS. In buildings where physically handicapped people are regularly employed or are residents, an emergency management plan for their evacuation also plays an essential role in fire safety.

A4.4 PROTRUDING OPJECTS.

A4.4.1 GENERAL. Guide dogs are trained to recognize and avoid hazards. However, most people with severe impairments of vision use the long cane as an aid to mobility. The two principal cane techniques are the touch technique, where the cane arcs from side to side and touches points outside both shoulders; and the diagonal techniques, where the cane is held in a sta-





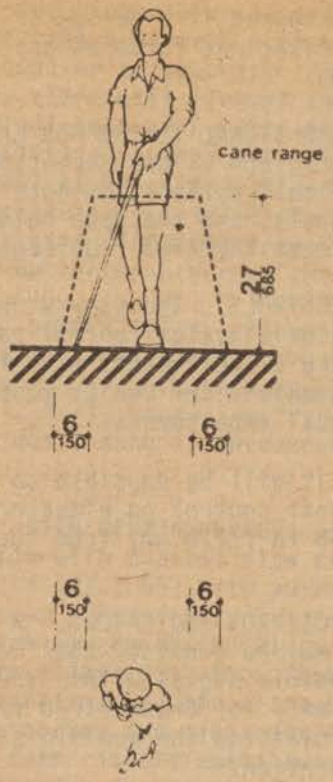


Fig. A4
Cane Technique

tionary position diagonally across the body with the cane tip touching or just above the ground at a point outside one shoulder and the handle or grip extending to a point outside the other shoulder. The touch technique is used primarily in uncontrolled areas, while the diagonal technique is used primarily in certain limited, controlled, and familiar environments. Cane users are often trained to use both techniques.

Potential hazardous objects are noticed only if they fall within the detection range of canes (see Fig. A4). Visually impaired people walking toward an object can detect an overhang if its lowest surface is not higher than 27 in (685 mm). When walking alongside projecting objects, they cannot detect overhangs. Since proper cane and guide dog techniques keep people away from the edge of a path or from walks, a slight overhang of no more than 4 in (100 mm) is not hazardous.

A4.5 GROUND AND FLOOR SURFACES.

A4.5.1 GENERAL. Ambulant and semiambulant people who have difficulty maintaining balance and those with restricted gaits are particularly sensitive to slipping and tripping hazards. For such people, a stable and regular surface is necessary for safe walking, particularly on stairs. Wheelchairs can be propelled most easily on surfaces that are hard, stable, and regular. Soft, loose surfaces such as shag carpet, loose sand, and wet clay, and irregular surfaces such as cobblestone, can significantly impede wheelchair movement.

Slip resistance is based on the frictional force necessary to keep a shoe heel or crutch tip from slipping on a walking surface under the conditions of use likely to be found on the surface. Although it is known that the static coefficient of friction is the basis of slip resistance, there is not as yet a general accepted method to evaluate the slip resistance of walking surfaces.

Cross slopes on walks and ground or floor surfaces can cause considerable difficulty in propelling a wheelchair in a straight line.

A4.5.3 CARPET. Much more needs to be done in developing both quantitative and qualitative criteria for carpeting. However, certain functional characteristics are well established. When both carpet and padding are used, it is desirable to have minimum movement (preferably none) between the floor and the pad and the pad and the carpet, which would allow the carpet to hump or warp. In heavily trafficked areas a thick, soft (plush) pad or cushion, particularly in combination with long carpet pile, makes it difficult for individuals in wheelchairs and those with other

ambulatory disabilities to get about. This should not preclude their use in specific areas where traffic is light. Firm carpeting can be achieved through proper selection and combination of pad and carpet, sometimes with the elimination of the pad or cushion, and with proper installation.

A4.6 PARKING AND PASSENGER LOADING ZONES

A4.6.3 PARKING SPACES. High-top vans, which disabled people or transportation services often use, require higher clearances in parking garages than automobiles. When optional van spaces are provided within a garage, only the spaces themselves and a vehicle route to them require the specified clearances.

A4.8 RAMPS.

A 4.8.1 GENERAL. Ramps are essential for wheelchair users if elevators or lifts are not available to connect different levels. However, some people who use walking aids have difficulty with ramps and prefer stairs.

A4.8.2 SLOPE AND RISE. The ability to manage an incline is related to both its slope and its length. Wheelchair users with disabilities affecting arms or with low stamina have a serious difficulty using inclines. Most ambulatory people and most people who use wheelchairs can manage a slope of 1:16. Many people cannot manage a slope of 1:12 for 30 ft (9m). Many people who have difficulty negotiating very long ramps at relatively shallow slopes can manage very short ramps at steeper slopes.

A4.8.5 HANDRAILS. The requirements for stair and ramp handrails in this standard are for adults. When children are principal users in a building or facility, a second set of handrails at an appropriate height can assist them and aid in preventing accidents.

A4.10 ELEVATORS.

A4.10.6 DOOR PROTECTIVE AND REOPENING DEVICE. The required door reopening device would hold the door open for 20 seconds if the door remains unobstructed. After 20 seconds, the door may begin to close. However, if designed in accordance with ANSI A17.1-1978, the door closing movement could still be stopped if a person or object exerts sufficient force at any point on the door edge.

A4.10.7 DOOR AND SIGNAL TIMING FOR HALL CALLS. This paragraph allows variation in the location of call buttons, advance time for warning signals, and the door holding period used to meet the time requirement.

A4.10.12 CAR CONTROLS. Industry-wide standardization of elevator control panel design would make all elevators significantly more convenient for use by people with severe visual impairments.

In many cases, it will be possible to locate the highest control on elevator panels within 48 in (1220 mm) from the floor.

A4.10.13 CAR POSITION INDICATORS. A special button may be provided that would activate the audible signal within the given elevator only for the desired trip, rather than maintaining the audible signal in constant operation.

A4.10.14 EMERGENCY COMMUNICATIONS. A device that requires no handset is easier to use by people who have difficulty reaching.

A4.11 PLATFORM LIFTS.

Platform lifts include porch lifts and other devices used for short-distance, vertical transportation of people in wheelchairs. At the present time, generally recognized safety standards for such lifts have not been developed. Care should be taken in selecting and installing lifts to ensure that they are free from hazards to users or to other individuals who may be in the vicinity where they are being operated.

A4.13 DOORS.

A4.13.8 THRESHOLDS AT DOORWAYS. Thresholds and surface height changes in doorways are particularly inconvenient for wheelchair users who also have low stamina or restrictions in arm movement, because complex maneuvering is required to get over the level change while operating the door.

A4.13.9 DOOR HARDWARE. Some disabled persons must push against a door with their chair or walker to open it. Applied kickplates on doors with closers can reduce required maintenance by withstanding abuse from wheelchairs and canes. To be effective, they should cover the door width, less approximately 2 in (51 mm), up to a height of 16 in (405 mm) from its bottom edge and be centered across the top.

A4.13.10 DOOR CLOSERS. Closers with delayed action features give a person more time to maneuver through doorways. They are particularly useful on frequently used interior doors such as entrances to toilet rooms.

A4.13.11 DOOR OPENING FORCE. Although most people with disabilities can exert at least 5 lbf (22.2 n), both pushing and pulling from a stationary position, a few people with severe disabilities cannot exert even 3 lbf (13.3 N). Although some people cannot manage the allowable forces in this standard and many others have difficulty, door closers must have certain minimum closing forces to close doors satisfactorily. Forces for pushing or pulling doors open are measured with a push-pull scale under the following conditions:

(1) Hinged Doors: Force applied perpendicular to the door at the door opener or 30 in (760 mm) from the hinged side, whichever is farther from the hinge.

(2) Sliding or Folding Doors: Force applied parallel to the door at the door pull or latch.

(3) Application of Force: Apply force gradually so that the applied force does not exceed the resistance of the door.

In high-rise buildings, air-pressure differentials may require a modification of this specification in order to meet the functional intent.

A4.13.12 AUTOMATIC DOORS AND POWER-ASSISTED DOORS. Sliding automatic doors do not need guard rails and are more convenient for wheelchair users and visually impaired people to use. If slowly opening automatic doors can be reactuated before their closing cycle is completed, they will be more convenient in busy doorways.

A4.15 DRINKING FOUNTAINS AND WATER COOLERS

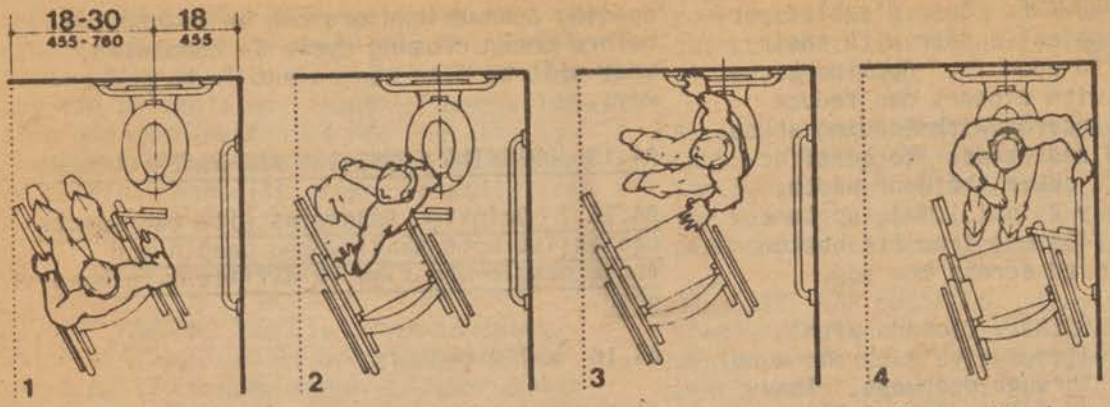
A4.15.2 Drinking fountains with two spouts can assist both handicapped people and those people who find it difficult to bend over.

A4.16 WATER CLOSETS.

A4.16.3 HEIGHT. Preferences for toilet seat heights vary considerably among disabled people. Higher seat heights may be an advantage to some ambulatory disabled people but a disadvantage for wheelchair users and others. Toilet seats 18 in (455 mm) high seem to be a reasonable compromise. Thick seats and filler rings are available to adapt standard fixtures to these requirements.

A4.16.4 GRAB BARS. Fig. A5(a) and (b) show the diagonal and side approaches most commonly used to transfer from a wheelchair to a water closet. Some wheelchair users can transfer from the front of the toilet, while others use a 90-degree approach. Most people who use the two additional approaches can also use either the diagonal approach or the side approach.

A4.16.5 FLUSH CONTROLS. Flush valves and related plumbing can be located behind walls or to the side of the toilet, or a toilet seat lid can be provided if plumbing fittings are directly behind the toilet seat. Such designs reduce the chance of injury and imbalance caused by leaning back against the fittings. Flush controls for tank-type toilets have a standardized mounting location on the left side of the tank (facing the tank). Tanks can be obtained by special order with controls mounted on the right side. If administrative authorities require flush controls for flush valves to be located in a position that conflicts with the location of the rear grab bar, then that bar may be split or shifted toward the wide side of the toilet area.



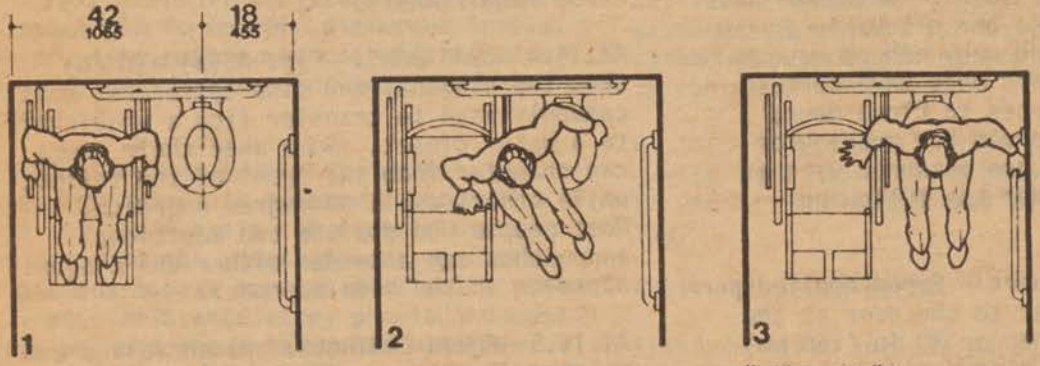
1 Takes transfer position, swings footrest out of the way, sets brakes

2 Removes armrest, transfers.

3 Moves wheelchair out of the way, changes position (some people fold chair or pivot it 90° to the toilet).

4 Positions on toilet, releases brake.

(a)
Diagonal Approach



1 Takes transfer position, removes armrest, sets brakes.

2 Transfers.

3 Positions on toilet.

(b)
Side Approach

Fig. A5
Wheelchair Transfers

A4.17 TOILET STALLS

A4.17.5 DOORS. To make it easier for wheelchair users to close toilet stall doors, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.

A4.19 LAVATORIES AND MIRRORS.

A4.19.6 MIRRORS. If mirrors are to be used by both ambulatory people and wheelchair users, then they must be at least 74 in (1880 mm) high at their topmost edge. A single full length mirror can accommodate all people, including children.

A4.21 SHOWER STALLS

A4.21.1 GENERAL. Shower stalls that are 36 in by 36 in (915 mm by 915 mm) wide provide additional safety to people who have difficulty maintaining balance because all grab bars and walls are within easy reach. Seated people use the walls of 36 in by 36 in (915 mm by 915 mm) showers for back support. Shower stalls that are 60 in (1525 mm) wide and have no curb may increase usability of a bathroom by wheelchair users because the shower area provides additional maneuvering space.

A4.23 BATHROOMS, BATHING FACILITIES, AND SHOWER ROOMS.

A4.23.9 MEDICINE CABINETS. Other alternatives for storing medical and personal care items are very useful to disabled people. Shelves, drawers, and floor-mounted cabinets can be provided within the reach ranges of disabled people.

A4.26 HANDRAILS, GRAB BARS, AND TUB AND SHOWER SEATS.

A4.26.1 GENERAL. Many disabled people rely heavily upon grab bars and handrails to maintain balance and prevent serious falls. Many people brace their forearms between supports and walls to give them more leverage and stability in maintaining balance or for lifting. The maximum grab bar clearance of 1-1/2 in (38 mm) required in this standard is a safety clearance to prevent injuries from arms slipping through the opening. It also provides adequate gripping room.

A4.26.2 SIZE AND SPACING OF GRAB BARS AND HANDRAILS. This specification allows for alternate shapes of handrails as long as they allow an opposing grip similar to that provided by a circular section of 1-1/4 in to 1-1/2 in (32 mm to 38 mm).

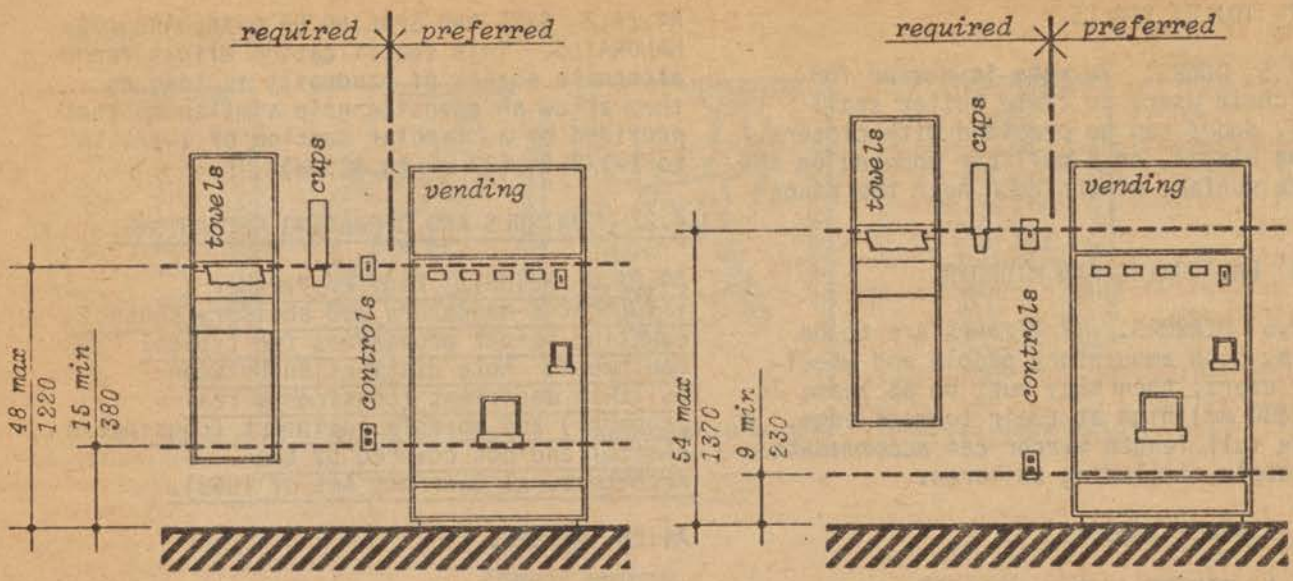
4.27 CONTROLS AND OPERATING MECHANISMS.

A4.27.3 HEIGHT. Fig. A6 further illustrates mandatory and advisory control mounting height provisions for typical equipment. Note distinction between built-in equipment (considered real property) and movable equipment (considered chattel and not covered by the Architectural Barriers Act of 1968).

A4.28 ALARMS.

A4.28.2 AUDIBLE ALARMS. Audible emergency signals must have an intensity and frequency that can attract the attention of individuals who have partial hearing loss. People over 60 years of age generally have difficulty perceiving frequencies higher than 10,000 Hz.

A4.28.3 VISUAL ALARMS. Locating visual emergency alarms in rooms where deaf individuals may work or reside alone can ensure that they will always be warned when a emergency alarm is activated. To be effective, such devices must be located and oriented so that they will spread signals and reflections throughout a space or raise the overall light level sharply. The amount and type of light necessary to wake a deaf person from a sound sleep in a dark room will vary depending on a number of factors, including the size and configuration of the room, the distance between the source and the person, whether or not the light flashes, and the cycle of flashing. A 150-watt flashing bulb can be effective under some conditions. Certain devices currently available are designed specifically as visual alarms for deaf people. Deaf people may not need accessibility features other than the emergency alarm connections and communications devices. Thus rooms in addition to those accessible for wheelchair users should also equipped with emergency visual alarms or connections.



(a)
Forward Reach Possible

(b)
Side Reach Possible

Fig. A6
Control Reach Limitations

A4.29 TACTILE WARNINGS.

A4.29.2 TACTILE WARNINGS ON WALKING SURFACES. Reserved.

A4.29.3 TACTILE WARNINGS ON DOORS TO HAZARDOUS AREAS. Tactile signals for hand reception are useful if it is certain that the signals will be touched.

A4.29.5 TACTILE WARNINGS AT HAZARDOUS VEHICULAR AREAS. Reserved.

A4.29.6 TACTILE WARNINGS AT REFLECTING POOLS. Reserved.

A4.29.7 STANDARDIZATION. Too many tactile warnings or lack of standardization weakens their usefulness. Tactile signals can also be visual signals to guide dogs, since dogs can be trained to respond to a large variety of visual cues.

A4.30 SIGNAGE.

A4.30.1 GENERAL. In building complexes where finding locations independently on a routine basis may be a necessity (for example, college campuses), tactile maps or prerecorded instructions can be very helpful to visually impaired people. Several maps and auditory instructions have been developed and tested for specific applications. The type of map or instructions used must be based on the information to be communicated, which depends highly on the type of buildings or users.

Landmarks that can easily be distinguished by visually impaired individuals are useful as orientation cues. Such cues include changes in illumination level, bright colors, unique patterns, wall murals, location of special equipment, or other architectural features (for example, an exterior view).

Many people with disabilities have limitations in movement of their head and reduced peripheral vision. Thus, signage positioned perpendicular to the path of travel is easiest for them to notice. People can generally distinguish signage within an angle of 30 degrees to either side of the centerline of their face without moving their head.

A4.30.2 CHARACTER PROPORTION. The legibility of printed characters is a function of the viewing distance, character height, the ratio of the stroke width to the height of the character, the contrast of color between character and background, and print font. The size of characters must be based upon the intended viewing distance. A severely nearsighted person may have to be much closer to see a character of a given size accurately than a person with normal visual acuity.

A4.30.3 COLOR CONTRAST. The greatest readibility is usually achieved through the use of light colored characters or symbols on a dark background.

A4.30.4 RAISED OR INDENTED CHARACTERS OR SYMBOLS. Signs with descriptive materials about public buildings, monuments, and objects of cultural interest can be raised or incised letters. However, a sighted guide or audio-tape device is often a more effective way to present such information. Raised characters are easier to feel at small sizes and are not suspectible to maintenance problems as are indented characters, which can fill with dirt, cleaning compounds, and the like.

Braille characters can be used in addition to standard alphabet characters and numbers. Placing braille characters to the left of standard characters makes them more convenient to read. Standard dot sizing and spacing as used in braille publications are acceptable. Raised borders around raised characters can make them confusing to read unless the border is set far away from the characters.

A4.31 TELEPHONES.

A4.31.3 MOUNTING HEIGHT. In localities where the dial-tone first system is in operation, calls can be placed at a coin telephone through the operator without inserting coins. The operator button is located at a height of 46 in (1170 mm) if the coin slot of the telephone is at 54 in (1370 mm).

A generally available public telephone with a coin slot mounted lower on the equipment would allow universal installation of telephones at a height of 48 in (1220 mm) or less to all operable parts.

A4.31.5 EQUIPMENT FOR HEARING IMPAIRED PEOPLE. Other aids for people with hearing impairments are telephones, teleprinter, and other telephonic devices that can be used to transmit printed messages through telephone lines to a teletype printer or television monitor.

A4.32 SEATING, TABLES, AND WORK SURFACES.

A4.32.4 HEIGHT OF WORK SURFACES. Different types of work require different work surface heights for comfort and optimal performance. Light detailed work such as writing requires a work surface close to elbow height for a standing person. Heavy manual work such as rolling dough requires a work surface height about 10 in (255 mm) below elbow height for a standing person. The principle of a high work surface height for light detailed work and a low work surface for heavy manual work also applies for seated persons; however, the limiting condition for seated manual work is clearance under the work surface.

Table A1 shows convenient work surface heights for seated persons. The great variety of heights for comfort and optimal performance indicates a need for alternatives or a compromise in height if people who stand and people who sit will be using the same counter area.

Table A1
Convenient Heights of Work Surfaces for Seated People*

Conditions of Use	Short Women		Tall Men	
	in	mm	in	mm
Seated in a wheelchair:				
Manual work:				
Desk or removable armrests	26	660	30	760
Fixed, full-size armrests†	32‡	815	32‡	815
Light, detailed work:				
Desk or removable armrests	29	735	34	865
Fixed, full-size armrests†	32‡	815	34	865
Seated in a 16-in (405-mm) -high chair:				
Manual work	26	660	27	685
Light, detailed work	28	710	31	785

*All dimensions are based on a work-surface thickness of 1-1/2 in (38 mm) and a clearance of 1-1/2 in (38 mm) between legs and the underside of a work surface.

†This type of wheelchair arm does not interfere with the positioning of a wheelchair under a work surface.

‡This dimension is limited by the height of the armrests; a lower height would be preferable. Some people in this group prefer lower work surfaces, which require positioning the wheelchair back from the edge of the counter.

A4.33 ASSEMBLY AREAS.

A4.33.2 SIZE OF WHEELCHAIR LOCATIONS. Spaces large enough for two wheelchairs allow people who are coming to a performance together to sit together.

A4.33.3 PLACEMENT OF WHEELCHAIR LOCATIONS. The location of wheelchair areas can be planned so that a variety of positions within the seating are provided. This will allow choice in viewing and price categories.

A4.33.6 PLACEMENT OF LISTENING SYSTEMS. A distance of 50 ft (15 m) allows a person to distinguish performers' facial expressions.

A4.33.7 TYPES OF LISTENING SYSTEMS. A listening system that can be used from any seat in a seating area is the most flexible way to meet this specification. Earphone jacks with variable volume controls can benefit only people who have slight hearing losses and do not help people with hearing aids. At the present time, audio loops are the most feasible type of listening system for people who use hearing aids, but people without hearing aids or those with hearing aids not equipped with inductive pickups cannot use them. Loops can be portable and move to various locations within a room. Moreover, for little cost, they can serve a large area within a seating area. Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with hearing aids need custom-designed equipment to use them as they are presently designed. If hearing aids had a jack to allow a by-pass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. Some listening systems may be subject to interference from other equipment and feedback from hearing aids of people who are using the systems. Such interference can be controlled by careful engineering design that anticipates feedback and sources of interference in the surrounding area.

A4.34 DWELLING UNITS.

A4.34.2 MINIMUM REQUIREMENTS. Handicapped people who live in accessible dwelling units of multi-family buildings or housing projects will want to participate in all on-site social activities, including visiting neighbors in their dwelling units. Hence, any circulation paths among all dwelling units and among all on-site facilities should be as accessible as possible. an accessible second exit to dwelling units provides an extra margin of safety in a fire.

A4.34.5 ADAPTABLE BATHROOMS. Although not required by these specifications, it is important to install grab bars at toilets, bathtubs, and showers if it is known that a dwelling unit will be occupied by elderly or severely disabled people.

A4.34.6 ADAPTABLE KITCHENS.

A4.34.6.1 CLEARANCE. The minimum clearances provide satisfactory maneuvering spaces for wheelchairs only if cabinets are moved at the sink.

A4.34.6.5 SINK. Installing a sink with a drain at the rear so that plumbing is as close to the wall as possible can provide additional clear knee space for wheelchair users.

A4.34.6.6 RANGES AND COOKTOPS. Although not required for minimum accessibility, countertop range units in a counter with adjustable heights can be an added convenience for wheelchair users.

A4.34.6.7 OVENS. Countertop or wall-mounted ovens with side-opening doors are easier for people in wheelchairs to use. Clear spaces at least 30 in (760 mm) wide under counters at the side of ovens are an added convenience. The pullout board or fixed shelf under side-opening oven doors provides a resting place for heavy items being moved from the oven to a counter.

A4.34.6.8 REFRIGERATOR/FREEZERS. Side-by-side refrigerator/freezers provide the most usable freezer compartments. Locating refrigerators so that their doors can swing back 180 degrees is more convenience for wheelchair users.

A4.34.6.10 KITCHEN STORAGE. Full height cabinets or tall cabinets can be provided rather than cabinets mounted over work counters. Additional storage space located

A4.34.6.10 KITCHEN STORAGE. Full height cabinets or tall cabinets can be provided rather than cabinets mounted over work counters. Additional storage space located conveniently adjacent to kitchens can be provided to make up for space lost when cabinets under counters are removed.

A9 POSTAL FACILITIES.

A9.2 GENERAL. Furniture as chattel is not covered under the Architectural Barriers Act of 1968, but the requirements for lobby furniture and equipment are imposed by the United States Postal Service for greater accessibility in its customer lobbies.

Note: Unedited copies of the American National Standards Institute standard A117.1-1980, "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," are available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York, 10018.

[FR Doc. 84-20831 Filed 8-6-84; 8:45 am]
BILLING CODE 6820-23-C, 3810-01-C, 4210-32-C, 7710-12-C

federal register

Tuesday
August 7, 1984

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 40

Accessibility Standards for Design, Construction, and Alteration of Publicly Owned Residential Structures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 40

[Docket No. R-84-1186; FR-1957]

Accessibility Standards for Design, Construction, and Alteration of Publicly Owned Residential Structures

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule adopts standards for access to publicly owned residential building by physically handicapped people. The rule implements the Department's mandate under the Architectural Barriers Act (the Act), to promulgate accessibility standards for residential buildings. The adopted standards are being published elsewhere in today's Federal Register by HUD and the three other Federal agencies responsible for developing standards under the Act. Adopting the same standards as those announced jointly by the four Federal standards setting agencies will promote nationwide uniformity of accessibility standards.

EFFECTIVE DATE: October 4, 1984.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Department of Housing and Urban Development, Room 9220, 451 Seventh Street, SW., Washington, D.C. 20410; telephone (202) 755-6454 (voice) or 755-7149 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 3 of the Architectural Barriers Act (the Act) (42 U.S.C. 4153) requires the Secretary of Housing and Urban Development to prescribe standards for the design, construction, and alteration of residential structures subject to the Act to ensure that physically handicapped persons have access to and use of these buildings to the extent practicable.

The Act requires three other Federal agencies to prescribe similar standards for other types of structures. These agencies are the General Services Administration, the Department of Defense and the United States Postal Service.

In an effort to promulgate uniform standards, these four agencies worked with seven other Federal agencies on a task force to consider the development of uniform Federal accessibility standards. The four agencies proposed such a standard in the Federal Register on April 29, 1983 (see 48 FR 19610) and announce final uniform standards elsewhere in today's issue of the Federal Register.

This Rule

This rule adopts the Uniform Federal Accessibility Standards as the Department's standards. As adopted, these standards follow closely those currently recommended by the American National Standards Institute and already in general use in the private sector. Adopting the uniform standards will promote nationwide uniformity of accessibility standards, so that builders and architects will be able to employ virtually the same accessibility standards for both federal and many non-federal projects.

The details of the provisions of the final standards are discussed in the joint Uniform Federal Accessibility Standards published elsewhere in this issue of the Federal Register.

This rule is being published as a final rule. The Administrative Procedure Act (APA) (5 U.S.C. 553) requires agencies to provide the opportunity for notice and comment before a rule is published in final form, unless it is impracticable, contrary to the public welfare or falls within one of the statutory categorical exemptions.

The Department has determined that there has been adequate opportunity for interested persons to submit their views on these standards. The proposed Uniform Federal Accessibility Standards provided for 45 days of public comment, later extended an additional 60 days. Because the Department is not departing in any way from the uniform standards, all issues raised during the uniform standards' comment period would be identical to those raised by a HUD rulemaking. In addition, the Department believes that it is important to have HUD's accessibility standards in place on or about the same time the Uniform Federal Accessibility Standards are issued. For these reasons, the Department has determined that proposed rulemaking is contrary to the public interest and is publishing its standards as a final rule.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements 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 during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a major rule as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued 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 the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because the cost of compliance will not be significantly greater than the cost imposed by requirements for accessibility currently in effect for small Public Housing Agencies or other small agencies that may own residential structures covered by the Act.

This rule was listed in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902, 15914), under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 40

Handicapped, Public housing.

Accordingly, the Department amends 24 CFR Part 40, as follows:

1. By revising the Part heading to read as follows:

PART 40—ACCESSIBILITY STANDARDS FOR DESIGN, CONSTRUCTION, AND ALTERATION OF PUBLICLY OWNED RESIDENTIAL STRUCTURES

2. In § 40.2, paragraph (b)(3) is revised to read as follows:

§ 40.2 Definition of "residential structure."

* * * * *

(b) * * *

(3) Any residential structure that contains 15 or more housing units, unless otherwise specifically prescribed by the Uniform Federal Accessibility Standards contained in Appendix A to this part.

* * * * *

3. By revising § 40.4 to read as follows:

§ 40.4 Standards.

Residential structures subject to this part shall be designed, constructed or altered to ensure that physically handicapped persons have access to, and use of, these structures. This requirement is satisfied by using the specifications contained in Appendix A to this part, the Uniform Federal Accessibility Standards (UFAS).

4. By revising § 40.5 to read as follows:

§ 40.5 Waiver.

The applicability of the standards prescribed in this part may be modified or waived on a case-be-case basis upon application to the Secretary of HUD or to his or her designee, made by the head of the department, agency or instrumentality of the United States concerned. The Secretary will grant a modification or waiver only upon a determination that the waiver or modification is clearly necessary and consistent with the purposes of the Architectural Barriers Act (Pub. L. 90–480; 42 U.S.C. 4153).

5. By adding Appendix A to Part 40 to read as follows:

Appendix A to Part 40—Accessibility Standards for Publicly Owned Residential Structures

Note.—By this rule, the Department is adopting as its own standards the Uniform Federal Accessibility Standards (UFAS) published elsewhere in today's issue of the **Federal Register.** The text of the uniform standard is adopted by HUD without change. When codified, Appendix A to Part 40 will contain the text of the UFAS. To review the text of the Standards, please see the UFAS in today's **Federal Register.**

(Sec. 3 of the Architectural Barriers Act (42 U.S.C. 4153); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d))

Dated: July 31, 1984.

Philip Abrams,

**Under Secretary.*

[FR Doc. 84–20818 Filed 8–6–84; 8:45 am]

BILLING CODE 4210–32–M

federal register

Tuesday
August 7, 1984

Part IV

General Services Administration

41 CFR Part 101-19

Accommodations for the Physically Handicapped; Final Rule

Part IV

General Services Administration

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-19

[FPMR Amendment D-82]

Accommodations for the Physically Handicapped

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: GSA is revising its regulations to adopt the new Uniform Federal Accessibility Standards to make buildings more accessible to physically handicapped people. The standards, which appeared as proposed standards in the **Federal Register** of April 29, 1983, grow out of efforts by the General Services Administration (GSA), the Department of Defense (DOD), the Department of Housing and Urban Development (HUD), and the United States Postal Service (USPS) to establish uniform standards under the Architectural Barriers Act of 1968, Pub. L. 90-480, as amended, 42 U.S.C. 4151 et seq. for designing, constructing, or altering Federal and federally-funded buildings and other facilities.

EFFECTIVE DATE: July 31, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathleen Fields, Design Management Division, General Services Administration (FTS 8-566-0038 or 202-566-0038).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of E.O. 12291 of February 27, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society. (Note: The Uniform Federal Accessibility Standards are located elsewhere in this issue of the **Federal Register**).

List of Subjects in 41 CFR 101-19

Federal buildings and facilities, Government property management, Handicapped.

PART 101-19—CONSTRUCTION AND ALTERATION OF PUBLIC BUILDINGS

1. The authority citation for Part 101-19 reads as follows:

Authority: Sec. 2, 82 Stat. 718, 42 U.S.C. 4152.

Subpart 101-19.6—Accommodations for the Physically Handicapped

2. Section 101-19.603 is revised to read as follows:

§ 101-19.603 Standards.

Except as provided in § 101-19.604, every building must be designed, constructed, or altered to meet the minimum requirements of the Uniform Federal Accessibility Standards (uniform standards) developed by the General Services Administration (GSA), the Department of Defense (DOD), the Department of Housing and Urban Development (HUD), and the United States Postal Service (USPS), in consultation with the Department of Health and Human Services. Departing from these standards by using other methods is permitted if it is clear that equal accessibility and usability of the facility are provided. Except as provided under §§ 101-19.602 and 101-19.604, buildings designed, constructed, or altered before the effective date of this standard must meet the minimum standards in the GSA Accessibility Standard DG6 from October 14, 1980, to July 31, 1984, or the American Standard Specifications for Making Buildings and Facilities Accessible to and Usable by, the Physically Handicapped, published by the American National Standards Institute, Inc. (ANSI A117.1-1961) (R1971) from September 2, 1969, to October 13, 1980. Buildings under design are governed by the criteria of the uniform standards if the date bids were invited falls after the effective date of this rule.

3. Section 101-19.604 is amended by revising paragraph (e) to read as follows:

§ 101-19.604 Exceptions.

* * * * *

(e) The leasing of space when it is found after receiving bids or offers not otherwise legally acceptable that a proposal meets most of the requirements of the Uniform Federal Accessibility Standards. If no offeror or bidder meets all the requirements, then preference must be given to the offeror or bidder who most nearly meets the standards in section 101-19.603. If the award is proposed for a firm other than the one that most nearly meets the Uniform Federal Accessibility Standards and whose bid or offer is reasonable in price and is otherwise legally acceptable, a waiver or modification of the standards must be obtained.

4. Subpart 101-19.6 is amended by adding a new Appendix A to read as follows:

Appendix A to Subpart 101-9.6—Uniform Federal Accessibility Standards

Note.—General Services Administration is adopting as its own standards, the Uniform Federal Accessibility Standards published elsewhere in today's issue of the **Federal Register**. The text of the uniform standards is adopted by General Services Administration without change. When codified, Appendix A to Subpart 101-19.6, will contain the text of the uniform standards.

Dated: July 6, 1984.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84-20832 Filed 8-6-84; 8:45 am]

BILLING CODE 6820-23-M

federal register

Tuesday
August 7, 1984

Part V

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Interim Final Regulations With Invitation To Comment

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Interim final regulations with invitation to comment.

SUMMARY: The Secretary amends those sections of the regulations governing the establishment of local contribution rates under the Impact Aid Program. The rates are used by the Secretary to compute assistance to school districts in federally affected areas.

The Secretary is making these changes to clarify the regulations and provide additional guidance to school districts applying under Pub. L. 81–874 (the Act) for assistance for maintenance and operations.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments, except that § 222.31(c) will terminate on September 30, 1984. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2107, Washington, D.C. 20202–6272. Telephone (202) 245–1975.

SUPPLEMENTARY INFORMATION: Under section 3 of Pub. L. 81–874, commonly referred to as the Impact Aid Program, the Secretary provides assistance for maintenance and operations to certain local educational agencies (LEAs). LEAs eligible to participate in the program are those providing a free public education to certain types of so-called federally connected children; that is, children who reside on Federal property; children whose parents are employed on Federal property; children residing on Federal property with parents employed on Federal property; and children whose parents are on active duty in the uniformed services.

The amendments to the regulations affect implementation of section 3 of the Act. This section describes the process by which the Secretary determines payments to eligible applicants. Except for the changes to provisions governing local contribution rates and additional assistance under section 3(d)(2)(B), these regulations contain no other changes to the regulations implementing Pub. L. 81–874.

Payments are determined by several factors: the number(s) and type(s) of federally connected children attending the schools of an applicant LEA, the applicant's local contribution rate, the amount of the annual appropriation, and the distribution formula contained in the appropriation legislation. Among other provisions, section 3 requires the Secretary to establish for each applicant a local contribution rate and, in the case of certain applicants, to determine which LEAs in their respective States are generally comparable to the applicants.

Because of a number of inquiries regarding the methods used by the Secretary to identify generally comparable LEAs, the Secretary reviewed the current practices and regulations for the program and determined that the provisions governing those methods should include objective factors that would produce more uniform results for districts with similar characteristics.

A notice of proposed rulemaking (NPRM) was published on March 30, 1984 (49 FR 12950). Substantive comments and recommendations received in response to this notice and the Secretary's responses are summarized in the Appendix to these regulations.

Summary of changes from the NPRM

A brief summary of changes in the final regulations resulting from substantive comments on the NPRM follows. In addition to the specific changes discussed, some editorial changes have been made and some paragraphs have been reordered to make the regulations clearer.

In response to public comments, the Secretary has changed § 222.31(a) so that the State educational agency (SEA) may not preempt an LEA's decision to recommend a local contribution rate.

Many commenters objected to the proposed changes in the method of determining local contribution rates because they believed the changes—occurring late in the school year—would cause financial hardship for school districts. Commenters also objected to basing payments on rates approved in prior years because they would not reflect increased educational expenditures. In response to these comments, the Secretary has adopted the major public suggestion that LEAs be "held harmless" in fiscal year (FY) 1984 and changed § 222.31(b)(2) (now § 222.31(c)) of the regulations to provide a rate that takes increased per pupil expenditures into account. In response to other comments, this "hold-harmless" provision will be available for FY 1984 only.

The information in §§ 222.33 and 222.34 has been reorganized to clarify and separate the steps that must be followed by the SEA and applicant LEA in computing and recommending, respectively, a local contribution rate. Section 222.33 contains the instructions the SEA is to follow in identifying groups of generally comparable LEAs on which local contribution rates may be based. This section also contains a new provision for identifying generally comparable LEAs for applicant LEAs that have boundaries that are coterminous with the boundaries of Federal military installations.

Section 222.34 now contains the procedure an applicant LEA must follow in recommending a local contribution rate.

For FY 1985 and future years, the regulations will permit each applicant LEA—unless otherwise precluded by the Act or the regulations from doing so—to recommend either one of two types of rates that will be used by the Secretary in determining the LEA's payment. Those two types of rates are—

1. The rate guaranteed by the Act; and

2. A rate based on appropriate data from generally comparable LEAs within the State. Under this method, the applicant LEA would identify the generally comparable LEAs—using information supplied by its SEA—and would be permitted to recommend a rate based on these LEAs, provided there were at least 10 LEAs (including the applicant itself, except in certain cases) within the generally comparable group.

The regulations also permit the LEA flexibility in selecting the factors it wishes to use as the basis for general comparability. The generally comparable LEA method described above is depicted in the chart included in this preamble.

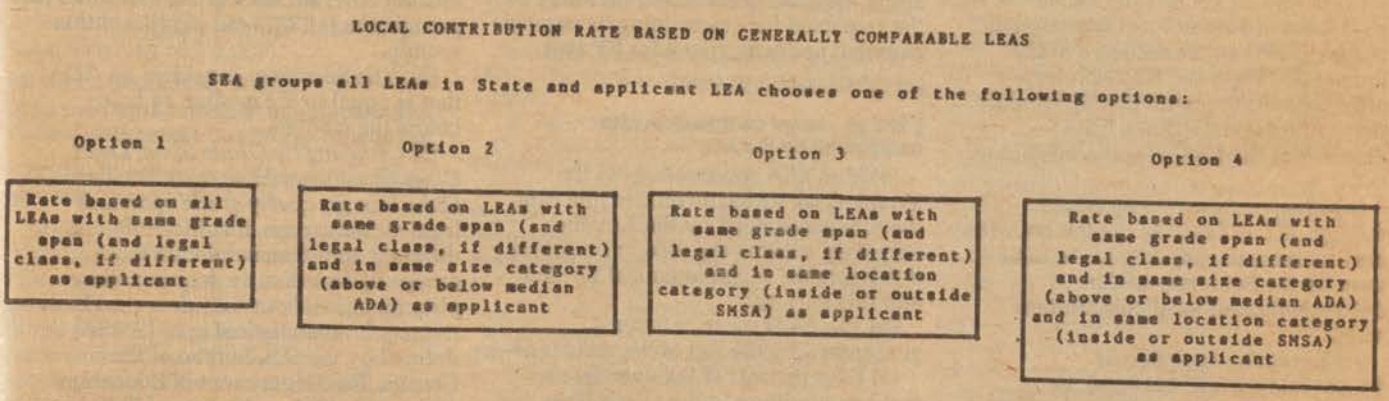
Regardless of the method recommended in any fiscal year, no LEA would receive a rate less than the rate guaranteed to the applicant by the Act.

The lists of SMSA classifications of LEAs supplied by the Department to SEAs will be used in FY 1984 because they represent the most complete and accurate information regarding the metropolitan status of LEAs available at this time. However, the Office of Management and Budget has approved some revisions in the terminology and definition of metropolitan areas. The

term "standard metropolitan statistical area" (SMSA) has been replaced by "metropolitan statistical area" (MSA), or in some cases "consolidated metropolitan statistical area" (CMSA).

These changes will not affect the use of SMSA as a factor in these regulations as they apply to FY 1984 payments.

The Department is reviewing these changes in order to update its lists of LEAs' metropolitan status for future use. The Department will provide revised lists to SEAs for use in completing applications for future fiscal years.



The Secretary is also providing a 60-day period during which the Department will continue to receive public comment on the regulations as they affect Impact Aid payments for FY 1985 and future years.

In particular, the Secretary invites the public to comment further on the use of size, measured by average daily attendance (ADA), as a factor to identify groups of generally comparable LEAs. The Department is reviewing, and the public is invited to submit, comments regarding measures of size, other than the median ADA, that could be used to group LEAs (e.g., permitting an SEA to establish three or more groupings with equal numbers of LEAs in each group, or permitting an SEA to establish groupings based on measures of statistical variation to help avoid instances of groups of LEAs with wide ranges in ADA). The Secretary is also interested in other generally comparable LEA rate methods and standards for determining whether those methods are appropriate.

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.

Paperwork Reduction Act of 1980

Information collection requirements contained in these regulations (§§ 222.33 and 222.34) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control No. 1810-0036. This control number appears as a citation at the end of each applicable section.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these final regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments should be submitted on or before (the 60th day after publication of this document) to be assured consideration by the Secretary.

All comments submitted in response to these final regulations will be available for public inspection, during and after the comment period, in Room 2107, 400 Maryland Avenue, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing, Reports and recordkeeping requirements.

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 regulations.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operation)

Dated: August 2, 1984.

T. H. Bell,

Secretary of Education.

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

The Secretary amends Part 222 of Title 34 of the Code of Federal Regulations by revising Subpart D as follows:

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rates

Sec.

222.30 Determination of local contribution rates; general.
222.31 Recommendation of local contribution rate.
222.32 Local contribution rate guaranteed by the Act.
222.33 Identification of generally comparable LEAs.
22.34 Local contribution rate based on generally comparable LEAs.
222.35 Computation of local contribution rates.
222.36 Determination of additional assistance.

Authority: Pub. L. 81-874, as amended, 64 Stat. 1100 (20 U.S.C. 236-244), unless otherwise noted.

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rates

§ 222.30 Determination of local contribution rates: general.

(a) Before computing the amount to be paid to an applicant local educational agency (LEA) under section 3 of the Impact Aid Program, the Secretary—after consultation with the LEA and its State educational agency (SEA)—determines the LEA's local contribution rate.

(b) The provisions in §§ 222.30 through 222.35 describe the methods that may be recommended by LEAs to be used by the Secretary in the determination of local contribution rates.

(c) Except as specified in §§ 222.31(a)(2) and 222.32(b), the provisions in §§ 222.30 through 222.36 do not apply to applicant LEAs located in—

(1) Puerto Rico;
(2) Wake Island;
(3) Guam;
(4) American Samoa;
(5) The Northern Mariana Islands;
(6) The Virgin Islands;
(7) Any State in which a substantial portion of the land is in unorganized territory; and
(8) Any State in which there is only one LEA.

(20 U.S.C. 238(d)(3))

§ 222.31 Recommendation of local contribution rate.

An LEA shall recommend to the Secretary one of the following types of local contribution rates on which the Secretary will base the LEA's payment:

(a) *Guaranteed Minimum Rate* (1) The LEA may recommend the local contribution rate guaranteed by the Act.

(2) In the case of a jurisdiction listed or identified in § 222.30(c), the Secretary establishes as the local contribution rate the rate guaranteed by the Act, as described in § 222.32(b).

(3) The provisions governing this rate are in § 222.32.

(b) *Generally Comparable LEA Rate* (1) The LEA may recommend a local contribution rate based on appropriate data from generally comparable LEAs within its State.

(2) The provisions governing this rate are in §§ 222.33 through 222.35.

(c) *"Hold-Harmless" Rate for FY 1984* (1) For fiscal year (FY) 1984 only, an LEA that was paid on a rate above the rate guaranteed by the Act in FY 1981 may recommend a rate 37.57 percent greater than its FY 1981 rate.

(2) To compute the amount of a rate under paragraph (c)(1) of this section, multiply the FY 1981 section 3 local contribution rate by 1.3757.

(3) If during FY 1981, the LEA received additional assistance under section 3(d)(2)(B) of the Act as well as a regular payment under section 3, the LEA may apply the 37.57 percent increase only to the rate used for determining its regular payment under section 3 for FY 1981.

(20 U.S.C. 238(d)(3); 242(b))

§ 222.32 Local contribution rate guaranteed by the Act.

(a) If an LEA recommends to the Secretary as its local contribution rate the rate guaranteed by the Act, the Secretary accepts the recommendation if it meets the requirements of the Act and this Part 222.

(b) The local contribution rate guaranteed by the Act is the greater of—

(1) Fifty percent of the average per pupil expenditure in the LEA's State during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed; or

(2)(i) Fifty percent of the average per pupil expenditure in all of the 50 States and the District of Columbia during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed.

(ii) However, if a rate resulting from paragraph (b)(2)(i) exceeds the average per pupil expenditure in the LEA's State for the second fiscal year preceding the fiscal year for which the local contribution rate is being computed, the Secretary approves a local contribution rate that is equal to that State's average per pupil expenditure for the second preceding fiscal year.

(20 U.S.C. 238(d)(3)(B))

§ 222.33 Identification of generally comparable LEAs.

(a) If an LEA wishes to recommend to the Secretary a rate based on appropriate data from generally comparable LEAs within its State, the SEA for that State shall use data from the second fiscal year preceding the fiscal year for which the local contribution rate is being computed to group all of its LEAs as follows:

(1) *Grouping by Grade Span/Legal Classification Alone.* Divide all LEAs into groups that serve the same grade span and then subdivide the grade span groups by legal classification, if the Secretary regards this classification as sufficiently different from grade span within the State.

(2)(i) *Grouping by Grade Span/Legal Classification and Size.* Divide all LEAs into groups by grade span and legal classification, if sufficiently different, and then subdivide these groups by size as determined by placement above or below the median average daily attendance (ADA) for each grade span (and legal classification, if sufficiently different) within the State.

(ii) The SEA shall include all applicant LEAs when determining the median ADA for each group identified in paragraphs (a)(2)(i) and (a)(4)(i) of this section.

(iii) The Secretary considers an ADA that is equal to the median as being below the median.

(3) *Grouping by Grade Span/Legal Classification and Location.* Divide all LEAs into groups by grade span and legal classification, if sufficiently different, and then subdivide these groups by location, as determined by placement inside or outside a standard metropolitan statistical area (SMSA) as defined by the U.S. Bureau of the Census. The Department of Education will supply SEAs with lists of SMSA classifications for their LEAs.

(4)(i) *Grouping by Grade Span/Legal Classification, Size, and Location.* Divide all LEAs into groups by grade span and legal classification, if sufficiently different; then subdivide these groups by size (above or below the median ADA for each grade span); and further subdivide these groups by location (inside or outside an SMSA).

(ii) In using both the size and location factors, the SEA shall subdivide according to the size factor before the location factor.

(b) After applying the following restrictions, the SEA shall compute a local contribution rate according to the provisions of § 222.35 for each group of generally comparable LEAs identified under paragraph (a) of this section.

(1) The SEA shall not include the following heavily impacted LEAs in any group of generally comparable LEAs:

(i) Any LEA having—in the second fiscal year preceding the fiscal year for which the local contribution rate is being computed—20 percent or more of its ADA composed of children identified under section 3(a) of the Act.

(ii) Any LEA having—in the second fiscal year preceding the fiscal year for which the local contribution rate is being computed—50 percent or more of its ADA composed of children identified under section 3(b) of the Act, or under both sections 3(a) and 3(b) of the Act.

(2) The SEA shall not compute a local contribution rate for any group that contains fewer than 10 LEAs.

(c)(1) In the case of an applicant LEA whose boundaries are coterminous with the boundaries of a Federal military installation, the SEA, in consultation with the LEA, shall select 10 generally comparable LEAs from the group

identified under paragraph (a)(4) of this section that includes the coterminous applicant LEA.

(2) Using the 10 generally comparable LEAs selected under paragraph (c)(1) of this section, the SEA shall compute the local contribution rate for the coterminous applicant LEA according to the provisions of § 222.35.

(20 U.S.C. 238(d)(3)(A); 242(b))

(Approved by the Office of Management and Budget (OMB) under Control No. 1810–0036.)

§ 222.34 Local contribution rate based on generally comparable LEAs.

(a) If an LEA recommends to the Secretary as its local contribution rate a rate based on appropriate data from generally comparable LEAs within its State, the Secretary accepts the recommendation if it meets the requirements of the Act and this Part 222.

(b) In selecting its recommended rate, the LEA shall use the following steps:

(1) *Step 1.* The LEA shall select the factor or factors in § 222.33 the LEA wishes to use as the basis for general comparability.

(2) *Step 2.* Using State-supplied data, the LEA shall identify within the State the entire group of LEAs (containing at least 10 LEAs exclusive of heavily impacted LEAs) that matches the factor or factors selected in Step 1 and that contains the applicant LEA.

(3) *Step 3.* The LEA shall recommend to the Secretary the local contribution rate, which the SEA has computed according to the provisions of § 222.35, based on the group identified in Step 2.

(c) A heavily impacted LEA is entitled to—

(1) Apply for assistance under the program; and

(2)(i) Recommend as its local contribution rate any type of rate described in § 222.31 for which the LEA is eligible, including a rate based on generally comparable LEAs.

(ii) Under the generally comparable LEA method, recommend for itself the local contribution rate of any group it would be included in based on grade span/legal classification, size, and/or location, if it were not excluded as heavily impacted in paragraph (b)(1) of § 222.33.

Example. An LEA applies for assistance under section 3 of the Impact Aid Program and wishes to recommend to the Secretary a local contribution rate based on generally comparable LEAs within its State.

Characteristics of Applicant LEA

The grade span of the applicant LEA is kindergarten through grade 8 (K–8). In the applicant's State, legal classification of LEAs is based on grade span.

The average daily attendance (ADA) of the applicant LEA is above the median ADA of LEAs serving only K–8 in the State.

The applicant LEA is located outside a standard metropolitan statistical area (SMSA).

Characteristics of Other LEAs Serving Same Grade Span

The SEA of the applicant's State groups all LEAs in its State according to the factors in § 222.33.

The SEA identifies the following groups:

One hundred and one LEAs serve only K–8. The SEA has identified a group of 50 LEAs having an ADA above the median ADA for the group of 101, one LEA having an ADA at the median, and a group of 50 LEAs having an ADA below the median ADA; thus, according to § 222.33(a)(2)(iii), 51 LEAs are considered to have an ADA below the median ADA.

Of the 101 LEAs in the group, the SEA has identified a group of 64 LEAs as being inside an SMSA and a group of 37 LEAs as being outside an SMSA.

Among the group of 50 LEAs having an ADA above the median, the SEA has identified a group of 36 LEAs as being inside an SMSA and a group of 14 LEAs as being outside an SMSA.

Among the group of 51 LEAs having an ADA below the median, the SEA has identified a group of 27 LEAs as being inside an SMSA and 24 LEAs as being outside an SMSA.

One LEA has 20 percent of its ADA composed of children identified under section 3(a) of the Act and, therefore, must be excluded from any group it falls within before the SEA computes a local contribution rate for the group. This LEA has an ADA below the median ADA and is located outside an SMSA.

On the basis of § 222.35, the SEA computes the local contribution rate for each group of generally comparable LEAs that the SEA has identified.

Selection of Generally Comparable LEAs

The applicant LEA selects the group of generally comparable LEAs matching the factor or factors it wishes to use as the basis for general comparability.

Under the requirements of § 222.33, the applicant LEA must begin with the group that includes all LEAs with its grade span and legal classification. In this case, grade span and legal classification happen to be the same. Thus, the group would include 100 LEAs, after excluding the one heavily impacted LEA.

The applicant LEA then has several options:

Option 1. The applicant LEA may select as its group of generally comparable LEAs on which to base its recommended local contribution rate the group of 100 LEAs serving K–8, after excluding the one heavily impacted LEA. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 2. Instead of selecting the group of 100, the applicant LEA may select as its generally comparable group only those LEAs within the 101 (the heavily impacted LEA must be included initially for the purpose of determining the median ADA) that have an ADA above the median ADA, that is, the group of 50. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 3. Instead of selecting either of the groups described in Options 1 and 2, the applicant LEA may select as its generally comparable group only those LEAs within the 101 that are outside an SMSA; that is, the group of 36, after excluding the one heavily impacted LEA. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 4. Instead of selecting any of the groups described in Options 1, 2 and 3, the applicant LEA may select as its generally comparable group only those LEAs that *both* have an ADA above the median ADA for the 101 *and* are outside an SMSA; that is, the group of 14. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

However, as provided in § 222.33(b)(2), if the SEA were to have identified fewer than 10 LEAs under any factor or combination of factors, the SEA would not have computed a rate for such a group. Therefore, any applicant LEA included in such a group would not be able to use this factor or combination of factors in recommending its local contribution rate to the Secretary.

The heavily impacted LEA, while included for determining the media ADA, is excluded from the computation of any group's local contribution rate. However, the heavily impacted LEA may recommend for itself the local contribution rate of any group it matches in grade span/legal classification, size, and/or location (that is, below the median ADA and outside an SMSA), provided the group contains at least 10 LEAs that are not heavily impacted.

(20 U.S.C. 238(d)(3)(A); 242(b))

(Approved by OMB under Control No. 1810–0036.)

§ 222.35 Computation of local contribution rates.

Except as otherwise specified in the Act, the SEA, subject to the Secretary's review and approval, shall compute a local contribution rate for each group of generally comparable LEAs within its State, which were identified using the factors in § 222.33, as follows:

(a)(1) The SEA shall compile the aggregate current expenditures of the comparable LEAs in each group for the second fiscal year preceding the fiscal year for which the local contribution rate is being computed.

(2) For purposes of this section, the SEA shall consider only those aggregate current expenditures made by the generally comparable LEAs from revenues derived from local sources. No State funds may be included.

(b) The SEA shall compile the aggregate number of children in ADA to whom the generally comparable LEAs in each group provided free public education during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed.

(c) The SEA shall divide—

(1) The aggregate current expenditures determined under paragraph (a) of this section; by

(2) The aggregate number of children determined under paragraph (b) of this section.

(d) If a rate computed under this section is lower than the rate guaranteed by the Act, the Secretary bases the LEA's payment on the guaranteed rate.

(20 U.S.C. 238(d)(3)(A))

§ 222.36 Determination of additional assistance.

(a) The provisions of this section govern an LEA that applies to the Secretary for additional assistance under section 3(d)(2)(B) of the Act, as well as applying for a regular payment under section 3.

(b) If the LEA is applying for a regular payment under section 3 based on a local contribution rate guaranteed by the Act, the Secretary—

(1) In determining the amount of additional assistance, considers the LEA comparable to all LEAs in its State; and

(2) Establishes the rate for, and determines the amount of, the additional assistance.

(c) If the LEA, in applying for a regular payment under section 3, recommends to the Secretary a local contribution rate based on generally comparable LEAs in its State, the Secretary—

(1) In determining the amount of the additional assistance, considers as comparable LEAs the same LEAs that the applicant identifies as comparable in its application for a regular payment under section 3; and

(2) Establishes the rate for, and determines the amount of, the additional assistance.

(20 U.S.C. 238(d)(2)(B); 242(b))

Note.—This Appendix will not be codified in the Code of Federal Regulations

Appendix—Summary of Comments and Responses to the Notice of Proposed Rulemaking

Part 222—Impact Aid Program

General

Several commenters indicated their support of the proposed regulations as published. Other specific comments follow.

Comment. Several commenters objected to the proposed rules on the grounds that they were unnecessary. Most of these commenters suggested that the Department should eliminate the "$50 rule" but continue to use other existing rules.

Response. No change has been made. As a result of a lawsuit brought by applicant LEAs, the "$50 rule" has been declared invalid by a Federal District Court, and it will no longer be used in selecting comparable LEAs. Without the "$50 rule," however, the existing regulations are not sufficiently specific to identify comparable LEAs. Therefore, amended rules are necessary to provide an adequate means of determining comparability.

Comment. One commenter contended that individual selection is a statutory right and may not be eliminated merely by promulgation of a new regulation.

Response. No change has been made. The Impact Aid statute, Pub. L. 81–874 (the Act), directs the Secretary to determine, after consultation with the applicant and its SEA, which LEAs are generally comparable to the applicant. An applicant has no statutory right to individually select its generally comparable LEAs.

Comment. Many commenters objected to making the proposed changes effective in FY 1984 because the proposed regulations were published in the middle of the fiscal year. Some contended that the changes would cause late payments in FY 1984 and would interrupt planning for FY 1985. One commenter contended that it would be illegal to apply the proposed rules for FY 1984, since the LEAs applied for Impact Aid funds before the proposed rules were published in final form.

Response. A change has been made. Because the Department will no longer use the "$50 rule" to establish local contribution rates, it is necessary for these regulations to be implemented in FY 1984 to provide guidance for applicants that wish to base their rates on generally comparable LEAs. The legal requirements of the formal rulemaking process have been satisfied, and the Secretary believes that it is proper to apply these regulations to 1984 payments. These regulations are expected to become effective before final FY 1984 payments are made. The new comparable LEA method will be available in FY 1984 to those applicants that choose to use it, but *no applicant will be required to use it.* These regulations will not delay FY 1984 payments.

Comment. One commenter believed that the effect of the proposed regulations would be to provide "Super a" districts less than the 100 percent of entitlement that was assured by the 1984 Appropriations Act.

Response. No change has been made. All "Super a" districts will receive 100 percent of entitlement in accordance with the 1984 appropriations language.

Comment. One commenter contended that the Secretary does not have the information in the FY 1984 applications necessary to make payments in accordance with the proposed rules. The commenter believed that a reapplication process would be needed and that the Secretary would use these rules to recalculate "entitlement rates" for FY 1984, which would delay payments.

Response. No change is needed. The SEAs currently have available all data necessary to implement the new rate method contained in these regulations and have begun transmitting these data to the Secretary. The Secretary soon will have the information needed to approve a rate for any LEA that wishes to recommend any of the three types of rates contained in these regulations—the minimum rate guaranteed by the statute, a rate determined under the "hold-harmless" provision, or a rate determined under the generally comparable LEA method.

Comment. One commenter believed that the proposed changes would result in unnecessary delays for LEAs requesting additional assistance under section 3(d)(2)(B).

Response. No change has been made. Final payments under section 3(d)(2)(B) will be made on the same schedule as in the past.

Comment. Three commenters expressed the belief that the Department of Education would, under the proposed rules, be locking itself into unfairly high rates for LEAs that may have abused the Individually Selected Comparable District (ISCD) method in the past.

Response. A change has been made. The provision permitting an applicant to recommend a rate from a prior year has been deleted. In FY 1985 and beyond, unless an LEA elects the minimum rate, it will be required to compare itself to LEAs with similar characteristics under the new generally comparable LEA method. As a result, the types of abuses that may have been possible in the past should be eliminated.

Comment. Two commenters contended that the proposed regulations would have a severe impact on LEAs in States that provide a low level of support.

Response. No change has been made. The purpose of section 3 of the Act is for the Federal Government, as a property owner, to contribute to the educational

costs of children connected with Federal property in amounts roughly similar to amounts other property owners contribute in similar communities. Under the terms of the program statute, local contribution rates are based on expenditures from local sources only. Impact Aid payments are not intended to compensate for variations in State aid payments.

Comment. One commenter expressed the hope that some provision might be made for large heavily impacted districts to assure that any reduction is kept to a minimum, or that a reasonable "hold-harmless" or transition period is built in.

Response. A change has been made. A "hold-harmless" provision, which reflects changes in per pupil expenditures since 1981, has been included in these regulations for use in 1984.

Comment. Two commenters contended that the proposed regulations are specifically directed at small, heavily impacted Indian school districts. Four other commenters states that the proposed rules would adversely affect small Indian districts. Two argued that Indian districts should be allowed to compute their rates based on districts with comparable educational and cultural problems. One commenter suggested that local contribution rates for small Indian districts be determined by allowing an applicant's rate to be the difference between other available funds and a minimum per pupil expenditure figure, based on a sample of small Indian districts.

Response. No change has been made. The regulations are not directed toward any type of school district but rather are intended to provide a uniform policy for all school districts and to treat applicants with similar characteristics equitably.

The purpose of the Impact Aid Program is to provide general maintenance and operations assistance to applicant LEAs. The special needs of school districts serving children who reside on Indian lands are recognized by the 25 percent increase in their local contribution rates for such children and the 87.5 percent increase in their rates for such children who are handicapped, which are authorized by sections 3(d)(2)(D) and 3(d)(2)(C) of Pub. L. 81-874, respectively. These regulations will not alter this provision. Further, the Federal Government offers assistance to school districts through a variety of other programs to address special educational and cultural needs of their students. Basing rates for one type of applicant on a minimum per pupil expenditure amount would require legislative action and could not be achieved through regulations alone.

Comment. Several commenters disagreed with the statement in the preamble that the "proposed regulations will not have a significant economic impact on a substantial number of small entities."

Response. No change has been made. The change in the method of establishing local contribution rates made by these regulations does not affect the vast majority of the applicants under this program because their payments are based on the minimum rate guaranteed by the Act.

The Secretary believes that a "significant economic impact" occurs if a major portion of an LEA's budget has been affected. The regulations contain a "hold-harmless" provision for FY 1984 that will maintain the status quo for most of the LEAs that are eligible to use it. While the local contribution rate is a necessary part of the calculation of an applicant's payment, it is only one of several factors affecting the amount of funds an applicant actually receives. For these reasons, the Secretary does not believe that these regulations significantly affect the budgets of a substantial number of small LEAs.

Comment. One commenter suggested that comparability be capped at what the LEA raises, including what it receives from the State.

Response. No change has been made. The program statute directs that local contribution rates be based on expenditures from local sources only, and therefore State aid payments may not be taken into account.

Section 222.31 Recommendation of local contribution rate.

Comment. One commenter objected to the proposed procedure on the grounds that an LEA would tend to shop for the highest possible rate regardless of the nature or degree of "comparability."

Response. A change has been made. These regulations are designed to provide a certain amount of flexibility to applicant LEAs in FY 1984 to help them make the transition from the Department's past rate procedures to the generally comparable LEA method. For 1984 only, applicants will have three choices: a rate under the "hold-harmless" provision; a rate under the new generally comparable LEA method; or the minimum rate guaranteed by the statute. The "hold-harmless" provision will be eliminated in FY 1985, and applicants will then have two methods of establishing their rates. The Secretary believes that the new method will eliminate the rate "shopping" that some applicants may have done in the past by using objective factors to identify generally comparable LEAs.

Comment. Several commenters objected to the provision in proposed § 222.31(a) which would have allowed an SEA to establish a local contribution rate without any input from the LEAs. One commenter recommended that the SEA be required to give advance notice to the affected LEAs if it intended to preempt the districts by recommending the statutory minimum.

Response. A change has been made. Section 222.31(a) of the proposed regulations was intended to continue the previous practice in many States where the SEA recommended, presumably with the consent of the applicant LEAs, the minimum rate guaranteed by the Act for all applicants. This provision was not meant to restrict unfairly any applicant's choice in recommending a local contribution rate method. These regulations have been changed to make it clear that the SEA cannot preempt the LEA's choice. This will help avoid possible misunderstandings between SEAs and applicant LEAs.

Comment. Many commenters stated that the method in § 222.31(b)(2) of the proposed regulations did not provide for increased operational costs to a district due to increases in per pupil expenditures. Two commenters contended that this provision would discriminate against those LEAs that have to use 1981 rates and in favor of those LEAs that can use 1983 rates. One commenter recommended that all LEAs develop rates based upon FY 1984 statistics and that a cost of education percentage allowance be included based on the rising national or State education costs.

Response. A change has been made. A "hold-harmless" provision has been incorporated into these regulations which an applicant may use in FY 1984 instead of the new generally comparable LEA method. An applicant that was paid on a rate above the guaranteed minimum rate in FY 1981 may request for 1984 its 1981 rate increased by 37.57 percent to reflect increases in per pupil expenditures. Only rates on which regular 1981 payments were based may be used under this "hold-harmless" provision.

Comment. Two commenters believed that proposed § 222.31(b)(2) is inconsistent with the law. This provision implies that the same districts that were comparable in 1981 will continue to be comparable regardless of the changed circumstances or makeup of the districts. Four commenters believed this provision simply perpetuated the "illegal $50 rule." Another commenter

contended that section 3(d)(3)(A) of the Act requires an annual determination of general comparability, and this provision therefore would violate the Act.

Response. A change has been made. The provision under proposed § 222.31(b)(2) has been deleted. However, FY 1981 local contribution rates are used as the basis for the new "hold-harmless" provision to allow a transition from the Department's past methods of establishing rates to the generally comparable LEA method. This is being done largely in response to the commenters who stated that it would be disruptive to require the implementation of the new generally comparable LEA method in FY 1984. The effect of using the FY 1981 rates will be limited because the "hold-harmless" provision will be used in FY 1984 only.

Section 222.32 Local contribution rate guaranteed by the Act.

Comment. One commenter believed that the rate guaranteed by law should not be listed as an option.

Response. No change has been made. The rate guaranteed by the Act is always an option that an LEA may choose to recommend.

Comment. One commenter asked if proposed § 222.32(b)(2)(ii) applies only to Puerto Rico.

Response. No change has been made. At present, Puerto Rico is the only jurisdiction whose per pupil expenditure makes it subject to the limitation in § 222.32(b)(2)(ii).

Section 222.33 Identification of generally comparable LEAs.

Note.—Because of a printing error, this section was erroneously numbered § 222.23 in the March 30, 1984, NPRM.

Comment. Several commenters believed data from applicant districts should not be included in calculating rates under the generally comparable LEA method. One commenter believed that the legislative history requires their exclusion. Another questioned why data from all Impact Aid recipients should be allowed to distort the data for each group. The commenter recommended either: (1) Removing the federally connected pupils from the group data in calculating the rate; or (2) adding the Impact Aid payments for the group to the amounts expended from local sources.

Response. No change has been made. It should be noted that § 222.33(c)(2)(iii) (now § 222.33(b)(1)) excludes data for heavily impacted applicant LEAs from the calculation of a rate based on generally comparable LEAs. The Secretary does not believe that data from lightly impacted LEAs would distort the rates.

Comment. Noting that § 222.33(c)(2)(iii) (now § 222.33(b)(1)) excludes certain LEAs from any group, two commenters asked how an LEA that is excluded selects comparable districts.

Response. No change has been made. Although a heavily impacted LEA is excluded from any group of comparable LEAs when a rate is computed for the group, it may still recommend for itself the rate of any group it matches in grade span/legal classification, size, and/or location.

Comment. One commenter said that in his State there are K–12 school districts and P–12 districts. The commenter asked whether these are the same or different grade spans as the term is used in § 222.34(a)(1) (now § 222.33(a)(1)).

Response. No change has been made. As these are approximately the same grade spans, the Secretary would consider K–12 and P–12 school districts to be serving the same grade span for the purposes of these regulations.

Comment. One commenter asked for a definition of "legal classification" as the term is used in proposed § 222.34(a)(2) (now § 222.33(a)(1)). Another commenter asked whether county school districts and city school districts in the same State would have the same or different legal classifications.

Response. No change has been made. The term "legal classification" varies according to State law and practice. The Secretary generally accepts the State's definition, but will review this on a case-by-case basis. The example used by the commenter does not contain enough information to determine whether the districts have the same legal classification in that State and, if not, whether the difference in legal classification is significant for the purposes of these regulations.

Comment. One commenter asserted that if the current rules are a correct interpretation of the program statute, then these regulations—which are a "dramatic and complete departure" from the existing rules—are inconsistent with and in violation of the statute.

Response. No change has been made. These regulations implement the statutory requirement that the Secretary identify LEAs generally comparable to the applicant and are consistent with the existing regulations. All of the factors in these regulations to be used in determining comparability are found in the existing regulations as well as in the legislative history. In keeping with the legislative history, both regulations include the concept of basing local contribution rates on larger groups of LEAs.

Comment. A few commenters questioned the appropriateness of the factors used to determine comparability. One said there are too few factors and they are too narrow to take into account the special needs of Indian schools. One commenter argued that ADA will, in effect, be the only criterion on which rates will be based. Another objected to using standard metropolitan statistical area (SMSA) as a factor. Because SMSAs usually follow county boundaries, the commenter believed that the use of this factor will group LEAs by county rather than by the urban or rural character of the LEAs.

Response. No change has been made. The Secretary believes that the factors used in these regulations—grade span, legal classification (if sufficiently different from grade span), size (ADA), and location (SMSA)—provide a very good basis for determining the comparability of LEAs. These factors have been researched extensively by educational groups across the country and have a demonstrated relationship to local school costs. The requirement of section 3(d)(3)(A) of the program statute that the Secretary identify LEAs "generally comparable" to the applicant is met by the factors used in these regulations. These factors also have the advantage of being mentioned specifically in the legislative history as being particularly appropriate measures of comparability. States that in the past have based their rates on groupings of LEAs have in most cases used the same or similar factors in determining comparability for their applicants.

Because general comparability is the standard set in the statute, the Secretary believes that these objective indicators of cost are appropriate for all LEAs, including those serving children residing on Indian lands. These LEAs will be compared with other LEAs of similar size and location that serve the same grade span to establish their basic local contribution rates. In recognition of their additional needs, the statute directs that these rates are to be increased by 25 percent, except in the case of handicapped children residing on Indian lands, when the rates are increased by 87.5 percent.

No option in these regulations uses ADA as the only factor on which comparability would be determined. One option uses grade span; legal classification, if sufficiently different; and ADA. One uses these factors plus location. Two methods of establishing groups do not use ADA at all.

While SMSAs usually do follow county boundaries, they are based on several other factors as well, including

population growth and density, degree of economic and social integration with the central metropolitan area, and commuting patterns. The purpose of using SMSAs is to recognize a general relationship between the communities grouped within each designation.

Comment. Several commenters expressed concern over the effects of using only two groups based on size under proposed § 222.34(b)(1) (now § 222.33(a)(2)). One commenter noted that a school district with an ADA of about 300 is considered comparable, under these regulations, to a school district with an ADA of over 14,000. In another State, a commenter said a district with an ADA of approximately 255 would be comparable to one with an ADA of 5,900. Another commenter suggested that when the number of LEAs in either of the two groups exceeds 50, or some such number, further breakdown—at least to quartiles—should be allowed.

Response. No change has been made at this time. The Act and the legislative history direct the Secretary to determine general comparability only, and larger groups of LEAs are consistent with this aim. There will be variation in any group of individual school districts, but the use of a rate produced by summing the data for all the districts in the group will reduce the effects of the variations. In light of the objections to dividing LEAs into two groups, the Secretary will continue to review this issue. During the additional 60-day comment period, the public is invited to submit comments regarding measures of size, other than the median ADA, that could be used to group LEAs (e.g., permitting an SEA to establish three or more groupings with equal numbers of LEAs in each group, or permitting an SEA to establish groupings based on measures of statistical variation to help avoid instances of groups of LEAs with wide ranges in ADA). The Secretary is also interested in other generally comparable LEA rate methods and standards for determining whether those methods are appropriate.

Comment. One commenter asked whether a school district in one SMSA in a State can compare itself to school districts in other SMSAs in the same State.

Response. No change has been made. An LEA in one SMSA may compare itself with LEAs in other SMSAs in the State.

Comment. Seven commenters objected to what they called the "arbitrary" rule in § 222.33(b)(2) that each group must include a minimum of ten LEAs. Two commenters recommended that the minimum number be five or fewer. Two other commenters suggested that, if a minimum number of districts is necessary to determine comparability, then a maximum number ought also to be set. Commenters from two small States questioned the benefits of the proposed regulations, since some groups in their States would contain fewer than ten LEAs.

Response. No change has been made. The legislative history indicates that the larger the number of comparable LEAs on which a local contribution rate is based, the more objective and equitable the resulting rate will be. A minimum of ten LEAs per group was established to achieve confidence in the objectivity of the calculated local contribution rates and is consistent with the legislative intent.

Comment. One commenter contended that the proposed regulations would impose hardships on military school districts with no tax base. Two commenters suggested that the following provision be added: "School districts, without any taxable property, at the time these amended regulations take effect, whose boundary is coterminous with the military reservation wherein the school district is located, shall be provided full funding on the basis of the local contribution rate established by the State. The rate shall be based on criteria used to calculate the entitlement for payments for maintenance and operations of schools from five individually selected school districts. Annual payments for such school districts shall be funded at one hundred percent of entitlement, without reductions, for all section 3(a) students."

Response. A change has been made. These regulations now provide a method of determining local contribution rates that takes into account the circumstances of LEAs with boundaries that are coterminous with Federal military installations. These new provisions are described in § 222.33(c).

Section 22.35 Computation of local contribution rates.

Comment. Two commenters believed that these regulations will cause an increased burden on the SEA. One commenter stated that the SEA is required not only to gather and distribute statistics, but also to compute the rates for the various groups. The other commenter said that this function has historically been performed by the Department and recommended that it continue to be performed by the Department.

Response. No change has been made. Since the SEA already has all the necessary data, minimal effort is required to compute a rate once the data are assembled in the proper order. In the past, either the SEAs or the applicants have computed rates in most cases. Additional time would be required—and delays in payments would result—if the Department were to make the rate computations.

[FR Doc. 84-20820 Filed 8-6-84; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Tuesday
August 7, 1984

Part VI

Department of the Interior

Minerals Management Service

Outer Continental Shelf, Gulf of Alaska/ Cook Inlet; Proposed Oil and Gas Lease Sale 88; Notice

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Gulf of Alaska/Cook Inlet Proposed Oil and Gas Lease Sale 88

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale. The following is a proposed Notice of Sale for Sale 88 in the Gulf of Alaska/Cook Inlet. This Notice is hereby published as a matter of information to the public.

Dated: August 1, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

Approved.

Garrey Carruthers,

Assistant Secretary for Land and Minerals Management.

BILLING CODE 4310-MR-M

Gulf of Alaska/Cook Inlet Outer Continental Shelf
Proposed Notice of Sale
Oil and Gas Lease Sale 88

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 between 8:00 a.m. and 4:00 p.m., Alaska Standard Time (a.s.t.), until the Bid Submission Deadline at 10:00 a.m., a.s.t., December ___, 1984. Bids will not be accepted on December ___, 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., a.s.t., December ___, 1984. Bids may not be withdrawn unless written withdrawal is received by the RM prior to 8:30 a.m., a.s.t., December ___, 1984. Bid Opening Time will be 9:00 a.m., a.s.t., December ___, 1984, at the _____ Anchorage, Alaska. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at _____, on October ___, 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 88--Gulf of Alaska/Cook Inlet (insert Official Protraction Diagram number(s) and name(s), if applicable, and block number(s)), not to be opened until 9:00 a.m., a.s.t., December ___, 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 88--Gulf of Alaska/Cook Inlet, NO 7-2, Block 617, not to be opened until 9:00 a.m., a.s.t., December ___, 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. 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. 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. All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. 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 ($150 per acre) or fraction thereof. All leases awarded from this sale will provide for a yearly rental payment of $8 per hectare ($3.00 per acre) or fraction thereof. All leases will provide for a minimum royalty of $8 per hectare ($3 per acre) or fraction thereof. The bidding system to be utilized for this sale applies to blocks or bidding units as shown in paragraph 12. All bids for this sale must be submitted on a cash bonus basis with a fixed royalty of 12½ percent.

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 commence 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 of $371 or more per hectare or fraction thereof. 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 authorized officer 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 as specified below, 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.

Outer Continental Shelf Official Protraction Diagrams.

NP 6-8, Cordova	(approved October 31, 1974)
NO 6-2, Middleton Island	(revised May 1, 1984)
NO 7-1, Icy Bay	(revised May 1, 1984)
NO 7-2, Yakutat	(revised April 23, 1984)
NO 7-3, -	(approved August 1, 1975)
NO 7-4, Alsek Valley	(revised April 25, 1984)
NP 5-8, Kenai	(revised May 4, 1984)
NO 5-1, Iliamna	(approved March 20, 1975)
NO 5-2, Seldovia	(revised May 3, 1984)
NO 5-4, Afognak	(approved July 3, 1975)
NO 5-3, Mt. Katmai	(revised April 30, 1984)
NO 5-5, Karluk	(revised April 30, 1984)
NO 4-6, Ugashik	(revised April 27, 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 and divides it into Federal and State portions. Each split block listed below represents the available Federal portion and 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., 141 (NO 7-1)). All parts of a bidding unit must be bid on together.

(b) The following blocks or portions of blocks are offered for bids:

Official Protraction Diagram NP 6-8, Cordova (approved October 31, 1974):

Whole or Partial Blocks:

902	939-942	981-999
903	945-954	

Official Protraction Diagram NO 6-2, Middleton Island (revised May 1, 1984)

(1) Whole or Partial Blocks:

7-27	265-290	539-563
48-70	296-299	573-578
90-114	309-334	583-588
133-157	339-343	617-622
166	353-387	627-632
167	397-431	661-666
177-201	441-475	670-676
209-211	485-490	705-720
221-245	495-519	749-764
252-255	529-534	793-808

(2) Split Blocks:

Blocks	Hectares	Blocks	Hectares
491	2157.42	582	1390.77
494	2247.29	626	2229.60
535	1758.23	667	2253.28
538	1346.04	668	1736.11

(3) Bidding Units:

Blocks	Hectares	Total Hectares
123	2274.54	
124	3.23	2277.77
168	78.18	
212	182.55	
256	286.87	
300	391.15	
141 (NO 7-1)	78.18	
185 (NO 7-1)	182.55	
229 (NO 7-1)	286.87	
273 (NO 7-1)	391.15	1877.50
344	495.38	
388	599.56	
317 (NO 7-1)	495.38	
361 (NO 7-1)	599.56	2189.88
432	703.70	
405 (NO 7-1)	703.70	1407.40
476	807.79	
449 (NO 7-1)	807.79	1615.58
492	329.10	
493	480.79	809.89
520	911.84	
493 (NO 7-1)	911.84	1823.68
564	1015.84	
537 (NO 7-1)	1015.84	2031.68
579	667.08	
623	844.03	1511.11
625	211.21	
669	2070.83	2282.04

Official Protraction Diagram NO 7-1, Icy Bay (revised May 1, 1984):

(1) Whole or Partial Blocks:

66-70	362-396	734-748
74-76	406-440	778-792
99-122	450-484	822-836
142-169	494-528	866-880
186-214	538-572	910-924
230-260	602-616	954-968
274-306	646-660	998-1012
318-352	690-704	1042-1056

(2) Split Blocks:

Blocks	Hectares	Blocks	Hectares
30	1766.59	261	1924.46
77	2236.86	307	1942.14
123	1858.70	308	868.53
215	1769.79		

(3) Bidding Units:

Blocks	Hectares	Total Hectares
31	999.93	
32	458.24	
33	136.65	1594.82
78	1382.37	
79	96.07	1478.44
97	3.23	
98	2274.54	2277.77
124	1044.34	
125	1257.71	2302.05
126	205.28	
170	1707.49	
171	29.44	1942.21
216	664.19	
217	7.51	671.70
262	817.47	
263	14.74	832.21

Official Protraction Diagram NO 7-2, Yakutat (revised April 23, 1984):

(1) Whole or Partial Blocks:

353-355	661-677	925-951
397-404	705-722	969-976
441-449	749-769	978-996
485-495	793-797	1013-1022
529-540	799-815	1025-1028
573-586	837-861	1030-1032
617-631	881-906	1035-1039

(2) Split Blocks:

Blocks	Hectares	Blocks	Hectares
356	2106.94	587	2080.53
357	1823.34	588	653.98
358	1663.38	632	2273.44
359	1375.53	678	1893.40
405	1933.85	679	576.82
406	557.39	723	2300.98
450	2293.26	770	1843.73
496	2102.39	816	2042.97
497	695.70	952	2213.87
541	2261.79		

(3) Bidding Units:

Blocks	Hectares	Total Hectares
265	23.79	
309	1738.05	1761.84
310	787.04	
311	340.69	
312	3.05	1130.78
360	969.11	
361	58.46	1027.57
451	1404.99	
452	160.95	1565.94
542	1284.69	
543	159.51	1444.20
633	1195.05	
634	53.26	1248.31
724	1596.60	
725	557.81	
726	1.33	2154.74
771	849.21	
772	49.10	898.31
817	926.88	
818	17.26	944.14
862	1677.29	
863	149.21	1826.50
907	1925.08	
908	311.37	2236.45

Official Protraction Diagram NO 7-3, (approved August 1, 1975):

Whole or Partial Blocks:

37-44 81-88

Official Protraction Diagram NO 7-4, Alsek Valley (revised April 25, 1984):

Whole or Partial Blocks:

1-10	89-113	309-328
13-16	133-156	353-371
18-21	177-199	397-414
23-26	221-242	441-457
45-70	265-285	485-501

Official Protraction Diagram NP 5-8, Kenai (revised May 4, 1984):

(1) Whole or Partial Blocks:

757	844-848	976-981
758	888-893	
800-803	932-937	

(2) Split Blocks:

Blocks	Hectares	Blocks	Hectares
760	663.64	931	1747.77
804	2283.13	938	2276.49
805	544.07	939	135.39
887	1384.43	982	1890.14
894	1331.32		

(3) Bidding Units:

Blocks	Hectares	Total Hectares
669	47.60	
712	1.53	
713	1790.86	1839.99
670	309.68	
714	1951.86	2261.54
715	175.27	
759	1697.06	1872.33
755	0.12	
756	997.38	997.50
799	400.61	
843	1023.46	1424.07

Blocks	Hectares	Total Hectares
849	1980.89	
850	98.37	2079.26
974	19.99	
975	2146.74	2166.73

Official Protraction Diagram NO 5-1, Iliamna (approved March 20, 1975):

Whole or Partial Blocks:

527	748	968
528	791	1011
571	792	1012
572	834-836	1055
616	876-880	1056
660	922-924	
704	967	

Official Protraction Diagram NO 5-2, Seldovia (revised May 3, 1984):

(1) Whole or Partial Blocks:

7-13	227-232	529-538	837-843
51-57	267-276	573-582	881-885
94-100	310-320	617-625	925-928
138-144	354-364	661-669	969-971
182-188	397-408	705-713	1013-1015
223	441-450	749-757	
224	485-494	793-801	

(2) Split Blocks:

Blocks	Hectares	Blocks	Hectares
6	437.02	178	1008.53
14	1490.83	179	1613.15
93	588.65	180	2254.30
101	2124.98	222	1842.85
136	211.17	266	2296.61
145	1590.39	353	2000.22

(3) Bidding Units:

Blocks	Hectares	Total Hectares
49	141.45	
50	1931.19	2072.64
58	986.69	
102	81.48	1068.17

Blocks	Hectares	Total Hectares
189	737.80	
233	213.20	
277	189.21	
321	150.75	
365	112.29	
409	73.82	1477.07
265	195.86	
309	784.77	980.63

Official Protracton Diagram NO 5-3, Mt. Katmai (revised April 30, 1984):

(1) Whole or Partial Blocks:

44	522-528	695	912-917
220	564-572	697	955-961
264	607	699-701	998-1004
307	609	738-740	
308	610	742-744	
350-352	612-615	782-788	
392-396	651	827-831	
436-440	653	869-874	
479-484	655-658		

(2) Split Blocks:

Blocks	Hectares	Blocks	Hectares
219	1908.24	693	1006.94
262	278.70	694	2286.57
263	2176.96	702	2225.47
305	884.24	703	399.48
306	2163.71	737	1924.87
349	2222.47	745	2283.24
391	973.19	746	975.27
477	727.17	781	2303.82
478	2265.64	789	1061.00
520	1937.33	868	2284.58
521	2259.04	962	1698.92
563	2254.71	995	908.62
650	1287.46	996	1455.41
659	1909.37	997	1879.99
		1005	2043.49

(3) Bidding Units:

Blocks	Hectares	Total Hectares
347	10.98	
348	741.76	752.74

Blocks	Hectares	Total Hectares
434	60.65	
435	1575.78	1636.43
475	46.00	
519	1265.39	1311.39
562	554.59	
606	624.77	1179.36
616	1582.14	
660	123.87	1706.01
780	523.65	
824	1260.19	1783.84
832	1237.51	
833	88.26	1325.77
867	316.10	
910	15.43	
911	1350.37	1681.90
875	1703.74	
876	11.10	1714.84
918	2091.35	
919	123.40	2214.75
953	20.58	
954	1606.90	1627.48
1006	791.72	
1007	9.25	800.97

Official Protraction Diagram NO 5-4, Afognak (approved July 3, 1975):

(1) Whole or Partial Blocks:

1-3	221-224	397
45-47	265-268	398
89-91	309-311	441
133-135	353	
177-179	354	

(2) Split Blocks:

Blocks	Hectares	Blocks	Hectares
355	2288.65	485	2228.70
356	426.93	486	527.34
399	1659.85		

(3) Bidding Units:

Blocks	Hectares	Total Hectares
269	1880.42	
270	38.72	1919.14
312	1923.41	
313	200.86	2124.27
442	1792.02	
443	172.06	1964.08
529	1082.90	
573	11.91	1094.81

Official Protraction Diagram NO 5-5, Karluk (revised April 30, 1984):

(1) Whole or Partial Blocks:

28-34	409-418	799-814
68-76	453-462	843-859
110-119	494-505	887-903
153-163	537-549	931-947
196-205	580-592	976-991
239-248	623-635	
282-290	667-679	
325-333	711-723	
368-375	755-768	

(2) Split Blocks:

Blocks	Hectares	Blocks	Hectares
26	1335.41	365	2196.19
27	2300.52	366	2195.56
35	2061.51	367	2235.51
66	2137.53	376	2301.09
67	2211.43	408	1993.82
77	1980.35	419	2292.02
120	2289.39	420	1365.73
121	593.76	452	2293.08
151	802.57	493	2213.33
152	1731.91	506	2096.69
164	1122.40	579	1191.52
194	1284.31	636	2294.85
195	2303.45	680	1864.65
206	2303.29	724	2248.01
249	2298.46	725	672.28
250	1046.59	769	2298.54
291	2162.99	770	1576.91
334	2177.06	771	792.86
335	392.34	815	2264.70
364	1372.05	904	1515.59
		948	1588.38
		992	1197.87

(3) Bidding Units:

Blocks	Hectares	Total Hectares
21	231.05	
22	11.70	
65	1681.74	1924.49
23	42.67	
24	803.95	
25	684.11	1530.73
36	1063.73	
37	87.74	1151.47
78	992.08	
79	123.37	1115.45
108	93.35	
109	2141.69	2235.04
207	1146.12	
208	0.44	1146.56
237	196.48	
238	2030.57	2227.05
280	78.62	
281	1440.78	1519.40
292	1584.38	
293	483.18	2067.56
321	184.44	
322	89.96	274.40
323	182.99	
324	1541.49	1724.48
377	916.55	
378	193.81	1110.36
449	324.39	
450	358.34	
451	901.31	1584.04
463	1329.13	
507	252.17	1581.30
492	406.82	
535	21.06	
536	1786.14	2214.02

Blocks	Hectares	Total Hectares
550	985.66	
594	96.33	1081.99
593	1328.03	
637	170.71	1498.74
816	605.68	
860	1479.28	2084.96
974	0.09	
975	2257.53	2257.62

Official Protraction Diagram NO 4-6, Ugashik (revised April 27, 1984):

(1) Whole or Partial Blocks:

653	785	874
654	786	916-918
697	829	960-962
698	830	1003-1005
740-742	873	

(2) Split Blocks:

Blocks	Hectares	Blocks	Hectares
652	1229.28	915	1991.13
784	2143.69	958	995.77
828	1274.47	959	2300.59
872	1999.79	1002	1380.79

(3) Bidding Units:

Blocks	Hectares	Total Hectares
608	10.46	
609	1152.00	
610	912.57	2075.03
695	49.71	
696	2185.88	2235.59
739	675.01	
783	180.61	855.62
870	0.002	
871	657.83	657.832
1006	2257.53	
1007	0.09	2257.62

13. Lease Terms and Stipulations.

(a) Bidders are advised that the MMS is analyzing responses to the request for comments on primary lease terms published in the Federal Register on December 20, 1983 (48 FR 56279). It is expected that this analysis will be completed prior to issuance of a final Notice of Sale and that the results may cause alteration of subparagraph (b) and Stipulation No. 6.

(b) Leases resulting from this sale for the following whole or partial blocks will be for an initial term of 10 years.

Official Protraction Diagram NO 6-2

388	515-520	588	759-764
431	544-546	631	795
432	548	632	802-808
476	555-564	673-676	
501	587	717-720	

Official Protraction Diagram NO 7-1

378	510	866-870	1042-1049
405	537-555	910-915	1052
422	557	954-960	
449-451	778	998-1004	
493-496	822-824	1008	

Official Protraction Diagram NO 7-3

37-40		81-87

Official Protraction Diagram NO 7-4

221	309-312	397-407
265	353-360	441-452
266	363	485-497

All other leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form MMS-2005 (August 1982), available from the Regional Manager, Alaska Region, at the address stated in paragraph 2.

(c) 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 and shall include information concerning avoidance of conflicts with commercial fishing operations and with commercial fishing gear.

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--Wellhead and Pipeline Requirements

Subsea wellheads on temporary abandonments or suspended operations that leave protrusions above the seafloor are potential hazards to fisheries trawling gear. They shall, as appropriate, be constructed or protected in such a manner as to allow commercial fisheries trawling gear to pass over the structures without snagging or otherwise damaging the structures or the fishing gear. The lessee shall submit latitude and longitude coordinates

of these structures and their water depths to the Regional Supervisor, Field Operations. The lessee shall also forward this information to the U.S. Coast Guard for publication in a Notice to Mariners. To determine the coordinates of such structures, the lessee shall use navigation systems with accuracy of at least ±150 feet at 200 miles.

All pipelines, unless buried, including gathering lines, shall have a smooth-surface design. If an irregular pipe surface is unavoidable because of the need for valves, anodes, or other structures, it shall, as appropriate, be protected in such a manner as to allow trawling gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

Stipulation No. 5--Transportation of Hydrocarbons

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 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--Suspension of Operations

(This stipulation will be included in leases issued on the following blocks in water depths of 400-900 meters.)

Official Protraction Diagram NO 6-2

385-387	509-514	586	793
428-430	542	629	794
471-475	543	630	797-801
499	552-554	714-716	
500	585	758	

Official Protraction Diagram NO 7-1

375-377	497-509	735	961
406-408	511	779-781	962
417-421	512	825	1005-1007
452	556	826	1050
453	646	871	1051
455-465	690	916	1053
467	734	917	1054

Official Protraction Diagram NO 7-3

41-44		88	

Official Protraction Diagram NO 7-4

177	314	408	501
267	361	453	
313	362	498	

The Director shall suspend or temporarily prohibit production or any other operation or activity pursuant to this lease if such suspension or cessation of operations or activities is necessary to complete operations or activities described in a development and production plan submitted to the Regional Supervisor pursuant to 30 CFR 250.34 and the interim final rule which was published in the Federal Register on April 24, 1984, at 49 FR 17449.

14. Information to Lessees

(a) Information on Coastal Zone Management. Lessees are advised that the Alaska Coastal Management Program (ACMP) may contain policies and standards which may be applicable to certain exploration and development activities associated with leases resulting from this sale. In addition, approved local CMP's which are part of the ACMP may contain more specific policies related to energy facility siting; areas with particular geologic hazards, subsistence uses, habitats, and transportation uses; and areas which have historic or prehistoric resources. Early consultation and coordination with the State and coastal communities involved in the review of Outer Continental Shelf (OCS) oil and gas exploration and development plans, oil spill contingency plans, and development activities for consistency with the ACMP is encouraged. Coastal districts with approved CMP's may have programs applicable to ACMP consistency reviews of postlease activities. Coastal districts near the lease sale area engaged in program development or implementation include: the Kodiak Island Borough; City of Yakutat; the City and Borough of Sitka; the cities of Hydaburg, Craig/Klawock, Wrangell, Petersburg, Kake, Pelican, Hoonah, Skagway, Haines, Cordova, Valdez; the City and Borough of Juneau; and the Ketchikan Gateway Borough.

(b) Information on Areas of Special Biological Sensitivity. Lessees are advised that certain areas are especially valuable for their concentration of marine birds, marine mammals, and/or fishes. The Gulf of Alaska Unit of the Alaska Maritime National Wildlife Refuge which includes the Barren Islands, Middleton Island, Saint Lazaria, Hazy Islands, and Forrester Island National Wildlife Refuges; Portlock Bank, Sugarloaf and Marmot Islands, Copper River Delta Critical Habitat Area, Kachemak Bay Critical Habitat Area, Fairweather Ground, and McNeil River Game Sanctuary are among Areas of Special Biological Sensitivity under terms of the oil spill contingency plan section of Alaska OCS Order No. 7 and environmental report requirements of 30 CFR 250.34-3. Lessees are advised that areas of special biological sensitivity may also be defined by local coastal management programs and that local and regional organizations such as Coastal Resource Service Area (CRSA) boards, planning offices, village councils, and regional nonprofit corporations also may have identified specific sites requiring special biological consideration in oil spill contingency plans.

(c) Information on Fairway Designations. 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 blocks pursuant to the Ports and Waterways Safety Act of 1972 as amended (33 U.S.C. 1221 et. seq.).

(d) 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 as amended; the Endangered Species Act of 1973 as amended; 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 "take" in violation of the Endangered Species Act. Violations under these acts and treaties may be reported to the NMFS or the FWS, as appropriate. Behavioral disturbance of most birds and mammals found in or near the lease area would be unlikely if marine vessels and aircraft maintained at least a 1-mile distance from observed wildlife concentrations or from known wildlife concentration areas such as bird colonies and marine mammal haulout and breeding areas. Therefore, it is recommended that aircraft or vessels operated by lessees maintain at least a 1-mile distance from observed or known wildlife concentrations.

To reduce potential effects on right, humpback, gray, and other cetacean species from noise and disturbance associated with vessel and aircraft activities, lessees are encouraged to reduce, minimize, or reroute marine vessel and/or aircraft operations to and from the leasehold by aircraft, tugs, barges, supply ships, hovercraft, or other self-propelled surface vessels when whales are likely to be in the area (generally during the period April through December). Lessees are advised that operations may be restricted or suspended, if appropriate, by the Regional Supervisor,

Field Operations (RSFO), on any lease in the lease area whenever endangered whales are present in the area or sufficiently near to be subject to disturbance from vessel and aircraft activities which would be likely to constitute a "taking" under the Endangered Species Act. Under the Endangered Species Act, the term "take" has been defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in such conduct."

For protection of whales throughout the proposed lease area, operators of fixed-wing aircraft or helicopters should maintain a 1,500-foot altitude when in transit over the lease area, generally during the period April-December. Human safety will take precedence at all times over these provisions.

Maps locating major wildlife concentration areas in the lease area are suitable for general route planning and are available from the RSFO.

(e) Information on Geologic Hazards. Lessees are advised that this sale is in a region of high seismicity. Evidence suggests that a high probability exists for a major earthquake to occur within this area of interest in the next few decades.

Exploration and development will be most affected by this seismic hazard in areas with recent sediment cover. To safely emplace facilities in these areas, it will be necessary to design foundations and structures to withstand amplified ground motion and possible soil failure.

Similarly, there are portions of the lease sale area that may be subject to mass movement (slumping) of sediment. Emplacement of platforms or sea floor wellheads for the production or storage of oil and gas will not be allowed on those portions of any block which may be subject to mass movement of sediments unless or until the lessee has demonstrated to the satisfaction of the RSFO, that the potential for mass movement of sediments does not exist or that structures can be safely designed to withstand such mass movement at the proposed location of the structure.

Seismic data for this lease sale--except in the vicinity of previous lease sales--are limited. However, there is evidence of slope instability in the Holocene sediment. Data coverage has identified specific hazards on blocks previously offered in Sales 39--Northern Gulf of Alaska, and 55--Eastern Gulf of Alaska. Blocks interpreted to have instability problems are as follows:

1. Official Protraction Diagram NO 7-1: Blocks 101, 104, 105, 145, 149, 162, 163, 164, 165, 193, 205, 206, 207, 209, 249, 293, 294, 295, 318, 319, 338, 339, 340, 362, 363, 364, 408, 409, 453.

2. Official Protraction Diagram NO 6-2: Blocks 296, 297, 298, 299, 340, 342, 343, 344.

3. Official Protraction Diagram NO 7-2: Blocks 723, 724, 725, 767, 768, 811, 812, 950, 951, 952, 994, 995, 996, 1038, 1039.

(f) Information on Potential Gear Conflict with Commercial Fishing Industry. Lessees are advised that much of the proposed lease area is fished intensively by American and foreign vessels. Two examples of heavily-fished areas are the Fairweather Ground, about 37 miles offshore Cape Fairweather, and Shelikof Strait.

In order to reduce potential fishing gear conflicts, the lessee should keep commercial fishermen operating in the area advised of plans for seismic surveys, drill rig transport, or other vessel traffic and then discuss mutually satisfactory ways to avoid fishing gear conflicts.

(g) Information on Right Whales. Lessees are advised that the RSFO has the authority to limit or suspend any noise-producing operations, including geophysical surveys, on a lease whenever endangered right 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, collect, or to attempt to engage in such conduct." A Notice to Lessees will be issued to specify performance standards before any preliminary activities may be conducted on a lease.

(h) Information on Gulf of Alaska/Cook Inlet Biological Task Force. In the enforcement of the Protection of Biological Resources stipulation, the RSFO, will receive recommendations from the Gulf of Alaska/Cook Inlet Biological Task Force (BTF) composed of designated representatives of the MMS, the FWS the NMFS, and the Environmental Protection Agency. Representatives from the State of Alaska are encouraged to participate in the proceedings of the BTF. The RSFO will consult with the Gulf of Alaska/Cook Inlet BTF on the conduct of biological surveys by lessees, on the appropriate course of action after surveys have been conducted, and on the biological/environmental aspects of the lessee-proposed activities.

(i) Information on U.S. Army Corps of Engineers Permits. 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 of 1953 as amended.

(j) Information on Discharges of Drilling Fluids. Lessees are advised that Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) permits are required for discharge of drilling fluids, produced waters, and other drilling wastes generated during exploration and development/production phases.

(k) Information on the Memorandum of Understanding with Department of Transportation on 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 Unitization. Lessees are advised that in accordance with section 16 of each lease offered, 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.

(m) 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 Technologies requirements as determined by the RSFO.

(n) Information on Affirmative Action Requirements. Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) have been deferred, pending review of those 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 the Hiring of Alaskan 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 effects.

(p) Information on Mitigating Socioeconomic Effects. Lessees are advised that exploration, development, and production activities may directly and indirectly have significant social and economic effects 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 effects 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 effects 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 improvements projects.

(q) Information on Exploration Plan Submittals For 10-Year Lease Terms. 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 intention prior to the end of the ninth lease year.

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.

[FR Doc. 84-20884 Filed 8-6-84; 8:45 am]
BILLING CODE 4310-MR-C

federal register

Tuesday
August 7, 1984

Part VII

Department of Agriculture

Office of the Secretary

Competitive Research Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Competitive Research Grants Program

AGENCY: Office of Grants and Program Systems, Office of the Secretary, USDA.

ACTION: Application Notice for Competitive Research Grants for Fiscal Year 1985.

SUMMARY: Applications are invited for competitive grant awards under the Competitive Research Grants Program for fiscal year 1985.

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture. Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation or individual.

As outlined by OMB Circular No. A–89, the official program number and title for these grants are 10.206, Grants for Agricultural Research, Competitive Research Grants.

Applicable Regulations

Regulations applicable to this program include the following: (a) The regulations governing the Competitive Research Grants Program, 7 CFR Part 3200 (49 FR 5570, February 13, 1984); and (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015.

Specific Research Areas To Be Supported in Fiscal Year 1985

Standard grants and a small number of continuation grants will be awarded to support basic research in selected areas of plant science and human nutrition, which have been considered by a number of scientific groups to possess exceptional opportunity for fundamental scientific discovery and for contributing, in the long run, to applied research and development vitally needed on high-priority food and nutrition problems.

Consideration will be given to research proposals which address fundamental questions in the areas noted below and which are consistent with the long-range missions of USDA. While basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to delineate certain important areas where new information is vitally needed, the guidelines are not meant to provide boundaries or to detract from the creativity of potential investigators. USDA encourages the submission of innovative projects in the so-called "high-risk" category as well as those which may have a higher payoff potential.

The following specific research areas (program areas) and guidelines are thus provided as a base from which proposals may be developed:

A. Plant Science

1. *Biological Stress on Plants.* Plants are exposed to many stresses that may adversely affect their productivity and usefulness to man. This grants program will support research on stresses on plants arising from their interactions with other plants or with other biological agents such as weeds, insects, nematodes, fungi, bacteria, viruses, and mycoplasma-like organisms. The ultimate goal of the research supported in this area is to reduce losses in plant productivity from damage caused by biologically generated stresses. This program area will emphasize studies that enhance our understanding of (a) how stressful interactions are established between plants and other biological agents, (b) how plants react to stresses generated by interactions with biological agents, and (c) how damage from such interactions may be reduced or eliminated. The interactions may be studied at any number of levels: i.e., population, organismal, cellular and molecular; and by various approaches including genetics, molecular biology, and biochemistry. These may include studies on plants separated from stress-causing organisms or on stress-causing organisms separated from their target plants. However, proposals should indicate how the anticipated information will be relevant to the understanding of the causes, consequences, and avoidance of biologically generated stresses on plants. The research supported in this program area will focus on the identification of new approaches that will be both effective and compatible with social and environmental concerns.

To expedite processing and review of the large number of proposals submitted in the broad subject area of Biological Stress on Plants, proposals will be considered under two subprogram areas: (1) Plant Pathology/Weed Science and (2) Entomology/Nematology, each of which will have a separate deadline for submission of proposals.

Within the guidelines described above, the Plant Pathology/Weed Science subprogram area will consider all proposals for research addressing plant pathogens or weeds affecting plant stress. The Entomology/Nematology subprogram area will consider all proposals for research addressing arthropods or nematodes stressing the plant. If necessary, further information may be obtained from the Associate Program Manager at (202) 475–5022.

2. *Genetic Mechanisms for Crop Improvement.* The goal of this program area is to encourage new and innovative approaches for the development of genetically superior varieties of agricultural crops. Proposals should be directed toward obtaining novel genetic combinations or gene modifications that cannot be achieved by using conventional plant breeding techniques. Studies addressing the basic cellular and genetic processes which contribute new information required for the development of novel approaches to crop improvement will be given high priority. This program area will emphasize the following but will not exclude other new or unusual approaches to crop improvement: (a) Acquisition of basic information on the structure, function, and expression of plant nuclear and organellar genes; (b) cell and tissue culture studies designed to increase our knowledge of the basic molecular, biochemical, and cellular processes involved in regenerating whole plants from single cells; (c) development of cellular and molecular methods for identifying plant characteristics or genes which are important targets for genetic manipulation; (d) development of molecular and cellular methods for crop improvement using gene transfer or genetic engineering technology; (e) development of new methods for producing, selecting, and transferring agronomically important qualitative and quantitative traits; and (f) basic genetic studies on the alteration and utilization of unadapted and wild germplasm. If necessary, further information may be obtained from the Associate Program Manager at (202) 475–5045.

3. *Biological Nitrogen Fixation.* The most common limiting nutrient for plant growth is nitrogen. The presence of soil nitrogen is due to past accretions in nature, biological nitrogen fixation, or the application of nitrogenous fertilizer. The latter represents a significant energy input in cropping and ultimately increases food costs. Thus, the enhancement of biological nitrogen fixation capacity in plant-soil microbial associations is of major importance. Research aimed at understanding nitrogen-fixing mechanisms and related

nitrogen metabolism in both symbiotic and free-living organisms as well as the fate of fixed nitrogen is of high priority.

In general, the objectives in this program area include building a foundation of basic information concerning nitrogen fixation as it relates to enhancing the process in currently known systems and in providing a base for developing new nitrogen-fixing associations, by genetic transfer or other means, for crop species not now possessing such capability. Moreover, the process of nitrification (the oxidation of ammonia to nitrate), the assimilation and utilization of ammonia and nitrate, and denitrification (the reduction of nitrate to volatile forms of nitrogen which are lost from the soil) all play important roles in plant growth. Soil nitrogen, whether supplied by biological nitrogen fixation or as chemical fertilizer, serves to increase food production only when it is present in an available form which is not lost from the plant-soil ecosystem.

Examples of research encompassed in this program area include: (a) Structure and mechanism of action of nitrogenase; the regulation of nitrogenase activity and synthesis; the relationship between nitrogenase and hydrogenase activities in nitrogen-fixing organisms; (b) energetics of the nitrogen fixation process including competitive processes within the plant; (c) infection by *Rhizobium* and conditions for effective nodulations; basis of the recognition process between symbiotic organisms; factors controlling symbiont specificity; competition in the soil; (d) study of the nitrogen-fixing capabilities of Actinomycetes, *Azospirillum* spp., Cyanobacteria, and other organisms potentially important to supplying nitrogen needs of plants; (e) relation between the fixation process and the processes of assimilation, nitrification, and denitrification; (f) the development of methods for the *in situ* measurement of nitrification and denitrification, and determination of the actual extent of these processes in nature; (g) an analysis of the distribution of denitrifying and nitrifying bacteria and elucidation of control mechanisms operating on nitrogen transformations in the major species; (h) studies of the metabolism of fixed nitrogen including the enzymes involved in the assimilation and dissimilation of fixed nitrogen in bacteria and crop plants and the partitioning of fixed nitrogen into various gene products or plant organs; and (i) the efficiency of nitrogen utilization by crop plants in the production of food proteins.

Emphasis in program priorities will be on innovative approaches which may contribute to a more thorough understanding of nitrogen cycling encompassing biochemistry, cellular and developmental biology, genetics and genetic manipulation, and other relevant life science disciplines. An understanding of these processes is essential to the development of strategies which maximize nitrogen fixation, minimize inputs of nitrogenous fertilizers, and optimize their utilization in agriculture. If necessary, further information may be obtained from the Associate Program Manager at (202) 475–5033.

4. *Photosynthesis.* Photosynthetic efficiency is an important factor in crop productivity. Basic research which provides information on limiting processes of photosynthesis and associated carbon metabolism will lead to a greater understanding of those factors which affect the ability of the plant to produce a useable product.

Research is needed in the following major subareas: (a) Aspects of photosynthetic energy conversion, including such areas as early events in photon capture by photosynthetic systems and the mechanisms of charge separation, the structure and function of photosynthetic membranes and membrane constituents, and the associated chemical and physical reactions; (b) photosynthetic carbon assimilation, including CO_2 fixation, biochemistry of photosynthetic pathways, photorespiration, and aspects of cellular metabolism regulating these reaction; (c) control of photosynthate partitioning and translocation; (d) factors controlling development and senescence of the photosynthetic apparatus; (e) genetic and cellular manipulation to improve photosynthetic efficiency in plants including studies of the chloroplast genome, of nuclear genes regulating photosynthesis, and analysis of regulatory steps controlling both nuclear and extranuclear genome expression and their interactions; and (f) the photosynthetic process in leaves, whole plants, and canopies, including but not limited to involvement of the stomatal apparatus and water and temperature extremes.

Other research designed to generate new information leading to a basic understanding of photosynthesis and its accompanying processes may also be considered a part of this program. If necessary, further information may be obtained from the Associate Program Manager at (202) 475–5041.

B. Human Nutrition

Proposals are invited in the area of human requirements for nutrients. Support will not be provided for clinical research nor for demonstration or action projects.

Research in this program area is intended to contribute to the improvement of human nutritional status by increasing our understanding of requirements for nutrients. The objective is to support basic, creative research that will help to fill gaps in our knowledge about nutrient requirements, bioavailability, the interrelationships of nutrients, and the nutritional value of foods that are consumed in the U.S. and of the nutritional status of population groups, as all of these relate to human nutrient requirements. Special attention will be given to applications involving innovative approaches designed to improve methods of research and investigation that will increase the reliability and validity of data concerned with the quantitative evaluation of nutrient requirements and nutritional status.

Proposals dealing with processing techniques in food technology should be clearly oriented toward determination of human nutrient requirements. Proposals which concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient requirements. It is especially important that proposals emphasize innovative (creative), fundamental (basic) research. If necessary, further information may be obtained from the Associate Program Manager at (202) 475–5045.

C. Where and When to Submit Grant Applications

Twenty copies of each research grant application must be submitted by the time limits set below to:

Grants Administrative Management (GAM)
ATTENTION: Competitive Research Grants Program, Office of Grants and Program Systems (OGPS), U.S. Department of Agriculture, Room 010, West Auditors Building, 15th & Independence Avenue, SW., Washington, D.C. 20251.

In order to be considered for funding during Fiscal Year 1985, the proposals should be postmarked by the following dates:

November 1, 1984—for Genetic Mechanisms for Crop Improvement;
November 1, 1984—for Biological Stress on Plants—*Plant Pathology and Weeds*;
November 15, 1984—for Photosynthesis;

December 3, 1984—for Biological Stress on Plants—*Entomology and Nematology*;
December 17, 1984—for Biological Nitrogen Fixation;
December 17, 1984—for Human Requirements for Nutrients.

What to Submit

An application for award should include an original and 19 copies of the research proposal and Form S&E–661, "Grant Application", which is included in the "Research Grant Application Kit." See 7 CFR 3200.4. Please note that potential applicants who were on the Competitive Research Grants mailing list for 1984, or who recently requested placement on the list for 1985, will receive copies automatically. All others will receive copies upon request from:

Grants Administrative Management (GAM)
ATTENTION: Proposal Services Unit, Office of Grants and Program Systems (OGPS), U.S. Department of Agriculture, Room 010, West Auditors Building, 15th & Independence Avenue, SW., Washington, D.C. 20251, Telephone: (202) 475–5049

Information collection requirements contained in this document have been approved by OMB Document No. 0525–0001.

Special Instructions

The applicable specific research area (select only one for each proposal) should be identified in Block 8 of Form S&E–661 by indicating the code number assigned to each program area as listed below:

1 Biological Stress on Plants—Plant Pathology and Weeds
2 Biological Stress on Plants—Entomology and Nematology
3 Genetic Mechanisms for Crop Improvement
4 Biological Nitrogen Fixation
5 Photosynthesis
6 Human Requirements for Nutrients

All copies of the proposal should be mailed in one package, if at all possible. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. If copies of the proposal must be mailed in more than one package, however, the number of packages should be marked on the outside of each. It is important that *all packages be mailed at the same time.* Also, please see that each copy of each proposal is *stapled securely* in the upper left-hand corner; DO NOT BIND. Information should be typed on one side only.

Every effort should be made to *ensure* that the *proposal contains* all *pertinent information when initially submitted.* Prior to mailing compare your proposal with the Application Requirements checklist contained in the "Research Grant Application Kit" and instructions contained in the regulations governing the Competitive Research Grants Program, 7 CFR Part 3200.

Available Funds

The award of any grants under the Competitive Research Grants Program in fiscal year 1985 is subject to the availability of appropriations.

Further Information

For further information contact: Ojetta O. Pannell, Supervisory Proposal Specialist, OGPS, USDA, Room 010, West Auditors Building, 15th & Independence Avenue, SW., Washington, D.C. 20251, Telephone: (202) 475–5049.

Dated: August 1, 1984.

Orville G. Bentley,

Assistant Secretary for Science and Education.

[FR Doc. 84–20894 Filed 8–6–84; 8:45 am]
BILLING CODE 3410–39–M

federal register

Tuesday
August 7, 1984

Part VIII

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 250

Fisheries Loan Fund Procedures; Extension of Available Fisheries Loans and Open Season for Applications

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 250

[Docket No. 40894-4094]

Fisheries Loan Fund Procedures; Extension of Available Fisheries Loans and Open Season for Applications

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

ACTION: Notice of available fisheries loans and open season extended for applications.

SUMMARY: NOAA extends from July 1, 1984, to August 31, 1984, the open season to receive emergency loan applications under the Fisheries Loan Fund from fishermen whose vessels are not financed under the Fisheries Obligation Guarantee Programs. The season was extended to utilize fully the allocation of funds. Additional applications are expected. Specific eligibility criteria and application instructions remain unchanged from that published on April 26, 1984 (48 FR18072).

EFFECTIVE DATE: August 6, 1984.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, Chief, Financial Services Divisions, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC 20235, (202) 634-7496.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of 50 CFR Part 250, and is taken in compliance with Executive Order 12291.

(16 U.S.C. 742a-742k)

List of Subjects in 50 CFR Part 250

Fishing vessels, Loan program, Business.

Dated: August 2, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-20935 Filed 9-6-84; 8:45 am]

BILLING CODE 3510-22-M

Reader Aids

Federal Register

Vol. 49, No. 153

Tuesday, August 7, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

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, AUGUST

30679-30910.....1
30911-31050.....2
31051-31254.....3
31255-31388.....6
31389-31658.....7

CFR PARTS AFFECTED DURING AUGUST

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.

5 CFR

Ch. XIV.....31051

7 CFR

726.....31052
908.....31389
910.....31054, 31255
921.....31255
930.....31389
958.....31257
1207.....31390
1980.....31258

Proposed Rules:

Ch. IV.....30963
1.....31292
2.....30911
442.....30964
800.....30911
810.....31432
1006.....30720, 31072
1007.....31072
1011.....31072
1012.....30720, 31072
1013.....31072
1046.....31072
1076.....30964
1093.....31072
1094.....31072
1096.....31072
1097.....31072
1098.....31072
1099.....31072
1102.....31072
1108.....31072

8 CFR

100.....31054
205.....30679
238.....31258

Proposed Rules:

239.....31293

9 CFR

81.....31055

10 CFR

9.....31259
600.....31390

Proposed Rules:

50.....30726, 31432
73.....30726, 30735, 30738
1017.....31236

12 CFR

7.....30920
701.....30679, 30682, 30683

Proposed Rules:

602.....31293
721.....30739
741.....30740
746.....30740

14 CFR

39.....31057-31059
71.....30688, 31060, 31259
97.....30923

Proposed Rules:

39.....30965, 31074, 31295, 31433
71.....31075-31077, 31298, 31434
73.....31435
121.....31298
152.....31078
221.....30742
223.....30746
225.....31436
250.....30742
255.....30742
298.....30742

16 CFR

305.....31061

Proposed Rules:

13.....30967, 31440

17 CFR

270.....31062, 31064

Proposed Rules:

1.....31442
240.....31300

18 CFR

154.....31259

19 CFR

6.....31248
12.....31248
18.....31248
19.....31248
141.....31248
143.....31248
144.....31248
146.....31248

21 CFR

14.....30688
81.....30925, 30926
178.....30689
193.....30702
510.....31065
558.....30927, 31065, 31280, 31281
680.....31394
1240.....31065

Proposed Rules:

101.....31301
510.....31444
1308.....30748

23 CFR

Proposed Rules:

630.....31079

24 CFR

40.....31620
570.....31069
880.....31281, 31395
881.....31281, 31395
883.....31281, 31395
884.....31281, 31395
886.....31281, 31285,
965.....31399
1700.....31366
1710.....31366, 31372
1730.....31366

Proposed Rules:

203.....31444
570.....31446

26 CFR

Proposed Rules:

1.....30971, 31080, 31086
5.....31080

29 CFR

1601.....31410
1621.....31411

30 CFR

870.....31412
931.....30689
946.....30927

Proposed Rules:

913.....31448
943.....30972
950.....30973

31 CFR

Proposed Rules:

210.....31450
223.....31454

32 CFR

2003.....31412

Proposed Rules:

155.....31455

33 CFR

100.....30930–30932, 31286
110.....31287
117.....30933
165.....31286
401.....30934

Proposed Rules:

100.....30974, 30975, 31459
117.....30976, 30977
165.....30978

34 CFR

222.....31628

35 CFR

251.....31070

36 CFR

264.....31413

Proposed Rules:

9.....31086

37 CFR

Proposed Rules:

2.....30749, 31460

38 CFR

2.....30691

Proposed Rules:

1.....30979

39 CFR

262.....30693

40 CFR

52.....30694, 30695, 30696, 30936, 31413–31416
81.....30697, 30698
147.....30698
152.....30884, 30909
162.....30884
180.....30699, 30700, 30701
271.....31417
403.....31212

Proposed Rules:

52.....31086
80.....31032
81.....31091, 31093
124.....31462
125.....31462
180.....30751
270.....31094
271.....31301
455.....30752
763.....31302
773.....31302

41 CFR

101–19.....31625

Proposed Rules:

101–11.....31302

42 CFR

57.....30702

43 CFR

2880.....31208

Proposed Rules:

1880.....31473
2650.....31475
2880.....31094

44 CFR

64.....30708

Proposed Rules:

67.....31095

45 CFR

1622.....30939

47 CFR

Ch. I.....30710
1.....30943
73.....30712, 30946, 31288, 31289

Proposed Rules:

Ch. I.....31115
22.....31115
69.....31118
73.....30752–30760, 31115, 31119, 31303–31307
81.....31115
90.....31115

49 CFR

1.....31290
1011.....31070
1115.....31070
1160.....31070

Proposed Rules:

393.....30980

50 CFR

10.....31290
17.....31418
20.....31421
250.....31657
285.....30713
638.....31427
652.....30946, 31430
654.....30713
658.....30713
661.....30948, 31430
662.....31291
663.....30948, 31431
674.....30951

Proposed Rules:

17.....31112
651.....31307

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 26, 1984.