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Wednesday
February 13, 1985

Selected Subjects

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Selected Subjects

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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Vol. 50, No. 30
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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Licenses and Authorizations (For Individuals Only)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is finalizing its proposed rule on Licenses and Authorizations (For Individuals Only) published in the **Federal Register** on October 17, 1984 (49 FR 40583), in which it was proposed that no changes be made to these regulations.

EFFECTIVE DATE: March 15, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch (RM), USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. The action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule 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. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and section 3504(h) of this Act, the information collection and recordkeeping requirements contained in this final rule have been approved by OMB. No comments concerning these requirements were received during the comment period.

Final Action

The review of the regulations concerning Licenses and Authorizations (For Individuals Only) (7 CFR Part 800.170-800.180) included a determination of the continued need for and consequences of the regulations. An objective of the review was to ensure that the regulations are serving their intended purpose, the language was clear, and that the regulations are consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS and authority, and should remain in effect.

In the October 17, 1984, **Federal Register** (49 FR 40583), FGIS proposed that §§ 800.170-800.180 be retained as presently written. These sections contain provisions relating to the licensing, authorization, or approval of individuals to perform inspections or Class X weighing. Included are sections on application and examination for licenses and their issuance as well as suspension, cancellation, termination, and renewal of licenses.

FGIS received no comments to the proposed rule which allowed 60 days for public comment. Therefore, this action will finalize the review of regulations on Licenses and Authorizations (For Individuals Only) with no changes to the regulations.

List of Subjects in 7 CFR Part 800

Administrative practices.

PART 800—GENERAL REGULATIONS LICENSES AND AUTHORIZATIONS (FOR INDIVIDUALS ONLY)

Accordingly, FGIS finalizes §§ 800.170-800.180 without change.

Authority: (Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: January 25, 1985.

Kenneth A. Gilles,
Administrator.

[FR Doc. 85-3576 Filed 2-12-85; 8:45 am]

BILLING CODE 3410-EN-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-010]

Importation of Certain Animals; Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of deadline for receipt of applications for special authorization, date, time and place of drawing, and schedule of fees for importation of cattle through the Harry S Truman Animal Import Center; Correction.

SUMMARY: A document published in the **Federal Register** on January 10, 1985 (captioned "Importation of Certain Animals; Harry S Truman Animal Import Center" and set forth at 50 FR 1207-1208), contained information concerning the next two groups of cattle to be imported through the Harry S Truman Animal Import Center. The document of January 10 contained fee schedules for the importation of such cattle. The fee schedules are republished in this document in order to correct errors in the document of January 10.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION: The fees set forth at 50 FR 1208 are corrected to read as follows:

COST OF QUALIFYING OR ATTEMPTING TO QUALIFY CATTLE—EUROPE—ON PREMISES OF ORIGIN

Number of cattle		Total fixed cost dollars	In country		Total cost per head dollars
			Fixed cost per head dollars	Variable cost per head dollars	
50	55	104,935	2,099	166	2,265
56	60	108,456	1,937	166	2,103
61	65	111,977	1,836	166	2,002
66	70	115,499	1,750	166	1,916
71	75	119,020	1,676	166	1,842
76	80	122,541	1,612	166	1,778
81	85	126,062	1,556	166	1,722
86	90	129,583	1,507	166	1,673
91	95	133,105	1,463	166	1,629
96	100	136,626	1,423	166	1,589
101	105	140,147	1,388	166	1,554
106	110	143,401	1,353	166	1,519
111	115	146,655	1,321	166	1,487
116	120	149,908	1,292	166	1,458
121	125	153,162	1,266	166	1,432
126	130	156,416	1,241	166	1,407
131	135	159,670	1,219	166	1,385
136	140	162,924	1,198	166	1,364
141	145	166,177	1,179	166	1,345
146	150	169,431	1,160	166	1,326
151	155	172,685	1,144	166	1,310
156	160	175,997	1,128	166	1,294
161	165	179,309	1,114	166	1,280
166	170	182,621	1,100	166	1,266
171	175	185,933	1,087	166	1,253
176	180	189,245	1,075	166	1,241
181	185	192,557	1,064	166	1,230
186	190	195,869	1,053	166	1,219
191	195	199,181	1,043	166	1,209
196	200	202,493	1,033	166	1,199
201	205	205,805	1,024	166	1,190
206	210	206,033	1,000	166	1,166
211	215	206,261	978	166	1,144
216	220	206,488	956	166	1,122
221	225	206,716	935	166	1,101
226	230	206,944	916	166	1,082

COST OF QUARANTINING CATTLE—EUROPE BREST AND HSTAIC

Number of cattle		Total fixed cost (dollars)	In quarantine		Total cost per head (dollars)
			Fixed cost per head (dollars)	Variable cost per head (dollars)	
50	55	310,818	6,216	897	7,113
56	60	317,438	5,669	897	6,566
61	65	324,059	5,312	897	6,209
66	70	330,679	5,010	897	5,907
71	75	337,299	4,751	897	5,648
76	80	343,920	4,525	897	5,422
81	85	350,540	4,328	897	5,225
86	90	357,160	4,153	897	5,050
91	95	363,780	3,998	897	4,895
96	100	370,401	3,858	897	4,755
101	105	377,021	3,733	897	4,630
106	110	388,175	3,662	897	4,559
111	115	399,329	3,598	897	4,495
116	120	410,483	3,539	897	4,436
121	125	421,637	3,485	897	4,382
126	130	432,792	3,435	897	4,332
131	135	443,946	3,389	897	4,286
136	140	455,100	3,346	897	4,243
141	145	466,254	3,307	897	4,204
146	150	477,408	3,270	897	4,167
151	155	488,562	3,236	897	4,133
156	160	494,922	3,173	897	4,070
161	165	501,283	3,114	897	4,011
166	170	507,643	3,058	897	3,955
171	175	514,004	3,006	897	3,903
176	180	520,364	2,957	897	3,854
181	185	526,724	2,910	897	3,807
186	190	533,085	2,866	897	3,763
191	195	539,445	2,824	897	3,721
196	200	545,806	2,785	897	3,682
201	205	552,166	2,747	897	3,644

COST OF QUARANTINING CATTLE—EUROPE BREST AND HSTAIC—Continued

Number of cattle		Total fixed cost (dollars)	In quarantine		Total cost per head (dollars)
			Fixed cost per head (dollars)	Variable cost per head (dollars)	
206	210	556,876	2,703	897	3,600
211	215	561,585	2,662	897	3,559
216	220	566,295	2,622	897	3,519
221	225	571,004	2,584	897	3,481
226	230	575,714	2,547	897	3,444

COST OF QUALIFYING OR ATTEMPTING TO QUALIFY CATTLE—BRAZIL—ON PREMISES OF ORIGIN

Number of cattle		Total fixed cost (dollars)	In Country		Total cost per head (dollars)
			Fixed cost per head (dollars)	Variable cost per head (dollars)	
50	55	79,937	1,599	216	1,815
56	60	83,404	1,489	216	1,705
61	65	86,870	1,424	216	1,640
66	70	90,337	1,369	216	1,585
71	75	93,803	1,321	216	1,537
76	80	97,270	1,280	216	1,496
81	85	100,736	1,244	216	1,460
86	90	104,203	1,212	216	1,428
91	95	107,669	1,183	216	1,399
96	100	111,136	1,158	216	1,374
101	105	114,602	1,135	216	1,351
106	110	117,825	1,112	216	1,328
111	115	121,049	1,091	216	1,307
116	120	124,272	1,071	216	1,287
121	125	127,495	1,054	216	1,270
126	130	130,719	1,037	216	1,253
131	135	133,942	1,022	216	1,238
136	140	137,165	1,009	216	1,225
141	145	140,388	996	216	1,212
146	150	143,612	984	216	1,200
151	155	146,835	972	216	1,188
156	160	150,068	962	216	1,178
161	165	153,300	952	216	1,168
166	170	156,533	943	216	1,159
171	175	159,766	934	216	1,150
176	180	162,999	926	216	1,142
181	185	166,231	918	216	1,134
186	190	169,464	911	216	1,127
191	195	172,697	904	216	1,120
196	200	175,929	898	216	1,114
201	205	179,162	891	216	1,107
206	210	179,390	871	216	1,087
211	215	179,618	851	216	1,067
216	220	179,845	833	216	1,049
221	225	180,073	815	216	1,031
226	230	180,301	798	216	1,014

COST OF QUARANTINING CATTLE—BRAZIL CANNANEIA AND HSTAIC

Number of cattle		Total fixed cost (dollars)	In quarantine		Total cost per head (dollars)
			Fixed cost per head (dollars)	Variable cost per head (dollars)	
50	55	312,730	6,255	996	7,251
56	60	318,939	5,695	996	6,691
61	65	325,148	5,330	996	6,326
66	70	331,358	5,021	996	6,017
71	75	337,567	4,754	996	5,750
76	80	343,776	4,523	996	5,519
81	85	349,985	4,321	996	5,317
86	90	356,194	4,142	996	5,138
91	95	362,404	3,982	996	4,978
96	100	368,613	3,840	996	4,836

COST OF QUARANTINING CATTLE—BRAZIL CANNANEIA AND HSTAIC—Continued

Number of cattle		Total fixed cost (dollars)	In quarantine		Total cost per head (dollars)
			Fixed cost per head (dollars)	Variable cost per head (dollars)	
101	105	374,822	3,711	996	4,707
106	110	385,825	3,640	996	4,636
111	115	396,827	3,575	996	4,571
116	120	407,830	3,516	996	4,512
121	125	418,832	3,461	996	4,457
126	130	429,835	3,411	996	4,407
131	135	440,837	3,365	996	4,361
136	140	451,840	3,322	996	4,318
141	145	462,842	3,283	996	4,279
146	150	473,845	3,246	996	4,242
151	155	484,847	3,211	996	4,207
156	160	491,097	3,148	996	4,144
161	165	497,346	3,089	996	4,085
166	170	503,596	3,034	996	4,030
171	175	509,845	2,982	996	3,978
176	180	516,095	2,932	996	3,928
181	185	522,344	2,886	996	3,882
186	190	528,594	2,842	996	3,838
191	195	534,843	2,800	996	3,796
196	200	541,093	2,761	996	3,757
201	205	547,342	2,723	996	3,719
206	210	552,645	2,683	996	3,679
211	215	557,948	2,644	996	3,640
216	220	563,251	2,608	996	3,604
221	225	568,554	2,573	996	3,569
226	230	573,857	2,539	996	3,535

Dated: February 8, 1985.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-3632 Filed 2-12-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 373

[Docket No. 50214-5014]

Change in Reporting Frequency From Monthly to Quarterly Under the Service Supply License Procedure

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The "Service Supply License" procedure allows persons or firms to service equipment exported from the U.S., produced abroad by a U.S. subsidiary, or produced abroad by a manufacturer using U.S. parts in the manufactured product. This rule amends § 373.7 of the Export Administration Regulations by changing the requirement for a monthly report on all exports made during the preceding month under the Service Supply License procedure to a quarterly report.

The Office of Export Administration's recent institution of a comprehensive

auditing program of licenses has both materially strengthened its export control program and enabled it to reduce the frequency of required reports. This reduction is consistent with the Administration's policy of reducing unnecessary regulatory burdens.

DATES: This rule is effective February 13, 1985.

FOR FURTHER INFORMATION CONTACT: Roy Flinn, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone (202) 377-3856).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared. However, because of the importance of these regulations public comments are invited.

2. This rule makes a regulatory burden consistent with requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* by replacing the requirement for certain monthly reports under the Service Supply Licensing Procedure to quarterly reports. (OMB Approval No. 0625-0041).

3. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) are inapplicable because this regulation involves a foreign affairs function of the United States.

4. Because a notice of proposed rulemaking is not being published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act and is not subject to the requirements of that act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 373

Exports.

PART 373—[AMENDED]

§ 373.7 [Amended]

Accordingly, § 373.7(k) of the Export Administration Regulations (15 CFR Parts 368-399) is revised to read as follows:

(k) *Reports.* Each exporter who has been issued an SL License under the provisions of § 373.7(f)(1) shall prepare and submit, on a quarterly basis, a report on all exports made during the preceding quarter under the SL License (OMB Approval No. 0625-0041). The report shall cite the license number indicated on the export license and shall show, as a minimum for each consignee, a separate aggregate value for each product group shown on his license (i.e., for each commodity identified by the code letter "A" following the Export Control Commodity Number or related "A" product group). Where exports are made to service vessels or aircraft, both the country of registry and the country to which the shipment was made shall be listed. Yugoslav End-Use Certificates and Swiss Blue Import Certificates covering exports to these destinations shall be submitted as attachments to the report. If exports of commodities identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List have been made to Country Group Q, W, or Y, Afghanistan or the People's Republic of China under the SL Procedure, the quarterly report shall show each of these shipments separately, the date of each shipment, and shall include the following additional information for each such commodity—

(1) A description of the equipment serviced in Commodity Control List terms;

(2) The quantity or number and the value of such items or equipment serviced; and

(3) The country is which the equipment was serviced.

If the U.S. exporter has authorized his approved foreign-based service facility to reexport such commodities identified by the code lettert "A" following the Export Control Commodity Number to Country Group Q, W, or Y, Afghanistan or the People's Republic of China or to service such equipment at its facility and to return the serviced equipment to the destination from which it was received for servicing, a similar quarterly report shall be submitted in the same detail set forth above. In addition, the Office of Export Administration may require additional reports regarding any aspects of exports or reexports under the provisions of this § 373.7. Submit reports (original only) to the Office of Export Administration at the address in § 373.1(d).

Authority: Secs. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704) Executive Order No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984).

Dated: February 8, 1985.

James K. Pont,

Acting Director, Office of Export Administration, International Trade Administration.

[FR Doc. 85-3557 Filed 2-12-85; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 373

[Docket No. 50213-5013]

Aircraft and Vessel Repair Station Procedure; Submission of Form ITA-686P, Reduction in Number of Copies Required

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Office of Export Administration has been attempting to eliminate unnecessary paperwork burdens on the export community in accordance with the Administration's overall regulatory program. Accordingly, the Aircraft and Vessel Repair Station Procedure is being revised to no longer require foreign importers to submit five copies of Form ITA-686P, Statement by Foreign Importer of Aircraft or Vessel Repair Parts. The foreign importer will now be required to submit only the original and two copies of Form ITA-686P.

EFFECTIVE DATE: February 13, 1985.

ADDRESSES: Written comments (six copies when possible) should be sent to: Betty Ferrell, Exporter Assistance Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Roy Flinn, Exporter Assistance Division, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. The provisions of the Administration Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) are inapplicable because this regulation involves a foreign affairs function of the United States.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Foreign importers availing themselves of this procedure will use Form ITA-686P. This form has been approved by the Office of

Management and Budget (OMB) under approval number 0625-0137.

3. Because a notice of proposed rulemaking is not being published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 373

Exports.

PART 373—[AMENDED]

Accordingly, § 373.8 of the Export Administration Regulations (15 CFR Parts 368-399) is amended by revising the first sentence of (d)(2), the paragraph heading of (g) and the first sentence of (g)(1) to read as follows:

§ 373.8 Aircraft and vessel repair station procedure.

(d) *How to Obtain a Repair Station Number.* (1) * * *

(2) *Submission of Form ITA-686P by foreign importer.* To apply for qualification to operate under the Aircraft and Vessel Repair Station Procedure, the foreign importer shall submit the original and two copies of Form ITA-686P to the Office of Export Administration. * * *

* * * * *

(g) *Extension of Validity Period of Form ITA-686P*—(1) *Request.* If there are no changes in the facts and commitments set forth in the Form ITA-686P originally approved by the Office of Export Administration, a foreign importer may request the extension of an expiring Form ITA-686P by submitting a letter to the Office of Export Administration, in an original and two copies, which includes the following certification: * * *

* * * * *

Authority: Secs. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704) Executive Order No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984).

Dated: Februrary 8, 1985.

James K. Pont,

Acting Director, Office of Export Administration, International Trade Administration.

[FR Doc. 85-3556 Filed 2-12-85; 8:45 am]

BILLING CODE 3510-DT-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Parts 410 and 430

Amendment of Basin Regulations; Water Code and Water Quality Standards and Ground Water Protected Area; Pennsylvania

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its January 30, 1985 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and *Basin Regulations—Water Code and Water Quality Standards* in relation to standards for the discharge of oil and grease. By separate action at its January 30, 1985 business meeting, the Commission amended the *Ground Water Protected Area Regulations for Southeastern Pennsylvania* to exempt from regulation certain ground water withdrawals for space heating and cooling purposes—ground water heat pumps—and to establish minimum well construction standards for all wells exempted by this amendment. These rules reflect the amendments made at the January 30, 1985 business meeting.

EFFECTIVE DATE: January 30, 1985.

ADDRESS: Copies of the Commission's Administrative Manual—Part III, *Basin Regulations—Water Quality, Water Code of the Delaware River Basin,* and *Ground Water Protected Area Regulations for Southeastern Pennsylvania* are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission; Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION:

Background

Standards relating to the discharge of oil and grease were included in Interpretive Guidance No. 1, adopted by the Commission in 1972 and have not heretofore been included in the Commission's water quality standards. Public hearings on proposed oil and grease standards were held by the Commission in July and November of 1980, as noticed in the **Federal Register** on July 24, 1980, Vol. 45, No. 144, page 49322 and October 29, 1980, Vol. 45, 211, page 71642, respectively. While testimony was received and considered by the Commission, action was deferred pending adoption of revised oil and grease standards by the New Jersey Department of Environmental Protection (NJDEP). On July 2, 1984, NJDEP's newly promulgated oil and grease effluent standards became effective. The amendment sets specific requirements for runoff from oil storage terminals and incorporates by reference U.S. Environmental Protection Agency national effluent standards for oil and grease for specific industrial categories. In reference to the Ground Water Protected Area Regulations for Southeastern Pennsylvania, a public hearing was held on proposed amendments to the Ground Water Protected Area Regulations on October 24, 1984 as noticed in the October 16, 1984 **Federal Register**, Vol. 49, No. 201, pages 40434 and 40435. Notice was provided in the November 2, 1984 **Federal Register**, Vol. 49, No. 214, page 44105, that the Commission had extended the comment period to November 15, 1984 on those proposed amendments. Based upon comments received and further careful consideration, the Commission proposed revised amendments for which a hearing was held on January 30, 1985, as noticed in the January 23, 1985 **Federal Register**, Vol. 50, No. 15, page 2987.

List of Subjects

18 CFR Part 410

Water pollution control.

18 CFR Part 430

Water supply.

PART 410—[AMENDED]

1. The Commission's Comprehensive Plan and Section 3.10.4.D.1 of the *Basin Regulations—Water Code and Water Quality Standards* which are referenced in 18 CFR Part 410 are amended by the addition of a new subsection b. to read as follows:

b. Oil and Grease

1. Oil Storage Terminal Runoff

(a) Oil storage terminal runoff shall not exhibit readily visible oil.

(b) Control facilities shall be designed and operated such that the concentration of oil and grease in the effluent shall not exceed 15 mg/1 as the average of samples taken during any single storm event during which:

(i) Precipitation is not greater than two inches per hour or four and one-half inches in 24 hours; or

(ii) A maximum runoff of 80 gallons per minute per acre over a 24 hour period occurs.

(c) In implementing this standard, signatory parties may adopt and apply either effluent and monitoring standards, or best management practices for design, operation and maintenance of control facilities, provided that the Commission reserves the power to monitor discharges and enforce the 15 mg/1 oil and grease standard in section 1.(b) above as an effluent limit.

(d) The average oil and grease concentration for any storm discharge event shall be determined from samples collected in such manner and such location as to be representative of the actual discharge.

2. *Industrial Wastewater Discharges*

Shall not exceed the limits as prescribed in the U.S. Environmental Protection Agency's promulgated effluent standards for the industrial category in question.

Section 4.30.8E of the *Basin Regulations—Water Code and Water Quality Standards* is amended by the addition of a new subsection 1. to read as follows:

1. In the analysis of oil and grease samples from oil storage terminal runoff the liquid-liquid extraction with trichloro-trifluoro-ethane gravimetric method shall be used.

Interpretive Guideline No. 1, located in the *Basin Regulations—Water Code and Water Quality Standards*, is amended by the deletion of subsection B(2)a. Oil therefrom, and the renumbering of remaining subsections, as appropriate.

PART 430—[AMENDED]

§ 430.13 [Amended]

2. In 18 CFR Part 430, § 430.13, of the Commission's *Ground Water Protected Area Regulations for Southeastern Pennsylvania* is amended by redesignating paragraph (e) as paragraph (g) and adding new paragraphs (e) and (f), to read as follows:

* * * * *

(e) Ground water withdrawals for space heating or cooling purposes that are less than 100,000 gallons per day shall be exempt from obtaining a protected area permit provided that the water withdrawn is returned locally, and to the same ground water basin and aquifer system from which it is withdrawn, undiminished in quantity and quality (except temperature). Ground water withdrawals for space heating or cooling that are subsequently used for commercial or industrial water supply purposes are subject to Commission withdrawal and wastewater discharge regulations. Ground water withdrawals exempted pursuant to this subsection shall be subject to the registration requirements of § 430.17.

(f) All ground water withdrawal projects exempted by subsection "e" above shall be constructed in conformance with accepted industry practice and as a minimum shall comply with the following standards:

(1) All wells shall be drilled by a Pennsylvania licensed well driller and a Water Well Inventory Report shall be completed and filed with the Pennsylvania Department of Environmental Resources (PADER);

(2) No wells shall be located within a 100-year floodway;

(3) All wells shall have top of casing extended a minimum of one foot above the 100-year flood elevation;

(4) All wells shall have the casing protruding a minimum of six inches above the immediate surrounding grade;

(5) The area around or wells or well pits shall be constructed and/or graded to prevent the entrance of surface waters;

(6) All wells shall be accessible for inspection and shall have an access hole for water level measurements;

(7) In order to protect against significant leaks of refrigerant, all ground water heat pump systems shall be equipped with an automatic shutdown device that senses abnormally low or abnormally high refrigerant pressures;

(8) Any drilled well holes that are abandoned shall be sealed with a minimum of ten feet of cement grout. Additional seals may be required to separate different water-bearing zones.

[Delaware River Basin Compact [75 Stat. 688]]

Susan M. Weisman,

Secretary.

[FR Doc. 85-3403 Filed 2-12-85; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS DAVID R. RAY (DD 971) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 30, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS DAVID R. RAY (DD 971) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the placement of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval destroyer. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull Annex I, section 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, section 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, section 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, section 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, section 2(b)	Forward masthead light not in forward quarter of ship. Annex I, section 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, section (3)(a)	Percentage horizontal separation attained
USS DAVID R. RAY	DD971	*	*	*	*	*	*	*	46.4

Authority: Executive Order 11964; 33 U.S.C. 1605.

Dated: January 30, 1985.

John Lehman,

Secretary of the Navy.

[FR Doc. 85-3606 Filed 2-12-85; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS BRISCOE (DD 977) and USS JOHN HANCOCK (DD 981) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as naval destroyers. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January, 14, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS BRISCOE (DD 977) and USS John Hancock (DD 981) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the placement of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with their special functions as naval destroyers. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner differently from that prescribed herein will adversely affect the ships' abilities to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, section 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, section 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, section 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, section 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, section 2(b)	Forward masthead light not in forward quarter of ship. Annex I, section 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, section (3)(a)	Percentage horizontal separation attained
USS BRISCOE	DD 977						X	X	46.4
USS JOHN HANCOCK	DD 981						X	X	46.4

Authority: Executive Order 11964; 33 U.S.C. 1605.

Approved: January 14, 1985.

John Lehman,

Secretary of the Navy.

[FR Doc. 85-36067 Filed 2-12-85; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS ELROD (FFG 55) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain

provisions of the 72 COLREGS without interfering with its special function as a naval frigate. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS ELROD (FFG 55) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), regarding the arc of visibility of its forward masthead light; Annex I, section 2(a)(i), regarding the height above the hull of its forward masthead light; and Annex I, section 3(b), regarding the horizontal relationship of its side lights to its forward masthead light, without interfering with its special function as a naval frigate. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS ELROD (FFG 55) is a member of the FFG 7 class of ships for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to this ship.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table One of § 706.2 is amended by adding USS ELROD as follows to indicate the certifications issued by the Secretary of the Navy:

Vessel	No.	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
USS Elrod	FFG 55	1.6

2. Table Four of § 706.2 is amended by adding to the existing paragraph 8 the following vessel for which navigational light certification is herewith issued by the Secretary of the Navy:

On the following ship the arc of visibility of the forward masthead light required by Rule 23(a)(i) may be obstructed through 1.6° arc of visibility at the points 021° and 339° relative to the ship's head:

USS Elrod ..... FFG 55 .....

3. Table Four of § 706.2 is amended by adding to the existing paragraph 9 the following vessel for which navigational light certification is herewith issued by the Secretary of the Navy:

Side lights on the following ship do not comply with Annex I, section 3(b):

Vessel	No.	Distance of side lights forward of masthead lights in meters
USS Elrod	FFG 55	2.75

Authority: Executive Order 11964; 33 U.S.C. 1605.

Approved: January 14, 1985.

John Lehman,

Secretary of the Navy.

[FR Doc. 85-3608 Filed 2-12-85; 8:45 am]

BILLING CODE 3810-AE-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Amendments to the Condominium Regulations

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is amending its regulations governing condominium project approval. It is expected that these amendments will improve lender participation in this VA housing program.

EFFECTIVE DATE: March 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC, 20420, (202) 389-3042.

SUPPLEMENTARY INFORMATION: On April 2, 1982, the VA published in the **Federal Register** (46 CFR 14172) proposed amendments to the VA regulations governing condominium project approval. Eight comments were received; some offered extensive suggestions for improvements. While it is not practical to discuss every comment, each major suggestion and each comment which is being adopted into these final regulations will be discussed.

The VA, after review of the public comments and extensive consideration by staff of methods to improve the VA condominium project approval procedure, has decided to implement numerous refinements to the condominium regulations.

Brief Description of Comments and Revisions

One comment was received suggesting the proposed amendment to § 36.4356(b)(3), the definition of Conversion Condominium, would inadvertently exclude units built as condominiums but subsequently rented prior to sale of an individual unit. We believe the proposed revised definition does cover this type of condominium. No further amendment is considered necessary.

Several comments were received concerning § 36.4356(c), Project Approval. Two comments were received suggesting the VA accept FNMA (Federal National Mortgage Association) approved condominiums and initiate some form of limited review of condominium legal documentation if the project submitted for approval uses documentation similar to a previously VA-approved condominium. An additional comment was received suggesting VA allow lenders to certify that condominium projects meet the VA standards. The proposals for VA to accept FNMA-approved projects or authorize lenders to certify if a project meets VA standards would be major changes in the existing VA procedures. These two alternatives will be given further consideration by staff, and if considered appropriate, proposed regulations will be issued seeking public comment on a revised condominium legal document review procedure. Concerning the proposal for VA to initiate a limited review procedure where the project legal documentation is similar to the documentation of a project

previously reviewed and approved by VA, we believe the proposal has merit. A change has been issued to VA's internal operating procedures to implement this proposal since a regulatory change is not required.

Three comments were received concerning proposed § 36.4356(c)(2), on the issue of Unit Completion, and four comments were also received on the issue of Common Element Completion, proposed § 36.4356(c)(3). These two provisions have been added as § 36.4360a(b) (3) and (4), and we will discuss the comments and revisions in our discussion of the revised appraisal regulation.

Five comments were received on the proposed addition of § 36.4357(c)(4) concerning the Administrator's authority to review proposed amendments to documents while the declarant is in control of the condominium association. The comments focused on the need to allow declarants to annex additional phases to the planned condominium without VA prior approval. We believe the comments are correct, and this final regulation and §§ 36.4360(a)(3) and 36.4360a(b)(6) have been amended to adopt the suggestion.

Three comments were received about § 36.4357(d)(2), concerning developmental plans in proposed condominiums. Two comments were offered suggesting that developmental plans should conform with State law requirements unless State law is silent or inadequate. We believe that the VA requirements are minimal and should not contradict any State's more detailed requirements. It would also make the application of a nationwide standard impossible if this suggestion were adopted. The third comment suggested that the liberalization of the developmental plan requirements would make it impossible for a declarant to comply with § 36.4360(a)(6) which requires the declarant to specify a minimum and maximum number of units which will be constructed. We do not agree. The declarant may reserve his/her rights to build additional phases and the size and other details concerning the construction of additional phases. However, the minimum number of units would have to be those units which the declarant "must build," to ensure a viable community while the maximum should be reflective of the possibility of a larger number of units being constructed than planned originally, but not such a large number that the planned community facilities would be overburdened.

One comment was received concerning the amendment to § 36.4358(c)(4) which would allow the "Monuments as Boundaries" approach as well as the "Easements for Encroachments" approach to building encroachment problems. The proposed regulation suggested that the declaration ". . . should provide reasonable limits on the extent of any . . . revised boundary(ies) . . . ." The comment received suggested that our proposal might contravene some State laws. We agree and have revised the final regulation to allow but not to require limitations on the easements for encroachments or revised boundaries based on the requirements of State law.

Two comments were also received from the public and one from staff concerning the proposed amendment to the leasing restriction requirement of § 36.4358(c)(6). The regulation has been redrafted to make it clearer, and we have adopted the suggestion, offered in both public comments, that we extend the allowable minimum initial term of leasehold estates from 6 months to one year. In addition, on October 27, 1982, the VA published final regulations allowing restrictions on the sale, lease or occupancy of units based on age (47 FR 49392, November 1, 1982). We have inserted an amendment to § 36.4358(c)(6) to clarify that age restrictions governing the leasing of a condominium unit are acceptable provided the restrictions comply with § 36.4350(b)(5)(iv). In addition, a leasing restriction imposed by a State or local housing authority as a part of its assistance to an individual may be acceptable provided the restriction complies with §§ 36.4308(e) or 36.4350(b)(5)(iv).

Two comments were received concerning the proposed amendment to § 36.4359(c) which requires a declarant to offer an information brochure to purchasers of condominium units. This provision has been moved and renumbered § 36.436a0(b)(5), and is further discussed below.

Three comments were received concerning the proposed amendment to § 36.4359(e)(2). This provision is the VA recommended fidelity bond coverage. Two comments strongly endorsed the proposed amendment. While the third comment endorsed the proposal, a new method of computing fidelity bond coverage was suggested. Since the regulatory provision is only a VA recommendation and not a requirement, we do not wish to amend our regulatory provision further than the April 2, 1982 proposal.

Section 36.4359(e)(3), on the issue of professional management, has been revised and implemented as § 36.4360a(f) and is further discussed below.

One comment was made on each proposed revision to § 36.4360(a) (1), (3), (5), and (6). The comment on § 36.4360(a)(1) urged VA to allow reasonable changes in future phases of an expandable project to reflect changes in market conditions. We agree and this was the precise reason for the proposed amendment both to this section and § 36.4357(d)(2), Developmental Plan, and § 36.4360a(b)(5), Information Brochure. We have amended § 36.4360(a)(3) which required VA approval of documents adding new phases to an expandable condominium based on the suggestion in the public comment. It will no longer be necessary for the VA to review amendments to the declaration or other annexation documents implementing the expansion of a project in accordance with a previously approved general plan of development. Evidence of proper phasing must be submitted to the Administrator in accordance with § 36.4360a(b)(6).

One comment was received concerning the proposed amendment to § 36.4360(a)(5) which requires the declarant to purchase liability insurance when the declarant is continuing to construct additional phases. The comment suggested specifying a minimum coverage of not less than $1,000,000 per occurrence. We concur and the regulation is amended to specify a minimum coverage. The Administrator will no longer review and approve such insurance coverage.

The comment received concerning § 36.4360(a)(6) suggested that VA should not require the declaration to state maximum and minimum property interests to be acquired by unit owners. The comment was based on the liberalizing amendment to § 36.4357(d)(2), Developmental Plan, which would allow the declarant to limit the number and types of units which may (or may not) be built in additional phases. We feel that a reasonable minimum number of units must be constructed to assure adequate support to pay for the amenities. Thus, a maximum percentage interest for each unit that will be built may be specified in the declaration. A minimum percentage of interest for each unit based on a maximum number of units to be constructed should also be specified. Since style and density of units may be changed, we believe that it might be prudent for the declarant in some circumstances to specify different minimum and maximum numbers of units depending upon whether tracts of land are added or withdrawn from the development. This is particularly true for flexible condominiums which have

contractable (withdrawable) or convertible real estate. We do not choose to modify the proposed regulation.

Section 36.4360(d) concerning Offsite Facilities governs the approval of condominium projects which own all or a percentage interest in an offsite facility. The offsite facility is usually established as a planned-unit development. This provision has been reincorporated as an appraisal requirement in § 36.4360a(e). A complete discussion of the revised regulation and the public comments will be discussed in the appraisal regulation.

Section 36.4360a, Appraisal Requirements, has been revised extensively. Proposed § 36.4356(c)(2), Unit Completion, has now been incorporated as § 36.4360a(b)(3). Three comments were received concerning the proposal, each suggesting that buyer preference items need not be installed in a unit for it to be substantially complete. We agree, and the Final Regulation is revised to reflect this view.

Four comments were also received on the issue of common Element Completion, formerely proposed regulation § 36.4356(c)(3). This proposal expressed concern that the amendment required the initial completion of all common elements and amenities regardless of the size of the development. A clarifying sentence has been added which reflects VA's belief that amenities and common elements in a large development should be constructed on a phased basis and added to the development when sufficient units have been added enabling the condominium to support the amenities. Once comment expressed concern that VA's proposal to allow the escrowing or earmarking of funds for the completion of amenities could be counter-productive to assuring the completion of the development. VA does not look with favor on the escrowing or earmarking of funds to assure completion of common elements or amenities. In most cases common elements and amenities should be substantially complete and added to the development as the units to be served by the common elements or amenities are completed and added. The use of escrows will be allowed cautiously only when there is a clear ability by the declarant to complete properly the amenities or common elements in a timely manner. Finally, one comment was received urging VA to consider the posting of a guaranty by the declarant in lieu of a cash escrow. We do not wish to adopt this proposal since we believe the use of cash escrows or earmarked accounts are necessary to properly protect the interest of the unit owners and the VA. However, we have amended the final regulation to authorize the acceptance of letters of credit and surety bonds in lieu of cash escrows, since we believe these are appropriate methods to assure completion of the amenities or common elements.

Section 36.4359(c), Information Brochure, has been reincorporated into the regulations as § 36.4360a(b)(5). Two comments were received concerning the proposed amendments. Both comments to the proposed changes to the former regulations supported the revision to allow the information brochure to be furnished to the purchaser after the purchase contract was signed if State law authorizes a "cooling off" period. Cooling off periods allow the purchaser to cancel the contract for a specified number of days (pursuant to State law) without penalty. A new requirement has been added as requested in one public comment to specify additional information in the information brochure if the condominium is a conversion. This matter will be discussed in greater detail when the revisions to § 36.4360a(b)(7), Additional Condominium Conversion Requirements, are discussed.

A new provision, § 36.4360a(b)(6), entitled Evidence of Proper Phasing, has been added to the condominium regulations. This provision requires the submission of evidence that additional phases have been added to the expandable or flexible condominium prior to guaranty of an individual unit loan. VA no longer must review amendments implementing planned developmental expansion, but submission of evidence of the addition of a phase prior to guaranty of the first unit loan will be necessary.

The proposed amendments to § 36.4360a(b)(3), Additional Condominium Conversion Requirements, have been adopted, but the provision has been renumbered as § 36.4360a(b)(7).

One comment suggested that the proposed amendment, which allows the declarant in certain circumstances to place funds in escrow to pay for replacement of major structural or mechanical components having less than 10 years' remaining economic life, was not a good idea. The comment suggested VA should retain the requirement that the major systems have a remaining economic life of 10 years. We continue to believe that a major system such as a roof should not be replaced arbitrarily to satisfy a Government regulation if the roof has 7 or 8 years of expected useful life. We, therefore, adopt the proposed regulation but caution that the major structural or mechanical component systems having less than 3 years remaining useful life in most cases should be replaced. The comment received on this issue noted that if VA chose to adopt the proposed regulation which allows builder escrows, then they urged VA to require that the Information Brochure contain information about the major structural and mechanical systems and any declarant escrows established for the future repair of those systems. We agree, and as noted previously, § 36.4360a(b)(5) has been amended to include this requirement.

Amendments are also adopted based on staff proposals to § 36.4360a(c) concerning presale requirements. Any purchase by a person other than the declarant may now be counted toward the presale requirement in new or proposed condominiums. In addition, § 36.4360a(c)(3) concerning a required occupancy level of owner occupants in an existing resale condominium has been canceled. Experience has shown that this regulatory provision was of little value in assuring the viability of a condominium.

Two comments were received requesting VA to revise the proposed amendment to § 36.4360a(d) concerning declarant warranties of the common elements. Both comments noted our error in discussing the common elements as being conveyed to the owners' association. Since each homeowner acquires an undivided interest in the common elements in a condominium, the common element properties are not "conveyed" to the owners' association as they are in a planned-unit development. We have revised this regulation to reflect the correct terminology.

Section 36.4360(d), Ownership and Operation of Offsite Facilities, has been incorporated as a part of the appraisal requirements and renumbered as § 36.4360a(e). The documents establishing an offsite facility must continue to be reviewed and approved by the VA pursuant to VA's planned-unit development guidelines as published in DVB Circular 26-80-34, (45 FR 58284, September 2, 1980). One provision, former § 36.4360(d)(4) concerning the Board of Director's first meeting, has been canceled. Staff discussions concluded that this provision was of little value in assuring the viability of the offsite facility.

Section 36.4359(e)(3), Professional Management, has been reincorporated as § 36.4360a(f). One comment was

received concerning the previous proposal to amend the professional management provision. The comment suggested that VA require termination without penalty of declarant-negotiated contracts at any time after transfer of control upon not more than 90 days' notice. With management contracts limited to a two-year term for declarant-negotiated contracts and with the ability of the homeowners' association to cancel a contract for cause with 30 days' notice, the extra protection suggested by the comment would appear to unduly favor the homeowners' association. Professional management companies would be unwilling to commit company resources if their expected return could be so easily eliminated by the homeowners' association terminating the contract without cause within a 90-day period. A second comment was received suggesting that the 1-year term on contracts negotiated by the declarant be maintained in lieu of the proposal to extend the allowable term to 2 years. Prior comments received when the condominium regulations were adopted and published on August 24, 1979 (44 FR 47336) indicated that management contracts negotiated for terms of less than 2 years provided little incentive for the management company to either significantly invest time or money in the project because of the short term of the contract. This revised regulation carefully balances the interests of the homeowners and the professional management companies.

Finally, proposed regulation § 36.4360a(e), Commercial Areas, is adopted but renumbered as § 36.4360a(g).

These regulatory amendments governing condominiums reflect our ongoing effort to assure standards which protect the interests of veterans and the Government while imposing reasonable guidelines reflective of marketplace realities. We believe the adoption of these amendments to the VA regulations will improve participation in the VA condominium program.

The Administrator certifies that these final regulation changes will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 United States Code, sections 601–612. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604. The reasons for this certification are that the final regulations should have no impact upon small government jurisdictions or small organizations and should have a minor but beneficial economic impact upon small businesses participating in the Loan Guaranty program. The Administrator also has determined that condominium associations are not small entities (section 601(6)) under the RFA since they do not come within the definition of small organizations (section 601(4)). In addition, the amendments to § 36.4360a(b) (3) and (4) which require completion of the condominium units and amenities before guaranty of the first unit loan, will not have a significant economic impact because they simply restate existing VA policy and will not change present practice.

These final regulations have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. They will not have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The final condominium regulations will not impact on the public or private sectors as a major rule as defined by the Executive Order because the regulations are primarily liberalizing revisions to the existing requirements for the approval of condominium developments. Two amendments, § 36.4360a(b) (3) and (4), are a restatement of existing policies which were omitted when VA's condominium policies were published in regulatory form on August 13, 1979. Other proposed amendments are for the purpose of clarifying language. As adopted, the regulations will not have an annual effect on the economy of $100 million and should not cause major increases in costs or adversely affect in a significant manner any element named above.

(Catalog of Federal Domestic Assistance Program Number is 64.114.)

The amendments are promulgated under authority granted to the Administrator by sections 210(c), 1803(c), and 1810(a)(6) of title 38, United States Code.

The information collection requirements contained in these regulations have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, and will not be effective until OMB approval has been obtained. Comments on the information collection requirements should be submitted within 50 days to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Veterans Administration, 726 Jackson Place, NW, Washington, DC 20502, (202) 395–7316.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs-housing and community development, Loan programs-business, Manufactured homes, Veterans.

Approved: April 4, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4356, the introductory portion of paragraph (b), and paragraphs (b) (2), (3), (11) and (13) are revised as follows:

§ 36.4356 Condominium loans—general.

* * * * *

(b) *Definitions.* On and after July 1, 1979, the following definitions shall be applicable to each condominium loan entitled to be guaranteed or insured, and shall be applicable to such loans previously guaranteed or insured to the extent that no legal rights vested thereunder are impaired. Whenever used in 38 U.S.C. ch. 37 or the § 36.4300 series, unless the context otherwise requires, the terms defined in this paragraph shall have the meaning stated.

* * * * *

(2) *Condominium.* Unless otherwise provided by State law, a condominium is a form of ownership in which the buyer receives title to a three dimensional air space containing the individual living unit together with an undivided interest or share in the ownership of common elements (restatement of § 36.4301, Condominium).

(b) *Definitions.*—(3) *Conversion condominium.* Condominium projects not originally built and sold as condominiums but subsequently converted to the condominium form of ownership.

* * * * *

(11) *Low rise condominium.* A condominium project in which all or a part of a living unit extends over or under another living unit, e.g. garden apartment or walk-up project.

* * * * *

(13) *Series condominium.* A number of adjoining but separately constituted condominiums. An association of owners is established for each project, and each association is responsible for maintenance and upkeep of the common elements in its own project. Cross-easements between the separate condominiums may be created to permit members of the separate condominiums to use the common areas of the other condominiums.

2. Section 36.4357 is amended as follows:

a. By inserting the words "as used in this paragraph (c)(3)" following the word "Available" in the last sentence and by removing the legal citation following paragraph (c)(3).

By removing the last two sentences of paragraph (a) and adding paragraph (a)(3); by adding paragraph (c)(4); and by revising paragraph (d) so that the added and revised material reads as set forth below:

§ 36.4357 Acceptable ownership arrangements and documentation.

(a) *Types of condominium ownership.*

* * * * *

(3) Individual ownership of units coupled with an undivided interest in the general common elements and/or limited common elements, with title to additional property for common use vested in an association of unit owners, with mandatory membership by unit owners or owners' associations. Any such arrangement must not be precluded by applicable State law. (38 U.S.C. 210(c)(1), 1810(a)(6))

* * * * *

(c) *Condominium documentation.* * * *

(4) *Amendments to documents after Veterans Administration project approval.* While the declarant is in control of the owners' association, amendments to the declaration, bylaws or other enabling documentation must be approved by the Administrator. The declarant should have proposed amendments reviewed prior to recordation. This provision does not apply to amendments which annex additional phases to the condominium regime in accordance with a general plan of development. (See §§ 36.4360(a)(3) and 36.4360a(b)(6)). (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(d) *Real property descriptions in the declaration*—(1) *Clarity—conformity with the law of the jurisdiction.* The description of the units, common elements, any recreational facilities and other related amenities, and any limited common elements shall be clear and in conformity with the law of the jurisdiction where the project is located. Responsibility for maintenance and repair of all portions of the condominium shall be set forth clearly.

(2) *Developmental plan—proposed condominiums.* The declaration or other legally enforceable and binding document must state in a reasonable manner the overall development plan of the condominium, including building types, architectural style and the size of the units for those phases of the condominium which are required to be built. Under the applicable provisions of the declaration or such other legally enforceable and binding document, the development of the required portion of the condominium must be consistent with the overall plan, except that the declarant may reserve the right to change the overall plan or decide not to construct planned units or improvements to the common elements if the declaration sets forth the conditions required to be satisfied prior to the exercise of that right the time within which the right may be exercised, and any other limitations and criteria that would be necessary or appropriate under the particular circumstances. Such conditions, time restraints and other limitations must be reasonable in light of the overall plan for the condominium. In an expandable project, additional phases which are not required to be built may be described in the development plan in very general terms, or the declaration may provide that the declarant makes no assurances concerning the construction, building types, architectural style and size of the units, etc. of these phases. However, the minimum number of units to be built should be that which would be adequate to reasonably support the common elements. (see § 36.4360(a)(6)) (38 U.S.C. 210(c)(1), 1803(c)(1), 1801(a)(6))

3. Section 36.4358 is amended as follows:

a. By inserting the words "late charges," following the words "with interest" in the second and third sentences of paragraph (b)(4)(i).

(b) By revising paragraphs (c) (4) and (6) as set forth below:

§ 36.4358 Rights and restrictions.

* * * * *

(c) *Unit owners' rights and restrictions.* * * *

(4) *Encroachments—units and common elements*—(i) *Easements for encroachments.* In the event any portion of the common elements encroaches upon any unit or any unit encroaches upon the common elements or another unit as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. The declaration may provide, however, reasonable limits on the extent of any easement created by the overlap of units, common elements, and limited common elements resulting from such encroachments; or

(ii) *Monuments as boundaries.* If permitted by the governing law within the jurisdiction where the project is located, the existing physical boundaries of a unit or a common element or the physical boundaries of a unit or a common element reconstructed in substantial accordance with the original plats and plans thereof become its boundaries rather than the metes and bounds expressed in the deed, plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats, plans or in the deed and those of the building. The declaration should provide reasonable limits on the extent of any such revised boundary(ies) created by the overlap of units, common elements, and limited common elements resulting from such encroachments.

* * * * *

(6) *Leasing restrictions.* Except as provided in this paragraph, there shall be no prohibition or restriction on a condominium unit owner's right to lease his or her unit. The following restrictions are acceptable:

(i) A requirement that leases have a minimum initial term of up to 1 year, or

(ii) Age restrictions or restrictions imposed by State or local housing authorities which are allowable under § 36.4308(e) or § 36.4350(b)(5)(iv).

* * * * *

4. Section 36.4359 is amended as follows:

a. By removing paragraph (c) and (e)(3).

b. By adding paragraph (a)(1)(iii); and by revising paragraphs (b) and (e)(2) so that the added and revised material reads as follows:

§ 36.4359 Miscellaneous legal requirements.

(a) Declarant transfer of control of owners' association. * * *

(1) Standards for transfer of control. * * *

(iii) On a case basis, modifications or variations of the requirements of paragraphs (a)(1) (i) and (ii) of this section will be acceptable, particularly in circumstances involving very large condominium developments.

* * * * *

(b) *Taxes.* Unless otherwise provided by State law, real estate taxes must be assessed and be lienable only against the individual units, together with their undivided interests in the common elements, and not against the multifamily structure. The owners' association usually owns no real estate, so it has no obligation concerning ad valorem taxes. Unless taxes are assessed only against the individual units, a tax lien could amount to more than the value of any particular unit in the structure. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

* * * * *

(e) *Insurance and related requirements.* * * *

(2) *Fidelity bond coverage.* The securing of appropriate fidelity bond coverage is recommended but not required, for any person or entity handling funds of the owners' association, including, but not limited to, employees of the professional managers. Such fidelity bonds should name the association as an obligee, and be written in an amount equal to at least the estimated maximum of funds, including reserve funds, in the custody of the owners' association or the management agent at any given time during the term of the fidelity bond. However, the bond should not be less than a sum equal to 3 months' aggregate assessments on all units plus reserve funds. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

5. Section 36.4360 is amended as follows:

a. By removing paragraph (d).

b. By revising paragraphs (a)(1), (3), (5), (7), and (8); and paragraph (c) to read as follows:

§ 36.4360 Documentation and related requirements—flexible condominiums and condominiums with offsite facilities.

(a) *Expandable condominiums.* The following policies apply to condominium regimes which may be increased in size by the declarant:

(1) The declarant's right to expand the regime must be fully described in the declaration. The declaration must contain provisions adequate to ensure that future improvements to the condominium will be consistent with initial improvements in terms of quality of construction. The declarant must build each phase in accordance with an approved general plan for the total development (§ 36.4357(d)(2)) supported by detailed plats and plans of each phase prior to the construction of the particular phase.

* * * * *

(3) The declaration or equivalent document must contain a convenant that the condominium regime may not be amended or merged with a successor condominium regime without prior written approval of the Administrator. The declarant may have the proposed legal documentation to accomplish the merger reviewed prior to recordation. However, the Administrator's final approval of the merger will not be granted until the successor condominium has been legally established and construction completed. The declarant may add phases to an expandable condominium regime without the prior approval of the Administrator if the phasing implements a previously approved general plan for the total development. A copy of the amendment to the declaration or other annexation document which adds each phase must be submitted to the Administrator in accordance with § 36.4360a(b)(6).

* * * * *

(5) The declarant must purchase (at declarant's own expense) a general liability insurance policy in an amount not less than $1 million for each occurrence, to cover any liability which owners of previously sold units are exposed to as a result of further condominium project development.

* * * * *

(7) The declaration or equivalent document shall set forth clearly the basis for reallocation of unit owner's ownership interests, common expense liabilities and voting rights in the event the number of units in the condominium is increased. Such reallocation shall be according to the applicable criteria set forth in §§ 36.4357(b) and 36.4358(c) (1) and (2).

(8) The declarant's right to expand the condominium must be for a reasonable period of time with a specific ending date. The maximum acceptable period will usually be from 5 to 7 years after the date of recording the declaration. On a case basic, longer periods of expansion rights will be acceptable, particularly in circumstances involving sizable condominium developments. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

* * * * *

(c) *Other flexible condominiums.* Condominiums containing withdrawable real estate (contractable condominiums) and condominiums containing convertible real estate (portions of the condominium within which additional units or limited common elements, or both, may be created) will be considered acceptable provided the flexible condominium complies with the § 36.4300 series. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

6. In § 36.4360a, paragraphs (b), (c), and (d) are revised and paragraphs (e), (f), and (g) are added so that the added and revised materials reads as follows:

§ 36.4360a Appraisal requirements.

* * * * *

(b) *Proposed condominiums or existing condominiums with declarant in control or marketing units*—(1) *Low rise and high rise condominiums.* Low rise and high rise condominiums shall comply with local building codes. Only the alterations, improvements, or repairs to low rise and high rise buildings proposed to be converted to the condominium form of ownership must comply with current local building codes, unless local authorities require total code compliance on the entire structure when a building is being converted to the condominium form of ownership. In those areas where local standards are nonexistent, inferior to, or in conflict with Veterans Administration objectives, a certification will be required from a registered professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical of similar construction methods and standards for condominiums used in the area. Those portions of the condominium conversion which are not being altered, improved or repaired must be appraised in accordance with paragraph (a) of this section.

(2) *Horizontal condominiums.* The MPS (Minimum Property Standards) for One and Two Family Dwelling, HUD (Department of Housing and Urban Development) 4900.1, as identified in 24 CFR 200.929 (a) and (b)(1) are hereby incorporated by reference into this paragraph.

(i) Proposed horizontal condominiums (excluding conversions) must be constructed according to HUD 4900.1, with the exception of the provision of paragraph 202-2 which states that individual utilities serving a living unit shall not pass over, under or through another living unit. Furthermore, references made therein to submission of applications for variations to the Department of Housing and Urban Development, are also not applicable. Requests for variations in projects subject to VA approval shall be directed to VA field installations. Amendments to HUD 4900.1 are published in the **Federal Register.** (See 24 CFR 200.933.) A current copy of HUD 4900.1 is available for public inspection in accordance with 24 CFR 200.931. HUD 4900.1 shall also be available for public inspection at VA field installations. VA policies and

procedures applicable to single-family residential construction shall also apply to horizontal condominiums.

(ii) Proposed or existing (declarant in control or marketing units) horizontal condominium conversions shall comply with current local building codes for alterations and improvements or repairs made to convert the building to the condominium form of ownership unless local authorities require total code compliance on the entire structure when a building is being converted to the condominium form of ownership. In those areas where local standards are nonexistent, inferior to, or in conflict with Veterans Administration objectives, a certification will be required from a registered professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national buidling codes which is typical of similar construction methods and standards for condominiums used in the area. Those portions of the condominium conversion which are not being altered, improved, or repaired must be appraised in accordance with paragraph (a) of this section.

(3) *Unit completion.* All units in the individual project or phase must be substantially completed except for customer preference items, such as interior finishes, appliances or equipment.

(4) *Common element completion.* All amenities of the condominium (to include offsite community facilities), that are to be considered in the unit value, must be bound legally to the condominium regime. All such amenities as well as the common elements of the project, must be substantially completed and available for use by the unit owners. In large multi-phase projects, the declarant should construct common elements in a manner consistent with the addition of units to support the entire development. The Administrator, in appropriate cases, may approve the placement of adequate funds by the declarant in an escrow or otherwise earmarked account or accept a letter of credit or surety bond to assure completion of amenities and allow closing of VA-guaranteed (or insured) loans. Such funds must be adequate to assure completion of the amenities free and clear of all liens. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(5) *Information brochure/public offering statement.* When units are being sold by the declarant (not applicable to resales), an information brochure/public offering statement must be given to veteran buyers prior to the time a downpayment is received and an agreement is signed, unless State law authorized receipt of the downpayment and delivery of the information brochure followed by a period in which purchasers may cancel the purchase agreement without penalty for a specified number of days. Information brochures must be written in simple terms to inform buyers that the association does not provide owner's contents and personal liability policies which are the owner's responsibility. In the event the development is expandable, series, etc., there must be full disclosure of the impact of the total development plan. In expandable, series or other projects with more than one phase, the information brochure must disclose fully later development rights, and the general plans of the declarant for additional phases. If the declarant makes no assurance concerning phases which are not required to be built, the declarant should state that no assurances are given concerning construction, unit sizes, building types, architectural styles, etc. In condominium conversions, the information brochure must list the major structural and mechanical components and the estimated remaining useful life of the components. A brief explanation must be furnished in the brochure explaining that certain major structural or mechanical components may require replacement within a specified time period. If the declarant has elected to place funds into a condominium reserve fund for replacement of a major component under the provisions of § 36.4360a(b)(7), the amount of the contribution into the reserve fund must be specified in the information brochure.

(6) *Evidence of proper phasing.* In an expandable or flexible condominium, evidence of the addition of each phase in accordance with a previously approved general plan of development must be submitted to the Administrator prior to the guaranty of the first loan in the added area.

(7) *Additional condominum conversion requirements.* (i) The declarant of a condominium project, which is (A) proposed, (B) under construction, or (C) an existing project with a declarant in control or marketing units not previously occupied, must furnish structural and mechanical common element component statements on the present condition of all accessible structural and mechanical components material to the use and enjoyment of the condominium. These statements must be completed by a registered professional engineer and/or architect prior to the guaranty of the first unit loan in the project. Each statement must also give an estimate of the expected useful life of the roof, elevators, heating and cooling, plumbing and electrical systems assuming normal maintenance. A minimum of 10 years estimated remaining useful life is required on all structural and mechanical components. In the alternative, the declarant may contribute an amount of funds to the condominium reserve fund equal to a minimum of 1/10 (one tenth) of the estimated costs of replacement of a major structural or mechanical component (as determined by an independent registered professional architect or engineer) for each year of estimated remaining useful life less than 10 years, e.g. 7 years remaining useful life equals a 3/10 required declarant contribution to the reserve fund of the component's estimated replacement cost. The noted statements and remaining useful life requirement are not applicable to existing resale conversion projects when the declarant is no longer marketing units and/or in control of the association. Expandable or series condominium conversions require engineering and architectural statements on each stage or phase.

(ii) In declarant controlled projects, a statement(s) by the local authority(ies) of the adequacy of offsite utilities servicing the site (e.g. sanitary or water) is required. If a local authority(ies) declines to issue such a statement(s), a statement(s) may be obtained from a registered professional engineer. If local authority(ies) declines to issue such a statement(s), a statement(s) may be obtained from a registered professional engineer. (38 U.S.C. 210(c), 1803(1), 1810(a)(6))

(c) *Presale requirements*—(1) *Proposed construction or existing declarant in control.* Bona fide agreements of sale must have been executed by purchasers other than the declarant (who are obligated contractually to complete the purchase) of 70 percent of the total number of units in the project. Lenders shall certify as to satisfaction of the presale requirement prior to VA guaranty of the first unit loan. When a declarant can demonstrate that a lower percentage would be justified, the Administrator, on an individual case basis, may approve a presale requirement of less than 70 percent. Reduction of the 70 percent presale requirement will be considered when:

(i) Strong initial sales demonstrate a ready market, or

(ii) The declarant will provide cash assests or acceptable bonds for payment of full common area assessments to the owners' association until such

assessments are assumed by unit purchasers, or

(iii) Subsequent phases of an overall development are being undertaken in a proven market area, or

(iv) Previous experience in similar projects in the same market area indicates strong market acceptance, or

(v) The development is in a market area that has repeatedly indicated acceptance of such projects.

(2) *Multiphase—proposed or existing declarant in control.* The requirements of paragraph (c)(1) of this section shall apply to each individual phase of a multiphase development, taking into consideration that each individual phase must be capable of self-support in the event that the developer does not complete all planned phases. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(d) *Warranty.* Except in condominium conversion projects, each CRV (Certificate of Reasonable Value) issued by the Administrator relating to a proposed or existing not previously occupied dwelling unit in a condominium project shall be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran purchasing the dwelling unit with the aid of a guaranteed or insured loan a warranty against defects for the unit and common elements. The unit shall be warranted for 1 year from the date of settlement or the date of occupancy (whichever first occurs). The common elements shall be warranted for 2 years from the date each of the common elements is completed and available for use by the unit owners, or 2 years from the date the first unit is conveyed to a unit owner other than the declarant, whichever is later, in the particular phase of the condominium containing the common element. For these purposes, defects shall be those items reasonably requiring the repair, renovation, restoration, or replacement of any of the components constituting the unit or common elements. Items of maintenance relating to the unit or common elements are not covered by the warranty. No certificate of guaranty or insurance credit shall be issued unless a copy of such warranty, duly receipted by the purchaser, is submitted with the loan papers. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(e) *Ownership and operation of offsite facilities.*—(1) *Title requirements.* Evidence must be presented that the offsite facility owned by an owners' association with mandatory membership by condominium unit owners or condominium unit owners' associations has been completed and conveyed free of encumbrances by the declarant for the benefit of the unit owners with title insured by an owner's title policy or other acceptable title evidence. Offsite facilities conveyed to a nonprofit corporation are the preferred method of offsite facilities ownership; however, the Administrator will consider other forms of ownership on an individual case basis.

(2) *Mandatory membership.* The declaration of the condominium (each condominium in a series development) and the legal documentation of the corporation or association which owns the offsite facility must provide the following:

(i) The owner of a condominium unit is automatically a member of the offsite facility corporation or association and that upon the sale of the unit, membership is transferred automatically to the new owner/purchaser. It is also acceptable if each condominium owners' association (in lieu of each individual unit owner) is automatically a member of the offsite facility corporation or association coupled with use rights for each of the unit owners or residents. If membership in an offsite owners' association is voluntary, no credit in the CRV valuation may be given for such offsite amenities.

(ii) Each member of the offsite facility corporation or association must be entitled to a representative vote at meetings of the offsite facility corporation or association. If the individual condominium owners' association is a member of the offsite facility corporation or association, each condominium owners' association must be entitled to a representative vote at meetings of the offsite facility corporation or association.

(iii) Each member must agree by acceptance of the unit deed to pay a share of the expenses of the offsite facility corporation or association as assessed by the corporation or association for upkeep, insurance, reserve fund for replacements, maintenance and operation of the offsite facility. The share of said expenses shall be determined equitably. Failure to pay such assessment must result in a lien against the individual unit in the same manner as unpaid assessments by the association of owners of the condominium. If each condominium owners' association is a member of the offsite facility in lieu of individual unit owners, failure of the condominium owners' association to pay its equitable assessment to the offsite facility must result in an enforceable lien.

(3) *Declarant payment of offsite facility in a series project.* Until the declarant has completed all of the intended condominium phases in a total condominium development or established each condominium regime by filing a separate declaration in a series development, the balance of the total sum of the expenses of the offsite facility not covered by the assessment against the unit owners should be assessed against and be payable by the declarant commencing on the first day of the first month after the first unit is conveyed to a homeowner in the first phase. If this balance is not paid, it must become a lien against those parcels of land in the development area which are owned by the declarant. The collection of such debt and enforcement of such lien may be by foreclosure or such other remedies afforded the corporation or association under local law. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(f) *Professional management.* Many condominiums are small enough and their common areas so minimal that professional management is not necessary. VA does not have a requirement for professional management of condominiums. The powers given to the owners' association by the declaration and bylaws are fundamentally for "use control" and maintenance of the undivided interest all of the owners have in the common areas. These powers normally include management which may, if desired, be delegated to a professional manager. However, if the board of directors wants professional management, the management agreement must be terminable for cause upon 30 days' notice, and run for a reasonable period of from 1 to 3 years and be renewable for consent of the association and the management. (Management contracts negotiated by the declarant should not exceed 2 years.) (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(g) *Commercial areas.* With respect to existing and proposed condominiums, commercial areas within condominium developments are acceptable, but such interests will be considered in value. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

§ 36.4361 [Amended]

Section 36.4361 is amended by reversing the words "originally imposed" where they appear in paragraph (d) and by changing the first word of paragraph (e) from "Where" to "When".

(38 U.S.C. 210(c)(1))

[FR Doc. 85-3598 Filed 2-12-85; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 21

[Gen. Docket No. 80-112; FCC 84-568]

Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service; Amendment

AGENCY: Federal Communications Commission.

ACTION: Final rule. Second Report and Order.

SUMMARY: This Order adopts rules to allow the use of lotteries to select Multichannel Multipoint Distribution Service (MMDS) licensees. The use of lotteries will reduce the time needed to process MMDS applications and will eliminate the need for comparative hearings among mutually exclusive applicants. In addition, the Order specifies that minority and diversity preferences will be awarded in MMDS lotteries.

EFFECTIVE DATE: All provisions will become effective February 13, 1985.

FOR FURTHER INFORMATION CONTACT: Susan C. Belardi, (202) 634-1843 or 634-1860, Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 21

Point-to-multipoint microwave, Communications common carriers, Radio.

Second Report and Order

In the matter of General Docket No. 80-112; amendment of Parts 2, 21, 74 and 94 of the Communication's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service. Inquiry into the development of regulatory policy with regard to future service offerings and expected growth in the Multipoint Distribution Service and Private Operational Fixed Microware Service, and into the development of provisions of the Commission's Rules and Regulations in regard to the compatibility of the operation of satellite services with other services authorized to operate in the 2500-2690 MHz band. Amendment of Parts 1 and 21 of the Commission's Rules and Regulations in regard to using random selection procedures to select permittees in the Multipoint Distribution Service.

Adopted: November 21, 1984.

Released: February 1, 1985.

By the Commission: Commissioners Fowler, Chairman; and Rivera issuing separate statements; Commissioner Dawson dissenting in part and issuing a statement.

I. Introduction Background

1. On July 15, 1983, the Commission released a Report and Order in this proceeding.[1] In that Order 8 channels were reallocated from the Instructional Television Fixed Service (ITFS) to Multichannel Multipoint Distribution Service (MMDS).[2] In making the reallocation the Commission acknowledged it was likely that a large number of MMDS applications would be received and that for this reason MMDS might be a service that would be amendable to the use of a lottery to select permittees.[3] On September 9, 1983, about 16,500 MMDS applications were filed.

2. On October 14, 1983, the Commission released a Further Notice of Proposed Rulemaking in this proceeding in which it proposed to use a lottery to select both MMDS and single channel MDS permittees.[4] In that *Further Notice* the Commission reached tentative conclusions concerning the factors that Congress had indicated should be considered in deciding whether the use of a lottery in a particular service would be in the public interest.[5] In particular the Commission tentatively concluded that because approximately 16,500 applications had been filed for the approximately 1,000 available MMDS channels and because the use of a lottery to select permittees would be faster and less expensive than the comparative hearing procedure, the use of a lottery would be in the public interest.

3. The Commission also acknowledged that proposing to use a lottery to select MDS permittees raised the issue of whether MDS was a medium of mass communication therefore requiring that certain applicants be granted a preference if a lottery were used. The Commission's initial analysis of the language and the legislative history of the lottery statute led it to the tentative conclusion that MDS was not a medium of mass communication and that the granting of lottery preference was not required.

4. Comments were requested on the Commission's tentative conclusions concerning the public interest factors to be considered in deciding whether to use a lottery and its analysis of whether preferences should be used in an MDS lottery. In addition the Commission specifically requested comment on whether it legally could and as matter of public policy should grant preferences in MDS lotteries even if the statute did not require it.

5. Comments also were solicited on the propriety of Rules § 21.903(b)(2), the "fifty percent" rule, the question of whether participants in an MDS lottery should be required to file a "real party in interest" statement, the procedures to be used in an MDS lottery, and the rules relating to the transferability of MDS construction permits and licenses.

6. Thirty-two entities filed comments in response to the notice; seven parties filed reply comments.[6] Our view of the comments and reply comments filed leads us to conclude that the use of a lottery to select Mulitchannel MDS licensees is in the public interest. We have also concluded that Congress intended that we grant preferences in such a lottery. In addition, we have concluded that a lottery for single channel MDS would not be in the public interest, and that requiring a "real party in interest" certification from MMDS applicants is not necessary. As a result of having reached these conclusions, we are hereby adopting specific procedures to conduct an MMDS lottery. We are also clarifying our rules concerning the

[1] Amendment of Parts 2, 21, 74, and 94 of the Commission's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service, 94 F.C.C. 2d 1203 (1983), *reconsideration denied*, 49 FR 27147 (July 2, 1984), (hereinafter cited as *Multichannel MDS Order*.)

[2] The channels reallocated were the 4 E-group channels (E1-2596 to 2602 MHz, E2-2608 to 2614 MHz, E3-2620 to 2626 MHz, E4-2632 to 2638 MHz) and the 4 F-group channels (F1-2602 to 2608 MHz, F2-2614 to 2620 MHz, F3-2626 to 2632 MHz, F4-2638-2644 MHz). Each applicant is permitted by § 21.902(d)(2) to submit only one application for either all 4 E-group channels or for all 4 F-group channels.

[3] In this Order we are using the term "MMDS" to refer to the reallocated E and F group channels and the phrase "single channel MDS" to refer to channel 1 (2150 to 2156 MHz), channel 2 (2156-2162 MHz) or channel 2A (2156-2160 MHz). The term MDS refers to both MMDS and single channel MDS.

[4] Further Notice of Proposed Rulemaking, Gen. Docket No. 80-112, 48 FR 49309, 49310 October 25, 1983) (hereinafter *Further Notice*).

[5] *See* H.R. Rep. No. 765, 97 Cong., 2d Session 37 (1982) (hereinafter *Conference Report*).

[6] A list of all entities that filed comments or replies is contained in Appendix. A.

transferability of MDS construction permits.

II. Public Interest Issues

A. Random Selection of MMDS Licensees

7. With two exceptions, the commenters favored using random selection to select Multichannel Multipoint Distribution Service permittees. Addressing the factors enumerated by Congress in the *Conference Report* and discussed in our *Further Notice*, the commenters agreed that it would be in the public interest for the Commission to use lotteries to select MMDS licensees. The commenters emphasized that lotteries would reduce the time, expense and delay associated with the traditional comparative hearing process. Many commenters stated that use of random selection is necessitated by the large number of MMDS applications filed and the need to expedite service to the public. Comparative hearings were said to be too costly and time-consuming and generally not effective in finding meaningful distinctions between competing, qualified applicants. In addition, several commenters stressed that the public would benefit from the use of random selection because the diversity of information available to a community would increase if MMDS systems were to become operational in the near future. One commenter also claimed that use of lotteries benefits smaller businesses; because participation in a lottery is less costly than participation in a comparative hearing, small businesses have applied for licenses to enter the MMDS industry. As stated by this commenter, this could increase the diversification of ownership in the MMDS industry.

8. Two commenters opposed the use of lotteries for awarding MMDS licenses. One of these, Ms. Stella Pappas, favored using a streamlined, paper hearing in order that applications proposing new and innovative uses for MMDS frequencies, such as High Definition Television (HDTV), would be given consideration by the Commission. *See* para. 11, *infra*. Another commenter, National Black Media Coalition, favored using streamlined, paper hearings in order that the few minority applicants who applied for MMDS licenses would not be foreclosed from receiving MMDS grants. However, National Black Media Coalition also stated that in small markets where no minorities had applied to be licensees, they would not oppose the use of random selection to award MMDS licenses.[7]

9. After review of the lottery statute,[8] the accompanying *Conference Report* and the comments, we conclude that using random selection instead of comparative hearings to award MMDS construction permits is in the public interest. We confirm the analysis advanced in the *Further Notice*, and find that a lottery would bring service to the public in the quickest way possible, with the least cost to the public and the applicants.

10. We conclude that the Commission should institute lotteries to choose among MMDS applicants, because all of the factors enumerated in the *Conference Report, supra* note 5 at 37, are present. These factors are: (1) Whether there are a large number of licenses available; (2) whether a new service is being initiated resulting in a large number of mutually exclusive applications for each license; (3) whether there is a significant backlog of applications; (4) whether employing a lottery would significantly speed up the process of getting service to the public; and (5) whether diversity of information sources would be enhanced. First, approximately 1,000 MMDS licenses are available.[9] Second, there are a large number of mutually exclusive applications for the newly allocated MMDS frequencies.[10] Third, there is a backlog of about 16,000 pending MMDS applications. In addition, in a practical sense, comparative hearings involving this many mutually exclusive applications would be extremely complicated and burdensome, and almost impossible to conduct on an expedited basis. Therefore, we conclude, fourth, that a lottery would significantly speed up the process of getting MMDS service to the public. Finally, the diversity of information available to a community will be affected by the selection procedure we will use for MMDS. Random selection will expedite the introduction of MMDS to the public and thus increase the number and diversity of communications sources available in a community. In summary, we conclude that the use of a lottery for MMDS will significantly benefit the public interest by expediting the initiation of MMDS service.

11. We further conclude that our adoption of random selection for MMDS will not result in the detriments alleged by those opposed. Lotteries will not preclude the use of MMDS frequencies for new and innovative technological uses. Multichannel MDS is an extremely flexible service, capable of meeting a variety of marketplace demands. Although MDS is now used primarily to distribute premium video entertainment programming, this use is not mandated by our rules. The fact that MDS has been used for different purposes in the past suggests new and different uses for MMDS facilities will evolve in the future. *See* 76 F.C.C. 2d 273, 279. Our rules allow MDS stations to render any communications service consistent with the Commission's Rules. For example, an MDS station can be used for data distribution or distribution of voice services. We also have added additional frequencies at 18 GHz for return channels to allow MDS to be used as a two-way communications service.[11] *See also* 47 CFR 21.903(b). We therefore believe that use of a lottery will not stifle development of innovative uses of the MDS spectrum, and we decline to treat proposals advancing new technological uses for MMDS any differently from other applications filed. If an applicant desires to serve customers proposing new uses for MMDS channels, such as HDTV, that applicant, if chosen to be a permittee, can reconfigure its service offerings in order to satisfy its customer's needs.[12] We are not persuaded that the best use of MMDS facilities in a particular community is better decided in a comparative selection process at this

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[7] National Black Media Coalition argues that the use of a lottery may result in the exclusion of minorities from participation in MMDS. It suggests that the Commission use comparative hearings and reopen the filing period for MMDS to enable more minority groups to apply. However, they also state that if the Commission approves a lottery for MMDS they should use minority preferences. *See* para. 12, *infra*.

[8] The Communications Amendments Act of 1982, Pub. L. 97-259, section 115, 96 Stat. 1087, 1094-95, enacted September 13, 1982, amended section 309(i) of the Communications Act of 1934, as amended, 47 U.S.C. 309(i).

[9] *See Further Notice*, 48 FR 49310. We reached this estimate by assuming that MMDS licenses would be available in all areas where we received single channel MDS applications.

[10] *Id.* We received about 16,500 applications. Most of them propose to serve the large metropolitan areas. Thus, we believe that only a few will not be mutually exclusive.

[11] Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules to Allocate Spectrum at 18 GHz for, and to Establish Other Rules and Policies Pertaining to, the Use of Radio in Digital Termination Systems and in Point-to-Point Microwave Radio Systems for the Provision of Digital Electronic Message Service, for other Common Carrier, Private Radio, and Broadcast Auxiliary Services, 54 Rad. Reg. 2d (P&F) 1091, 1096-97 (1983).

[12] We authorized permittees to exchange channels in order to provide wider bandwidth services. *See* Multichannel MDS Order, 94 F.C.C. 2d at 1247; *see also*, 47 CFR 21.901(d)(6).

Commission than in response to the market needs in the community.

12. That some minority applicants believe they would have a greater chance of obtaining licenses in comparative hearing proceedings is not sufficient reason to forego a lottery in view of its compelling benefits. The decision we reach here regarding the use of lotteries does not preclude minority applicants from receiving MMDS grants. In fact, because preferences will be awarded in MMDS lotteries, minorities may have greater chances of receiving MMDS licenses.[13] Thus, the concerns expressed by these applicants have been largely accommodated.

B. Random Selection of Single Channel MDS Licensees

13. Several commenters separately addressed the issue of whether we should use lotteries for selecting single channel MDS licensees. The majority of these commenters stated that random selection of newly filed single channel MDS permittees would be in the public interest. One commenter stated that the Commission should also include pending applications in any lottery held for single channel MDS facilities. Single channel MDS lotteries were necessary, many commenters said, because of the delay inherent in any comparative process. However, one commenter, Microband Corporation of America (Microband), did not concur with our proposal to select single channel applicants by random selection. Microband stated that random selection of single channel MDS applicants would be contrary to the intentions of Congress, because none of the four factors enumerated in the *Conference Report* applies to single channel MDS applications.

14. An analysis of the five public interest factors contained in the *Conference Report* indicates that a lottery for single channel MDS would not be in the public interest.[14] First, there are not a large number of licenses available. The Commission has already issued MDS construction permits and/or licenses in all major cities. Only a few frequencies are still available. Second, single channel MDS is not a newly initiated service. Consequently, there are only a few mutually exclusive situations that are pending before the Commission. In fact, there are now only eleven pending mutually exclusive cases in which a lottery could be used if we were to authorize one for single channel MDS.[15] Eight of these situations involve only two mutually exclusive applicants. In addition, we do not expect many new single channel MDS applications to be filed, because most cities have already been applied-for. Consequently, the use of comparative hearings to select single channel licenses would not be confusing, burdensome or overly time-consuming. In addition, there is no significant backlog of single channel MDS applications, and all eleven pending cases should soon be designated for hearing. Finally, we note that there has been a very high percentage of pre-hearing settlements in this service; we expect these settlements to continue. For these reasons, we decline to adopt a lottery to grant single channel MDS licenses.

III. Preferences

15. In our *Further Notice* we invited the public to comment on our analysis of whether perferences are statutorily required in an MDS lottery. In addition, we solicited comments on whether we legally can and should, pursuant to our general authority under our public interest mandate, use preferences in an MDS lottery even if we conclude that their use is not required. We received two dozen comments on the issue of minority and other preferences. Most of the commenters argued that preferences are not statutorily required and should not otherwise be awarded in an MDS lottery. Several commenters, however, disagreed and argued that preferences are statutorily required for MDS. Alternatively, they claimed that even if preferences are not mandatory, the Commission legally has the discretion to create such preferences for MDS and that the public interest would be furthered by so doing.

16. After re-evaluating this issue, we now conclude that Congress intended preferences to be awarded in MDS lotteries. The Congressional scheme contemplates that preferences be awarded in lotteries involving media of mass communications. Section 309(i)(3)(c)(i) defines the term "media of mass communications" for purposes of the lottery statute to specifically include multipoint distribution services and other services in which the licensee has editorial control. In the past we have felt that MDS licensing should not be subjected to preferences because MDS operators did not exercise editorial control.[16] However, upon further reflection, it has become apparent that Congress labeled MDS a "media of mass communication" for purposes of the lottery statute in section 309(i)(3)(c)(i) because it felt that, as presently constituted, MDS operators do have the ability to exercise editorial control over a substantial portion of the service. Pursuant to § 21.903(b)(2) (the fifty percent rule), an MDS operator may provide service to its affiliate for up to fifty percent of its total programming time. Congress felt that if such services were "treated by the Commission in the future strictly as common carrier services with no ability on the part of the licensee to exercise direct editorial control," then no preferences need be applied. *Conference Report* at 41. Accordingly, we will comply with the intent of Congress and award preferences in MMDS lotteries. Having reached this conclusion, we do not reach the questions of whether we have the authority to grant preferences as a matter of discretion, or whether granting any such preferences would be in the public interest.[17]

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[13] The number of applicants in an MMDS comparative hearing, and the procedural complexity resulting therefrom, and the costs involved may discourage all but the most financially resourceful applicants from participating. As the Conferees noted:

It is clear that the current comparative hearing process has not resulted in the award of significant numbers of licenses to minority groups. Many minority applicants are simply unable to participate in comparative hearings which often take a considerable period of time and require substantial economic resources. The Conferees believe that a lottery preference scheme will greatly speed the process of initial licensing awards, and will permit not only greater numbers of minority groups to apply for licenses, but also will result in the award of a greater proportion of available licenses to minorities than has been the case to date.

Conference Report, *supra* n.5, at 44.

[14] "The Conferees wish to emphasize their strong expectation that the Commission will exercise carefully its discretion to use a lottery system by making a finding that the public interest would be significantly benefited by using a lottery method instead of a comparative hearing." Conference Report, *supra* n.5, at 38.

[15] The Lottery Statute, *supra* n.8, empowers the Commission to use lottery procedures in any proceeding in which the first application was tendered for filing on or after August 14, 1981, the effective date of the statute. The applications in these eleven situations were filed on or after this date.

[16] *See Further Notice*, 48 FR 49311. *See also*, Amendment of the Commission's Rules to Allow the Selection from Among Certain Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings, 93 F.C.C.2d 952, 978–979 (1983), *recon. denied*, 49 FR 49466 (Dec. 20, 1984) (hereinafter cited as *Lottery Order*).

[17] Since we have decided to treat MMDS as a Media of Mass Communications, it appears appropriate to consider whether we should continue to regulate MMDS under Part 21. Therefore, we intend to issue a further Notice of Proposed Rulemaking to consider whether another regulatory scheme would be more appropriate for MMDS. Because we intend to reevaluate our MMDS regulatory scheme, we will defer consideration of the future applicability of the MMDS editorial control rules so that both subjects may be considered together. Our primary proposal will be to allow MMDS operators to fully program their facilities and to change the MMDS regulatory

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17. We note that our decision to award preferences in an MDS lottery represents a departure from our previous indications. In our *Lottery Order* we stated that present MDS licensees would be eligible for diversity preferences in low power television lotteries without regard to their MDS holdings. We are also aware that our conclusion herein departs from that set forth in our Notice of Proposed Rulemaking.[18] Nevertheless, that Notice gave full indication that we were considering once again our obligation to provide preferences under the Act.[19] Based upon both the comments received as well as upon a thorough review of the Act, our rules, and applicable precedent, we have now concluded that, in light of the fifty percent rule, Congress intended that we grant preferences in MDS lotteries. Such a re-evaluation is clearly within our prerogative, when it is necessary for us to fulfill our statutory mandate.[20]

18. Microband argues that a grant of minority preferences would violate the due process clause of the fifth amendment.[21] According to Microband, the holdings in *Regents of the University of California* v. *Bakke*, 438 U.S. 254 (1978), *Fullilove* v. *Klutznick*, 448 U.S. 448 (1980), and *Califano* v. *Webster*, 430, U.S. 313 (1977), require that laws which grant preferential treatment on the basis of immutable characteristics such as race or gender are constitutional only if Congress has expressly acted to remedy the continuing effects of past discrimination. We have previously held that the preference scheme itself does not violate the fifth amendment.[22]

IV. Acceptability of Applications

A. Threshold Standards

19. As we stated in our *Further Notice*, all applications must be acceptable for filing in order to be included in a lottery. 48 FR 49311. We will review all applications prior to a lottery to determine that the criteria set forth in § 21.20 of our rules are met. 47 CFR 21.20. In addition, we will require all multichannel applicants to meet the requirements for Multichannel MDS systems specified in our *Multichannel MDS Order*, 93 F.C.C.2d at 1262–1266. In accordance with the majority of comments received, we find that prescreening will ensure that all applicants included in a lottery possess the minimal qualifications necessary to be MMDS licensees. Applications that are found to be acceptable for filing will be accepted for inclusion in a lottery and will be placed on public notice.[23]

B. Real-Party-In-Interest Certification

20. In our *Further Notice*, we solicited comment on whether we should require parties to file a real-party-in-interest certification prior to their inclusion in a lottery. We recognized that requiring a certification from all Multichannel MDS applicants could help to limit the practice of "stuffing the ballot box" and ensure that no one applicant had more than one chance in a lottery. In addition, certification could help prevent dilution of minority and diversity preferences. We received mixed comments on this issue, with the majority in favor of requiring the certification. These commenters felt that § 21.901(d)(2), limiting entities to a single four-channel application in each service area, was not sufficient to deal with the problem.[24] Home Box Office (HBO) was among the commenters opposed to real-party-in-interest certifications. HBO argued that § 21.901(d)(2) was adequate to ensure that there would be competitive licenses in each area. Other commenters requested that the Commission clarify § 21.901(d)(2) to specify which interests constitute "similar cognizable interests" thereby violating the rule.[25] A few commenters, however, stated that although certifications are acceptable, they are unnecessary because Questions 20 and 25(b) of the construction permit application form, FCC Form 435, in effect comprise a real-party-in-interest certification.[26] These commenters stated that if the Commission requires certifications, the MMDS application process might be further delayed.

21. We have decided not to require MMDS applicants to file real-party-in-interest certifications. We believe that § 21.901(d)(2) is sufficient to prevent abuse of the lottery system. Applicants who do not comply with the "one to a market rule" in order to increase the probability that their applications will be selected in a lottery must reveal this fact in response to Questions 20 and 25(b) of the construction permit application form. Real-party-in-interest certifications would only duplicate the statements applicants have made to the Commission in their applications. Accordingly, we believe that requiring certifications would not best serve the public interest in expediting the initiation of MMDS service.

22. Section 21.901(d)(2) provides that the partners, owners, trustees, beneficiaries, officers, directors or stockholders holding more than one percent of an entity's stock may not have an interest in the applicant for, or licensee of, either the same group, or the other group of channels in the same area. 47 CFR 21.901(d)(2).[27] In addition,

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classification to non-common carrier. In the meantime, however, since it is important to get these services to the public as quickly as possible and since there can be no assurance that our present policies will change, we will proceed to process the applications on hand under our current policies. In addition, we are not resolving the question here of whether any Title III broadcast responsibilities apply to MDS licensees. *See, NAB* v. *FCC*, 740 F. 2d 1190 (D.C. Cir. 1984); *accord United States Satellite Broadcasting Co.* v. *FCC*, 740 F. 2d 1177 (D.C. Cir. 1984). We will also address this issue in a subsequent proceeding.

[18] Further Notice, 48 FR 49309 (October 25, 1983).

[19] *Id.* at 49311.

[20] 47 U.S.C. 303(r) (Commission shall make such rules and regulations as necessary to carry out the provisions of the Act); *accord id. section 154(i); see FCC* v. *American Broadcasting Co.*, 347 U.S. 284, 289 (1954) (Commission would be "remiss in its duties" if it failed, in the exercise of its licensing authorities, to implement the Act); *see also United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 201–02 (1956). In any event, regulations, interpretations and practices are subject to change "through exercise by the administrative agency of its continuing rulemaking power." *Helvering* v. *Reynolds*, 313 U.S. 428, 432 (1941) (Prior agency construction of statute is not "so embedded in the law that only Congress can effect a change."); *accord Helvering* v. *Wilshire Oil Co.*, 308 U.S. 90, 97–98 (1939). This is especially true when the regulation is interpreting a Congressional enactment which has been on the books during the period in question, as opposed to regulations that are themselves legislative in nature. *See* Annot., 153 A.L.R. 1188, 1191–92 (1944), and cases cited therein.

[21] Comments of Microband at 36–37.

[22] Lottery Order, 93 F.C.C.2d at 974–75, *reconsideration denied*, 47 FR 49 468.

[23] *See* para. 27, infra.

[24] Section 21.901(d)(2) states:

The E-group channels will be assigned to a single applicant in each area and the F-group channel will be assigned to a different applicant in that area. In such areas, each applicant may submit only a single application for either the E-group channels or the F-group channels but not both. The partners, owners, trustees, beneficiaries, officers, directors or stockholders holding more than one percent of an entity's stock, or any other person or entity holding a similar cognizable interest in the applicant for, or licensee of, one group of channels in any area, shall not have a cognizable interest in the applicant for, or licensee of, either the same group, or the other group of channels in the same area.

[25] Other commenters suggested that (1) specific statements from applicants should be required to identify the relationship between applicants who have filed in the same market and are represented by a common source; (2) the Commission should enforce "the one to a market rule" by imposing fines or forfeitures for violations; and (3) the Commission should allow pre-lottery petitions to deny on real-party-in-interest violations only.

[26] *Question 20*, FCC Form 435 asks: "Is the proposal contained in this application inconsistent with any of the Commission's Rules?"

Question 25(b) inquires: "Are there any agreements or understandings existent or under negotiations which affect the ownership or control of the facilities proposed herein, or any right or interest therein by any person not party to this application?"

[27] One commenter stated that the "one percent rule" is not rational because it is not clearly related to the Commission's regulatory goals. In addition, this commenter stated that the rule is not easily

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the rule prohibits "any other person or entity holding a similar cognizable interest in the applicant for, or license of, one group of channels in any area" from having an interest in the applicant for, or licensee of, either the same group, or the other group of channels in the same area. Although many of the commenters request that we narrowly define the term "similar cognizable interest", to include, for example, spouses or minor children, we decline to do so here. We do not believe that creating presumptions of related interests will prevent those who seek to increase their chances in a lottery from filing "related" applications. In addition, we recognize that parties can have a commonality of interest with respect to applications filed in a particular market without necessarily having a cognizable relationship to one another. We therefore believe that in order to prevent applicants from unfairly prejudicing the lottery, we must address the real-party-in-interest problem on a case-by-case basis. Accordingly, we will examine any real-party-in-interest issues when we review the petitions to deny filed against the tentative selectee in each market. We wish to emphasize, however, that if a selectee is found to have violated the "one to a market rule", that applicant's MMDS application will be dismissed with prejudice. In addition, for an egregious violation of the real-party-in-interest rule, we will use other remedies available to us, including dismissal with prejudice of all applications filed by that party in all markets. Criminal prosecution under 18 U.S.C. 1001 is also sanctioned for any willful false statement made by an applicant on this application. We believe that these remedies will preserve the integrity of the lottery process and ensure that the MMDS lottery proceedings will be fair and equitable for all applicants.

enforceable. MDS applicants are only required to disclose their 10 largest shareholders. In addition, the identity of stockholders of public companies is not always known because stock is often held by brokers in a "street name." Accordingly, many publicly held companies may be disqualified from applying for MMDS licenses because of the possibility that a brokerage firm holds over 1% of their stock. This commenter concludes that § 21.902(d)(2) would make more sense if it were limited to ownership interests that the agency requires to be disclosed. Although we recognize that "street names" may cause a problem in enforcing the "one percent rule", we will deal with such problems as they arise on a case-by-case basis. As to the rule itself, it is used in other services for purposes of determining interests. *See, e.g.*, 47 CFR 93.54, note 2; *id.* § 76.501, note 3.

V. Procedural Issues

A. Lottery by Channel Group

23. In our *Further Notice* we stated that we intended to consider in one proceeding all multichannel MDS applications that propose to serve the same area regardless of the channel group for which the applicant applied. That is, we intended to select applicants in a lottery by area, not by channel group. We believed that this procedure would expedite the selection process by enabling us to hold one lottery, instead of two, for each service area. The overwhelming majority of comments, however, opposed a consolidated lottery for all applicants in one service area.[28] Most of the commenters supported two lotteries in each service area, one for the E-group of channels and one for the F-group. The commenters stated that a consolidated lottery procedure would penalize applicants who extensively researched their proposals and selected either the E-group or the F-group of channels based on interference studies with ITFS stations. Many commenters complained that a consolidated lottery was contrary to § 21.901(d)(3) requiring applicants to select a particular channel group. They argued that the Commission should not impair their expectations by disregarding the time, expense and effort they expended in making their frequency designations. Other comments stressed that a consolidated, single area lottery could increase the number of mutually exclusive applications in non-Metropolitan Statistical Areas and create a "gridlock" of overlapping proposals.

24. The comments have persuaded us to reject adoption of a consolidated lottery proceeding for each service area. We believe that the public benefit that would accrue as a result of having fewer lotteries is outweighed by the potential prejudice to those applicants who carefully selected the channel group they applied for. In addition, while we recognize that one lottery proceeding could expedite the processing and selection of MMDS applicants, a single area lottery could also create mutually exclusive situations which would not otherwise exist. Therefore, we find that our initial proposal would not best serve the public interest. Accordingly, we intend to hold two lotteries for each service area—one for the E-group applicants and one for the F-group applicants.

25. Finally, we wish to point out that it was never our intention to consider a non-mutually exclusive applicant in the same proceeding with mutually exclusive applicants in the same service area. In those situations where we received a single application for one channel group and several applications for the other channel group we always intended to consider the single applicant to be non-mutualy exclusive with the multiple applicants for the other channel group. In addition, in situations where only two applicants applied for one channel group and there were no applicants for the other channel group, we will assign one of the two applicants to the other group. We believe that this will serve the public interest by allowing us to issue permits to both applicants. *See* 47 CFR 21.901(d)(3).

B. Filing Procedures—Petitions to Deny

26. In our *Further Notice* we stated that we intended to use the common carrier lottery procedures as outlined in the *Lottery Order*. We invited the public to comment on these procedures and their application to MDS lotteries.[29]

27. We received many comments on this issue. The majority of the commenters addressing this issue favored a post-lottery petition to deny process, and only against the tentative selectee, to avoid the need for applicants to prepare a great number of petitions that will never be evaluated. These commenters stated that pre-lottery petitions to deny would result in an avalanche of pleadings, thus imposing an unnecesary burden on both the applicants and the Commission. In most cases, they argue, petitions against all but the tentative selectee would ultimately become moot.

28. Several commenters, however, felt that the Commission should use a pre-lottery petition to deny procedure. Those favoring this method argued that pre-lottery petitions would serve to weed out unqualified applicants and would be less expensive and less burdensome for small carriers.[30] In addition, there were

[28] Only one set of comments favored selecting E and F group permittees in the same proceeding. Joint Comments of American Cable Systems of Florida, Inc., Area Television Associates, Cable Services, Inc., Century Microwave Corp., Chasco Cablevision Ltd., Daniels MDS Company, Diversified Communication Engineering, Eastern Shore Television, Echonet Corp., Harmon & Company, LOR United Partnership, McDonald Group, Inc., Multichannel, Inc., Omaha Cablevision, Inc., Sports and Cable Entertainment Corp., Summit Communications, Inc., United Paging Corporation and Valley Antenna Systems, Inc.

[29] The lottery rules that apply generally to common carrier services provide for the filing of petitions to deny at the public notice stage, prior to lottery. *See* Lottery Order, 93 F.C.C.2d at 996.

[30] Comments of American Box Office, Inc. (ABO) at 3. ABO stated that post-lottery petitions would result in too much "nit-picking" thus causing greater legal fees to be incurred by those concerned with the qualifications of the tentative selectee.

a few commenters who supported a dual petition process—pre-lottery petitions limited to the basic qualifications of lottery entrants or real-party-in-interest violations and post-lottery petitions against the tentative selectee only.

29. We have decided to adopt the approach set forth in the *Cellular Lottery Order* and accept petitions to deny, against the tentative selectees only, after the lottery is conducted.[31] We reject the use of pre-lottery petitions, either alone or in conjunction with post-lottery petitions. Because of the number of MMDS applicants, evaluation of pre-lottery petitions would be too time-consuming and of little benefit in expeditiously selecting qualified MMDS licensees. We do not agree that small carriers will incur greater legal expenses as a result of our decision to use a post-lottery petition to deny procedure. Post-lottery petitions will actually save these applicants the expense of preparing and filing petitions against all of the other competing applicants when only a small portion of those petitions will ever be evaluated by the Commission.

30. We find that this post-lottery petitioning process will best serve the public interest.[32] It will enable the public to focus their attention upon the tentative selectees and subject their applications to critical analysis. This serves the public interest by helping to ensure that only tentative selectees who are technically and financially qualified will be chosen to be MMDS licensees.[33] Accordingly, we are amending our rules to provide that petitions to deny applications shall be filed within 30 days from the date of the public notice announcing the tentative selectees, as that date is defined in § 1.4 of the Rules. A consolidated reply to these petitions by the tentative selectee will be due within 15 days.

C. Lottery Procedures

31. Other than the timing of petitions to deny and the application of preferences to be discussed below, the lottery procedures to be used for MMDS generally follow the procedures set forth in the *Lottery Order*, 93 F.C.C.2d at 996. However, in order to clarify the application processing scheme and to set forth the changes adopted for MMDS, we will review the procedures here.[34] First, applications that are not mutally exclusive will be processed and acted upon. Then, applications that are found to be mutually exclusive will be pre-screened for their acceptability for inclusion in a lottery. If found acceptable, these applications will be placed on public notice and the public will be given 30 days to inspect the applications. The public notice will also announce the date and time of the lottery for applications in these markets. Applicants who wish to settle will be required to notify us at least two business days before the date of the lottery.[35] Applicants who wish to claim a preference must do so in writing for each application within 30 days of publication of this Order in the **Federal Register.** Because of the large number of MMDS applications, we will strictly enforce the 30-day requirement. This lottery will be held under the direction of the Office of the Managing Director. For each channel group in each market, the random selection will choose a tentative selectee. After the lottery is conducted, we will issue a public notice announcing the tentative selectees. Parties will have 30 days from the date of the public notice announcing the tentative selectees as that date is defined in § 1.4 of the Rules to file petitions to deny against the tentative selectees only. The tentative selectees will have fifteen days to file their consolidated replies.[36] We will then review the petitions filed against the selectees. If we find that the tentative selectees are qualified, we will grant their applications. If, however, a substantial and material question of fact is raised, the application will be designated for hearing in accordance with § 1.823 of the rules. If any selectee is found unqualified, we will repeat the above procedures until we grant one of the applicants an authorization for that market.

D. Preferences

32. Section 309(i)(3)(A) of the Communications Act, 47 U.S.C. 309(i)(3)(A), requires that:

> The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection used for granting licenses or construction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.

In the *Lottery Order* we established rules to be used to award preferences in lotteries for media of mass communications. We will use those rules as modified herein to award MMDS preferences.

33. The rules adopted are in accord with the preference scheme in the *Conference Report.*[37] In particular these rules provide for the award of two types of preferences, a diversity preference and a minority preference.[38] For the purpose of awarding diversity preferences all mutually exclusive applicants are divided into three groups. The first group (group 1) consists of applicants that have no controlling interest in any media of mass communications. Members of this group receive a 2 to 1 relative preference. The second group (group 2) consists of those applicants that have a controlling interest in either one, two, or three media of mass communications.

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[31] *See* Allowing Selection From Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings, 49 FR 23628, 23643 (June 7, 1984) (hereinafter *Cellular Lottery Order*).

[32] In the Lottery Order we stated that petitions to deny must be filed before the lottery in common carrier services. 93 F.C.C.2d at 995, 996. We believed that this would result in the most efficient and effective conduct of common carrier lotter proceedings. However, we also stated that we would not hesitate to make changes if it became apparent that this procedure was not best serving the public interest.

[33] Section 309 of the Act requires that petitions to deny contain specific allegations of fact sufficient to raise a substantial and material question that grant of the petitioned application would be inconsistent with the public interest. Accordingly, we caution that only issues of a substantial or material nature should be raised in petitions against the application of the tentative selectee. Because we have decided to use random selection procedures to expedite granting MMDS licenses, we believe that petitions should be limited to basic qualifications issues. *See*, e.g., 47 CFR 21.4, 21.13, 21.15, 21.17. The public interest is not served by petitions which raise minor insubstantial issues or legal arguments that are inconsistent with established Commission precedent.

[34] Our present intention is to process mutually exclusive applications according to the number of applications filed in a particular market. The markets having the greatest number of applications will be processed first and subsequent markets taken in order of diminishing number. We do not intend to draw a series of service areas first, taking cooperation between applicants and natural barriers into account. This procedure, as suggested by one commenter, would nor expedite service to the public and would be very time consuming for the Commission's staff.

[35] Settlements are discussed in paragraphs 38–39, *infra*.

[36] Any amendments required by § 1.65 of the Rules must be filed by the tentative selectees within 14 days from the date of public notice announcing their selection. *See* 47 CFR 1.4. This will give prospective petitioners notice of any significant changes prior to the filing of petitions to deny.

[37] Conference Report, *supra* n.5, at 46–49.

[38] For purposes of this Order, preferences are those delineated by Congress and contained in §§1.621, 1.622 and 1.623 of our Rules. 47 CFR 1.621, 1.622, 1.623. The Commission is now considering preferences for women applicants in lotteries. *See* 95 F.C.C.2d 432 (1983) (Third Notice of Proposed Rulemaking in Docket 81–768). The results of that proceeding will be applicable to all MMDS lotteries held after that proceeding is completed.

Members of group 2 receive a 1.5 to 1 relative preference. The third group consists of those applicants that have a controlling interest in four or more media of mass communications *or* have such an interest in one more media of mass communications serving the area in which the applicant is seeking a license. Members of this group receive no preference. Finally, if the sum of the selection probabilities of all the applicants in group 1 and group 2 is less than 0.4, the selection probabilities of the applicants in these groups will be scaled up so that the sum equals 0.4.

34. In the *Lottery Order* we adopted a new rule, in which we listed the media that would be considered media of mass communications for the purposes of awarding diversity preferences. 47 CFR 1.1621. Those included are daily newspapers, television stations, AM or FM radio stations, certain direct broadcast satellite transponders and cable television systems. For the reasons stated in the *Lottery Order* we specifically declined to include MDS in the definition.[39] Because of our decision in this Order to add MDS to the definition of media of mass communications for the purpose of the lottery statute, we are revising § 1.1621 accordingly. This action is prospective and will apply to any lottery announced after the date of publication of this Order in the **Federal Register**. Only those applicants that claim a diversity preference after the effective date of this order must consider control of an MDS facility in determining whether they are eligible for a diversity preference. Thus control or either a single channel [40] or a multichannel MDS construction permit or license will be considered control of a medium of mass communications for purposes of determining diversity preferences in any future MMDS or other lottery.

35. Because MDS is a medium of mass communications for the purpose of awarding lottery preferences, we are also adding the protected service area boundary of MDS stations to § 1.1622(e). We are taking this action to comply with the requirement that no diversity preference be awarded to an applicant that controls an existing medium of mass communications in the area for which it is applying for another such facility.

36. The second type of preference to be awarded is a minority preference. Those applicants of which more than 50% of the ownership interest is held by minority groups are to be awarded a 2 to 1 relative preference. 47 CFR 1.1622. An applicant that qualifies for both a diversity preference and a minority preference is awarded both preferences. 47 CFR 1.1622(c).

37. Section 1.1622(a) requires that all applicants desiring a preference must claim such a preference in their applications. Because we had not decided whether MDS was a mass communications medium at the time the MMDS applications were filed, we did not provide for the inclusion of this information in the MMDS applications. We will allow all MMDS applicants to amend their applications to claim any preferences.

38. Applicants wishing to claim any preferences may do so by submitting the appropriate information within 30 days of the date of publication of this order in the **Federal Register**. This information should be submitted using Section V of FCC Form 346. Section V is reproduced as Appendix C of this Order. Applicants are hereby notified that in filling out page 3 of Section V (FCC Form 346, page 8) control of an MDS construction permit or license should also be included in determining whether the applicant is eligible for any diversity preference.

39. As noted in the *Lottery Order*, improper preference claims are a violation of Federal law. 18 U.S.C. 1001; *see Lottery Order*, 93 F.C.C.2d at 967.

VII. Miscellaneous Issues

A. Settlements

40. Several commenters suggest that the Commission afford settling MMDS applicants the cumulative number of chances in a lottery that they would have had if no settlement agreement had been reached. They believe that this proposal will provide applicants with added incentive to settle thereby fostering rapid implementation of service and reducing or eliminating administrative burdens.

41. The Commission recently adopted this proposal in the *Cellular Lottery Order*, 49 FR 23638, to allow settling parties their cumulative probability to reflect any partial settlements. We see no reason why we should not adopt the same policy here. Settlements are in the public interest, because they reduce or eliminate administrative burdens, delay and expenses. In addition, they allow many different parties to contribute to and to participate in MMDS service. Affording settling parties their cumulative probability in a lottery serves the public interest especially where only two carriers can be licensed in each market.[41] However, as we stated in the *Cellulare Lottery Order*, we will not recognize "pre-filing settlements" for the purposes of receiving a cumulative chance. There is no way for us to verify the intent of parties who joined together in pre-filing joint ventures. *Id.* Accordingly, in order to be eligible for a cumulative chance, each applicant must have filed an individually acceptable MMDS application.

B. Set-Asides

42. Microband proposes that the Commission set aside one channel group for existing MDS licensees. Microband proposes that in conducting lotteries, two applicant groups be established for each service area—one for each available channel group. One pool of applicants would consist of all licensed and operating MDS carriers that applied to serve the area in question and the other would consist of all other applicants that applied for that service area. Thus, the channel groups originally applied for and the areas where existing carrier-applicants are licensed would not be taken into consideration. Microband believes its approach would assure that at least one MMDS group of frequencies in each service area would be rapidly constructed and operated by a carrier with technical and engineering experience.

43. Essentially Microband tries to apply the rationale for the retention of the wireline set-aside in the *Cellular Lottery Notice* to MMDS.[42] The two are unrelated. In addition, in our *Multichannel MDS Order* we declined to adopt a similar proposal advanced by Microband. For the same reasons, we will not adopt Microband's proposal here.

44. Another set-aside proposal was advanced by National Black Satellite Network (NBSN). NBSN asks that the Commission set aside one complete channel group of four MDS frequencies for its satellite based system. We decline to adopt this proposal. While we encourage innovative, technological uses of the MMDS spectrum, it has not been demonstrated that a set-aside for this purpose is in the public interest.

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[39] 93 F.C.C.2d at 978–79.

[40] If a single channel MDS licensee or permittee desires to receive a diversity preference, it may do so by certifying that it will give up those MDS authorizations that would have prevented it from receiving the diversity preference. The authorizations must be surrendered prior to the grant of the MMDS construction permit.

[41] We wish to note, however, that if a settlement results in the resulting applicant no longer being entitled to receive a preference, we will recompute the preferences for that channel group and issue a new notice.

[42] Amendment of the Commission's Rules to Allow the Selection From Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings, 48 FR 51493 (1983).

NBSN is not precluded from participating in the lottery and, if selected, it can still utilize the spectrum to make its system operational.[43] As we have previously stated, Accordingly, no set-aside will be granted.

C. Financial Recertification

45. One commenter suggested that all applicants be required to submit a letter prior to the lottery recertifying their financial qualifications. This commenter stated that without financial recertification, the initiation of MMDS service could be delayed because a successful applicant might no longer have the available funds to construct and operate its system. We decline to adopt this proposal. Financial qualfication issues can be adequately raised in petitions to deny following the lottery and the selection of a tentative permittee. The Commission will review any financial qualification issues at the time it reviews the petitions against the tentative selectee.

D. Trafficking

46. In the *Multichannel MDS Order* we amended § 21.40 of our rules to allow the free transfer[44] of all Domestic Public Fixed Radio station licenses except those licenses that were obtained via the comparative hearing process. Such licenses may not be freely transferred until the station has been licensed for at least one year. We also stated our intention to continue to apply the anti-trafficking policy to construction permits. In the *Further Notice*, we acknowledged that certain language in the amended § 21.40 might be subject to differing interpretations and we therefore proposed to add clarifying language to the rule.

47. Several commenters took our proposal to clarify § 21.40 as an opportunity to comment on the trafficking issue. The MDS Industry Association (MDSIA) argued that the Commission should allow the free transferability of MMDS construction permits. The rationale for the MDSIA position was that many MMDS permittees were likely to be inexperienced and not financially capable of constructing the facilities in a timely manner and that the public interest would be better served by allowing such permittees to freely transfer their construction permits to more experienced and better capitalized entities that would construct the facilities more quickly. Revcom, on the other hand, although agreeing with MDSIA's contention that many MMDS applicants may be inexperienced and not seriously interested in operating an MMDS station, argues that the Commission's response should be to redouble its efforts to prevent trafficking.

48. Our policy against trafficking in authorizations for facilities that have not been constructed is based on our conclusion that it is not in the public interest to allow entities to obtain such authorizations on the basis of representations to this Commission that the facilities will be constructed by the applicant in a timely manner and then allow the permittee to assign, transfer or otherwise dispose of the authorization for a profit without ever constructing the facility. To allow such activity would invite the filing of applications by entities that have no intention of even constructing a facility but rather are interested only in selling the authorization for a profit. This result is especially likely in those services in which permittees are selected by lottery, where the cost of filing an application is low and the comparative hearing costs have been eliminated.

49. In addition, we believe that allowing the free transferability of MMDS construction permits would be contrary to the policy behind the lottery preference scheme. The Conference Report contained the following language concerning this issue:

> The Conferees note that this carefuly designed preference scheme could be undermined by the rapid re-assignment for transfer of stations, construction permits, or licenses granted by a lottery. Thus, it is the firm intent of the Conferees that for any mass communications media service in which the Commission determines use of a lottery is appropriate, it should retain its present anti-trafficking rules (47 CFR 73.3597 (1981)) or devise similar protections to help ensure that the very purposes sought to be achieved by the preference scheme be fulfilled.
>
> Moreover, the Commission should require that the applicant that is actually awarded the license certifies that they have not entered into any agreement, explicitly or implicit, to transfer to another party after a period of time any station construction permit or license awarded. If those eligible for preferences were simply applying for licenses for the purpose of obtaining a quick profit on the sale of the station once the license is awarded, the entire lottery preference mechanism would be undermined.[45]

In the Lottery Order, we recognized that such concerns were valid and as a result concluded that a licensee that was the beneficiary of a lottery preference should be subject to the same one year holding period that applies to licensees that received their authorizations after a comparative hearing.[46] We see no reason not to apply the same policy to successful MMDS applicants.

50. In summary, we reject MDSIA's suggestion that we allow the free transfer of MDS construction permits. Rather, we will allow the transfer of an MDS construction permit only if the transfer is consistent with our anti-trafficking policy. In addition, we will require that MDS facilities that are authorized after a comparative hearing or after a lottery in which the successful applicant received a preference be held for one year after commencing operations before such facilities may be freely transferred. We are by this order modifying § 21.40 of our rules to reflect these changes.

Conclusion

51. We believe that the policies and rules set out in this Order provide the means for MMDS licensees to meet what appears to be a substantial demand for MMDS. Because of the large number of applications and the time required to process those applications, we conclude that a lottery will bring MMDS to the public as expeditiously as possible with the least cost to the applicants and the Commission. In addition, because we conclude that Congress intended that we grant preferences in MMDS lotteries, minority and diversity preferences will be granted as set forth in this Order.

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[43] *See* para. 11, *supra*. In addition, we are awarding preferences to minorities in MMDS lotteries and thereby increasing the probability that minorities will receive MMDS grants.

[44] by the term "free transfer" we mean that the transfer will not be subject to the review procedure described in § 21.40 of the rules, the Domestic Public Fixed Radio Service anti-trafficking rule. The Commission has defined trafficking as speculation, barter or trade in licenses or construction permits. Applications for Voluntary Assignments or Transfers of Control, 32 FCC 2d 689 (1962). The Commission's policy is to prohibit profit-taking from the transfer of assignment of a construction permit. Applications for Voluntary Assignments or Transfers of Control, 52 Rad. Reg. 2nd (P&F) 1081, 1089 (1982). Section 21.40 is an anti-trafficking provision. It describes the circumstances under which the Commission will review proposed transfers or assignments of control to insure that "the proposed assignor or transferor has not acquired an authorization . . . for the principal purpose of profitable sale rather than public service." In particular § 21.40 states that all proposed transactions that involve the transfer or assignment of common carrier licenses or construction permits of facilities that were authorized as a result of a comparative hearing and have been operated less than a year, or involve facilities that have not been constructed, will be reviewed to determine if the circumstances indicate trafficking is occurring. If the Commission determines that trafficking is occurring it will not authorize the transfer.

[45] Conference Report, *supra* n.5, at 45–46.

[46] 93 FCC 2d at 973.

Regulatory Flexibility Act—Final Analysis

52. *Need for and Purpose of Rules.* This action will allow lotteries to be used instead of comparative hearings to choose among mutually exclusive MMDS applicants. This action is expected to greatly reduce the delay, lower the cost and speed and process of granting licenses in mutually exclusive cases.

53. *Issues Raised by the Public in Response to the Initial Analysis.* One commenter pointed out that the use of lotteries benefits small business, because participation in a lottery is less costly than participation in a comparative hearing. We agree that the institution of a lottery system will generally benefit small businesses in this manner. In addition, we are granting preferences to both minorities as well as to those for whom a grant would increase the diversification of ownership of media of mass communications. To the extent that small business applicants receive either or both preferences, this order would increase the chance that small business will receive MMDS authorizations.

54. *Alternatives that would lessen impact.* We have considered alternative approaches to a lottery such as streamlining the comparative hearing or utilizing auctions. Streamlining the comparative process is insufficient to achieve our goal of expediting MMDS service to the public and is far more costly. We decline to use an auction because it is unclear whether we have the authority to hold an auction while the authority to conduct lotteries is explicit.

Ordering Clauses

55. Authority for this rulemaking is contained in sections 1, 4 (i) and (j), 303, 309, 403 of the Communications Act of 1934, as amended, and Section 553 of the Administrative Procedure Act.

56. Accordingly, it is ordered, that Parts 1 and 21 of the rules are amended as specified in Appendix B. The amendments adopted in this Order governing the implementation of random selection procedures are either procedural in nature, *see* 5 U.S.C. 553(d)(1), or mandated by statute and therefore we find good cause that they become effective immediately upon publication of this Order in the **Federal Register.**

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico

Secretary.

Appendix A

Parties Filing Comments

Affiliated MDS Corporation, *et al.*
American Box Office, Inc.
American Cablesystems of Florida, Inc., et al.
Broadcast Data Corporation
Channel View, Inc.
Colony Productions, Inc., *et al.*
Contemporary Communications Corporation
Delta-Band Services, Ltd.
Electronics, Missiles & Communications, Inc. (EMCEE)
Robert L. Hilliard
Home Box Office, Inc.
Honorable John O. Dingell, Timothy E. Wirth, Edward J. Markey, Mickey Leland, Cardiss Collins, Mathew Rinaldo
Hubbard Broadcasting, Inc., *et al.*
Ledford and Hanna
MDS Industry Association
Microband Corporation of America
Microwave Communications Association, Inc.
Multi-Channel MDS, Inc.
Multi-Channel Telecommunications, *et al.*
Multicom Ventures
Multipoint Television Distributors, Inc.
National Black Satellite Network
Ms. Stella Pappas
Private Networks, Inc.
REVCOM
Satellite Broadcasting Corporation, *et al.*
Satelite Signals of New England Inc., *et al.*
Sunbelt Cable Corp. & Whitney Communications Corporation
Tanner & Associates
T/V Communications Association
Universal Telecommunications Network, Inc.
Warmath Communications, Inc.
Western Tele-Communications, Inc.

Reply Comments

American Women in Radio and Television, Inc.
Capital Cities Communications, Inc.
Microband Corporation of America
National Black Media Coalition
Private Networks, Inc.
Warmath Communications, Inc.

Appendix B

Parts 1 and 21 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

Subpart E—Complaints, Applications Tariffs and Reports Involving Common Carriers

1. A new subheading is added to appear just before § 1.821, and § 1.821 is revised to read as follows:

Grants By Random Selection

§ 1.821 Scope.

Where action on applications is permitted by the Chief, Common Carrier Bureau, under delegated authority, the provisions of this section, including provisions incorporated by reference, shall apply to applications for permits and licenses in the following services:

(a) Public Land Mobile Service,

(b) Domestic Public Cellular Radio Telecommunications Service,

(c) Multichannel Multipoint Distribution Service (MMDS).

2. Section 1.823 is retitled "General Selection Procedures," redesignated as § 1.822 and paragraph (a) is revised as follows:

§ 1.822 General selection procedures.

(a) Mutually exclusive applications for permits and licenses in the services specified in § 1.821 may be designated for random selection according to the procedures established for each service. Following the random selection, the Commission shall determine whether the applicant is qualified to receive the permit or license. If, after reviewing the tentative selectee's application and pleadings properly filed against it, the Commission determines that a substantial and material question of fact exists, it shall designate the qualifying issue(s) for an expedited hearing.

* * * * *

4. A new § 1.823 is added to read as follows:

§ 1.823 Random section procedures for the Public Land Mobile and Domestic Public Cellular Radio Telecommunications Services.

(a) *General Procedures.*—If there are mutually exclusive applications for an initial license, the Commission may use a random selection process. Each such random selection shall be conducted under the direction of the Chief of the Common Carrier Bureau. The random selection shall pick a tentative selectee and then repeat the random selection process with the remaining applicants, so that, in the event that the tentative selectee's application is denied, the other applicants will be ranked in order as alternative selectees. No preferences shall be awarded to participants.

Following the random selection, the Commission shall announce the tentative selectee and determine whether this applicant is qualified to receive the license. If the Commission determines that the tentative selectee is qualified, it shall grant the application.

(b) *Petitions to Deny.*—(1) *Public Land Mobile Service.* Petitions to Deny and other pleadings may be filed against applications for authority in the Public Land Mobile Service but will not be reviewed prior to conducting the random selection. Petitions filed against the tentative selectee's application will be reviewed after the tentative selectee is announced. (See § 22.30 for other requirements regarding Petitions to Deny and responsive pleadings.)

(2) *Cellular Radio Telecommunications Service.* In the Cellular Service, Petitions to Deny may be filed only against the tentative selectee within 30 days of the Public Notice announcing such tentative selection. A consolidated reply may be filed within 30 days of the due date for Petitions to Deny. No additional responsive pleadings will be accepted. If the tentative selectee is disqualified, or its application designated for hearing, the Commission will allow Petitions to Deny against the next-ranked tentative selectee.

(c) *Petitions for Reconsideration.*—Motions to Stay or Applications for Review may be filed only at such time as the Commission grants or denies the tentative selectee's application. The filing periods specified in the Rules shall apply for such pleadings.

5. A new § 1.824 is added to read as follows:

§ 1.824 Random selection procedures for Multichannel Multipoint Distribution Service.

(a) If there are mutually exclusive applications for an initial permit or license, the Commission may use the random selection process to select the permittee or licensee. Each such random selection shall be conducted under the direction of the Office of the Managing Director in conjunction with the Office of Secretary. Following the random selection, the Commission shall announce the tentative selectee and determine whether the applicant is qualified to receive the permit or license. If the Commission determines that the tentative selectee is qualified, it shall grant the application. In the event that the tentative selectees's application is denied, a second random selection will be conducted. Petitions for Reconsideration, Motions to Stay or Applications for Review may be submitted at the time the Commission grants or denies the application of the tentative selectee. The filing periods specified in the rules shall apply for such pleadings.

(b) Competing applications for permits and licenses shall be designated for random selection in accordance with the procedures set forth at §§ 1.1621, 1.1622 (a), (b), (c) and (d), and 1.1623. No preferences pursuant to § 1.1622 (b)(2) or (b)(3) shall be granted to any MMDS applicant whose owners, when aggregated, have an ownership interest of more than fifty percent in the media of mass communication whose service areas, as set forth at § 1.1622(e) (1) through (7), wholly encompass or are encompassed by the protected service area contour, computed in accordance with § 21.902(d), for which the license or permit is sought.

(c) Petitions to Deny may be filed only against the tentative selectee. These petitions must be filed within 30 days of the Public Notice announcing such tentative selection. A consolidated reply may be filed within 15 days of the due date for Petitions to Deny.

Subpart L—Random Selection Procedures for Mass Media Services

6. Section 1.1621 is amended by revising paragraph (a) to read as follows:

§ 1.1621 Definitions.

(a) Medium of mass communications means:

(1) A daily newspaper;

(2) A cable television system; and

(3) A license or construction permit for

(i) A television station, including low power TV or TV translator,

(ii) A standard (AM) radio station,

(iii) An FM radio station,

(iv) A direct broadcast satellite transponder under the editorial control of the licensee, and

(v) A Multipoint Distribution Service station.

* * * * *

7. Section 1.1622(e) is amended by adding a new paragraph (7) to read as follows:

§ 1.1622 Preferences.

* * * * *

(e) * * *

(7) Multipoint Distribution Service—station service area, computed in accordance with § 21.902(d).

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

Subpart B—Applications and Licenses

8. Section 21.2 is amended to add the following definition after "Mobile Station":

§ 21.2 Definitions.

* * * * *

Multichannel Multipoint Distribution Service. Those multipoint distribution service channels that use the frequency band 2596 MHz to 2644 MHz and associated response channels.

* * * * *

9. Section 21.23 is amended by revising (a), (b), and (c)(6) to read as follows:

§ 21.23 Amendment of applications.

(a) Any pending application may be amended as a matter of right if the application has not been designated for hearing or for comparative evaluation pursuant to § 21.35, *provided, however,* that the amendments shall comply with the provisions of § 21.29 as appropriate. An application tentatively selected by the random selection process may be amended as a matter of right up to 14 days after the date of the public notice announcing the tentative selection, *provided however,* that the amendments shall comply with the provisions of § 21.29 as appropriate.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing or for comparative evaluation, or tentatively selected by the random selection process, only if a written petition demonstrating good cause is submitted and properly served upon the parties of record, except that the application tentatively selected in a random selection process may be amended as a matter of right under paragraph (a) of this section.

(c) * * *

(6) If the amendment specifies a substantial change in benefical ownership or control (*de jure* or *de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 [47 U.S.C. 310(d)]. Such a change would not be considered major where the assignment or transfer of control is for legitimate business purposes other than the acquisition of applications.

* * * * *

10. Section 21.27(b) is revised to read as follows:

§ 21.27 Public notice period.

* * * * *

(b) The Commission will not grant any application until the expiration of a period of thirty (30) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing, or until the expiration of a period of thirty (30) days following the issuance of a public notice identifying the tentative selectee of a random selection proceeding.

* * * * *

11. Section 21.28 is amended by revising (a), (b) introductory text, and (b)(1), by revising paragraph (c) and redesignating it as paragraph (d) and by adding a new paragraph (c) to read as follows:

§ 21.28 Dismissal and return of applications.

(a) Except as provided under paragraph (c) of this section and under § 21.29, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or prior to selection of the comparative evaluation procedure of § 21.35. An applicant's request for return of its application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the provisions of § 21.29 as appropriate.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing, after selection of the comparative evaluation procedure of § 21.35, or after selection as a tentative selectee in a random selection proceeding, only if:

(1) A written petition is submitted to the Commission and, in the case of applications designated for hearing or comparative evaluation, is properly served upon all parties of record;

* * * * *

(c) Except as provided under § 21.29, an application designated for inclusion in the random selection process may be dismissed without prejudice as a matter of right if the applicant requests its dismissal at least 2 days prior to a random selection proceeding. An applicant's request for return of its application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the provisions of § 21.29 as appropriate.

(d) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal will be without prejudice prior to designation for hearing, selection of the comparative evaluation procedure of § 21.35, or tentative selection by the random selection process, but may be with prejudice for unsatisfactory compliance with § 21.29, or after designation for hearing, selection of the comparative evaluation process, or selection as a tentative selectee in a random selection proceeding.

12. Section 21.29 is amended by revising (a)(2), and (e) to read as follows:

§ 21.29 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) * * *

(2) The agreement (or understanding) may result in either:

(i) A proposed substantial change in beneficial ownership or control *(de jure* or *de facto)* of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 [47 U.S.C. 310(d)], or

(ii) Proposed withdrawal, amendment or dismissal of any application(s), amendment(s), petition(s), pleading(s), or any combination thereof, which would thereby permit the grant without hearing, comparative evaluation under of § 21.35, or random selection of an application previously in contested status.

* * * * *

(e) The Commission will grant an application (or applications) involved in the agreement (or understanding) only if it finds upon examination of the information submitted, and upon consideration of such other matters as may be officially noticed, that the agreement is consistent with the public interest, and the amount of any monetary consideration and the cash value of any other consideration promised or received is not in excess of those legitimate and prudent costs directly assignable to the engineering, preparation, filing and advocacy of the withdrawn, dismissed, or amended application(s), amendment(s), petition(s), pleading(s), or any combination thereof. Where such costs represent the applicant's in-house efforts, these costs shall include only directly assignable costs and shall exclude general overhead expenses. [The treatment to be accorded such consideration for interstate rate making purposes will be determined at such time as the question may arise in an appropriate rate proceeding.] An itemized accounting shall be submitted to support the amount of consideration involved except where such consideration (including the fair market value of any non-cash consideration) promised or received does not exceed one thousand dollars ($1,000.00). Where consideration involves a sale of facilities or merger of interests, the accounting shall clearly identify that portion of the consideration allocated for such facilities or interests and a detailed description thereof, including estimated fair market value. The Commission will not presume an agreement (or understanding) to be prima facie contrary to the public interest solely because it incorporates a mutual agreement to withdraw pending application(s), amendment(s), petition(s), pleading(s), or any combination thereof.

13. Section 21.30 is amended by revising (a)(2), and (a)(4) to read as follows:

§ 21.30 Opposition to applications.

(a) * * *

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§ 1.41 through 1.52, 21.33 and 1.821;

* * * * *

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto, or identifying the tentative selectee of a random selection proceeding (unless the Commission otherwise extends the filing deadline); and

* * * * *

14. Section 21.31(b) introductory text is revised to read as follows:

§ 21.31 Mutually exclusive applications.

* * * * *

(b) An application will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications only if:

* * * * *

15. Section 21.32 is amended by revising (f), (g) introductory text and (g)(3) to read as follows:

§ 21.32 Consideration of applications.

* * * * *

(f) The Commission may grant, deny, or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or Part 1 of this chapter.

(g) Whenever the public interest would be served thereby the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either conduct a random section process (in specified services under this rules part), designate all of the mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 21.35, as appropriate, if it appears:

* * * * *

(3) That a delay in making a grant to any applicant until after the conclusion of a hearing or a random selection proceeding on all applications might jeopardize the rights of the United States under the provision of an international agreement to the use of the frequency in question; or

* * * * *

16. A new § 21.33 is added to read as follows:

§ 21.33 Grants by random selection.

(a) If an acceptable application for an initial permit or license in the Multichannel Multipoint Distribution Service (MMDS) is mutually exclusive with another such application, the applicants may be included in the random selection process set forth in Part I, §§ 1.821 *et seq.* Renewal applications shall not be included in a random selection process.

(b) If, after filing individual applications, mutually exclusive applicants enter into settlements that result in the formation of a joint venture, such applicants will receive the cumulative number of lottery chances that the individual applicants would have had if no settlement had been reached.

17. Section 21.35(a) introductory text is revised to read as follows:

§ 21.35 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications in services under this rules part where the random selection process does not apply, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlined in paragraph (b) in this section if:

* * * * *

18. Section 21.40(a) is revised to read as follows:

§ 21.40 Considerations involving transfer or assignment applications.

(a) The Commission will review a proposed transaction to determine if the circumstances indicate "trafficking" in licenses or construction permits whenever applications (except those involving *pro forma* assignment or transfer of control) for consent to assignment of a common carrier construction permit or license, or for transfer of control of a permittee or licensee, involve facilities that were:

(1) Authorized following a comparative hearing and have been operated less than one year, or;

(2) Involve facilities that have not been constructed, or;

(3) Involve facilities that were authorized following a random selection proceeding in which the successful applicant received preference and that have been operated for less than one year.

At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assigment or transfer is due to changed circumstances (described in detail) affecting the licensee or permittee subsequent to the acquisition of the permit or license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

Subpart K—Multipoint Distribution Service

19. Section 21.900 is amended by adding a new sentence at the end of the existing section as follows:

§ 21.900 Eligibility.

* * * Any applicant for multichannel multipoint distribution service desiring a preference in the random selection process, in accordance with the procedures set out in § 1.1824, shall so indicate as part of its application.

[FR Doc. 85-3370 Filed 2-12-85; 8:45 am]
BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 50, No. 30
Wednesday, February 13, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. F&V A0-205-A6]

Filberts/Hazelnuts Grown in Oregon and Washington; Hearing on Proposed Amendment of the Marketing Agreement, as Amended, and Order, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed amendment and text of proposals.

SUMMARY: The hearing is being held to consider proposed changes in the filbert/hazelnut marketing agreement and order to improve program operations. The principal issues to be considered would: (1) Change the method of establishing marketing policy and volume regulations to allow more flexibility to react to market conditions and provide for market growth; (2) change Board representation to eliminate any reference to either cooperative or independent growers or handlers and recognize industry composition; (3) provide authority for advertising and promotion programs; and (4) provide authority for crediting a handler's assessment for certain kinds of advertising and promotion. Also to be considered are a number of technical changes.

DATE: The hearing will begin at 9:00 a.m., local time, Wednesday, February 20, 1985.

ADDRESS: The hearing will be held in Room 229, Green/Wyatt Federal Building, 1220 SW., Third Avenue, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-5053.

SUPPLEMENTARY INFORMATION: This amendment was proposed by the Filbert/Hazelnut Marketing Board established under the marketing agreement and order program which covers filberts/hazelnuts grown in Oregon and Washington. The Department of Agriculture proposes that it be authorized to make any necessary conforming changes which may result from this proceeding.

A pre-notice press release was issued December 7, 1984, inviting comments on the Board's proposals until December 31. One comment was received from the California Almond Growers Exchange supporting all the proposed changes.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small businesses.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900). The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendment, hereinafter set forth, and any appropriate modifications thereof, of the marketing agreement and Order No. 982, both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington.

PROPOSED BY THE FILBERT/HAZELNUT MARKETING BOARD

Proposal No. 1

Section 982.9 is deleted.

Section 982.9 Cooperative handler. [Deleted]

Section 982.10 is deleted.

Section 982.10 Independent handler. [Deleted]

Proposal No. 2

Section 982.16 is revised to read as follows:

Section 982.16 Inshell trade acquisitions.

"Inshell trade acquisitions" means the quantity of inshell filberts acquired by the trade from all handlers during a marketing year for distribution in the continental United States.

Proposal No. 3

Section 982.17 is revised to read as follows:

Section 982.17 Marketing year.

"Marketing year" means the 12 months from July 1 to the following June 30, both inclusive, or such other period of time as may be recommended by the Board and established by the Secretary.

Proposal No. 4

Section 982.30 is revised to read as follows:

Section 982.30 Establishment and membership.

(a) There is hereby established a Filbert/Hazelnut Marketing Board consisting of 10 members, each of whom shall have an alternate member, to administer the terms and provisions of this part. Each member and alternate shall meet the same eligibility qualifications. The 10 member positions shall be allocated as follows:

(b) Four of the members shall represent handlers, as follows:

(1) One member shall be nominated by the handler who handled the largest volume of filberts during the marketing year preceding the marketing year in which nominations are made;

(2) One member shall be nominated by the handler who handled the second largest volume of filberts during the marketing year preceding the marketing year in which nominations are made;

(3) One member shall be nominated by the handler who handled the third largest volume of filberts during the marketing year preceding the marketing year in which nominations are made; and

(4) The fourth handler member shall be nominated by and represent all other handlers.

(c) Five members shall represent growers and shall be nominated for the districts designated in or pursuant to § 982.31. One grower member shall represent each of the five grower districts.

(d) One public member who is neither a grower nor a handler.

(e) The Board, with the approval of the Secretary, may revise the composition or representation on the Board if it no longer is representative following substantial changes in the industry.

Proposal No. 5

Section 982.31 is revised to read as follows:

Section 982.31 Grower districts.

(a) For the purpose of nominating grower members and alternate members, the following districts within the production are are hereby established:

(1) *District 1*—The State of Washington, and Clackamas and Multnomah Counties in Oregon.

(1) *District 2*—Marion and Polk Counties in Oregon.

(2) *District 3*—Linn, Lane, and Benton Counties in Oregon.

(3) *District 4*—Yamhill County in Oregon.

(4) *District 5*—All other Oregon counties within the production area.

(b) The Secretary, upon the recommendation of the Board, may reduce the number of districts within the production area, may redefine each district into which the production area is divided, and may change the number of grower members who shall be selected to represent particular districts: *Provided*, That is recommending any such changes, the Board shall give consideration to: (1) The relative importance of production in each district and the number of growers in each district; (2) the geographic location of districts as they would affect the efficiency of administering the part; and (3) other relevant factors.

Proposal No. 6

Section 982.32 is revised to read as follows:

Section 982.32 Initial members and nomination of successor members.

(a) Members and alternate members of the Board serving immediately prior to the effective date of this amended subpart shall, if thereafter they are eligible, serve on the Board as initial members of the Board until their respective successors have been selected and have qualified.

(b) Nominations for successor handler member and alternate member positions specified in § 982.30(b) (1) through (3) shall be made by the largest, second largest, and third largest handler determined according to the tonnage of certified merchantable filberts and, when shelled filbert grade and size regulations are in effect, the inshell equivalent of certified shelled filberts(computed to the nearest whole ton) recorded by the Board as handled by each such handler during the marketing year preceding the marketing year in which nominations are made.

(c) Nominations for successor handler member and alternate member positions specified to § 982.30(b)(4) shall be made by the handlers in that category by mail ballot. All votes cast shall be weighted according to the tonnage of certified merchantable filberts and, when shelled filbert grade and size regulations are in effect, the inshell equivalent of certified shelled filberts (computed to the nearest whole ton) recorded by the Board as handled by each handler during the marketing year preceding the marketing year in which nominations are made, and if less than one ton is recorded for any such handler, the vote shall be weighted as one ton.

(d) Nominees to successor grower member and alternate member positions shall be submitted to the Secretary after balloting in the grower districts by growers, or officers or employees of growers, conducted by the Board as follows: Names of the candidates to be shown on the ballot for a particular district may be submitted to the Board on petitions signed by not less then 10 growers on record with the Board as growers being in that district; each grower may sign only as many petitions as there are persons to be nominated within that district. Whenever such petitions fail to result in submission of at least four names for a district the Board shll request all County Agricultural Extension Agents in that district to recommend one or more eligible growers to be included on the ballot. Ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all growers who are on record with the Board. The person receiving the highest number of votes shall be the member nominee for that district and the person receiving the second highest number of votes shall be the alternate member nominee for that district. In the case of a tie, the Board shall determine how the tie shall be broken.

(e) Nominations received in the foregoing manner by the Board for all handler and grower member and alternate member positions shall be certified to the Secretary at least 60 days prior to the beginning of each marketing year, together with all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary. If nominations are not made within the time and manner specified by the Secretary in this subpart, the Secretary may, without regards to nominations, select the board members and alternates on the basis of the representation provided for in this subpart.

(f) The members of the board shall nominate the public member and alternate public member at the first meeting following the selection of members for a new term of office.

(g) The Board with the approval of the Secretary shall issue rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section if they are no longer appropriate.

Proposal No. 7

Section 982.33 is revised to read as follows:

Section 982.33 Selection and term of office.

(a) *Selection.* Members and their respective alternates shall be selected by the Secretary from nominees submitted by the Board or from among other qualified persons.

(b) *Term of office.* Beginning July 1, 1985, the term of office of members and their alternates shall be for a period of one marketing year; but they shall serve until their successors are selected and have qualified: *Provided*, That beginning with the 1986–87 marketing year, no member shall serve more than six consecutive terms as member and no alternate member shall serve more than six consecutive terms as alternate.

(c) The current Board shall continue to serve until the new members and alternates have been selected and have qualified.

Proposal No. 8

Section 982.34 is revised to read as follows:

Section 982.34 Qualification.

(a) Any person selected to serve as a member or an alternate member of the Board shall qualify by filing with the Secretary a written acceptance of appointment.

(b) Each grower member and alternate shall be, at the time of selection and during the term of office, a grower or an

officer or employee of a grower in the districts for which nominated.

(c) Each handler member and alternate shall be, at the time of selection and during the term of office, a handler or an officer, employee, or agent of a handler.

(d) Any member or alternate member who at the time of selection was a member or employed by a member of the group which nominated that person shall, upon ceasing to be such a member become disqualified to serve further and that position shall be deemed vacant. In the event any grower member or alternate member of the Board handles filberts produced by other growers, or becomes an officer or an employee of a handler, that person shall be disqualified to continue to serve on the Board in that capacity.

(e) No person nominated to serve as a public member or alternate member shall have a financial interest in any filbert growing or handling operations.

(f) The Board, with the approval of the Secretary, may issue rules and regulations covering matters of qualifications for members or alternate members.

Proposal No. 9

Section 982.36 is revised to read as follows:

Section 982.36 Alternates.

An alternate for a member of the Board shall act in the place of such member's absence or upon the member's death, removal, resignation, or disqualification until a successor for that member's term has been selected and has qualified.

Proposal No. 10

Section 982.37 is revised to read as follows:

Section 982.37 Procedure.

(a) Seven members of the Board shall constitute a quorum at an assembled meeting of the Board, and any action of the Board shall require the concurring vote of at least six members. At any assembed meeting all votes shall be cast in person.

(b) The Board may vote by mail, telephone, telegraph, or other means of communication: *Provided,* That any vote (except mail votes) so cast shall be confirmed in writing. When any proposition is submitted for voting by any such method its adoption shall require 10 concurring votes.

Proposal No. 11

Section 982.40 is revised to read as follows:

Section 982.40 Marketing policy and volume regulation.

(a) *General.* As provided in this section, prior to September 20 of each marketing year the Board may hold meetings for the purpose of computing its marketing policy for that year and shall do so for the purpose of submitting any recommendations on its policy to the Secretary. The Board may designate one of its employees to compute and announce preliminary computed free and restricted percentages.

(b) *Inshell trade demand.* If the Board determines that volume regulation would tend to effectuate the declared policy of the act, it shall compute and announce an inshell trade demand for that year. The inshell trade demand shall equal the average of the preceding three years' trade acquisitions of inshell filberts; *Provided,* That the Board may increase such average by no more than 25 percent if market conditions justify such an increase. If the trade acquisitions during any or all of these years were abnormal, the Board may use a prior year or years in determining the three-year average.

(c) *Inshell allocation—(1) Preliminary computed percentages.* Prior to September 20 of that marketing year, the Board shall compute and announce preliminary computed free and restricted percentages for that year, to release 80 percent of the inshell trade demand computed for that year. The preliminary free percentage shall be 80 percent of the trade demand minus the declared carryin, divided by the Board's estimate of orchard-run production less the average disappearance during the preceding three years plus the undeclared carryin. The result shall be expressed as a percentage. The difference between 100 percent and the preliminary free percentage shall be the preliminary computed restricted percentage. At the same time, the Board may announce the portion of the restricted supply that may be shelled or exported, and the remainder of that supply to be disposed of in outlets approved by the Board pursuant to § 982.52.

(2) *Interim final and final percentages.* On or before November 15, the Board shall meet to recommend to the Secretary the interim final and final free and restricted percentages, including the portion of the restricted supply that may be shelled or exported. The interim final percentages shall release 100 percent of the inshell trade demand previously computed by the Board for that marketing year. The final free and restricted percentages shall release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell filberts for desirable carryout. If the trade acquisitions during any or all of these years were abnormal, the Board may use a prior year or years in determining this three-year average. The final free and restricted percentages shall become effective 30 days prior to the end of the marketing year, or earlier as may be recommended by the Board and approved by the Secretary. The recommendations to the Secretary shall include the following:

(i) The estimated tonnage of merchantable filberts expected to be produced during the marketing year.

(ii) The estimated tonnage of inshell filberts held by handlers on the first day of the marketing year which may be available for handling as inshell filberts thereafter.

(iii) Any other pertinent factors bearing on the production and marketing of filberts during the marketing year. Whenever the Secretary finds, on the basis of the recommendation of the Board or other available information that, to establish the interim final and final free and restricted percentages and the percentage of the restricted supply that may be shelled or exported would tend to effectuate the declared policy of the act, the Secretary shall establish such percentages.

(d) *Grade and size regulations.* Prior to September 20, the Board may consider grade and size regulations in effect and may recommend modifications thereafter to the Secretary.

(e) *Revision of marketing policy.* At any time prior to February 15 of the marketing year the Board may recommend to the Secretary revisions in the marketing policy for that year; *Provided,* That in no event shall any revision result in free and restricted percentages based on an inshell trade demand which is more than 125 percent of the average of the preceding three years' trade acquisitions computed pursuant to paragraph (b) of this section for that marketing year. At any time during the period December 1 through February 10 at the request of two or more handlers who during the preceding marketing year handled at least 10 percent of all filberts handled, the Board shall meet to determine whether the marketing policy should be revised.

Proposal No. 12

Section 982.41 is revised to read as follows:

Section 982.41 Free and restricted percentages.

The free and restricted percentages, including the percentage of the restricted supply that may be shelled or exported, computed by the Board or established by the Secretary pursuant to § 982.40, shall apply to all merchantable filberts handled during the current marketing year. Until the preliminary computed free and restricted percentages are computed and announced by the Board for the current marketing year, the free and restricted percentages in effect at the end of the previous marketing year shall be applicable.

Proposal No. 13

Section 982.51 is revised to read as follows:

Section 982.51 Restricted credit for ungraded inshell filberts and for shelled filberts.

(a) A handler may withhold lots of ungraded inshell filberts in lieu of cetified merchantable filberts in satisfaction of that handler's restricted obligation, and the weight on which credit may be received initially shall be the shelled filbert equivalent weight as determined by the Federal/State Inspection Service multiplied by 2.5. Any lot of ungraded filberts not meeting the moisture requirements for certified merchantable filberts shall not be eligible for credit. All determinations as to the shelled filbert equivalent weight shall be made by the Federal/State Inspection Service at the handler's expense. Filberts so withheld shall be subject to the applicable requirements of § 982.50. The weight of all such lots for which a handler has received credit shall be adjusted by the Board when the lots are handled or disposed of so that the creditable weight is equal to the amount of certified merchantable inshell filberts or certified shelled filberts that are subsequently handled or disposed of from those lots. If this adjustment causes the handler to no longer be in satisfaction of his restricted obligation as required by § 982.50, the deficiency shall be satisfied in the subsequent marekting year. If this adjustment results in a handler disposing in restricted outlets of a quantity in excess of his restricted obligation such excess shall not be credited to his restricted obligation during the subsequent marketing year.

(b) A handler may withold, in accorance with § 982.50(a), certified shelled filberts in lieu of certified merchantable filberts in satisfaction of such restricted obligation subject to such terms and conditions as are recommended by the Board and established by the Secretary. The inshell equivalent of such filberts shall be determined by multiplying the weight of the shelled filberts by 2.5.

(c) The Secretary upon recommendation of the Board and other available data may modify these procedures, change the conversion factors, and specify factors for conversion for different varieties of filberts.

Proposal No. 14

Section 982.52 (b) and (d) are revised to read as follows:

Section 982.52 Disposition of restricted filberts.

* * * * *

(b) *Export.* Sales of certified merchantable restricted filberts for shipment or export to destinations outside the continental United States shall be made only by the Board. Any handler desiring to export any part or all of his certified merchantable restricted filberts shall deliver to the Board the certified merchantable restricted filberts to be exported, but the Board shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any filberts so delivered for export which the Board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the Board only on execution of an agreement to prevent reimportation into the United States. A handler may be permitted to act as agent of the Board upon such terms and conditions as the Board may specify, in negotiating export sales, and when so acting shall be entitled to receive a selling commission as authorized by the Board. The proceeds of all export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose certified merchantable restricted filberts are so sold by the Board.

* * * * *

(d) *Retricted credits.* During any marketing year, handlers who dispose of a quantity of eligible filberts in restricted outlets, in excess of their restricted obligation, may transfer such excess credits to another handler or handlers. Upon a handler's written request to the Board during a marketing year, the Board shall transfer any or all of such excess restricted credits to such other handler or handlers that handler may designate. The Board, with the approval of the Secretary, shall establish rules and regulations for the transfer of excess restricted credits.

Proposal No. 15

Section 982.54 (a) and (c) are revised to read as follows:

Section 982.54 Deferment of restricted obligations.

(a) *Bonding.* Compliance by any handler with the requirements of § 982.50 when restricted filberts may be withheld shall be temporarily deferred to any date requested by the handler, but not later than 60 days prior to the end of the marketing year. Such deferment shall be conditioned upon the voluntary execution and delivery by the handler to the Board of a written undertaking before beginning to handle merchantable filberts during the marketing year. Such written undertaking shall be secured by a bond or bonds with a surety or sureties acceptable to the Board that on or prior to such date the handler will have fully satisfied the restricted obligation required by § 982.50, subject to any adjustment pursuant to § 982.51.

* * * * *

(c) *Bonding rate.* Said bonding rate for each pack shall be an amount per pound as established by the Board. Until bonding rates for a marketing year are fixed the rates in effect for the preceding marketing year shall continue in effect, and when such new rates are fixed necessary adjustments should be made.

* * * * *

Proposal No. 16

Section 982.57 is revised to read as follows:

Section 982.57 Exemptions.

(a) *General.* The Board, with the approval of the Secretary, may establish such rules, regulations and safeguards that exempt from any or all requirements pursuant to this part such quantities of filberts or types of shipments as do not interfere with the volume and quality control objectives of this part and shall require such reports, certifications, or other conditions as are necessary to ensure that such filberts are handled or used only as authorized.

(b) *Sales by growers direct to consumers.* Any filbert grower may sell filberts of his own production free of the regulatory and assessment provisions of this part if he sells such filberts in the area of production directly to consumers from his ranch or orchard or at roadside stands and farmers' markets.

Proposal No. 17

A new center heading entitled "Market Development" and a new § 982.58 following that heading are added to read as follows:

Market Development

Section 982.58 Research, promotion, and market development.

(a) *General.* The Board, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of filberts. The Board may also provide for crediting the pro rata expense assessment obligation of a handler with such portion of the handler's direct expenditures for such marketing promotion and paid advertising as may be authorized. The expenses of such projects shall be paid from funds collected pursuant to § 982.61 or credited pursuant to paragraph (b) of this section.

(b) *Creditable expenditures.* The Board, with the approval of the Secretary, may provide for crediting all or any portion of a handler's direct expenditures for marketing promotion, including paid advertising, that promotes the sale of filberts, filbert products, or their uses. No handler shall receive credit for any allowable direct expenditures that would exceed the total of that handler's assessment obligation which is attributable to that portion of the assessment designated for marketing promotion including paid advertising.

(c) *Rules and regulations.* Before any project involving marketing promotion, including paid advertising and the crediting of the pro rata expense assessment obligation of handlers, is undertaken pursuant to this section, the Secretary, after recommendation by the Board, shall prescribe appropriate rules and regulations as are necessary to effectively administer such project.

Proposal No. 18

Section 982.61 is amended by revising the third sentence to read as follows:

Section 982.61 Assessments.

* * * Each handler shall pay to the Board on demand, assessments on all such assessable filberts at the rate fixed by the Secretary, such sum less any amounts credited pursuant to § 982.58. * * *

Proposal No. 19

A new § 982.64 entitled "Creditable promotion and advertising reports" is added to read as follows:

Section 982.64 Creditable promotion and advertising reports.

Each handler shall file such reports of creditable promotion including paid advertising conducted pursuant to § 982.58 as recommended by the Board and approved by the Secretary.

Proposal No. 20

Section 982.69 is amended by revising the first sentence to read as follows:

§ 982.69 Verification of reports.

For the purpose of checking and verifying reports submitted by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to each handler's premises at any time during reasonable business hours, and shall be permitted to inspect any filberts held by such handler and all records of the handler with respect to filberts held or disposed of by such handler and all records of the handler with respect to promotion and advertising activities conducted pursuant to § 982.58. * * *

Proposal No. 21

A new sentence at the end of § 982.71 is added to read as follows:

§ 982.71 Records.

* * * The Board, with the approval of the Secretary, may prescribe rules and regulations to include under this section handler records that detail promotion and advertising activities that the Board may need to perform its functions under § 982.58.

Proposal No. 22

Section 982.86(b) is amended by adding a new paragraph (3) and renumbering current paragraphs (3) and (4) as (4) and (5), respectively to read as follows:

Section 982.86 Effective time, termination or suspension.

* * * * *

(b) * * *

(3) *Referendum.* The Board shall recommend to the Secretary during the first half of every ten-year period starting January 1, 1990, that a referendum be conducted to ascertain whether continuance of this subpart is favored by the producers.

* * * * *

PROPOSED BY THE FRUIT AND VEGETABLE DIVISION, AGRICULTURAL MARKETING SERVICE

Proposal No. 23

Make such changes as may be necessary to make the entire marketing agreement and order conform with any amendment thereto that may result from this hearing.

Copies of this notice of hearing and the order may be obtained from the Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, 1220 S.W. Third Avenue, Room 369, Portland, Oregon, 97204, or from the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250 or may be inspected there.

List of Subjects in 7 CFR Part 982

Marketing agreements and orders, filbert/hazelnuts, Oregon and Washington.

Signed at Washington, D.C. on February 11, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-3793 Filed 2-12-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-001]

Importation of Horses From Australia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations concerning the importation into the United States of certain horses by removing Australia from the list of countries in which contagious equine metritis (CEM) exists. It has been determined that CEM no longer exists in Australia. The adoption of the proposal would relieve restrictions on the importation into the United States of horses from Australia.

DATE: Written comments must be received on or before March 15, 1985.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m.,

Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including contagious equine metritis (CEM). CEM is a venereal disease of horses that affects fertility and breeding.

Section 92.2(i) of the regulations lists the countries in which CEM exists and, with certain exceptions, prohibits the importation of horses from the countries in which CEM exists and horses which have been in any such country within the 12 months immediately preceding their export to the United States. A document published in the **Federal Register** on September 23, 1977 (42 FR 48327) added Australia to the list of countries in which CEM (then called Equine Metritis-77) exists.

With respect to Australia, § 92.2(1)(2)(iii) provides that Standardbred horses from Australia may be imported into the United States if specific requirements to help prevent their introducing CEM into the United States are met. Section 92.2(i)(2) (iv) and (v) of the regulations also authorized the importation into the United States of certain stallions and mares over 731 days of age from countries affected with CEM if specific requirements to help prevent their introducing CEM into the United States are met, and if the animals imported are moved into approved States for further inspection, treatment, and testing.

Australia recently requested that the Department amend the regulations to remove Australia from the list of countries in which CEM exists. Based on surveys conducted by the government of Australia, it has been determined that there is no reason to believe that CEM exists in Australia. No cases of CEM have been reported in Australia since 1979. Therefore, this document proposes to remove Australia from the list of countries in which CEM is known to exist.

The effect of the adoption of this proposal would be to relieve certain restrictions on the importation of horses from Australia.

Executive Order 12291 and Regulatory Flexibility Act

This proposal is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule would not have a significant annual effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

It is not anticipated that any significant change in the number of horses imported into the United States or in the number of persons importing horses into the United States would result from the adoption of this proposal.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and Poultry Products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, it is proposed to amend 9 CFR Part 92 as follows:

§ 92.2. [Amended]

1. In § 92.2(i)(1) "Australia" would be removed.

2. In § 92.2(i)(2)(iii) "and Standardbred horses from Australia" would be removed and "and" would be inserted before "France".

Authority: Sec. 2, 32 Stat. 792, as amended; secs. 2 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 8th day of February, 1985.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-3633 Filed 2-12-85; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Voluntary or Involuntary Liquidations of Farm Credit System Banks and Associations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration ("FCA"), by its Federal Farm Credit Board ("Federal Board"), publishes for comment proposed amendments to its regulation relating the voluntary or involuntary liquidations of Farm Credit System ("System") banks and associations. 12 CFR 611.1130 is the existing FCA regulation governing voluntary and involuntary liquidations. The proposed regulations incorporate the provisions contained in the orders that have been issued by the FCA to date in connection with specific receiverships and set forth the powers and duties of receivers, the rights of creditors and stockholders and the inventory and examination requirements associated with receiverships.

DATE: Written comments must be received on or before March 15, 1985.

ADDRESS: Comments should be submitted in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all written comments received will be available for inspection by interested parties in the Office of the Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: The Farm Credit Act of 1971, 12 U.S.C. 2001, *et seq.*, provides that voluntary and involuntary liquidations of System banks and associations shall be conducted in accordance with regulations of the FCA. This provision provides the sole authority pursuant to which System institutions may be liquidated and requires the FCA to establish the procedures governing such

liquidations. The existing regulation governing receiverships is contained in 12 CFR 611.1130. The regulation relates only to System associations and provides that an involuntary liquidation shall be conducted upon such terms as the Governor of the FCA may prescribe on a case-by-case basis, and that in voluntary liquidations the supervising bank shall appoint a liquidating agent. In accordance with 12 CFR 611.1130, the FCA has issued orders that set forth specific powers and duties of the receivers appointed for the liquidation of System associations and has established administrative guidelines governing the winding up of the affairs of those institutions. In the case of a voluntary liquidations of a production credit association, the Federal intermediate credit bank ("FICB") in the district involved has submitted to the FCA for approval procedures governing the liquidating agents that have been appointed by the FICB.

The powers and duties of receivers of System associations and the procedures governing liquidations were developed following an analysis of similar procedures governing liquidations under the jurisdiction of the Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance Corporation with necessary adjustments to accommodate differences among the institutions involved.

The Federal Board has determined that the FCA receivership regulations should be expanded to include the basic provisions that have heretofore been contained in the orders appointing receivers, and should apply to banks as well as associations. These provisions in the regulations will assist in clarifying the status of receivers of System institutions as agents of the FCA and will enhance the ability of receivers to carry out their responsibilities. Accordingly, the Federal Board has proposed regulations governing voluntary and involuntary liquidations that include the specific provisions contained in FCA orders issued to date appointing association receivers, and has included comparable provisions relating to receiverships for System banks. The proposed regulations set forth procedures for placing a bank or association into receivership, the powers and duties of receivers, the rights of creditors and stockholders of an institution in liquidation, and the inventory and examination requirements associated with receiverships.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Credit.

As stated in the preamble, it is proposed that Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations, be amended as follows:

1. By adding new Subparts I and J to 12 CFR Part 611 to read as follows:

PART 611—ORGANIZATION

Subpart I—Liquidation of Associations

Subpart J—Liquidation of Banks

Authority: Secs. 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621, 12 U.S.C. 2243, 2246 and 2252.

Subpart I—Liquidation of Associations

§ 611.1160 Appointment of receivers.

(a) The board of directors of an association, by the adoption of an appropriate resolution, may vote to liquidate the association, and upon approval of the resolution by the Farm Credit Administration after consultation with the supervisory bank, the Governor by order may place the association in receivership.

(b) Upon default of any obligation by an association, the Governor by order may declare the association insolvent and appoint a receiver.

(c) Upon the appointment of a receiver, the Governor shall immediately notify the institution and its supervisory bank and notice of the appointment shall be published in the **Federal Register**.

(d) Upon the issuance of the order placing an association in liquidation all rights, privileges and powers of the board of directors, officers and employees of the association are vested exclusively in the receiver, and said individuals are suspended.

(e) The voluntary or involuntary liquidation of an association shall be conducted by the receiver as agent of the Farm Credit Administration. The receiver shall be responsible for collecting the assets, paying the creditors, and paying any liquidating dividend to stockholders of the association. Upon completion of the liquidation and discharge of the receiver by the Farm Credit Administration, the Governor will cancel the charter of the association.

(f) When the Governor approves the voluntary liquidation of an association, the Governor shall appoint the supervisory bank as the receiver, except where the Governor determines in his sole discretion that such appointment would not be in the best interests of the creditors and stockholders of the association. Subject to the approval of the Farm Credit Administration, the supervisory bank may appoint liquidating agents for collecting the assets, paying the creditors, and paying any liquidating dividends to the stockholders of the association. Upon completion of the liquidation and discharge of the receiver by the Farm Credit Administration, the Governor will cancel the charter of the association.

(g) The Governor may at any time direct the receiver to turn over the association to its previous management or remove and replace the receiver.

§ 611.1161 Powers and duties of the receiver.

A receiver of an association is an agent of, and is subject to the specific procedures and approval requirements established by the Farm Credit Administration. When a supervising bank is appointed receiver of an association in voluntary liquidation, such bank shall adopt, subject to Farm Credit Administration approval, appropriate procedures governing the activities of its liquidating agents. As the agent of the Farm Credit Administration and acting on behalf of the association in receivership, the receiver is authorized and empowered to:

(a) Exercise all powers as are conferred upon the officers and directors of the association under law and the charter, articles and bylaws of the association.

(b) Take any action the receiver considers appropriate or expedient to carry on the business of the association during the process of liquidating its assets and winding up its affairs;

(c) Extend credit to existing borrowers as necessary to honor existing commitments and to effectuate the purposes of the receivership;

(d) Borrow such sums as may be necessary to effectuate the purpose of the receivership;

(e) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the association's assets or property, or rehabilitate or improve such property and assets;

(f) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any assets or property, on which the association has a lien or in which the association has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property;

(g) Investigate any matter related to the conduct of the business of the association including, but not limited to, any claim of the association against any individual or entity and institute appropriate legal or other proceedings in the name of the association to prosecute such claims;

(h) Institute, prosecute, maintain, defend, intervene, and otherwise participate in the name of the association in any legal proceeding by or against the association or in which the association or its creditors or members have any interest, and represent in every way the association, its members and creditors;

(i) Employ attorneys to give legal advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs;

(j) Hire any employees necessary for proper administration of the receivership, including the hiring of liquidation agents, which employees shall be covered by a bond satisfactory to the receiver and the Farm Credit Administration;

(k) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effectual as if it had been executed by the association's officers by authority of its board of directors;

(l) Sell for cash any mortgage, deed of trust, chose in action, note, contract, judgment or decree, stock, or debt owing to the association or any property (real or personal, tangible or intangible) acquired in satisfaction thereof;

(m) Purchase or lease office space, automobiles, furniture, equipment, supplies and purchase insurance, professional and technical services necessary for the conduct of the receivership;

(n) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome;

(o) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the association or the receiver;

(p) Pay out of the assets of the association all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver;

(q) Pay out of the assets of the association all approved claims of indebtedness in accordance with priorities established herein;

(r) Take all actions and have such rights, powers and privileges as are necessary and incident to the exercise of any specific power; and

(s) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration authorizes, directs, confers or imposes by order or by amendment of an order or by regulation.

§ 611.1162 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the association, no capital stock, participation certificates, equity reserves or other allocated equities of an association in receivership shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities.

(b) Immediately upon the adoption of a resolution by its board of directors to liquidate the association or upon the issuance by the Governor of an order declaring an association insolvent and appointing a receiver, the capital stock, participation certificates, equity reserves and allocated equities of the association shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equity until such time as the Farm Credit Administration disapproves such resolution. In the event the resolution is approved and the association is placed in receivership, the provisions of paragraph (a) of this section shall govern further disposition of the equities of the association.

§ 611.1163 Notice to stockholders.

As soon as practicable after the receiver takes possession of the association, the receiver shall notify by first class mail, each holder of stock and participation certificates of the following matters:

(a) The number of shares such holder owns;

(b) That the stock and other equities of the association may not be retired or transferred until the liquidation is completed; whereupon, the receiver will distribute a liquidating dividend, if any, to the owners of such equities;

(c) The options available to such holder regarding the repayment or transfer of loans;

(d) The services available to current borrowers during the winding up of the affairs of the association;

(e) The name(s) and location(s) of the other association(s) to which the territory has been transferred; and

(f) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§ 611.1164 Creditors' claims.

(a) The receiver shall publish promptly a notice to creditors to present their claims against the association, with proof thereof, to the receiver by a date specified in the notice, which shall be 90 calendar days after the first publication. The notice shall be published again 30 days and 60 days, respectively, after the first publication. Claims filed after the specified date shall be disallowed, except as the receiver may approve them for full or partial payment from the association's assets remaining undistributed at the time of approval. The receiver shall promptly send, by first class mail a similar notice to any creditor shown on the association's books at the creditor's last address appearing thereon.

(b) The receiver shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority which is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Sending by first class mail notice of the disallowance to the claimant's address appearing on the proof of claim shall be sufficient notice. Unless, within 30 days after notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance, disallowance shall be final. The receiver shall reconsider any claim upon the timely request of the claimant and, may approve or disapprove such claim in whole or in part.

(c) The receiver shall cause to be filed with the Farm Credit Administration, at such times and in such manner as Farm Credit Administratrion shall require, a complete list of claims presented, indicating the character of each claim and whether allowed by the receiver.

(d) Creditors' claims that are allowed shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established herein and in such manner and amounts as the receiver deems appropriate. In the event the association has a claim against a creditor of the association, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

§ 611.1165 Sale and transfer of loans.

(a) The receiver is authorized to sell loans to any commercial lending institution at fair market value (including any amount borrowed to purchase stock in the association); and

(b) The receiver is authorized to sell loans to an association that has been authorized, by charter amendment, agreement or otherwise, to make loans in the territory heretofore served by the association ("purchasing association") only on the following basis:

(1) A loan may be sold at its fair market value (including the amount borrowed to purchase stock or participation certificates in the association) and the borrower will immediately make the required capital investment in the purchasing association by providing cash sufficient therefor or by increasing the loan by an amount necessary to make such capital investment; or

(2) The loan may be sold at its fair market value (including the amount borrowed to purchase stock or participation certificates in the association) in conjunction with an agreement between the borrower, the receiver, the supervising bank, and the purchasing association, which provides for a loan from the supervising bank to the borrower or the purchasing association in the amount of the required capital investment in the purchasing association, to be repaid on or before the completion of the liquidation of the association, on terms set forth in the agreement.

§ 611.1166 Priority of claims.

(a) The following priority of claims shall apply to the distribution of the assets of an association in liquidation:

(1) All costs, expenses and debts of the association in receivership that were incurred on or after the date of the appointment of the receiver.

(2) All claims for taxes.

(3) All claims of creditors which are secured by, or constitute a lien on, assets or property of the association in accordance with the laws of the jurisdiction in which the association is located, and in the order of priority established by such laws.

(4) The claim of the supervising bank, except as provided for in paragraph (a)(3) of this section, based on the financing agreement between the association and the bank, including interest accrued before and after the appointment of the receiver, minus any setoff for stock of the supervising bank owned by the association.

(5) All claims of general creditors.

(b) All claims of each class described in paragraph (a) of this section shall be paid in full, or provision made for such payment, prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay any class of claims in full, distribution on such class shall be on a pro rata basis.

(c) Following the payment of all claims the receiver shall distribute the remainder of the assets of the association to the owners of stock, participation certificates and other equities in accordance with the priorities set forth in the bylaws of the association.

§ 611.1167 Inventory, examination and audit.

(a) As soon as practicable after taking possession of an association, the receiver shall make an inventory of the assets and liabilities as of the date possession was taken. Such inventory shall include the book value and the fair market value of the association's assets. The method of listing assets must provide such information to the satisfaction of the Farm Credit Administration. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The association in receivership shall be examined and audited by the Farm Credit Administration on an annual basis. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the association in receivership.

(c) The Farm Credit Administration may from time to time prescribe accounting practices to be followed and require such audit or other reports covering any matters related to the operations of the association or the receivership as it deems appropriate on such forms as it may prescribe. One copy of the reports required by this section shall be filed with the Deputy Governor, Office of Examination and Supervision, Farm Credit Administration, and one copy shall be retained in the receiver's principal office.

§ 611.1168 Final discharge and release of receiver.

The association shall continue as an association chartered in accordance with the Act until such time as the liquidation has been completed and the charter of the association has been cancelled by the Governor of the Farm Credit Administration. When the receiver recommends final distribution of assets or is otherwise relieved of its duties by the Farm Credit Administration, the receiver shall file with the Farm Credit Administration a detailed report in a form satisfactory to the Farm Credit Administration. Unless the Farm Credit Administration otherwise directs, upon final liquidation of the receivership or when the receiver completes or is otherwise relieved of its duties, the receivership shall be examined and audited pursuant to 12 CFR 617.7090. The receiver' accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released.

Subpart J—Liquidation of Banks

§ 611.1170 Appointment of receiver.

(a) The board of directors of a bank, by the adoption of appropriate resolution, may vote to liquidate the bank, and upon approval of the resolution by the Farm Credit Administration, the Governor may, by order, place the bank in receivership.

(b) Upon the default of any obligation by a bank, or upon a determination by the Governor, in accordance with section 4.4 of the Act (12 U.S.C. 2155), that the bank will default on its portion of a Systemwide and/or consolidated obligation in the absence an assessment by the Governor of other System banks that are jointly liable on such obligation, the Governor by order, may declare the bank insolvent and appoint a receiver.

(c) Upon the issuance of an order placing a bank in liquidation, all rights, privileges and powers of the board of directors, officers and employees of the bank are vested exclusively in the receiver, and such individuals are suspended.

(d) A voluntary or involuntary liquidation of a bank shall be conducted by the receiver, as agent of the Farm Credit Administration.

The receiver shall be responsible for collecting the assets, paying the creditors, paying any liquidating dividend to stockholders and winding up the affairs of the bank. Upon completion of the liquidation the Governor will revoke the charter of the bank.

(e) The Governor may at any time direct the receiver to return the bank to the previous management or remove or replace the receiver.

§ 611.1171 Powers and duties of the receiver.

A receiver of a bank is an agent of the Farm Credit Administration and has the same powers and duties with respect to a bank in receivership as the receiver of an association has in accordance with § 611.1161. In interpreting § 611.1161 for purposes of this section, the word "bank" shall be read for the word "association."

§ 611.1172 Preservation of equity.

(a) Except as provided for upon a formal distribution of the assets of the bank, no capital stock, participation certificates, equity reserves or other allocated equities of a bank in receivership shall be issued, allocated retired, sold, distributed, transferred, assigned or applied against any indebtedness of the owners of such equities.

(b) Immediately upon the adoption of a resolution by its board of directors to liquidate a bank or upon the issuance by the Governor of an order declaring a bank insolvent and appointing a receiver, the capital stock, participation certificates, equity reserves and allocated equities shall not be issued, allocated, retired, sold, distributed, transferred, assigned or applied against any indebtedness of the owner of such equities until such time as the Farm Credit Administration disapproves such resolution. In the event the resolution is approved and the bank is placed in receivership the provisions of paragraph (a) of this section shall govern further deposition of the equities of the bank.

§ 611.1173 Notice to associations, cooperative borrowers, and other financing institutions.

As soon as practicable after the receiver takes possession of the bank, the receiver shall notify by first class mail the production credit associations, Federal land bank associations, cooperative borrowers, and other financing institutions that own stock or other equities of the bank of the following matters:

(a) The number of shares or certificates such holder owns.

(b) The steps that will be taken to provide for the purchase of assets and assumption of liabilities by the bank that is or will be chartered to serve the territory formerly served by the bank in liquidation.

(c) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§ 611.1174 Creditors' claims and priority of claims.

(a) Except as provided for in paragraph (b) of this section the provisions of 12 CFR 611.1164 regarding the claims of creditors of associations in receivership shall also apply to the claims of creditors of a bank in receivership. In interpreting § 611.1164 for purposes of this section, the word "bank" shall be read for the word "association."

(b) The holders of bonds and notes in book entry form issued by the bank individually or jointly with one or more System banks are not required to submit claims in accordance with this section. The Farm Credit Administration will advise the receiver of the total obligation of the bank on such notes and bonds and of the obligation of the bank on specific issues as they mature.

(c) The following priority of claims shall apply to the distribution of the assets of a bank in liquidation:

(1) All costs, expenses an debts of the bank in receivership that were incurred on or after the date of the appointment of the receiver.

(2) All claims for taxes.

(3) All claims of holders of bonds and discount notes issued by the bank individually or jointly with one or more other banks pursuant to 12 U.S.C. 2153, all of which notes and bonds are collateralized and approved by the Farm Credit Administration in accordance with 12 U.S.C. 2154.

(4) All claims of creditors which are secured by, or constitute a lien on, assets or property of the bank in accordance with the laws of the jurisdiction in which the bank is located, and in the order of priority established by such laws.

(5) All claims of general creditors.

(d) All claims of each class described in paragraph (a) of this section shall be paid in full, or provision shall be made for such payment prior to the payment of any claim of lesser priority. The receiver shall immediately reserve funds sufficient to pay all claims provided for in paragraphs (a) (1) and (2) of this section. Thereafter the receiver may enter into a purchase and assumption agreement with a System bank authorized to serve the territory, pursuant to which the purchasing bank will acquire loan assets of the receivership and assume a like amount of obligations of the bank in receivership on its notes and bonds. The receiver shall then liquidate the remaining assets of the bank in a manner that minimizes the potential for any interruption in the timely repayment of principal and interest on claims provided for in paragraph (a)(3) of this section in accordance with the maturity dates of such obligations. The receiver shall immediately notify the Governor in the event the bank in receivership has insufficent funds to make a payment of principal or interest on any such obligation, whereupon the governor, in accordance with 12 U.S.C. 2155, may call upon other banks which are jointly liable on such obligation to make such payments as are necessary.

(e) Following the payment of all claims the receiver shall distribute the remainder of the assets of the bank to the owners of stock, participation certificates and other equities in accordance with the priorities set forth in the bylaws of the bank.

§ 611.1175 Inventory, examination and audit.

(a) As soon as practicable after taking possession of a bank, the receiver shall make an inventory of the assets and liabilities of the bank as of the date possession was taken. Such inventory shall include the book value and fair market value of the bank's assets and the book value of the bank's liabilities and any security therefor. The method of listing assets and liabilities must provide such information to the satisfaction of the Farm Credit Administration. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The bank in receivership shall be examined and audited by the Farm Credit Administration on an annual basis. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the bank in receivership.

(c) The Farm Credit Administration may from time to time prescribe accounting practices to be followed and require such audit or other reports covering any matters related to the operations of the bank or the receivership as it deems appropriate on such forms as it may prescribe. One copy of the reports required by this section shall be filed with the Deputy Governor, Office of Examination and Supervision, Farm Credit Administration, and one copy shall be retained in the receiver's principal office.

§ 611.1176 Final discharge and release of receiver.

The bank in receivership shall continue as a bank chartered in accordance with the Act until such time as the liquidation has been completed and the charter of the bank has been cancelled by the Governor of the Farm Credit Administration. When the

receiver recommends final distribution of assets or is otherwise relieved of its duties by the Farm Credit Administration, the receiver shall file a detailed report with, and in a form satisfactory to the Farm Credit Administration. Unless the Farm Credit Administration otherwise directs, upon final liquidation of the receivership or when the receiver completes or is otherwise relieved of its duties, the receivership shall be examined and audited pursuant to 12 CFR 617.7090. The receiver's accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released.

Donald E. Wilkinson,

Governor.

[FR Doc. 85-3651 Filed 2-12-85; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9173]

P. Leiner Nutritional Products Corp., et al.; 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 two Torrance, Cal. firms among other things, to cease in connection with the advertising, labeling, sale or distribution of nutritional supplements, representing falsely or without substantiation, that Octacol 4 or similar product can improve human vigor, stamina, endurance or any other aspects of physical performance or fitness; or that octacosanol, triacontanol, hexacosanol or tetracosanol are related in any way to athletic performance of physical fitness. The companies would also be barred from making any unsubstantiated claims concerning physical benefits to be derived from using such products. Additionally, the order would require that all records of materials supporting or contradicting product claims be maintained for a period of three years.

DATE: Comments must be received on or before April 15, 1985.

ADDRESS: Comments should be directed to FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Cheryl B. Anderson, FTC/B 411-1, 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 § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement, containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Nutritional supplements, Trade practices.

Before Federal Trade Commission

[Docket No. 9173]

Agreement Containing Consent Order to Cease and Desist

In the Matter of P. Leiner Nutritional Products Corp., a corporation, and P. Leiner Nutritional Products, Inc., of Delaware, a corporation.

The agreement herein, by and between P. Leiner Nutritional Products Corp., a corporation, and its subsidiary, P. Leiner Nutritional Products, Inc., of Delaware, a corporation, hereafter sometimes referred to as respondents, by their duly authorized officers, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent P. Leiner Nutritional Products Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1845 West 205th Street, Torrance, California. Respondent P. Leiner Nutritional Products, Inc., of Delaware 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 1845 West 205th Street, Torrance, California.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violation of section 5 and section 12 of the Federal Trade Commission Act and have filed answers to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act regarding this matter.

5. This agreement shall not become a 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 related materials pursuant to Rule 3.25(f), 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 respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. 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 § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents, (1) issue 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 decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they might 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 in the agreement may be used to vary or to contradict the terms of the order.

8. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondents P. Leiner Nutritional Products Corp., a corporation, and P. Leiner Nutritional Products, Inc. of Delaware, a corporation, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Octacol 4, or any other product of substantially similar composition, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that the product can help consumers improve vigor, stamina, endurance, any aspect of athletic performance, or any aspect of physical fitness.

B. Representing, directly or by implication, that the following ingredients contained in the product are related in any way to athletic endurance or performance or physical fitness—octacosanol, triacontanol, hexacosanol, tetracosanol.

II

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for personal or household use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research, or article, or any other scientific opinion or data.

III

A. It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for personal or household use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, concerning any benefit to be derived from using any such product with respect to athletic performance or endurance or any improvement in physical capability to be derived from using such product or from comparing any such products to any product or products of one or more competitors concerning the benefits from using any such products with respect to athletic performance or endurance or any improvement in physical capability to be derived from using such product unless, at the time of such representation, respondents possess and rely upon reliable and competent evidence that substantiates each such representation of the type and quantum appropriate for the representation.

B. For the purposes of Part III (A) to the extent evidence consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "reliable and competent" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

IV

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, offering for sale, sale, or distribution of any product for personal or household use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain accurate records:

1. Of all materials that were relied upon by respondents in disseminating any representation covered by this order.

2. Of all test reports, studies, surveys, or demonstrations in their possession or control or of which they have knowledge that contradict any representation made by respondents that is covered by this order.

Such records shall be retained by respondents for three 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 respondents and that respondents shall make such documents available to the Commission for inspection and copying upon request.

V

It is further ordered that respondents notify the Commission at least thirty (30) days prior to any proposed change in respondents 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 corporations which may affect compliance obligations arising out of the Order.

VI

It is further ordered that respondents shall forthwith distribute a copy of this Order to each of their operating divisions and to all distributors of Octoacol 4 or any other product of substantially similar composition.

VII

It is further ordered that respondents 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 they have complied with this Order.

VIII

It is further ordered that no provision of this Order shall be interpreted as precluding respondents from making statements or disclosures on their labels or labeling where those statements or disclosures are required by regulations promulgated by the Food and Drug Administration (FDA) or by statutes the FDA enforces.

Before Federal Trade Commission

[Docket No. 9173]

Analysis of Proposed Consent Order To Aid Public Comment

In the Matter of P. Leiner Nutritional Products Corp., a corporation, and P. Leiner Nutritional Products, Inc., of Delaware, a corporation.

The Federal Trade Commission has provisionally accepted an agreement containing a consent order to cease and desist from P. Leiner Nutritional Products Corp., and its wholly owned subsidiary, P. Leiner Nutritional Products, Inc., of Delaware. The Commission issued a Part III complaint against the respondents (then PLNP Holdings, Inc., and P. Leiner Nutritional Products, Inc. respectively; subsequently the corporations legally changed their names to those given here).

The proposed consent order has been placed on the public record for sixty (60) days for receipt 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 and take other appropriate action, or make final the proposed order contained in the agreement.

The matter concerns advertisements for Octacol 4, a capsule containing cold processed wheat germ oil and octacosanol, triacontanol, hexacosanol and tetracosanol.

The Commission's complaint in this matter charged P. Leiner Nutritional Products Corp., and P. Leiner Nutritional Products, Inc., of Delaware with disseminating advertisements containing false and unsubstantiated representations regarding the effect of Octacol 4 on human physical performance. According to the complaint, Octacol 4 advertisements falsely claimed that the use of the product will improve human endurance, stamina, vigor and overall athletic performance or physical fitness. In fact, the complaint alleges, that the claims are false and that Octacol 4 is not effective in improving athletic performance or physical fitness.

The complaint also alleges that the advertisements were deceptive because the corporations represented to consumers that they had a reasonable basis for claims that Octacol 4 could improve various aspects of human physical performance or fitness when in fact they had no reasonable basis for these representations.

The consent orders contains provisions designed to remedy the advertising violations charged, as well as to prevent respondents from engaging in similar allegedly illegal acts and practices in the future.

Part I of the consent order prohibits the respondents from representing directly or indirectly that Octacol 4 or any similar product can improve human vigor, stamina, endurance or any aspect of physical fitness or that octacosanol, triacontanol, hexacosanol or tetracosanol are in any way related to athletic performance or physical fitness.

Part II of the consent order requires the respondents to cease misrepresenting the purpose, content, sample, reliability, results or conclusions of any scientific test, research, or article, or any other scientific opinion or data.

Part III of the consent order requires the respondents to cease making any representations, including comparisons to competitors' products, for any product concerning the benefits of such product with respect to athletic performance or endurance or any improvement in physical capability to be derived from using such product unless the respondents possess and rely upon reliable and competent evidence that substantiates each such representations.

Finally the order contains provisions requiring retention of records supporting certain future advertising claims and for dissemination of copies of the consent order, including dissemination to all distributors of Octacol 4.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-3614 Filed 2-12-85; 8:45 am]

BILLING CODE 6750-01-M

POSTAL SERVICE

39 CFR Part 111

Addressing Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would change the postal regulations which govern the addressing of mail matter in order to promote a clear understanding of proper addressing procedures. At the present time, addressing regulations provide some guidelines but do not clearly differentiate between requirements, restrictions, and recommendations. Thus, some post offices attempt to enforce addressing recommendations as requirements. The Postal Service believes that if customers would follow the changed regulations, the Postal Service would be able to operate at a more efficient and less costly level, and customers would, at the same time, increase the likelihood that their own mail would be delivered more expeditiously.

DATE: Comments must be received on or before March 15, 1985.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Mail Classification, Rates and Classification Department, Room 8640, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260-5530. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8640 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. George E. Thomas, (202) 245-4512.

SUPPLEMENTARY INFORMATION: Deficient addressing procedures cause the Postal Service to incur additional costs in processing and delivering mail. The Postal Service believes that such unnecessary costs can be avoided and that a clearer understanding of proper addressing procedures can be advanced by differentiating addressing requirements from other addressing guidelines. Customers who follow the revised procedures will enable the Postal Service to operate more efficiently, and increase the possibility that their own mail will be better handled.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 533(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 122—ADDRESSES

Revise 122 to read DELIVERY ADDRESS.

Revise 122.1 thru 122.3 to read as follows:

122.1 Requirements.

The purpose of an address is to indicate the specific delivery location of a mailing piece.

.11 Mail must bear the legible address of the intended recipient on one side only. See 124.63a(13) for exception of live-day-old poultry.

.12 At a minimum an address must consist of the following elements and appear in the following order (Except simplified address mail as prescribed in 122.51):

a. Name or identification of the intended recipient;

b. Street number and street name, box number, general delivery, or rural or highway contract route designation and box number if necessary;

c. City and State. The "City" is the name of the post office serving the intended recipient (the delivery post office), and

d. ZIP Code (5-digit or ZIP + 4 codes) where required or desired (see also DMM 122.634). ZIP Codes 5-digit or ZIP + 4 codes) are required on:

(1) Presort First-Class Mail (361.4).

(2) ZIP + 4 First-Class Mail (361.4).

(3) Postal cards and post cards, not mailed as presorted First-Class Mail, which are mailed under 322.31h, i, or j (322.32).

(4) Second-class mail (452 and 455.2f)

(5) Bulk third-class mail (661.2), and

(6) Fourth-class except parcel post (761.1).

(7) Business Reply mail (917.52(5)).

(8) Merchandise Return (919.43, 919.532 and 919.531).

(9) Mail sent to Military Addresses.

(10) Official mail (137.28).

(11) Return addresses of printed stamped envelopes (141.242).

(12) Return addresses of mail in which postage is paid by stamps precanceled by bars only (143.421a).

(13) The sender's return address where return service is requested on second-class mail (493).

122.13 Positioning of Address.

.131 Letter-Size Mail. See section 322.3 regarding address arrangement on postcards. The orientation of the address on letter-size mail determines which dimensions constitute the height and length, and may subject the mail to a surcharge or render it nonmailable (see sections 127, 324, 352.21, 353, 651.212 and 652).

.132 Other Mail Processing Categories. See Exhibit 452.6 regarding address placement on second-class publications. A clear space must be provided on other mail for the address, stamps, postmarks, and postal endorsements.

.14 Return Address. The return address contains elements corresponding to those for the destination address in 122.12. The mail listed below must bear, in legible form the return address of the sender:

a. Mail of any class, when its return, and/or address correction service is desired—122.16.

b. Official mail—137.27 and 137.285.

c. Mail matter on which postage is paid by stamps precanceled by bars only—143.421.

d. Matter bearing company permit imprints—145.44.

e. Priority mail—361.2.

f. Second-class mail in envelopes or wrappers—453.2a.

g. Fourth-class mail—761.12.

h. Registered mail—911.31.

i. Insured mail—913.13e.

j. COD mail—914.131.

.15 See 122.8 for special instructions on addressing overseas military mail; see 126.2 for addressing mail sent via Department of State to U.S. government personnel abroad; see 129.3 for special instructions on window envelopes; and the International Mail Manual (IMM), for addressing international mail.

.16 A mailer's specific instructions for forwarding mail (see 159.2), as well as requests for address correction service return (see 159.3) must appear below the sender's return address. A full return address must be used with these endorsements. On letter-size mail, the information must appear in the upper left corner of the address side of the piece, on other mail, the information must appear in the upper left corner of the address area. The endorsements must stand out clearly against their background and be large enough to be readily visible.

Examples:

a. Frank B. White
2416 Front Street
St. Louis, MO 63135-1234
RETURN POSTAGE GUARANTEED

b. Frank B. White
2416 Front Street
St. Louis, MO 63135-1234
FORWARDING & RETURN POSTAGE GUARANTEED

c. Frank B. White
2416 Front Street
St. Louis, MO 63135-1234
ADDRESS CORRECTION REQUESTED RETURN POSTAGE GUARANTEED

d. Frank B. White
2416 Front Street
St. Louis, MO 63135-1234
ADDRESS CORRECTION REQUESTED FORWARDING & RETURN POSTAGE GUARANTEED

e. Frank B. White
2416 Front Street
St. Louis, MO 63135
DO NOT FORWARD

.17 At the sender's request the delivery post office will retain mail,

other than registered, insured, and certified, for not less than 3 days or more than 30 days. To request a specific retention time, the sender in his return address must request that mail be held. Requests to lengthen or shorten retention periods to not less than 3 nor more 30 days will be honored only at the sender's request. See 159.333 for registered, insured, and certified mail retention periods.

122.2 Restrictions.

.21 Mail bearing both a street address and a post office box number on different address lines will be delivered to the address element appearing on the line immediately above the city and state. If a ZIP Code (ZIP+4 or 5-digit code) is used, it must correspond with the address element immediately above the city and state. These restrictions also apply to return addresses on mail matter.

.22 Mail bearing both a street address and a post office box number on the same address line will be delivered to the post office box. If a ZIP+4 or 5-digit code) is used, it must correspond with the post office box number in the address. This type of addressing is not recommended.

PREFERRED

```
                    Grand Products, Inc.
                    100 Major Street
Mail will be delivered here → P. O. Box 200
                    Portland, OR  97207-0200
```

```
                    Grand Products, Inc.
                    P. O. Box 200
Mail will be delivered here → 100 Major Street
                    Portland, OR  97213-1234
```

NOT RECOMMENDED

```
                                        Grand Products, Inc.
Mail will be delivered here (to P. O. Box) → P. O. Box 200, 100 Major Street/
                                        Portland, OR  97207-0200
```

```
                                        Grand Products, Inc.
Mail will be delivered here (to P. O. Box)   100 Major Street, P. O. Box 200
                                        Portland, OR  97207-0200
```

.23 Mail bearing the name of more than one post office in either the address or return address is not acceptable for mailing.

.24 An endorsement directing return to point of mailing (postmark) will not be honored.

.25 Postage (stamps, meter stamps, or permit imprints) must be placed in the upper right corner of the address side for letter size mail (see 128.2). All other processing categories (see 128.1) must have the postage in the upper right corner of the address area (see 122.132).

122.3 Recommendations.

.31 The return address should be included on all mail. The return address on letter-size mail (see 128.2) should be located in the upper left corner of the address side. Other processing categories (see 128.1) should have the return address in the upper left corner of the address area (see 122.132). The return address should not be positioned below the delivery address. It should not appear on the reverse side of a mailing piece.

.32 The use of ZIP Codes is recommended on all mail because they enable the Postal Service to achieve greater reliability and efficiency in dispatch and delivery. Although its use is voluntary except where a ZIP+4 discount is claimed, use of the ZIP+4 code is preferred over the 5-digit ZIP Code.

.33 The Postal Service also requests that mailers follow certain addressing guidelines which permit the efficient processing of letter-size mail on automated optical character readers (OCRs) and bar code sorters (BCSs). The address, or at a minimum, the city, state, and ZIP Code line(s) of the address, on letter-size mail should be located within an imaginary rectangle (the OCR read area) on the front of the mail piece formed by the following boundaries:

a. At least 1 inch from the left edge.

b. At least 1 inch from the right edge.

c. At least ⅝ inch from the bottom edge (bottom line of rectangle).

d. No more than 2¼ inches from the bottom edge (top line of rectangle).

.34 Nonaddress printing, computer punch holes, etc., should not be placed within the OCR read area, alongside or below the city, state, and ZIP Code line(s) of the address.

.35 Unit, apartment, mail receptacle, office, or suite number should be included in the address. Place that information at the end of the delivery address line. If there is not enough space on this line, place it on the line immediately above the delivery address. Special service endorsements should be placed on the right side below the postage and above the address.

.36 Addresses should not be inverted (upside down).

122.4 Simplified Address.

Revise 122.43 to read as follows:

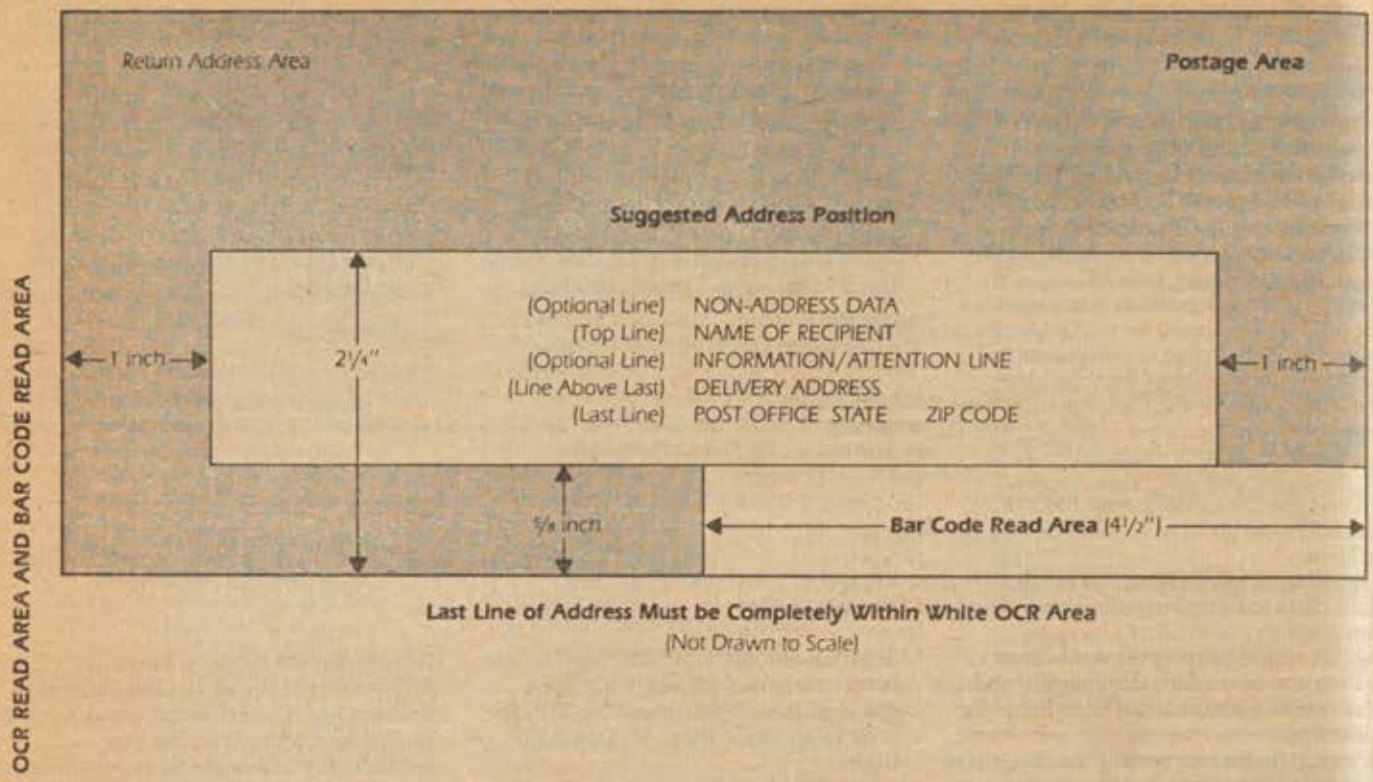
.43 Number of Customers. Delivery statistics for all carrier routes and post office box sections are included in the CRIS Scheme. See 622.11(e) for CRIS ordering information. On request, postmasters will furnish, without charge, information as follows:

a. Number of post office boxholders.

b. Route number and number of box holders on each rural and highway contract route.

c. Route numbers and number of families on each rural route.

d. Number of families served or number of business places served within the total delivery area or on particular carrier routes.



122.6 ZIP Code System.

Revised 122.61 to correct typographical error on the penultimate line; "routine" is changed to read "route." Revise 122.632 to correct typographical error on line 5; "signed" is changed to read "assigned."

Revised 122.635 to read as follows:

.635 Directory Assistance. The Postal Service maintains a directory assistance system to help the public obtain correct ZIP Codes (ZIP+4 or 5-digit). ZIP Code information numbers are published in the Yellow Pages of telephone directories. All 5-digit ZIP Codes and their areas are listed in the National Five Digit ZIP Code and Post Office Directory (Publication 65). ZIP+4 codes are listed in ZIP+4 State Directories. The first issue will be available in late 1984. See section 122.12d for mail which must bear a ZIP Code.

Revised 122.641 and 642 to omit punctuation marks in the examples.

122.8 Military Mail.

All examples appearing in this section are revised to omit punctuation marks.

127 Minimum Sizes.

Omit the "Note" following 127b and insert new 127c reading as follows:

c. Address orientation can subject First-Class Mail and single piece third-class mail to a nonstandard surcharge or render it incompatible with the above minimum size standards. Mailing pieces which do not meet the minimum size standards are prohibited from the mails.

Note.—With the exception of mail sent at third-class carrier route rates, the orientation of the address establishes which dimensions are the height and length of a piece.

129 Envelopes and Cards.

Revised 129.3 a, b, and c to read as follows:

a. The address window on all letter-size envelopes should be located within the area described in 122.33. See 122.131 regarding address position. The address window must be parallel with any edge of the envelope on flat-size mail (see 128.3). See 122.38 for recommendation. See 127 for size standards.

b. The window must be of sufficient size and sufficiently transparent so that each character in the address and optional endorsement line (if used), is visible throughout an insert's full movement fully within its envelope. Mail which does not conform to this standard may be rejected or returned.

c. The provisions in Part 122 governing addressing also apply to window envelopes. Nonaddress printing, computer punch holes, or other extraneous information should not be placed alongside or below the city, state, or ZIP Code line of the address.

159.3 Address Correction Service and Return.

Revised 159.332b to change reference 122.32 to read 122.17.

322.3 Restrictions on the Use of Double and Single Postal and Post Cards.

Revise 322.32b to read as follows:

b. The addresses on the cards must include either the ZIP+4 code or the 5-digit ZIP Code and must be positioned in accordance with 122.131.

323 Presorted First-Class Mail.

Revise 323.2 to insert the word CRIS after Postal Service and before scheme on line 19.

352.2 Shape, Ratio, and Sealing.

Omit the "Note" following 352.21b and insert new 352.21c reading as follows:

c. Address orientation can subject First-Class Mail to a nonstandard surcharge or render it incompatible with the above minimum size standards. First-Class Mail which does not meet these minimum standards is prohibited from the mails.

Note.—The orientation of the address establishes which dimensions are the height and length of First-Class Mail.

452 Addressing.

Revise 452.1f to read as follows:

See 122.131 and 127 regarding address orientation and minimum size standards on letter-size pieces. On other mail processing categories the addresses must be placed on the front or back cover in accordance with 122.132. On flat size pieces (see 128.3) it is suggested the address be placed so that when the bound or folded edge is grasped in the right hand, the address must be along the bound edge or the top edge near the bound edge as indicated in Exhibit 452.6.

651.2 Size, Shape, and Ratio.

Omit the "Note" following 651.212b(3) and add new 651.212c reading as follows:

c. Address orientation can render third-class mail incompatible with the minimum size standards above or subject single piece rated third-class mail to a nonstandard surcharge. Third-class mailing pieces other than keys and identification devices which do not meet these minimum size standards are prohibited from the mails.

Note.—With the exception of mail sent at third-class carrier route rates, the orientation of the address establishes which dimensions are the height and length of a piece.

951 Post Office Box (P.O. Box) Service.

Revise 951.86 to change reference 122.32 to 122.17.

952 Caller Service.

Revise 952.46 to change reference 122.32 to 122.17.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

(39 U.S.C. 401, 404)

W. Allen Sanders,

Associate General Counsel, General Law and Administration.

[FR Doc. 85-3602 Filed 2-12-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300113; FRL-2774-8]

Mono and Dialkyl (C_8–C_{18}) Methylated Ammonium Chloride Compounds; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that mono- and dialkyl (C_8–C_{18}) methylated ammonium chloride compounds, where the alkyl group(s) are derived from conconut, cottonseed, soya, tallow, or hogfat fatty acids be exempted from the requirement of a tolerance when used as inert ingredients (surfactants and related adjuvants of surfactants) in pesticide formulations. This proposed regulation was requested by Akzo Chemie America.

DATE: Writen comments identified by the document control number [OPP-300113], must be received on or before March 15, 1985.

ADDRESS: By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767), Environmental Protection Agency, Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 St. SW., Washington, D.C. 20460

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: At the request of Akzo Chemie America, the Administrator proposes to amend 40 CFR 180.1001(d) by expanding the existing exemption from the requirement of a tolerance from "dialkyl (C_8–C_{18}) dimethyl ammonium chloride, (C_8–C_{18}) groups from tallow" to "mono- and dialkyl (C_8–C_{18}) methylated ammonium chloride compounds, where the alkyl (C_8–C_{18}) group(s) are derived from coconut, cottonseed, soya, tallow, or hogfat fatty acids." These ingredients are listed for use as surfactants and related adjuvants of surfactants in pesticide formulations applied to growing crops only. The amendment would also be for use as surfactants and related adjuvants of surfactants. A separate entry is not necessary in order to reflect this change.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredients. Mono and dialkyl (C_8–C_{18}) methylated ammonium chloride compounds, where the alkyl (C_8–C_{18}) group(s) are derived from coconut, cottonseed, soya, tallow, or hogfat fatty acids.

Name address of requestor. Akzo Chemie America, McCook, IL 60525.

Bases for approval. (1) Dialkyl (C_8–C_{18}) dimethyl ammonium chloride, (C_8–C_{18}) group from tallow, is cleared under 40 CFR 180.1001(d) for use as surfactants and related adjuvants of surfactants.

(2) Methyl *bis*(2-hydorxyethyl) alkyl ammonium chloride (C_8–C_{18}) derived from coconut, cottonseed, soya, or tallow acids is cleared under 40 CFR 180.1001(d) for use as surfactants.

(3) The Agency does not consider this change to be of toxicological significance.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, these ingredients are useful and do not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains these inert ingredients, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP-300113]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: Janurary 30, 1985.

Douglas D. Campt,

Director, Registration Division, Office or Pesticide Program.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(d) be amended by removing the entry "dialkyl (C_8–C_{18}) dimethyl ammonium chloride, (C_8–C_{18}) group from tallow," and alphabetically inserting the following entry, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	*	*
Mono and dialkyl (C_8–C_{18}) methylated ammounium chloride compounds, where the alkyl group(s) (C_8–C_{18}) are derived from coconut, cottonseed, soya, tallow, or hogfat fatty acides.		Surfactants, related adjuvants of surfactants.
* * *	*	*

[FR Doc. 85-3217 Filed 2-12-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300114; FRL-2774-3]

Sodium Benzoate; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that sodium benzoate be exempted from the requirement of a tolerance when used as an inert ingredient (anticaking agent, stabilizer, preservative) in pesticide formulations. This proposed regulation was independently requested by American Cyanamid Co. (for use as an anticaking agent) and Fairfield American Corp. (for use as a stabilizer/preservative).

DATE: Written comments, identified by the document control number [OPP-300114], must be received on or before March 15, 1985.

ADDRESS: By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Registration Support and Emergency Response Branch, Evironmental Protection Agency, Rm. 716A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicily by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7700).

SUPPLEMENTARY INFORMATION: At the request of the American Cyanamid Co. and the Fairfield American Corp., the Administrator proposes to amend 40 CFR 180.1001(e) for sodium benzoate when used as an anticaking agent (American Cyanamid Co.) or stabilizer/preservative (Fairfield American Corp.) in pesticide formulations applied to animals.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Sodium benzoate.

Name and address of requestors. American Cyanamid Co., Wayne, NJ 07470, and Fairfield American Corp., Frenchtown, NJ 08825.

Bases for approval. Safety of the proposed use is inferred from the 40 CFR 180.1001(c) clearance and from the food additive clearances noted below:

1. Sodium benzoate has prior sanction under 21 CFR 181.23 as a component of food-packaging materials.

2. Sodium benzoate is generally recognized as safe (GRAS) for use as a direct food additive under 21 CFR 184.1733 and as a preservative in animal feed under 21 CFR 582.3733.

3. Sodium benzoate is cleared under 40 CFR 180.1001(c) for use as an anticaking agent when used in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP-300114]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 30, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180.1001(e) be amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* *	*
Sodium benzoate (CAS Registry No. 532-32-1).		Anticaking agent/ stabilizer/ preservative.
* * *	* *	*

(Sec. 408(b), 68 Stat. 514 (21 U.S.C. 346a(e)))

[FR Doc. 85-3223 Filed 2-12-85 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 175

[Docket No. HM-192]

Quantity Limitations Aboard Aircraft

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Notice of public hearing.

SUMMARY: On April 6, 1984, the Materials Transportation Bureau (MTB) published an Advance Notice of Proposed Rulemaking in the **Federal Register** (49 FR 13717) which solicited public comments relative to any future action it should take concerning the provisions of § 175.75(a)(2) of the Department's Hazardous Materials Regulations (HMR). This section imposes a limitation of fifty pounds net weight on the quantity of hazardous materials, permitted to be carried aboard passenger aircraft, that may be carried in an inaccessible manner aboard any aircraft. The advance notice of proposed rulemaking was published in response to a petition for rulemaking submitted by Japan Air Lines Company, LTD. (JAL) on April 15, 1983, requesting that § 175.75(a)(2) be removed from the HMR. This document summarizes the comments received in response to that Advance Notice of Proposed Rulemaking and announces a public hearing that will be held with regard to this matter.

DATE: The hearing will be held May 30, 1985, beginning at 9:30 a.m.

ADDRESS: The hearing will be held in the Third Floor Auditorium at the Federal Aviation Administration Headquarters Building (Federal Office Building 10A), 800 Independence Avenue, SW., Washington, D.C. 20591. Submit written comments to Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket, be submitted in five copies, and be received on or before May 31, 1985. The Dockets Branch is located in room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-0656.

SUPPLEMENTARY INFORMATION: A total of 28 comments were received in response to the advance notice of proposed rulemaking. Commenters expressed widely varying opinions regarding the action proposed in the JAL petition, from full agreement that § 175.75(a)(2) be removed from the HMR to opposition to making any change to the existing provisions. Other commenters proposed that the quantity limitations in § 175.75(a)(2) be increased. Because this matter is so controversial, the Air Line Pilots Association (ALPA) requested that a public hearing be held on the matter. The MTB agrees with ALPA that this is both an important and controversial matter, and believes that any change to the existing provisions of § 175.75(a)(2) must be carefully examined. Accordingly a public hearing will be held concerning this matter. In addition, the MTB believes it is important to summarize the comments that have been received in response to the advance notice of proposed rulemaking in order that certain matters raised by various commenters may be further considered at the hearing. The MTB will also accept additional written comments on matters raised in this document.

Six comments were received from emergency response organizations (e.g. fire departments and fire service training organizations). All of these commenters opposed any change to § 175.75(a)(2), alleging that removal of these quantity limitations could result in a catastrophic loss of life. One of these commenters termed any consideration of deleting the existing quantity limitation as "ludicrous". It should be noted that none of these commenters provided any detailed information to support these opinions, nor did any attempt to answer the specific questions posed by the MTB in the advance notice of proposed rulemaking. These questions had been posed in an attempt to gather information in order to determine the merits of the JAL petition.

One comment was received from a foreign government. The Director General of Civil Aviation of Portugal supported deletion of the provisions of § 175.75(a)(2) on the basis that such action would not be prejudicial to safety and that it would create further uniformity with the International Civil Aviation Organization (ICAO)

Regulations in Annex 18 of the Convention on International Civil Aviation and the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air. However, no information was provided to support the contention that removal of these quantity limitations would not be prejudicial to safety.

Comments were received from nine chemical shippers or shipper related organizations. All of these commenters supported some modification to the existing quantity limitations, with eight suggesting the removal of the limitations. Many of these commenters cited distribution and marketing difficulties that had arisen from these regulations such as the following example:

American Hoechst Corporation divisions, subsidiaries and our parent facility have experienced, as a result of this regulation, marketing disadvantages with unnecessary handling and packaging difficulties which, in many cases, has defeated the purpose of using air freight service in the first place.

* * * * *

Current packaging standards, whether performance or specification criterion, when complied with offers sufficient control to transport hazardous material safety as proven by the lengthy service from responding air lines to this docket.

In its comments, Dow Chemical U.S.A. cited similar difficulties, and also attempted to outline the origin of the "50 pound" weight restriction. The salient points of the Dow comment are as follows:

1. This is to advise that the Dow Chemical Company supports the elimination of the present 50 lb. weight restriction for hazardous materials that currently applies to inaccessible cargo compartments on passenger aircraft. The rule served it's purpose years ago when most passenger aircraft had baggage and cargo compartments that were easily accessible to a crew member; and there was a very limited experience with transporting hazardous materials by air. Today not a single passenger aircraft operated by the Trunk Air Carriers have in-flight access to any of the baggage or cargo compartments. As a result, it creates an undue and unnecessary burden upon carrier and shipper alike.

2. The original rule stems from the early history when cargo and passenger aircraft had both accessible and inaccessible cargo and baggage compartments. The DC-3's had an in-flight accessible compartment behind the crew and one that was inaccessible in-flight behind the passenger compartment. The DC-4, DC-6 and DC-7 as well as the Connies and the Strata Cruisers all had the larger accessible compartment behind the crew as well as the belly compartments that were inaccessible during flight for all practical purposes. Some had trap doors or hatches that could be removed but they were primarily for mechanical inspection and normally used on the ground.

3. The limit of 50 lbs. was believed to be the heaviest weight that a cargo agent could physically handle with any degree of care. It also was high enough to cover an aircraft battery which the air carriers frequently transported as company material. Since there were other cargo compartments for the larger shipments the 50 lb. limit did not necessarily create a problem for either the shipper or the carrier.

4. The world headquarters of Dow's Pharmaceutical Division, Merrell Dow, is located in Cincinnati, Ohio. At one time they used a central purchasing plan that sourced their global manufacturing points on Cincinnati for certain of their raw materials and expensive drugs, many of which were regulated by DOT. The purpose of the central sourcing was for better quality control and to buy in large quantities at a lower price. In most cases the materials would move from Cincinnati to international points by air. Since Cincinnati had little or no all-cargo aircraft, the distribution system relied heavily upon the passenger aircraft and packaged accordingly. This was especially true for destinations like South Africa.

In the past, shipments were small and it went fairly smoothly, but as production increased the shipments became larger. As an example, Cherry Extract. Due to its flash point it is shipped as a flammable. On shipments of 100 to 200 pounds they were not only separated in compartments, but split up between aircraft, often being separated from the restricted article certificate and causing undue delays. Reducing the size of the shipment to 50 lbs. helped but also increased the costs.

* * * * *

5. In researching hazardous material incidences that have been reported to DOT and discussing the matter with knowledgeable air carrier personnel, we are unable to find a record of any hazardous material incidents aboard an aircraft that was caused by a large quantity of hazardous material. The control of the potential hazard of the material is in the packaging, not in the quantity aboard the aircraft in any one compartment.

The Council for the Safe Transportation of Hazardous Articles (COSTHA) supported some change to the existing quantity limitations, citing successful transportation experience with hazardous materials classified as ORM-D Consumer Commodities to which the quantity limitations of § 175.75(a)(2) do not apply. The following extract of the COSTHA comment outlines the suggested modification to the existing quantity limitations:

For a number of years, COSTHA participants have been shipping Consumer Commodities ORM-D-AIR via aircraft, without being subject to the 50-pound limitation. This transportation has been free of any undue passenger or crew hazard exposure. This verifies that certain packaging and quantity restrictions imposed by the rules result in safe transportation.

Without addressing what higher quantity would be equally safe, it seems reasonable to conclude that similar quantities of similar materials, otherwise classed, will provide the same degree of safety for passengers and crew alike. There is such a category under the U.S. regulations commonly referred to as "limited quantity".

There are a few exceptions to this equivalency generalization, but except for pure gases in quantities over 4 fluid ounces, the only material difference would seem to be the overall ORM-D gross package weight limit of 65 pounds. Pure flammable gases and non-flammable gases may need to be considered as a separate category.

The following points should be considered:

1. Experience that has been reported by foreign commenters to the docket (Question 1).

2. The obvious lack of safety implications for permitting the same items as now permitted by another name (Question 2).

3. The marked increase in efficiency and timeliness in moving goods because of the greater availability of scheduled airlines, thereby avoiding the delays that shippers frequently experience (Question 3).

4. The known outstanding experience of moving ORM-D materials by air without significant risk (Question 4).

5. And using the established 65-pound package limit now recognized by the DOT Hazardous Materials Regulations and ICAO TI Packing Note 910 (actually 55.1 pound) (Question 5).

There is a basis to remove immediately the total quantity limit by substituting a package size restriction, and a hazard risk level. The level could be that set by the current U.S. limited quantity categories.

While this solution is not entirely satisfactory because it does not correlate directly to the international regulatory system, the general risk level (better described as the "lack-of-significant-risk" level) might be adequately reflected by choosing UN Group II and III materials and quantities for passenger aircraft as given in the ICAO TIs. While it is true that the ICAO quantities would result in larger packaging for some materials than the 65-pound limit suggests, it is equally true that under U.S. experience many of these materials are moving safely in commerce, some as unregulated, and have been for many years. Safety in their movement is more related to methods of packaging than a packaging size having its origins in the ancient regulations for railway express cars.

The major advantage to such an approach is that it is not U.S.-regulation oriented. It uses existing international criteria. It would seem to be a reasonable compromise for at least the initial step.

We request, therefore, a formal rule making proposal at least using the U.S. limited quantity levels. During these considerations very serious study should be given to considering alternatively the use of ICAO passenger aircraft quantity limits or Group II and III limitations on package sizes, rather than aircraft total quantities. Under this

proposal, the 50-pound quantity limitation would continue to apply to Group I substances where they are authorized aboard aircraft.

Eleven comments were received from air carriers and air carrier organizations. All of these commenters supported either the removal of the quantity limitations or an increase in the quantity limits. The International Air Transport Association (IATA) and seven foreign air carriers submitted comments fully supporting the JAL petition to remove any limitation on the quantity of hazardous materials permitted to be carried in an inaccessible location aboard a passenger aircraft. The majority of these commenters provided specific opinions regarding the questions posed in the advance notice of proposed rulemaking. The comments submitted by Air France are typical of these comments and, although the comments are relatively lengthy, the MTB believes there is merit in reproducing those comments in this document. The five questions referred to in the Air France comments are those posed by the MTB in the advance notice.

In response to the reference advance notice of proposed rulemaking, AIR FRANCE wishes to submit the following comments:

(a) We fully support the statements in the JAPAN AIR LINES Co., Ltd., petition dated April 15, 1983, quoted in the reference Docket.

(b) With regard to the questions raised in the Docket itself:

(1) What has been the transportation experience in areas outside of the United States where no corresponding aircraft quantity limitations are imposed?

As most international airlines serving airports located on United States territory, AIR FRANCE had for the past two decades the experience of simultaneously operating:

—Flights to, from, or through a U.S. airport, where the quantity limitations per aircraft hold or compartment in § 175.75(a)(2) were applied, and

—Flights not serving a U.S. airport, where no such quantity limitations were applied and only the quantity limitations were applied and only the quantity limitations per package in (up to 1982) International Air Transport Association (I.A.T.A.) Regulations and (from 1983 on), International Civil Aviation Organization (I.C.A.O.) Technical Instructions for the Safe Transport of Dangerous Goods by Air were enforced, with no total aircraft or compartment quantity limitation.

We registered during this long period no evidence of either more incidents or more potentially hazardous ones on the international flights, as compared to the flights serving an airport on U.S. territory, which were—and still are—performed in compliance with the requirements of § 175.75(a)(2).

Further, our records of all incidents or abnormalies concerning carriage of dangerous goods (hazardous materials) associated with AIR FRANCE flights, held since 1972, include no case where the total quantity (number of packages) per aircraft, or cargo compartment, or unit load device was identified as a factor which might eventually have increased the risk.

(2) What would be the safety implications, if any, if the J.A.L. petition were granted?

To the best of our knowledge, this would introduce no adverse safety implications. On the contrary, positive safety improvement effect could be expected, insofar as past experience demonstrates safety regulations are best and most universally complied with when they are systematically the same for all flights. Exceptions, and rules with too many variants, have consistently been found more difficult to enforce. The currently prevailing international situation, whereby in accordance with I.C.A.O. Technical Instructions there is no aircraft quantity limitation on most routes, but there is one for any shipment to, from or through an airport located in the United States or on U.S. territory, constitutes an additional complexity which may have an adverse effect on safety.

(3) What would be the economic benefits and consequences associated with adoption of the amendment proposed by J.A.L.?

The currently prevailing situation under 49 CFR 175.75(a)(2) is primarily detrimental to the U.S. general public, insofar as U.S. shippers or consignees may not benefit from the possibility of shipping any significant amount of hazardous cargo on passenger aircraft flights: They are in practice limited to the use of freighter aircraft flights, noticeably less frequent and available to a significantly lesser number of international destinations.

Since there is no evidence to demonstrate it contributes to a higher safety, this rule therefore seems to constitute an unwarranted restraint on international commerce by air, primarily detrimental to United States citizens or companies.

Deletion of the rule would result in more equal competition between the U.S. and foreign chemical industries on worldwide markets, as well as more equal competition between U.S. and foreign air carriers on international routes not touching an airport located on U.S. territory. Past experience has shown that removing such restrictions on fair competition usually results in traffic development beneficial to the shipping public as well as the airline industry at large.

(4) If, instead of removing § 175.75(a)(2), certain classes * * * of hazardous materials were to be excepted from these quantity limitations, what hazard classes or sub-classes could be safely excepted and why?

Based on the findings of the I.C.A.O. group of international expects as reflected in I.C.A.O. Technical Instructions for the Safe Transport of Dangerous Goods by air, all classes or sub-classes of hazardous materials (dangerous goods) can safely be exempted from aircraft quantity limitations, with the exception of:

—United Nations Class 7, Radioactive Materials, where a maximum quantity of 50 Transport Indexes per aircraft should remain applicable in accordance with International Atomic Energy Agency (I.A.E.A.) rules.

(5) If, instead of removing § 175.75(a)(2), the 50 pound limitation were replaced by a higher quantity limit, what quantity limit would be applicable and why?

Except as provided for under comment No. 4) above in accordance with I.C.A.O. Technical Instructions, we believe 50 pound (or 150 pounds of non flammable compressed gas) to be an arbitrary limit, and it does not, to the best of our knowledge, seem possible to substantiate this value or any higher set value in terms of safety. This is because safety, in the context of international I.C.A.O. regulations as well as 49 CFR, is based on quantity limitations per package in relation with stringent packaging requirements, with the intent of making each individual package harmless once all specified requirements have been complied with. The actual safety problem is to ensure every single package is totally harmless: If it is not, it should be deemed unacceptable on passenger aircraft, where it may not be accessible during flight in the event of an incident. If it is, then having 2, 3 or in identical packages, all meeting the safety requirements per package, will not change the safety risk.

The Air Transport Association of America (ATA) reported that its member airlines are in basic agreement that the quantity limitations imposed by § 175.75(a)(2) are too restrictive, although they are divided as to whether to remove them or raise them, with one carrier stating that they are satified with the present rule and quantities. However, they noted that only international carriers can provide transportation experience in areas outside of the United States where no corresponding aircraft quantity limitations are imposed. The ATA went on to make the following observations regarding the origin of this limitation, problems enountered by carriers as a result of the limitation and a suggested interim measure to increase the permitted quantities in order to help the carriers as a result of the limitation and a suggested interim measure to increase the permitted quantities in order to help to resolve the problems that have been encountered:

Certain air carriers have reported that, in complying with § 175.75(a)(2), it has forced multi-piece air freight shipments of hazardous materials of the same class to be split, requiring loading in multiple ULD's and cargo compartments, and/or movement on numerous aircraft over a period of days, and in certain instances, requiring routing to different transfer points. This all provides for additional handling, and exposure of the pieces in the shipment to an increased possibility of incompatible loading and damage. In this situation, additional paperwork is also required, i.e., extra copies of dangerous goods declarations, pilot notifications, and separate manifests for each additional flight.

In considering this issue, one has to ponder the question of how the 50 pounds of

hazardous materials (and 150 pounds of non-flammable compressed gas) in an inaccessible cargo compartment, found its way into the regulations. It appears that it may have been inherited from passenger rail car and rail express car quantities established many years ago, perhaps by the old Railway Express Agency (REA).

This also makes it all the more difficult to recommend practicable quantity limits. Perhaps an approach applying modification to § 175.75(a)(2) could be introduced to increase the quantity from 50 pounds to 300 pounds, and 150 pounds of non-flammable compressed gas to 500 pounds, for a period, such as, one year from the date of an interim rule. Close evaluation of the increased quantities could be made during and at the end of this period. Further determination could then be made with respect to the issuance of a final rule.

The Flying Tiger Line was the only United States air carrier to submit comments on the notice separate from those submitted by the ATA. Flying Tigers expressed reservations concerning the complete removal of the quantity limitations in question and indicated a belief that ". . . statements and/or petitions relating to experience can be misleading. The United States of America has imposed a Hazardous Incident Reporting Procedure (49 CFR 171.15 and 175.16) for many years. This same requirement does not exist worldwide, which suggests information received by DOT-MTB may be partially self-serving rather than complete." Flying Tigers went on to support an increase in the present quantity limitations along the lines suggested by the ATA. The Flying Tigers comments also made the following observations of general interest, and posed certain additional questions:

We further believe that the introduction of the ICAO Technical Instructions January 1, 1983, (acceptable to DOT when used in accordance with 49 CFR 171.11) permitted numerous quantity increases per existing packages on passenger and cargo aircraft. While we support the introduction and acceptance of ICAO Technical Instructions, it is suggested there is inadequate history to insure the same past levels of safety have been maintained. Carriers, and carrier organizations continue to file exceptions suggesting some form of disapproval with current regulations, and the level of safety provided by same.

There are obvious economic benefits to shippers and passenger air carriers that could be derived from either a relaxation of § 175.75(a)(2), or if the limitations were removed. The questions which arise are primarily based on removal of all quantity limitations, and the impact on safety. You may wish to consider the following:

1. Current quantity limitations present minimal problems to carriers insuring non-compatible Hazardous Material is properly separated in accordance with 49 CFR 175.78 (Table a). Removal of limitations can result in mixing non-compatible Hazardous Material due to aircraft space constraints. This problem may be compounded due to aircraft ground time at a facility, (further compounded by other flight activity, which must be completed in conjunction with flight prior to departure). This degree of danger is an unknown factor, which can only be determined by number and quantity of non-compatibles on a given flight and the potential reaction based on contact.

2. Aircraft configuration, (B747 vs B747 Combi, etc.) should be considered. Should a combi-aircraft be permitted to transport an unlimited quantity of hazardous materials on the main cargo deck of a passenger aircraft? What is the potential degree of danger to passengers in the event of incident? Does this impede crew abililty to respond to emergency?

Note: We believe this same incident occurring in a belly compartment can be more easily addressed by crews and presents a lesser degree of danger to passengers.

Sabena Belgian World Airlines also expressed some reservations regarding the total removal of these quantity limitations, and suggested a revision of § 175.75(a) (2) similar in many respects to that proposed by the ATA and Flying Tigers. In addition, the Sabena comments contained a number of important observations of a general nature, paraticularly with respect to the need to load hazardous materials on the main deck of combi-aircraft because the existing quantity limitations so severely restrict the loading of hazardous materials in the inaccessible underfloor holds. The following comments by Sabena are of particular interest:

In order to meet the present quantity limitations to, from or via the USA, we (SABENA) are obliged to load most of hazardous materials permitted on passenger aircraft in the main deck cargo compartment of our combi aircraft (these compartments are fully accessible Class B cargo compartments), but the adequacy of main deck Class B cargo compartments for transport of hazardous materials has been questioned by some parties. It has been considered that the loading of hazardous materials in main deck cargo compartments should not be encouraged, because combi main deck holds must be kept ventilated at all times. However, in theory, any fire in aircraft underfloor holds would be suppressed by oxygen starvation.

We believe that the present restriction of § 175.75(a)(2) does not recognize the principle that when hazardous materials are properly packaged, they no longer constitute any appreciable degree of hazard. We prefer to see more stringent packaging regulations where necessary with the complete elimination of quantity restrictions per aircraft (other than for radioactive materials). In fact, this was done in the ICAO Technical Instructions where specification packagings for hazardous materials have been required for transport on passenger-carrying aircraft as well. In this connection, we disagree with point 6 of the JAL petition which states: 'Shipments of hazardous materials that are acceptable for carriage on passenger aircraft would be subject . . . to much more stringent individual . . . packaging requirements than those applicable to hazardous materials transported on cargo aircraft.' We believe that the possibility of ruptured packagings does in fact exist with the non-specification packagings presently permitted for carriage on passenger aircraft, but that this possibility is remote with the specification packagings required for carriage on cargo aircraft or required by the ICAO Technical Instructions for carriage on passenger aircraft.

Considering the above, we feel that § 175.75(a) (2) should be retained for hazardous materials permitted to be carried aboard passenger-carrying aircraft when such materials are packed in non-specification packagings, but that § 175.75(a) (2) should not apply when hazardous materials are packed in marked specification packagings as provided in the ICAO Technical Instructions. This principle would be reviewed if and when ICAO adopts provisions for limited quantities of dangerous goods. Nevertheless, since no incidents have been reported in air transport, as stated above, a certain relaxation of the present restrictions of § 175.75(a) (2) seems desirable, and it is suggested that the quantity limitation be increased from 50 pounds to 300 pounds. On the other hand, we see no need to limit the quantity of non-flammable compressed gases, in view of the very specialized type of packagings (cylinders) used for these materials.

In addition to the general suggestion to raise the quantity limitation to 300 pounds, Sabena also proposed in their comments to exempt certain hazardous materials with a limited level of hazard from the provisions of § 175.75. Specifically, Sabena proposed that § 175.75 be amended to read as follows:

Section 175.75 Quantity limitations aboard aircraft.

(a) * * *

(1) * * *

(2) More than 300 pounds net weight of hazardous material permitted to be carried aboard passenger-carrying aircraft—

(i) * * *

(ii) * * *

(iii) * * *

(3) * * *

(b) No limitation applies to the number of packages of the following materials aboard an aircraft:

(i) Hazardous materials in marked specification packagings as provided in the ICAO Technical Instructions,

(ii) Non-flammable compressed gases,

(iii) Small-arms ammunition or Explosives of ICAO Division 1.4, compatibility group S,

(iv) Flammable liquids with a flashpoint above 90°F. (32°C.) that do

not meet the definition of another hazardous class,

(v) Combustible liquids subject to the requirements of this subchapter,

(vi) Substances of ICAO Packing Group III in Division 6.1,

(vii) Materials of ICAO Class 9, and

(viii) ORM materials.

While not ruling out the possibility of increasing the quantity limitations in § 175.75(a)(2), ALPA in their comments emphasized that such action should only be taken after careful study to insure that flight safety is in no way compromised. ALPA also indicated that testing should be done in order to assess the effects of hazardous materials releases not only in inaccessible compartments, but in accessible compartments as well. The following extract from the ALPA comments summarizes their views on this matter.

In summary, ALPA has reservations on the dilution of the safety aspects of 49 CFR by the proposed elimination of the limitations imposed by § 175.75(a)(2) solely to bring it in line with the ICAO Technical Instructions. We would strongly recommend that any consideration toward a reduction of the valuable safety quantity limitations of § 175.75(a)(2) be based on testing of inaccessible cargo compartments containing hazardous materials under actual flight conditions to assess their capability to withstand safely the possible problems created by the effects of the materials being carried in the compartments. These tests should include, but not be limited to, fire, toxic leaks, corrosive spills, the effects of high ground ambient temperatures, excessive humidity conditions, and the effects of explosive decompression. While it is recognized that this ANPRM is addressing only inaccessible cargo compartments, we would recommend that the same type of testing be accomplished for accessible cargo compartments. With the worldwide acceptance and use of the combi aircraft, the same issues will again have to be addressed.

We cannot support any reduction of the safety aspects of 49 CFR 175.75(a)(2) based purely on simplifying airline procedures or for economic gain. The fact that the possibility of a catastrophic ground accident concerns the petitioner, JAL, should certainly indicate that unlimited quantities of hazardous materials in inaccessible cargo compartments may have even more catastrophic results during flight.

Since this subject has become so controversial, we would recommend that a public hearing be scheduled.

As previously indicated, owing to the diversity of views on the question of limitations on the quantity of hazardous materials that may be carried in an inaccessible location aboard a passenger aircraft, the MTB agrees with the ALPA suggestion that a public hearing be scheduled relative to this matter. At this hearing the MTB desires to receive further information and constructive comments on the questions raised in the advance notice of proposed rulemaking, comments and further information regarding the general matters raised in the comments highlighted in this document and comments on the following specific questions:

1. What will be the difference in the effects of fire, toxic leaks, or corrosive spills if an incident occurs in an inaccessible compartment as compared to an accessible compartment?

2. What is the relative hazard of transporting unlimited quantities of hazardous materials in an accessible location aboard passenger aircraft (e.g. on the main deck of a combi aircraft), as compared to carrying the same quantities in inaccessible locations, and why? Should the scope of this docket be expanded to address the transport of hazardous materials in accessible locations that may afford less safety than inaccessible locations?

3. If the MTB proceeds with a rulemaking to increase the quantities permitted to be carried in an inaccessible location, should a distinction in the quantities permitted be made on the basis of the classification of the compartment (i.e. C, D or E) in which hazardous materials are to be loaded?

4. Should the use of unit load devices be considered as a condition for permitting an increase in the quantities of hazardous materials permitted to be transported in inaccessible locations?

5. What are the merits of the approaches suggested by COSTHA, ATA and Sabena to modifying the existing quantity limitations?

Persons participating in this hearing are asked to provide, to the extent possible, detailed factual support for their statements in order to provide the MTB with sufficient information on which to base a decision regarding any future action that may be taken under this docket. Commenters are not limited to responding to the questions raised above and may submit any facts and views consistent with the intent of this notice. In addition, as requested in the advance notice, commenters are encouraged to provide comments on "major rule" considerations under terms of Executive Order 12291, "significant rule" consideration under DOT regulatory procedures (44 FR 11034), potential environmental impacts subject to the Environmental Policy Act, information collection burdens which must be reviewed under the Paperwork Reduction Act, and economic impact on small entities subject to the Regulatory Flexibility Act.

It is requested that persons desiring to provide oral comments at the hearing advise Mr. Altemos before May 28, 1985.

(49 U.S.C. 1804, 1808)

Issued in Washington, D.C., on February 8, 1985.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-3648 Filed 2-12-85; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Zones in Which Nontoxic Shot Will Be Required for Waterfowl Hunting in the 1985–86 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposal contains descriptions of zones in which nontoxic shot would be required for waterfowl hunting in the 1985–86 hunting season. The zones included in this proposal were identified by the Fish and Wildlife Service (FWS) as areas where there is a substantial likelihood that lead shot used by waterfowl hunters poses a threat to bald eagles. These zones would be added to those previously identified in 50 CFR 20.108 to protect waterfowl from ingesting spent lead shot. Lead shot contained in the muscle tissue or digestive tract of waterfowl can be consumed by bald eagles that feed on crippled, sick, or dead waterfowl. Shot ingested in this manner can cause sickness or death to bald eagles. The only approved nontoxic shot available at this time is steel shot. The areas being proposed as nontoxic shot zones are located in the following States: Illinois, Iowa, Missouri, Kansas, Oklahoma, South Dakota, California and Oregon. In these eight States all or portions of 30 counties are being proposed as nontoxic shot zones.

DATE: Comments on this proposal will be accepted until March 18, 1985.

ADDRESS: Submit comment to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: The American bald eagle, our national symbol, is afforded greater protection than any other migratory bird species. Protective provisions found in the Bald and Golden Eagle Protection Act, the Endangered Species Act and the Migratory Bird Treaty Act collectively impose unique conservation responsibilities for the bald eagle upon the Secretary of the Interior. After a period of substantial decline, the last few years have witnessed an increase in the population levels of bald eagles. Nonetheless, the species is not yet fully recovered. Increases in bald eagles numbers are attributed to declines in the use of certain persistent pesticides.

As the effects of pesticides on bald eagles decline, attention has shifted to other causes of eagle mortality. Most recently, the debate has focused upon lead poisoning among bald eagles. The FWS has been aware of this issue and has been studying it for some time. Formulating definitive solutions to the problem of lead poisoning in bald eagles is very difficult. Most of the research in recent years regarding the effects of lead shot has focused on waterfowl, not raptors. Moreover, the biological conclusions developed for lead poisoning in waterfowl are not readily transferable to bald eagles.

The FWS acknowledges that an increased number of dead bald eagles recovered in recent years have died of lead poisoning and many of these deaths are due to the ingestion of lead shot contained in the muscle tissue and digestive tract of waterfowl eaten by bald eagles.

On August 1, 1984, the National Wildlife Federation (NWF) petitioned the FWS to immediately designate nontoxic shot zones for six counties located in five States. In addition, the NWF petitioned that an additional 89 counties in 30 States be proposed as nontoxic shot zones for 1985–86 hunting season. This petition was accompanied by a report entitled *A National Summary of Lead Poisoning in Bald Eagles and Waterfowl.*

On October 30, 1984, FWS published in the **Federal Register** and requested comment on the 95 counties identified by NWF in their petition of August 1, 1984 (49 FR 43571).

The FWS responded to the NWF petition on September 14, 1984 (49 FR 36273–36276 and 36290–36293). Pages 36290–36293 of the September 14, 1984 **Federal Register** contained a Notice of Intent which presented a proposed alternative conservation plan for dealing with lead poisoning in bald eagles. This FWS plan was presented as an alternative to the NWF petition, and public comment on the FWS proposal was requested and received until October 29, 1984. The conservation measures proposed by the FWS identified five counties in three States as areas where evidence suggested a substantial likelihood of lead poisoning among bald eagles. The plan also identified 14 counties in 11 States where there may be a problem of lead poisoning among bald eagles and 10 counties in seven States where there is a potential for a problem. The plan stated at that time that the subject of lead poisoning among bald eagles would be examined further prior to the publication of a proposed rule. FWS announced in the plan that following a review of additional data, an analysis of public comment on the September 14, 1984 plan, and an analysis of public comment on the NWF petition and report, it would determine in December 1984 the need for additional nontoxic shot zones to protect bald eagles. Should such zones be necessary, FWS would propose them for the 1985–86 waterfowl hunting seasons in this document.

Appropriated funds for the Department of the Interior for fiscal year 1985 were restricted in their use by the following provision:

No funds appropriated by the Act shall be available for the implementation or enforcement of any rule or regulation of the United States Fish and Wildlife Service, Department of the Interior, requiring the use of steel shot in connection with the hunting of waterfowl in any State of the United States unless the appropriate State regulatory authority approves such implementation.

Summary of Public Comment:

On September 14, 1984, FWS requested comments on *Lead Poisoning in Bald Eagles; Proposed Alternative Conservation Measures* (49 FR 36290–36293). Also, on September 14, 1984, FWS described in the **Federal Register** a petition for rulemaking relating to lead poisoning of bald eagles and waterfowl submitted to the Service by NWF (49 FR 36273–36273). FWS commented extensively on the NWF petition for rulemaking at that time, and on October 30, 1984, presented additional information on the petition (49 FR 43570–43571). Throughout the period from September 14, 1984 until December 1, 1984, FWS received correspondence relating to one or more aspects of the above documents. In addition, private organizations distributed information on this subject widely thoughout the United States. These activities by various organizations resulted in additional correspondence received by FWS. Therefore, the public has become aware of this subject through numerous sources in both the public and private sectors. In analyzing comments it was often impossible to relate general comments received from the public to specific proposals within the above referenced published documents. This is a summary of the general preferences of those commenting, and deals with the major comments received from the public.

Forty-one letters were received that expressed opposition to the concept of creating nontoxic shot zones for waterfowl hunting in order to protect bald eagles. In addition, a petition in opposition to nontoxic shot for waterfowl hunting in Klamath and Jackson Counties, Oregon was received and it contained the names of 303 individuals. Two specific issues recurred in the letters expressing opposition.

1. Steel shot is unacceptable as a substitute for lead shot, because it has inferior ballistic properties.

2. Lead poisoning among bald eagles does not represent a threat to bald eagle populations. Other causes of mortality among bald eagles are more important.

Among the letters expressing opposition were letters from the following private organizations: League of Kentucky Sportsmen, Inc., Wildlife Legislative Fund of America, Oregon Duck Hunter's Association, American Duck Hunters Association, Alaska Waterfowler Association, Waterfowl Habitat Owners Alliance, and Oregon Hunters Association.

State wildlife conservation agencies expressing opposition to a proposal to establish nontoxic shot zones to protect bald eagles in their State in 1985–86 were Oregon, Utah, Arkansas, Kentucky, and Maine. It is important to note that these letters were not opposed to nontoxic shot zones conceptually, they were opposed to such zones in their States in 1985. These letters generally expressed the view that there was inadequte information on the subject.

One hundred and eight letters offered support for the concept of nontoxic shot zones to protect bald eagles. Many of these comments objected to specific points made either in the NWF petition or in the FWS proposed alternative plan. Twenty-two of the above letters objected to both the FWS and the NWF proposals on the grounds that neither went far enough in protecting bald eagles. Private organizations expressing support for the concept of nontoxic shot zones for the protection of bald eagles were as follows: Klamath Basin Audubon Society, Northern Arizona Audubon Society, National Audubon Society, Association of Avian

Veterinarians, Maine Audubon Society, Central Mountains and Plains Wildlife Society, Arizona Wildlife Federation, Maricopa Audubon Society, Burroughs Audubon Society, Kentucky Chapter of the Wildlife Society, Western Maine Audubon Society, and the National Wildlife Federation.

Twenty-five State wildlife conservation agencies sent letters expressing opinions and suggestions regarding the loss of bald eagles to lead poisoning, and while not necessarily endorsing the specifics of either the FWS plan or the NWF plan, these States supported the concept of nontoxic shot zones for the protection of bald eagles. As mentioned previously, five States were opposed to a proposal to implement such nontoxic shot zones in their State in 1985–86 hunting seasons. States offering comments were Oregon, Idaho, California, Nevada, Utah, Arizona, Texas, Wyoming, South Dakota, Wisconsin, Minnesota, Michigan, Iowa, Missouri, Ohio, Indiana, Arkansas, Illinois, Kentucky, Maine, Delaware, Florida, Massachusetts, North Carolina and New Jersey.

The NWF in comments submitted to FWS on October 29, 1984, concluded that the alternative conservation measures proposed by the Service were inadequate because they fell far short of the protection for bald eagles proposed in the petition submitted by NWF on August 1, 1984. The NWF requested that the original 95 counties listed in their petition submitted on August 1, 1984, and published on October 30, 1984 (49 FR 43571), be proposed as nontoxic shot zones in 1985.

Service Responses

Adequacy of steel shot. With regard to the adequacy of steel shot as a nontoxic shot substitute, FWS recognizes that this subject has been controversial for many years and remains so. After reviewing results of numerous tests conducted on the subject over the past 20 years, FWS has concluded that steel shot is an adequate substitute for lead shot in situations in which a serious problem due to lead shot ingestion by birds has been documented. FWS has not dismissed the question of the comparative performance of steel shot versus lead shot. Plans to conduct further investigations or reviews into this subject are currently being developed. It is an extremely complex subject that is influenced by numerous variables, and is very difficult to investigate experimentally.

The importance of lead poisoning as a mortality factor among bald eagles. Bald eagles frequently congregate and feed on sick, crippled, or dead waterfowl. They ingest lead shot as a result of feeding in this manner. Some bald eagles have died from lead poisoning, and FWS files contain records of 80 bald eagles found dead or dying from this cause in 26 States during the last 15 years. In a majority of these cases ingested lead shot is implicated. Undoubtedly, more bald eagles have died due to this cause but were not detected. The actual importance of this mortality factor compared to other factors influencing bald eagle populations in unknown with any degree of accuracy, but this cause of death ranks fourth among bald eagle deaths reported to the FWS. This cause of death, along with all types of man-induced mortality to bald eagles, should be reduced or eliminated if possible. It is possible to reduce, and in some cases eliminate, lead poisoning of bald eagles by requiring nontoxic shot for waterfowl hunting in selected areas. FWS believes that in spite of an inadequate understanding of the full ramifications of lead poisoning among bald eagles, the evidence is clear that ingested lead shot is harmful to individual bald eagles, and it is being consumed frequently enough and in large enough quantities by bald eagles at some locations to be of concern.

Response to NWF. Most of the comments of the NWF dealt with the manner in which lead poisoning among bald eagles is to be identified and the extent of the corrective actions to be proposed. The NWF petition of August 1, 1984, selected counties where bald eagles should be protected on the basis of bald eagle numbers, bald eagle deaths due to this cause, waterfowl lead shot ingestion rates, and waterfowl deaths due to this cause. The FWS plan published on September 14, 1984, applied a waterfowl harvest intensity criterion to the counties designated by NWF. This resulted in the identification by FWS of 19 counties in categories I and II of a three-category classification system that contained a total of 29 counties. FWS disagreed with NWF that deaths to waterfowl were necessarily related to bald eagle deaths and that deaths to individual bald eagles necessarily occurred at the location where the lead shot was ingested.

After the first FWS comments on the NWF petition were pubished on September 14, 1984 (49 FR 36273–36276 and 36290–36203), additional investigations were conducted. The results of these additional analyses of the available data have produced a procedure for identifying potential lead poisoning problem areas where bald eagles are ingesting lead shot, and this procedure will be described below. In arriving at methods used in developing the proposal presented below, FWS analyzed comments and information provided by NWF, and we wish to acknowledge this cooperation. For example, NWF provided FWS with winter counts of bald eagles by county throughout the United States for the years 1980, 1981, and 1982. An exchange of information regarding the location of sick or dead bald eagles caused by lead poisoning was helpful.

FWS believes that in protecting bald eagles from lead poisoning, those areas with the most obvious risks should be proposed first. As our understanding of the relationships between bald eagle populations and waterfowl populations increases, the need for additional nontoxic shot zones for this purpose will be assessed.

The proposed nontoxic shot zones to protect bald eagles presented below give highest priority to areas where bald eagles are concentrated in winter and are associated with large harvests of ducks and geese. We believe it is reasonable to assume that the highest risks to bald eagles are occurring where large numbers of crippled or dead waterfowl are available at major waterfowl harvest areas. In order to locate such areas, FWS identified all counties in the United States that had an average waterfowl harvest of 10,000 ducks and geese annually between 1971 and 1980 and a winter count of bald eagles that exceeded 50 birds in at least one year between 1980 and 1982. Thirty-two counties were identified by this process. These counties are as follows:

State and county	Waterfowl harvest (x 1,000)	Bald eagle county
California:		
Lassen	43	57
Siskiyou	77	441
Shasta	10	61
Colorado: Weld	40	81
Florida: Polk	11	80
Idaho:		
Jefferson	22	87
Bingham	12	101
Illinois:		
Alexander	11	72
Henderson	12	159
Mason	12	111
Union	11	67
Iowa:		
Harrison	10	72
Jackson	10	78
Kansas: Stafford	13	53
Missouri:		
Charlton	48	185
Holt	25	169
Pike	15	56
St. Charles	19	60
Nebraska: Dawson	11	64
Oklahoma: Sequoyah	11	77
Oregon:		
Klamath	59	295
Lake	30	91
South Dakota: Hughes	12	100
Utah: Box Elder	94	87

State and county	Waterfowl harvest (x 1,000)	Bald eagle county
Washington:		
Clallam	31	154
Grant	135	194
Skagit	50	414
Snohomish	25	101
Douglas	12	91
Grays Harbor	18	79
Whatcom	10	284
Wisconsin: Grant	26	256

The counties listed above provided a basis for further analysis. People familiar with the waterfowl and bald eagle populations in these counties were contacted and the risk to bald eagles was assessed in light of local observations by wildlife biologists and others. The use of natural rather than political boundaries was explored, and it was recognized that natural units might extend into counties other than the original 32. These investigations actually included 49 counties in the final analysis.

It was recognized that the risk of lead ingestion by bald eagles could occur in some areas where there are low numbers of bald eagles and where the waterfowl harvest is low but very concentrated. All such areas were obviously not identified by this process, and additional work will be required to locate these in future years.

The geographic distribution of bald eagle deaths recorded as lead poisoning cases was investigated. It was determined that the location of these deaths should be used with caution in defining areas where problems exist. Repeated deaths of bald eagles at a particular location probably do indicate a problem in the vicinity, while a single death could occur after the flight of a sick bird over a considerable distance. For these reasons the locations of confirmed deaths to bald eagles due to lead poisoning were used as a secondary consideration in selecting proposed zones.

In the final analysis the 49 counties were examined and classified into four categories:

1. Suitable for proposal as a nontoxic shot zone in 1985–86.
2. Currently protected by nontoxic shot regulations.
3. Requires further investigation.
4. Not suitable for proposal as a nontoxic shot zone in 1985–86.

Results of FWS Analysis

1. Puget Sound (Clallam, Skagit, Snohomish, and Whatcom Counties, Washington)

The largest waterfowl harvest and the largest bald eagle population among these four counties occurs in Skagit County. Skagit County contains a nontoxic shot zone where the largest concentration of bald eagles occurs. It was created in 1978 for the protection of waterfowl. The major source of food for bald eagles wintering in the Puget Sound region is fish. Salmon spawning in the Skagit River are a primary food supply of bald eagles. Throughout the Puget Sound area there is one confirmed death to a bald eagle due to lead poisoning. We conclude that the risk of lead poisoning to bald eagles in Puget Sound is low and these counties are not being proposed as nontoxic shot zones in 1985.

2. Central Washington (Douglas and Grant Counties, Washington)

This zone is the location of a substantial harvest of mallards, primarily along the Columbia River. This harvest is wide-spread and generally on the uplands providing limited opportunities for bald eagles to feed on waterfowl. Bald eagles are concentrated along the river and are feeding on fish. No relationship between the waterfowl harvest of this area and the bald eagle population is evident. No dead bald eagles due to this cause have been reported from the vicinity. A decision relating to this area will be delayed until 1986, and FWS will gather additional information on the feeding behavior of bald eagles in 1985–86.

3. Grays Harbor County, Washington

Bald eagles wintering in this county feed primarily on fish. Waterfowl hunting is widely distributed over the county and the risk of lead poisoning to bald eagles does not appear to be high. This area will not be proposed for nontoxic shot.

4. Klamath County, Oregon

Most bald eagles move into this county in late January to March. Bald eagles using this area are associated with populations of bald eagles in Siskiyou County, California. Bald eagles throughout the Klamath Valley in both California and Oregon are known to feed on waterfowl, and three bald eagles that died of lead poisoning have been recorded in the vicinity. A portion of Klamath County is being proposed for nontoxic shot in 1985–86. This portion is adjacent to Siskiyou County, California.

5. Summer Lake, Lake County, Oregon

Summer Lake is the only area in this county where waterfowl hunting is concentrated. Summer Lake is not a major feeding area for bald eagles. This county will not be proposed for nontoxic shot use in 1985, but the feeding habits of bald eagles at Summer Lake will be investigated further by FWS in 1985–86.

6. Northern California (Siskiyou, Lassen, Shasta, and Modoc Counties, California)

The largest bald eagle population in this region is located in Siskiyou County. These eagles are known to utilize as food crippled, sick, and dead waterfowl on the hunting areas at Tule Lake and Lower Klamath National Wildlife Refuge (NWR). This eagle population also utilizes habitats in the southern portions of Klamath County, Oregon in winter. Three bald eagles have been reported as lead poisoned from the vicinity. We have concluded that a nontoxic shot zone should be proposed for that portion of Siskiyou County that includes Tule Lake NWR and Lower Klamath NWR. A proposal will not be made for Shasta, Modoc, and Lassen Counties in 1985, but additional information will be obtained from these three counties by FWS in 1985–86 in order to more properly assess the situation.

7. Southeast Idaho (Bingham and Jefferson Counties, Idaho)

In both of these counties the bald eagle populations feed primarily on fish along the Snake River and its tributaries. The waterfowl harvest is widely distributed and generally in the uplands. We do not propose these counties as nontoxic shot zones for 1985, but additional information will be collected by FWS in 1985–86.

8. Great Salt Lake Valley (Box Elder County, Utah)

Due to an 8-foot rise in water levels of the Great Salt Lake, most marshes in this valley have been inundated. The current distribution of waterfowl, waterfowl hunting, and bald eagles is uncertain. No action will be proposed for this area at this time. This area will be investigated further by FWS in 1985–86 and, if water levels continue to rise, additional time may be required before the areas can be identified where waterfowl and waterfowl hunting will occur and where bald eagles will congregate.

9. Weld County, Colorado

Contacts with biologists most familiar with the situation in this county have led us to conclude that bald eagles in this county are not feeding on waterfowl. This area will not be proposed in 1985, but the FWS will conduct more intensive observations in this county in 1985 to confirm these preliminary conclusions.

10. Sequoyah County, Oklahoma

This county contains Sequoyah NWR and the waterfowl hunting that takes place on this NWR requires nontoxic shot. However, neither the bald eagle population nor the waterfowl harvest of the county are confined to the NWR. Bald eagles are known to eat waterfowl in this area and a lead poisoned bald eagle has been found in a nearby county. We are proposing this county as a nontoxic shot zone in 1985.

11. Stafford County, Kansas

Bald eagles have been observed feeding on waterfowl in this county. The geographic extent of the problem within the county is poorly defined by our information, so we are proposing the entire county as a nontoxic shot zone with the understanding that this proposal can be further refined based upon comments received on this proposal.

12. Dawson County, Nebraska

We were unable to obtain information substantiating a problem in this county. The area will be investigated further by FWS in 1985–86, at which time a final decision will be made.

13. Missouri River in South Dakota (Hughes County)

Hughes County, South Dakota is one of several counties along the Missouri River where bald eagles are known to feed on waterfowl. Three lead poisoned bald eagles have been found along the Missouri River in South Dakota. Collectively the counties along this River from Hughes County to and including Charles Mix County provide winter habitat for a large population of bald eagles. The northern portion of this area is currently contained in a nontoxic shot zone created by the State of South Dakota, but this zone is not listed in Federal regulations. FWS proposes that the Missouri River and adjacent uplands in Stanley, Hughes, Lyman, Brule, Gregory, and Charles Mix Counties, South Dakota be included in the Federal nontoxic shot regulations in 1985.

14. Holt County, Missouri

This county includes Squaw Creek NWR and is a major goose harvest area. The bald eagle population in this area feeds upon watefowl. There is one reported loss of a bald eagle to lead poisoning in the vicinity. We are proposing this county as a nontoxic shot zone in 1985.

15. Swan Lake Goose Management Area (Chariton County, Missouri)

The goose management zone surrounding Swan Lake NWR includes portions of Chariton, Livingston, Carroll, and Linn Counties, Missouri. There are two public hunting areas within this zone where nontoxic shot is currently required. However, must of the harvest occurs on private lands. Bald eagles are abundant and are known to feed on waterfowl. We are proposing that the area within the described boundaries of the Swan Lake Goose Management Zone be included as a nontoxic shot zone in 1985.

16. Grant County, Wisconsin

This area is currently protected by a nontoxic shot zone established in 1977 for the protection of waterfowl, so no additional proposal wil be made at this time.

17. St. Charles, Pike and Lincoln Counties in Missouri and Calhoun and Pike Counties in Illinois

The portion of the Mississippi River extending from St. Louis, Missouri northward to the north boundaries of Pike County, Missouri and Pike County, Illinois winters from 400 to 500 bald eagles. Two bald eagles have been reported dead due to lead poisoning in the vicinity. The combined waterfowl harvest of these counties exceeds 50,000. Bald eagles in this area are known to feed on waterfowl. We are proposing for 1985, a zone along this portion of the Mississippi River which would include the Counties of St. Charles, Lincoln and Pike in Missouri, and Calhoun and Pike in Illinois.

18. Southern Illinois Goose Quota Zone (portions of Alexander, Jackson, Union, and Williamson Counties in Illinois)

This is the primary harvest area of a major population of Canada geese, and about 56,000 waterfowl are harvested here annually. Approximately 200 bald eagles winter in the vicinity. One lead poisoned bald eagle has been reported from the vicinity. Bald eagles are known to feed on waterfowl in the area. We are proposing this goose management zone as a nontoxic shot zone in 1985.

19. Illinois River (Peoria, Fulton and Mason Counties, Illinois)

This portion of the Illinois River winter a bald eagle population that exceeds 200 in some years. The combined waterfowl harvest of the three counties is 22,000. Bald eagles have been observed feeding on waterfowl in the area. The State of Illinois has in the past requested that hunters voluntarily use nontoxic shot when hunting in this area. We are proposing that Peoria, Fulton, and Mason Counties be included as nontoxic shot zones in 1985.

20. Henderson County, Illinois

This county lies along the Mississippi River and counts of bald eagles have ranged from 40 to 159 between 1980 and 1982. The waterfowl harvest and the bald eagle population both occur in the same areas, and bald eagles are known to utilize waterfowl as a source of food. We are proposing this county as a nontoxic shot zone in 1985.

21. Jackson County, Iowa

This county is currently protected by nontoxic shot zones in the areas where most waterfowl are harvested, so no proposal is necessary.

22. Harrison County, Iowa

This county is along the Missouri River and contains the DeSoto NWR. It is an area where bald eagles and waterfowl are closely associated, and bald eagles have been observed feeding on waterfowl. A bald eagle that died of lead poisoning has been recorded in the vicinity. We are proposing for the 1985–86 hunting season a zone that utilizes road boundaries to delineate waterfowl harvest and bald eagle habitats in this county and small portion of adjacent Pottawattamie County, Iowa.

23. Polk County, Florida

A nontoxic shot zone occurs in this county, but much of the waterfowl harvest occurs outside of this zone. The waterfowl harvest is not concentrated and the primary food of bald eagles in this county is fish. The actual risk of lead poisoning to bald eagles in this area is unknown, and we recommend that a final decision be delayed until additional observations of bald eagle feeding behavior can be made by FWS in 1985–86.

A formal Section 7 consultation under the Endangered Species Act has been completed for this proposal. The biological opinion associated with this consultation concluded that this action is not likely to jeopardize the continued existence of the listed bald eagle.

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980. In accordance with Executive Order 12291, it has been determined that this rule is not a major rule. In accordance with the Regulatory Flexibiltiy Act (5 U.S.C. 601 et seq.) it was determined that this rule, if implemeneted without adequate notice, could result in ammunition supplies for which there is no local demand. It is believed that adequate notice will be provided. Therefore, it was determined that the rule would not have a

significant economic effect on a substantial number of small entities. A copy of the analysis relating to these decisions, Determination of Effects of Proposed Amendment to Steel Shot Rules for 1985, can be obtained from the U.S. Fish and Wildlife Service (MBMO), Washington, D.C. 20240.

An Environmental Impact Statement on the steel shot program was signed in 1976. In addition, Environmental Assessments were prepared on various aspects of the steel shot program in 1977 through 1980.

This proposed rule was authored by Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 20240.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportaiton, Wildlife.

PART 20—[AMENDED]

In light of the foregoing, 50 CFR Part 20 is proposed to be amended as follows:

1. The authority citation continues to be read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

§ 20.108 [Amended]

2. Section 20.108 is proposed to be amended by adding the following nontoxic shot zone descriptions to the previously described zones in States listed below:

Mississippi Flyway

Illinois

Henderson, Peoria, Fulton, Mason, Calhoun, Pike, Alexander, Jackson, Union, and Williamson Counties.

Iowa

The area contained within a zone bounded on the west by the Missouri River, on the north by State Highway 127 east to State Highway 183, and then south and west on Highway 183 to the junction with the Missouri River.

Missouri

Holt, St. Charles, Pike, and Lincoln Counties, and those portions of Chariton, Livingston, Carroll, and Linn Counties contained with the Swan Lake Goose Management Area.

Central Flyway

Kansas

The entry for Stafford County would be reworded to include the entire County.

Oklahoma

Sequoyah County.

South Dakota

Stanley, Hughes, Lyman, Brule, Gregory, and Charles Mix Counties.

Pacific Flyway

California

That portion of the Lower Klamath Basin (including all of Lower Klamath National Wildlife Refuge) beginning at the junction of Highway 161 (State Line Road) and the Dorris-Brownell Road at the NW corner of Indian Tom Lake; thence south and east of the Dorris-Brownell Road as it makes a semicircle and unites again with Highway 161; thence west along Highway 161 to the point of origin at the NW side of Indian Tom Lake. Also included is the Tule Lake National Wildlife Refuge (excluding Refuge lands on Sheepy Ridge) in the Tule Lake portion of the Klamath Basin.

Oregon

That portion of Klamath County lying west and south of a line commencing at the Oregon-California State line and proceeding along State Highways 39 and 39–140, U.S. Highway 97, and State Highway 62 to the Klamath County-Jackson County line.

Dated: January 29, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–3605 Filed 2–12–85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 30
Wednesday, February 13, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agency Forms Under Review by Office of Management and Budget

February 8, 1985.

The department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg. Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Stabilization and Conservation Service
Application for ASCS County Employment
ASCS 675
On occasion
Individuals or households; 14,000 responses; 14,000 hours; not applicable under 3504(h)
Donald L. Samuels (202) 447-7517

• Food and Nutrition Service
Application for Participation-Sponsor and Site Information (Summer Food Service Program)
FNS 81 and FNS 81-1
Annually
State or local governments; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 17,380 responses; 57,982 hours; not applicable under 3504(h)
Albert V. Perna (703) 756-3604

New

• Forest Service
Application for Timber Sale contract Buy-Out
One time only
Businesses or other for-profit; Small businesses or organizations; 500 responses; 500 hours; not applicable under 3504(h)
Lloyd W. Olson (202) 475-3758

Revision

• Agricultural Marketing Service
Kiwifruit Grown in California under Marketing Order No. 920 Monthly, Annually, Every four years
Farms; Business or other for-profit; 827 responses; 707 hours; not applicable under 3504(h)
William J. Doyle (202) 447-5975

• Animal and Plant Health Inspection Service
U.S. Interstate and International Animal Health Certificate and Continuation Sheet
VS 18-1, 18-1a
On occasion
Individuals or households; Small businesses or organizations; 30,000 responses; 9,450 hours; not applicable under 3504(h)
Richard L. Crawford (301) 436-7833

• Food Nutrition Service
OMB Circular A-102 (Financial Status Report)
SF-269, SF-270
Quarterly
State or local governments; Businesses or other for-profit; Federal agencies or employees; 985 responses; 1,489 hours; not applicable under 3504(h)
Anneva Hackley (703)756-3166

Jane A. Benoit,
Departmental Clearance Officer.
[FR Doc. 85-3575 Filed 2-12-85; 8:45 am]
BILLING CODE 3410-01-M

Soil Conservation Service

Jacobs Creek Watershed, PA; Availability of Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: James H. Olson, State Conservationist, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of Pennsylvania, is hereby providing notification that a record of decision to proceed with the installation of the Jacobs Creek Watershed project is available. Single copies of this record of decision may be obtained from James H. Olson, State Conservationist, at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Olson, State Conservationist, Soil Conservation Service, 228 Walnut Street, Room 850, Box 985 Federal Square Station, Harrisburg, Pennsylvania 17108-0985, telephone (717) 782-4453.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally-assisted programs and projects are applicable)

Dated: February 6, 1985.

James H. Olson,
State Conservationist.
[FR Doc. 85-3551 Filed 2-12-85; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 17-82]

Foreign-Trade Zone 46, Cincinnati, OH; Withdrawal of Application for Subzone at Huffy Bicycle Plant, Celina, OH

The Greater Cincinnati Foreign-Trade Zone, Inc., an affiliate of the Greater Cincinnati Chamber of Commerce and grantee of Foreign-Trade Zone 46, has requested the withdrawal, without prejudice, of its application to the FTZ Board (the Board) for a subzone at the Huffy Corporation's bicycle plant in Celina, Ohio. The application was filed by the Board in August 1982 (47 FR 35543, 8/16/82). It was opposed by a number of bicycle and bicycle parts manufacturers, and was the subject of an industry impact study requested by the Board from the Commerce Department's Office of Consumer Goods.

The feasability of the proposal changed in late 1984, when the use of foreign-trade zones for non-export operations involving bicycle component parts was temporarily barred by section 231 of the Trade and Tariff Act of 1984, signed October 30, 1984. This prohibition is in effect until June 30, 1986.

As a result of the changed circumstances, the applicant was asked by Huffy to withdraw the proposal. The request is approved, without prejudice, and FTZ Board Docket 17-82 is closed.

Dated: February 8, 1985.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 85-3619 Filed 2-12-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-201-001]

Leather Wearing Apparel From Mexico; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On October 4, 1984, the Department of Commerce published the preliminaty results of its administrative review of the countervailing duty order on leather wearing apparel from Mexico. The review covers the period January 1, 1983, through June 30, 1983.

We gave interested parties an opportunity to comment on the preliminaty results. After review of all comments received, the final results are the same as the preliminary results.

EFFECTIVE DATE: February 13, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen Nyscot of Patricia Stroup, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 39182) the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Mexico (46 FR 21357, April 10, 1981). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican leather wearing apparel. Such merchandise is currently classifiable under items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated. These products include include leather coats and jackets for men, boys, women, girls and infants, and other leather apparel products including leather vests, pants and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel.

The review covers the period of January 1, 1983, through June 30, 1983, and eight programs: CEDI, FOMEX, CEPROFI, FOGAIN, FONEI, state tax incentives, import duty reductions and exemptions and National Development Plan ("NDP") preferential discounts.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from three Mexican exporters of leather wearing apparel, Manufacturas Industriales de Nogales, S.A., Karen Internacional, S.A. de C.V., and Elegance de Baja California, S.A., and from the Amalgamated Clothing and Textile Workers Union ("the Union").

Comment 1: The three Mexican exporters object strenously to the Department's tentative determination not to revoke this countervailing duty order with respect to their firms. The state that they meet the requirements for revocation under § 355.42 of the Commerce Regulations since they have been without the benefit of a net subsidy for at least a two year period, that they have in fact never received benefits from the Government of Mexico and have given assurances that they will not do so in the future, and that § 355.42 clearly contemplates the revocation of countervailing duty orders on a firm-by-firm basis. The Union, on the other hand, strongly concurs with the Department's tentative determination not to revoke the order with respect to the three firms.

Department's Position: After careful consideration, the Department has determined not to revoke the countervailing duty order with respect to these three firms. As long as the countervailable programs are still in existence and usable by manufactures or exporters of leather wearing apparel, we cannot be satisfied that there is "no likelihood of resumption of the subsidy" as required by § 355.42 of the Commerce Regulations.

Comment 2: The Union believes the Department should examine the Article 94 loans programs during this review.

Department's Position: The Article 94 loans program was raised too late in our review for our consideration. We will examine this program in our next review.

Final Results of the Review and Determination Not To Revoke In Part

After consideration of the comments received, the final results of the review are the same as the preliminanary results. We determine the total net bounty or grant during the period of review to be zero for the following 17 certified firms:

(1) Antonio Hurtado;
(2) Confecciones Generales, S.A. de C.V.;
(3) Delfina Diaz;
(4) Elegance de Baja California, S.A.;
(5) Fernando Nila;
(6) Hector Garcia;
(7) Jesus Jasso;
(8) Jesus Rivera;
(9) Jose Mora;
(10) Jose Sotelo;
(11) Juan Altamirano;
(12) Karen Internacional, S.A. de C.V.;
(13) Luis Bravo;
(14) Manufactuaras Industriales de Nogales, S.A.;
(15) Pedro Zaragosa;
(16) Rosa Ramos; and
(17) Victor Velazco.

For all other firms, we determine the total bounty or grant during the period to a be 2.71 percent *ad valorem*.

The Department will instruct the Customs Service to assess no countervailing duties on shipments of this merchandise from the 17 certified firms and to assess countervailing duties of 2.71 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1983, and on or before June 30, 1983.

The Department will instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751 (a) (1) of the Tariff Act, on shipments of this merchandise from the 17 certified firms and to collect a cash deposit of 2.71 percent of the entered value on shipments from all other firms entered, or withdrawn from warehouse, for consumption or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Furthermore, the Department has determined not to revoke the countervailing duty order with respect to Manufacturas Industriales de Nogales, S.A. Elegance de Baja California, S.A., and Karen Internacional, S.A. de C.V.

This administrative review and notice are in accordance with sections 751(a) (1) and (c) of the Tariff Act (19 U.S.C. 1675(a) (1), (c)), and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: February 6, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-3620 Filed 2-12-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-001]

Certain Refrigeration Compressors From the Republic of Singapore; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Suspension Agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. The review covers the period November 7, 1983, through December 31, 1983.

As a result of the review, the Department preliminarily determines that the amount of total bounty or grant to be offset by the export charge is 4.92 percent *ad valorem*. The Department also preliminarily determines that Matsushita Refrigeration Industries (Singapore) Pte. Ltd., Matsushita Electric Trading (Singapore) Pte. Ltd., and the Government of Singapore, the signatories to the suspension agreement, have complied with the terms of the agreement. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 13, 1985.

FOR FURTHER INFORMATION CONTACT: Philip Otterness or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 51167) a notice of suspension of countervailing duty investigation regarding certain refrigeration compressors from Singapore and announced its intent to conduct an administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Singaporean hermetic refrigeration compressors rated not over one-quarter horsepower. Such merchandise is currently classifiable under item 661.0900 of the Tariff Schedules of the United States Annotated. The review covers a producer, Matsushita Refrigeration Industries (Singapore) Pte. Ltd., and an exporter, Matsushita Electric Trading (Singapore) Pte. Ltd. These two companies, along with the Government of Singapore, are the signatories to the suspension agreement. The review covers the period November 7, 1983, through December 31, 1983, and six programs: (1) An income tax exemption on export earnings as provided for in Part IV of the Economic Expansion Incentives Act; (2) grants received from the Skills Development Fund; (3) the Public Utilities Board surcharge exemption; (4) financing provided by the rediscount facility of the Monetary Authority of Singapore; (5) the payment of income taxes in installments; and (6) the payment of technical assistance fees.

Analysis of Programs

(1) The Economic Expansion Incentives Act—Part IV

Part IV of the Economic Expansion Incentives Act provides a 90 percent tax exemption on a company's profits if that company is designated as an export enterprise. Matsushita Refrigeration is so designated and receives this tax exemption. To calculate the benefit from this program we divided the company's tax savings from the program by Matsushita Electric's total exports of refrigeration compressors. We preliminarily determine the benefit from this program to be 4.92 percent *ad valorem*.

(2) Grants from the Skills Development Fund

The Skills Development Fund was created in 1979. It is funded through a levy on all employers equal to 4 percent of the salary of all employees earning less than $750 (Singapore) per month. The Fund's Training Grant Scheme provides grants for training programs that will upgrade employee skills in Singapore. Both companies received grants under this program during the review period. The Fund's Interest Grant for Mechanisation Scheme provides grants to encourage companies to re-equip their plants with new machinery that will lead to savings in labor usage, an increase in productivity, or the introduction of more sophisticated or skilled operations. Neither company took advantage of this program during the review period.

During verification, the Singapore government presented documents showing that these two grant schemes are open to all businesses. The Fund's records show that the companies from all sectors applied for and received these grants. The Fund applied the same standards for giving grants to all businesses, and we saw no evidence of discrimination in favor of or against a particular company or industry. Therefore, we preliminarily determine the Training Grant Scheme and the Interest Grant for Mechanisation Scheme are not provided to a specific industry, or group of industries, and do not constitute countervailable benefits.

(3) The Public Utilities Board Surcharge Exemption

The surcharge exemption, an exemption from a government surcharge on electricity bills, is available to manufacturing companies that use more than 100,000 kwh of electricity per month. To receive the exemption, a company must show an improvement in

energy efficiency from one year to the next or invest an amount equal to or greater than 15 percent of its total annual energy cost in energy-saving equipment. At verification, we found the Board had applied these criteria when reviewing applications for the exemption and did not discriminate in favor of or against a particular company or industry. Therefore, we preliminarily determine the surcharge exemption is not provided to a specific industry, or group of industries, and does not provide a countervailable benefit.

(4) Financing Through the Monetary Authority of Singapore

The suspension agreement prohibits the two companies from applying for or receiving any financing provided by the rediscount facility of the Monetary Authority for shipments of this product to the United States. Both companies have complied with this clause of the agreement.

(5) Payments of Income Taxes in Installments

Both companies pay their income taxes in installments. This procedure is allowed under Singaporean law when a company files its enstimated returns within five months of the close of its fiscal year. The Singapore government uses this procedure to encourage companies to begin paying their taxes before the regular due date for payment. Many companies take advantage of the program. We preliminarily determine that this program is not provided to a specific industry, or group of industries, and therefore does not provide a countervailable benefit.

(6) Technical Assistance Fee Payments

The petitioner alleges that Matsushita Refrigeration may pay excessive technical assistance fees to its parent company in Japan in an effort to disguise its true profitability and thus to lower the benefit of tax exemptions under Part IV of the Economic Expansion Incentives Act. Matsushita Refrigeration has no research or development facilities and depends on its parent company to provide technical assistance. We found at verification that, whenever a company applies for tax-exempt status for its technical assistance fee payments, the Economic Development Board, along with the Inland Revenue Department, review the fees to ensure they are not excessive. They look at the particulars of each technical assistance agreement and also compare the amount charged for assistance with the amounts charged in other agreements providing similar assistance. Because the Board approved the applications, we preliminarily determine that the subsidiary does not receive countervailable benefits, directly or indirectly, through payment of excessive technical assistance fees.

Preliminary Results of the Review

As a result of the review, we preliminarily determine the total bounty or grant to be 4.92 percent *ad valorem* for the review period. The suspension agreement states that the Government of Singapore will offset completely with an export charge the net bounty or grant calculated by the Department. Following the methodology outlined in section B.4. of the agreement, the Department preliminarily determines that, in order to reach a final export charge of 4.92 percent *ad valorem*, a negative adjustment of 0.94 percent *ad valorem* may be made to the provisional export charge of 5.86 percent established in the Notice of Suspension of Countervailing Duty Investigation. The Government of Singapore may refund this amount to the companies.

The Department intends to notify the Government of Singapore that the provisional export charge on all exports to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 4.92 percent *ad valorem*.

In addition, we preliminarily determine that the two companies have complied with the terms of the suspension agreement, including the payment of the provisional export charge, for the period November 7, 1983, through December 31, 1983.

The agreement can remain in force only as long as shipments covered by the agreement account for at least 85 percent of imports of Singaporean refrigeration compressors into the United States. Our information indicates that the two companies accounted for 100 percent of imports into the United States of such refrigeration compressors during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751 of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: February 8, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-3630 Filed 2-12-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will convene a public meeting, February 21–23, 1985, at the Naniloa Surf Hotel's Kilohana Room, 93 Banyan Drive, Hilo, HI, to discuss (1) the Council's draft bottomfish framework fishery management plan (FMP) with management measures for the Northwest Hawaiian Islands; (2) an amendment to the Spiny Lobster FMP that changes the legal size measurement basis from carapace length to tail width and abolishes the 15 percent total catch tolerance provision; (3) a decision outline for a shrimp FMP; (4) the status of the Pelagics FMP, and (5) reauthorization of, and amendments to, the Magnuson Fishery Conservation and Management Act.

The Council's Scientific and Statistical Committee (SSC) will convene a public meeting on February 18–19, at the National Marine Fisheries Service's Honolulu Laboratory, 2570 Dole Street, Honolulu, HI, to discuss the same subjects as the Council.

A detailed agenda for Council and SSC meetings will be available around February 11. For further information, contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishp Street, Room 1405, Honolulu, HI, 96813; telephone: (808) 523-1368 or FTS 808-8923.

Dated: February 8, 1985.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-3652 Filed 2-12-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Limits for Certain Cotton Textile Products Produced or Manufactured in Indonesia

February 7, 1985.

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 February 14, 1985. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

On November 15, 1984 notices were published in the **Federal Register** (49 FR 45206 and 45207), which established import restraint limits for cotton shop towels in Category 369pt. (only TSUSA number 366.2740) and woven shirts of man-made fibers in Category 640, produced or manufactured in Indonesia and exported during the ninety-day periods which began, in the case of Category 369pt., on October 30, 1984 and extended through January 28, 1985, and, in the case of Category 640, on October 31, 1984 and extended through January 29, 1985, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia. The notices also stated that the Government of the Republic of Indonesia is obligated under the bilateral agreement, if no mutually satisfactory solution is reached on levels for these categories during consultations, to limit its exports during the periods which began on October 30, 1984 for Category 369pt. and on October 31, 1984 for Category 640 and extend through the end of the agreement year, June 30, 1985, to 432,348 pounds (Category 369pt.) and 166,095 dozen (Category 640).

The notice also stated that merchandise in the categories which is in excess of the ninety-day limits, if it is allowed to enter, may be charged to the prorated limits.

The United States Government has decided, inasmuch as no mutually satisfactory solution has been agreed concerning these categories, to control imports at the designated limits. The limits may be adjusted to include prorated swing and carryforward.

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), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

February 7, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 14, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 369 pt.[1] and 640, produced or manufactured and man-made fiber textile in Indonesia and exported during the following periods which on excess of the indicated limits:

Category	Restraint limit [2]	Period
369 pt. [1]	432,348 pounds	Oct. 30, 1984-June 30, 1985.
640	166,075 dozen	Oct. 31, 1984-June 30, 1985.

[1] In Category 369, only TSUSA numbers 366.2740.
[2] In limits have not been adjusted to reflect an imports exported after October 29, 1984 (Category 369 pt.) or October 30, 1984 (Category 640).

Textile products in Category 369 pt.[1] and 640, which have been exported to the United States during the previously established ninety-day periods which began on October 30 and 31, 1984 shall be subject to this directive.

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), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The 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] In Category 369, only TSUSA numbers 366.2740.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-3467 Filed 2-12-85; 8:45 am]

BILLING CODE 3510-DR-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket Nos. CRT 80-4, 81-1, 82-1, 83-1]

Order Granting Further Partial Distributions 1979, 1980, 1981, and 1982 Cable Royalty Distribution

FOR FURTHER INFORMATION CONTACT: Marianne Mele Hall, Chairman, Copyright Royalty Tribunal, 1111 20th Street NW., Room 450, Washington, D.C. 20036, (202) 653-5175.

The Copyright Royalty Tribunal (Tribunal), in response to motions recently filed, makes the following further partial distributions on the proceedings above:

CRT Docket 80-4, 1979 Cable Royalty Distribution. All clamaints are to receive that portion of the remaining pool which will bring their cumulative receipts to 96% pro rata.

CRT Docket 81-1, 1980 Cable Royalty Distribution. All clamaints are to receive that portion of the remaining pool which will bring their cumulative receipts to 85% pro rata.

CRT Docket 82-1, 1981 Cable Royalty Distribution. All clamaints are to receive that portion of the remaining pool which will bring their cumulative receipts to 97% pro rata.

CRT Docket 83-1, 1982 Cable Royalty Distribution. All clamaints are to receive that portion of the remaining pool which will bring their cumulative receipts to 91% pro rata.

The above determinations are made in accordance with section 111(d)(5)(C) of Title 17 which authorizes the Tribunal to distribute amounts not in controversy while withholding an amount sufficient to satisfy all claims with which a controversy exists. It is the Tribunal's determination that the above distribution equitably satisfies the legislative mandate.

A detailed analysis and history on all the distributions of the above encaptioned cases follows in the tables below. Computations have been rounded to four places beyond the decimal point.

The first column in each table represents the percentage allocation to each claimant, as a result of the latest court or Tribunal determination. It is upon this percentage allocation that we have determined what is in controversy and what to withhold to cover the same.

The following columns represent the previous distributions. The penultimate column represents the pro rata share of the full fund, to be attained in this 1985 partial distribution. The last column represents the amount of the total fund that must be distributed to bring each respective claimant to its equal pro rata share.

This last column percentage figure shall be applied to the total fund which shall be determined by adding the total amounts previously distributed to the amount remaining. This sum will effectively reflect the total fund as of this distribution including all earnings and deducting all costs. By working this last distribution on the total fund to bring each claimant to an equal percentage share, the proportionate earnings and costs will be allocated equitably.

This distribution will serve to equalize all shares by percentage. Then, the final distribution of each fund shall zero out each fund by distributing the remaining amount on a strictly pro rata basis.

Special attention must be given to the Devotional claimants who have received no royalties to date because their allocation was not determined until the May 11, 1984 [1] remand. Their proportionate share of each distsribution has been determined and noted parenthetically. This percentage shall be applied to the fund as it existed on the date of the actual earlier distributions to the other claimants. These retroactive distributions shall be made first on the respective remaining funds for each proceeding, before this 1985 further distrubution is executed.

By conducting these retroactive calculations first, the Devotionals shall be assured of the pro rata share of the earned interest in the respective funds that they would have gotten had their distributions been made at the time of the other distributions. In essence, they will get what they should have gotten at the earlier distrubutions with all costs and earnings accounted for. This will effectively adjust for their basic interest per each share.

An additional concern for the Devotionals is that their full share remained longer in the fund, and therefore it earned more interest proportionately. This will be adjusted for as follows. The Tribunal feels that it is not responsible for the lost time value of the Devotional's share for that period of time between the first distributions in May 1982 and the May 11, 1984 remand, as we can not be responsible for time value lost on an allocation which had not yet been determined. However, the Devotionals have lost time value from the May 11, 1984 remand to date. For example, in the 1979 fund, 91% of the fund had been distributed to all other claimants earlier, while the Devotional's full share which was not distributed, continued to earn interest for the total 1979 fund. We feel responsible for those additional earnings due to 91 of their award, remaining in the fund from the May 11, 1984 remand to date, while the other claimants received 91% of their shares. It is likewise for the 1980 and 1981 funds. For the 1982 fund, the proportional extra interest was earned from the Dec. 1, 1983 distribution to date. The percentage of additional interest shall be calculated on the respective total fund and deducted before this 1985 partial distribution is made.

Also note that the 1979 award to MPAA was reduced by the .5 award to the Devotionals as per 49 FR 20051 (1984). Their proportionate share has been computed accordingly to adjust for the remand. This can be reversed if said remand is not affirmed.

The Tribunal shall make these adjustments and this 1985 further partial distribution on February 7, 1985. Comments, in opposition to these determinations only, will be received until March 7, 1985. Thereafter, no further comments in opposition to any previous partial distribution shall be considered.

Dated: February 4, 1985.

Marianne Mele Hall,

Chairman.

	Percentage allocation [1] (latest)	50% dist. 5/82 [2]	35.5% dist. 11/83 & 3/84 [3]	Total rcvd. to date	96% of fund, pro rata	Further dist. needed to attain 96% pro rata
1979 PHASE I						
Program Syndicators. (see below)	70.00					
Joint Sports and NCAA	15.00	7.500	[4] 6.088	13.588	14.40	.812
PBS	5.25	2.625	2.131	4.756	5.04	.284
NAB*	4.50	2.250	[5] 2.160	4.4109	4.32	.0
Music	4.25	2.125	1.725	3.850	4.08	.230
Canadian	.75	.375	.360	.735	.72	.0
NPR	.25	.125	.125	.250	.24	.0
1979 PHASE II						
Program syndicators (70%)						
MPAA	[6] 96.3	33.880	27.515	61.395	64.7136	3.3166
Multimedia Program Production, Inc	1.6	.560	.448	1.008	1.0752	.0672
NAB*	.8	.280	[7] .224	.504	.5376	.0336
SIN	.7	.245	.196	.441	.4704	.0294
Mutual of Omaha	.1	.035	.028	.063	.0672	.0042
Devotn'ls (to be appl'd retroactively)	.5	0(.175)	0(.1243)	0(.2993)	.336	.0367

*NAB figures have been segregated into the respective Phase I and Phase II awards. In earlier distributions, they had been represented collectively.

[1] 47 FR 9897 (1982)
[2] 47 FR 24175 (1982)
[3] 48 FR 54679 (1983)
[4] 49 FR 4543 (1984)
[5] By agreement, Nov. 22, 1983
[6] 49 FR 20051 (1984)
[7] By agreement, Nov. 22, 1983

	Percentage allocation (latest) *	50% dist. 5/83 *	30% dist. 8/83 [10]	Total rcvd. to date	85% of fund, pro rata	Further dist. needed to attain 85% pro rata
1980 PHASE I						
Program syndicators	69.7544					
Joint Sports	14.9473	7.500	4.500	12.0000	12.7052	.7052
PBS	5.2316	2.625	1.575	4.2000	4.4469	.2469
NAB*	4.4842	2.250	1.350	3.6000	3.8116	.2116
Music	4.2351	2.125	1.275	3.4000	3.5998	.1998
Canadian	.7474	.375	.225	.6000	.6353	.0353
NPR	.2500	.125	.075	.2000	.2125	.0125
Devotionals (to be applied retroactively)	.3500	(.175)	(.105)	(.28)	.2975	.0175
Commercial Radio	0	0	0	0	0	0
1980 PHASE II						
PROGRAM SYNDICATORS (69.7544)						
MPAA	[11] 96.9000	[12] 33.915	[13] 20.349	54.264	57.4532	3.1892
Multimedia	1.6000	.560	.336	.896	.9486	.0526
NAB*	.8000	.280	.168	.448	.4743	.0263
SIN	.7000	.245	.147	.392	.4150	.0230

*NAB figures have been segregated into the respective Phase I and Phase II awards. In earlier distributions, they had been represented collectively.
* 49 FR 28092 (1984).
* 48 FR 15508 (1983).
[10] 48 FR 31449 (1983).
[11] 48 FR 9569 (1983).
[12] 48 FR 15508 (1983).
[13] 48 FR 31449 (1983).

	Percentage allocation (latest) [14]	85% dist. 8/83 [15]	5% dist. 11/83 [16]	6.5% dist. 8/84 [17]	Total rcvd. to date	97% of fund, pro rata	Further dist. needed to attain 96.5 pro rata
1981 PHASE I (Settled as per 1979 and 1980 Remand)							
SETTLING PARTIES							
Program syndicators (see below)	69.7544						
Joint Sports	14.9473	12.7500	.7500	.9750	14.4750	14.4989	.0239
PBS	5.2316	4.4625	.2625	.3412	5.0662	5.0747	.0085
NAB (see below)	4.4842						
	(+.558)	4.3010	.2530	.3289	4.8829	4.8909	.0080
Music	4.2351	3.6125	.2125	.2762	4.1012	4.1080	.0068
Canadian	.7474	.6375	.0375	.0488	0.7238	.7250	.0012
NPR	.2500	.2125	.0125	.0163	0.2413	.2425	.0012
Devotn is (to be appl'd retroactively)	.3500	0(.2975)	0(.0175)	0(.0228)	0(.3378)	.3395	.0017
1981 PHASE II							
PROGRAM SYNDICATORS (69.7544)							
MPAA	96.9000	57.6555	3.3915	4.4089	65.4559	65.5643	.1084
Multimedia	1.6000	.9520	.0560	.0728	1.0808	1.0826	.0018
SIN	.7000	.4165	.0245	.0319	0.4729	.4736	.0007
NAB (reflected in dist. above)	.8000						

[14] 49 FR 7845 (1984) et. seq.
[15] 48 FR 31450 (1983).
[16] 48 FR 46411 (1983).
[17] 49 FR 17067 (1984).

	Percentage allocation (latest) [18]	90% dist. 12/1/83 [19]	Total rcvd. to date	91% of fund pro rata	Further dist. needed to attain 91% pro rata
1982 PHASE I (Settled as per 1979 and 1980 Remand with adjustment for pro rata distribution of Devotionals share.) [20]					
SETTLING PARTIES					
Program syndicators (see below)	69.2982				
Joint Sports (see below)	14.8496				
PBS	5.1974	4.7250	4.7250	4.7296	.0046
NAB (see below)	4.4549				
	(+.5543)	4.5540	4.5540	4.5584	.0044
Music	4.2074	3.8250	3.8250	3.8287	.0037
Canadian	.7425	.6750	.6750	.6757	.0007
NPR	.2500	.2250	.2250	.2275	.0025
Devotional's (to be appl'd retroactively)	1.0000	0(.9000)	0	.9100	(.0100)
1982 PHASE II					
PROGRAM SYNDICATORS (69.2982)					
MPAA	[21] 97.5000	61.0470	61.0470	61.4848	.4378
Multimedia	1.0000	[22] 1.0080	1.0080	.6306	0
SIN	.7000	.4410	.4410	.4414	.0004
NAB (reflected in dist. above)	.8000				
SETTLING SPORTS PARTIES (14.8496)					
Joint Sports	[23] 99.9800	13.5000	13.5000	13.5104	.0104
SIN	.0200	0	0	.0027	.0027

[18] 49 FR. 37653 (1984) et. seq.
[19] 48 FR. 46412 (1983).
[20] To determine pro rata distribution of the Devotionals allocation, first the NPR allocation of .25 was deducted from 100%. Second, the percent allocation per claimant from 1979 and 1980 was adjusted upward to reflect the percentage share of the whole with the NPR deletion (99.75%). Then the whole (99.75%) was adjusted downward by deleting the Devotionals 1% to yield 98.75%. Lastly, the claimant's new percentages were applied pro rata against the whole (98.75%) as represented with the deduction of the Devotional's share, to arrive at these pro rata percentage allocations.
[21] 49 FR. 37653 (1984) et. seq.
[22] ibid.
[23] (Overdist.)

[FR Doc. 85-3604 Filed 2-12-85; 8:45 am]

BILLING CODE 1410-11-M; 1505-21-M

[Docket Nos. CRT 80-4, 81-1, 82-1, 83-1]

Amendment To Order Granting Further Partial Distributions 1979, 1980, 1981, and 1982 Cable Royalty Distribution

FOR FURTHER INFORMATION CONTACT: Marianne Mele Hall, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Room 450, Washington, D.C. 20036, (202) 653-5175.

Because of the size and nature of the partial distribution announced on February 7, 1985 and because sections of the February 7 order were omitted in error by the **Federal Register**,

the Copyright Royalty Tribunal announces that the actual disbursement shall take place on February 21 but shall be based on computations effective February 7. The funds have been reinvested for two weeks. Therefore, one additional computation shall be made to cover the two weeks lost time value on the Devotionals shares. A display of the computations, except this last one, is included below.

February 7, 1985.

Marianne Mele Hall,

Chairman.

1979 91% Disbursed raised to 96%

Disbursed Fund	$20,226,117.09	
Remaining Fund	3,419,100.00	
Additions to Fund	24,545.64	
Total fund	23,669,762.73	
Minus Devotional Interest	(1,381.94)	
Adjusted total	23,668,380.79	
	Percent of adj. total	Feb. 85 disbursement
MPAA	3.3186	$785,456.89
Multimedia	.0672	15,905.15
NAB	.0336	7952.58
SIN	.0294	6958.50
Mutual of Omaha	.0042	994.07
Joint Sports	.812	192,187.24
PBS	.284	67,218.20
Music	.230	54,437.27
Devotionals	.0367	8,686.30
Devotionals (retroactive distribution	.175 (10,673,380.00)	18,678.42
Devotionals (retroactive distribution	.1243 (9,552,737.09)	11,874.05
Devotionals (interest)	(.35/9) ($35,534.48)	1,381.00

(proportional % of remaining) (earnings since remand)

1980 80% Disbursed raised to 85%

Disbursed fund	$21,272,774.02	
Remaining fund	6,445,200.00	
Additions to fund	16,028.10	
Total fund	27,734,002.12	
Minus devotional interest	(8,941.27)	
Adjusted total	27,725,060.85	
	Percent of adj. total	Feb. 85 disbursement
MPAA	3.1892	$884,207.61
Multimedia	.0526	14,583.38
NAB	.2379 (.0263 & .2116)	65,957.92
SIN	.0230	6,376.76
Joint sports	.7052	195,517.12
PBS	.2469	68,453.17
Music	.1998	55,394.67
Canadian	.0353	9,786.95
NPR	.0125	3,465.63
Devotionals	.0175	4,851.89
Devotionals (retroactive distribution)	(.175) (13,225,000.00)	23,143.75
Devotionals (retroactive) distribution)	(.105) (8,047,774.02)	8,450.16
Devotionals (interest)	(.35/20) (510,929.50)	8,941.27

(proportional % of remaining) (earnings since remand)

1981 96.5% Disbursed raised to 97%

Disbursed Fund	$31,382,028.83	
Remaining Fund	3,910,350.00	
Additions to Fund	13,614.10	
Total Fund	35,305,992.93	
Minus Devotional Interest	(24,463.89)	
Adjusted total	35,281,529.04	
	%of adj. total	Feb 85 disbursement
MPAA	.1084	$38,245.17
Multimedia	.0018	635.07
SIN	.0007	246.97
Joint Sports	.0239	8,432.29
PBS	.0085	2,996.93
NAB	.0080	2,822.52
Music	.0068	2,399.14
Canadian	.0012	423.38
NPR	.0012	423.38
Devotionals	.0017	599.78
Devotionals (retroactive distribution)	(.2975) (27,438,633.70)	81,630.00
Devotionals (retroactive distribution)	(.0175) (1,692,578.78)	296.20
Devotionals (retroactive distribution)	(.0228) (2,250,816.35)	513.19
Devotionals (interest)	(.35/3.5) ($244,638.94)	24,463.89

(proportional % of remaining) (earnings since remand).

1982 90% Disbursed raised to 91%

Disbursed Fund	$37,944,320.72	
Remaining Fund	5,875,350.00	
Additions to Fund	2,109.19	
Total fund	43,821,779.91	
Minus Devotional Interest	(55,916.33)	
Adjusted total	43,765,863.58	
	Percent of adj. total	Feb. 85 disbursement
MPAA	.4378	$191,606.94
SIN	.0031 (.0004 & .0027)	1,356.74
Joint Sports	.0104	4,551.65
PBS	.0046	2,013.23
NAB	.0048 (.0044 & .0004)	2,100.76
Music	.0037	1,619.34
NPR	.0025	1,094.15
Canadian	.0007	306.36
Devotionals	.0100	4,376.59
Devotionals (retroactive distribution)	(.9) (37,659,738.32)	338,937.64
Devotionals (interest)	(.1/10) ($559,163.28)	55,916.33

(proportional % of remaining) (earnings since first distr.)

[FR Doc. 85-3603 Filed 2-12-85; 8:45 am]

BILLING CODE 1410-11-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent to Prepare a Draft Environmental Impact Statement; Withdrawal of Lands from Public Use; Nevada

The United States Air Force proposes to request extension of the withdrawal of lands from public use in the vicinity of Groom Mountain Range, located in Lincoln County, Nevada.

An environmental impact statement will be prepared which will examine the nature, range, degree and extent of impacts associated with the transfer of this approximately 89,600 acres of land from public use to uses designated by the Secretary of the Air Force. The withdrawn lands will be used for training in electronic warfare, tactical maneuvering and air support. Additional uses are for other defense related purposes consistent with, and involving no greater adverse impact on the withdrawn lands and their resources than the impacts analyzed in the EIS.

The draft EIS is scheduled to be completed in the fall of 1985. Upon issuance of the draft statement, a public comment period and public hearings are planned to obtain comments from the public and concerned organizations. The final environmental statement is scheduled to be published in the spring of 1986.

For further information concerning the preparation of the environmental impact statement on the extension of the withdrawal from public lands near the Groom Mountain Range, contact: Capt. Donald Zona, Hq Tactical Air Command/DEEV, Langley Air Force Base, Virginia 23665, Telephone Number: (804) 764-4430.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-3553 Filed 2-12-85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Flood Plain Reclamation Projects, Texas; Correction; Notice of Intent

AGENCY: U.S. Army Corps of Engineers, Fort Worth District, DOD.

ACTION: Corrected notice of intent to prepare a draft environmental impact statement (EIS) to address the potential cumulative impacts of a variety of flood plain reclamation projects along the Trinity River and its tributaries in Tarrant, Dallas, and Denton Counties, Texas.

Paragraph 5 of Notice of Intent appearing in the January 23, 1985 **Federal Register**, Vol. 50, No. 15, page 3009 is corrected to read:

It is estimated that the Draft EIS will be available to the public in the first quarter of calendar year 1986.

Dated: February 1, 1985.

Michael J. Mocek, P.E.,

Chief, Planning Division.

[FR Doc. 85-3637 Filed 2-12-85; 8:45 am]

BILLING CODE 6710-20-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Technology Transfer Task Force; Closed Meeting; Correction

This notice is given to correct the notice of the meeting of the Chief of Naval Operations Executive Panel Advisory Committee Technology Transfer Task Force, as published in the issue of February 4, 1985 (50 FR 4881). The February 4 notice stated that the meeting would be held on February 20 and 21, 1985. In fact, the meeting will take place only on February 20, 1985. All other information in the February 4 notice is accurate.

Dated: February 8, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-3609 Filed 2-12-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Council on Continuing Education; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: March 13-15, 1985.

ADDRESS: J.W. Marriott Hotel, 1331 Pennsylvania Ave., NW., Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 425 Thirteenth Street, NW., Suite 529, Washington, D.C. 20004, Telephone: (202) 376-8888.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) The preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) Activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending are asked to call the Council's office beforehand.

The Council meeting will begin on March 13 with a dinner meeting from 7:00 P.M. to 9:00 P.M., and continue from 8:30 A.M. to 5:00 P.M. on March 14 and from 8:30 A.M. to 12:00 Noon on March 15, 1985.

The proposed agenda includes:

—Senator Hatch's bill on Title I
—Administration views on continuing education
—Legislative update
—Federal programs of continuing education
—International study proposal
—Council-ED Department relations
—Moving the office to new location

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 425 Thirteenth Street, NW., Suite 529, Washington, D.C.

Signed at Washington, D.C. on February 7, 1985.

William G. Shannon

Executive Director.

[FR Doc. 85-3573 Filed 2-12-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Noncompeting Continuation Awards Under the Desegregation of Public Education Program for Fiscal Year 1985; Applications

AGENCY: Department of Education.

ACTION: Application notice for noncompeting continuation awards under the desegregation of public education program for fiscal year 1985.

Applications are invited for noncompeting continuation projects under the Desegregation Assistance Center (DAC) programs for race, sex, and national origin desegregation.

Authority for this program is contained in Title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c-2000c-5).

The purpose of the awards is to provide technical assistance, training, and advisory services to school districts in coping with the special educational problems caused by the desegregation of their schools based on race, sex, and national origin.

Closing Date for Transmittal of Applications: To be assured of consideration for funding, applicants for noncompeting continuation awards should mail or hand deliver their applications on or before March 18, 1985.

If an application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuation awards and may decline to accept it.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84:004D, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand: Applicants that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturday, Sunday, and Federal holidays.

Program Information: The present recipients of DAC awards are eligible to apply for the continuation of those awards. Under 34 CFR 270.38(c) (formerly 45 CFR 180.38(c)) the Secretary is authorized to approve the continuation of an existing DAC award if the recipient of that award "has complied with the terms of the award, has provided satisfactory assistance, and continues to show promise of success in providing that assistance".

In a notice published in the **Federal Register** on March 26, 1984, the Secretary designated service areas for the new competition for DAC awards for Fiscal Year 1984. That notice also indicated that the Secretary planned to undertake a study of the Desegregation of Public Education Program that would include an examination of the DAC service areas; and that if the study indicated that changes to the DAC service areas should be made, those changes would be proposed for Fiscal Year 1985.

This study has not yet been completed. Therefore, the Secretary has determined that changes to the DAC service areas will not be proposed for Fiscal Year 1985. Any changes to the DAC service areas found to be necessary will be proposed for Fiscal Year 1986, provided that funds are appropriated for the program.

Intergovernmental Review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review:

State

Alabama	New Mexico
Arizona	New York
Arkansas	North Dakota
California	Ohio
Connecticut	Oklahoma
Delaware	Oregon
District of Columbia	Pennsylvania
Florida	South Carolina
Hawaii	South Dakota
Indiana	Texas
Kansas	Tennessee
Kentucky	Trust Territory
Louisiana	Utah
Maine	Vermont
Massachusetts	Virginia
Michigan	Washington
Missouri	West Virginia
Montana	Wisconsin
Nebraska	Wyoming
Nevada	Guam
New hampshire	Virgin Islands
New Jersey	

Immediately upon receipt of this notice, applicants that are governmental entities must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State, should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by April 18, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181, (84.004) 400 Maryland Avenue SW., Washington, D.C. 20202. Proof of mailing will be determined on the same basis as applications.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Available Funds: The appropriation for this program for Fiscal Year 1985 is $24,000,000. Approximately $10,000,000 will be made available for 40 DAC grants. The average DAC award is projected to be $250,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Pursuant to a Congressional directive in the conference report accompanying the Department's Fiscal Year 1985 appropriation act, the Department is using Fiscal Year 1985 Title IV funds to support 1984 project that did not receive the full amount of their funding commitments due to the freeze on Fiscal Year 1984 funds imposed by the District Court in *United States* v. *Board of Education of the City of Chicago.* As such time as the Fiscal Year 1984 funds are released by the District Court, accounting adjustments will be made so that 1985 grants can be awarded using Fiscal Year 1985 funds.

Application Forms: Application forms and program information packages are expected to be ready for mailing by February 15, 1985. They may be obtained by writing to the Equity Training and Technical Assistance Program Staff, U.S. Department of Education (Room 2011, FOB#6), 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information

packages. However, the program information package is only intended to aid applicants in applying for assistance under the program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 page.

The Secretary further urges that applicants not submit information that is not requested.

(The application is approved under OMB Number 1810-0030.)

Applicable Reguations: Regualations applicable to this program include the following:

(a) Regulations governing the Desegregation of Public Education program is 34 CFR Part 270 (formerly 45 CFR Part 180).

(b) Education Department General Administrative Regulations in 34 CFR Parts 74, 75, 77, 78, and 79.

Further Information: For further information contact George R. Rhodes, Director, Division of Educational Support, U.S. Department of Education (Room 2003, FOB#6), 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 245-8484.

(42 U.S.C. 2000c-2000c-5)

(Catalog of Federal Domestic Assistance Number 84.004 Civil Rights Technical Assistance Program)

Dated: February 5, 1985.

Gary L. Jones,

Acting Secretary of Education.

[FR Doc.85-3618 Filed 2-12-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID-1883-002]

Klaus Bergman; Application

February 7, 1985.

Take notice that on January 25, 1985, Klaus Bergman (applicant) file an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Position and Name of Corporation

Director, Vice President, Chairman of the Board; West Penn Power Company Director, Chairman of the Board; The Potomac Edison Company Director, Chairman of the Board; Monongahela Power Company Director, President; Allegheny Generating Company Director; Ohio Valley Electric Corporation

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 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 February 28, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants party 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. 85-3539 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1496-002]

Frank J. Eppich; Application

February 7, 1985

Take notice that on January 25, 1985, Frank J. Eppich (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Position and Name of Corporation

Director, Vice President;
Monongahela Power Company
Director;
The Potomac Edison Company
Director;
West Penn Power Company
Director, Vice President;
Allegheny Generating Company
Director;
Ohio Valley Electric Corporation

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 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 February 28, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3582 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-118-001, et al.]

Northwest Pipeline Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporate

[Docket No. CP85-118-001]

February 7, 1985.

Take notice that on January 10, 1985, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85-118-001 an amendment to its pending application filed in Docket No. CP85-118-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to reflect a change in the proposed transportation rate and an amendment to the subject gas transportation agreement, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Northwest states on November 16, 1984, Northwest filed in Docket No. CP85-118-000 an application seeking a limited-term certificate of public convenience and necessity and temporary authority to transport up to 10 billion Btu's of natural gas per day for the account of Reichhold Chemical, Inc. (Reichhold) pursuant to a gas transportation agreement (Agreement) dated October 26, 1984.

In its application Northwest stated that the proposed transportation rate for the subject service would be 5.0 cents per million Btu plus the GRI charge of 1.18 cents per million Btu.

Northwest states that the Commission issued a temporary certificate dated November 30, 1984, which stated that Northwest could charge the proposed 5-cent rate but, pending a determination by the Commission of the appropriateness of that rate, Northwest would be at risk for undercollection for the difference between the 5-cent rate and the ultimate rate found to be appropriate for the proposed transportation service. Further Northwest states that the Commission by letter dated December 12, 1984, clarified its temporary certificate by stating that the risk of undercollection would be the difference between the

rate actually charged and the transportation rate that Northwest has in effect, from time-to-time, in its tariff.

Northwest's states that in reaction to the temporary certificate, Reichhold and Northwest entered into an amendment dated December 21, 1984, that revised the rate provision of the Agreement. It is explained that the amendment provides that Reichhold initially would pay Northwest for all transportation services rendered under the Agreement at a rate of 5.25 cents per million Btu, plus the applicable GRI charge of 1.18 cents per million Btu. Further, it is stated that in the event that Northwest places into effect new tariff transportation rates prior to the issuance of a permanent certificate herein, Reichhold agrees to pay such rates commencing immediately upon their effective date, subject to refund pending a final rate determination herein.

Northwest finally states that on December 23, 1984, it began transporting gas for Reichhold under the authority of the November 30, 1984 temporary certificate. Northwest states that pursuant to the amendment, dated December 21, 1984, Northwest is charging Reichhold 5.25 cents per million Btu plus the GRI charge for volumes transported for Reichhold's account.

Comment date: February 28, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Trailblazer Pipeline Company

[Docket No. CP85-241-000]

February 7, 1985.

Take notice that on January 23, 1985, Trailblazer Pipeline Company (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-241-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an interruptible transportation Rate Schedule ITS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes an interruptible transportation Rate Schedule ITS, that would allow Applicant price flexibility when negotiating with prospective shippers who desire best-efforts transportation. Applicant states that the negotiated rate would not be less than Applicant's currently effective Rate Schedule T demand charge divided by 30.4, nor would the rate exceed Applicant's Rate Schedule T, currently in effect, at a 100 percent load factor.

It is explained that Rate Schedule ITS would be applicable to any interstate or intrastate pipeline, independent producer, local distribution company or end-user who desires a best-efforts type transportation service. Applicant would also charge end-users an incentive allowance not to exceed that allowed by the Commission per million Btu per transaction, it is stated.

Comment date: February 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Consolidated Gas Transmission Corporation

[Docket No. CP85-246-000]

February 5, 1985.

Take notice that on January 24, 1985, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP85-246-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of up to 50,000 dt equivalent of natural gas per day to Texas Gas Transmission Corporation (Texas Gas) through December 31, 1985, and the use of existing delivery points as may be mutually agreeable, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the rate to be charged of $3.325 per dt as negotiated in a sales agreement (Agreement) between Applicant and Texas Gas dated January 22, 1985, would result in a net economic benefit to Applicant's on-system customers since the sale would fully recover Applicant's incremental purchased gas costs because the proposed rate exceeds the gas cost components of its pipeline suppliers' rates. Applicant states that it is currently making a limited-term sale to Texas Gas pursuant to a order issued March 30, 1982, in Docket No. CP81-528-000 and that the term of that sale expires on January 31, 1985.

Applicant states that the proposed sale would result in a net economic benefit to its on-system customers since all proceeds are to be used to offset gas costs in the monthly entries to Account 191. It is explained that the sale could also reduce Applicant's 1985 minimum bill liabilities by approximately $4.3 million. Alternatively, Applicant states it could purchase more volumes from its lowest cost pipeline supplier, Texas Eastern Transmission Corporation, thereby lowering its system average cost of gas leading to a savings to on-system customers of approximately $5.8 million.

Applicant also states this sale would provide it with additional flexibility to manage its present over-supply situation, currently estimated to be approximately 103,000,000 Mcf through December 31, 1985. Also, Applicant maintains that it could continue its presence as a purchaser in Louisiana, Texas, and the Gulf of Mexico, and to maintain a level of short-term demand sufficient to promote natural gas exploration and development activities, necessary to the development of adequate long-term supplies.

Comment date: February 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation; Columbia Gulf Transmission Company

[Docket No. CP85-217-000]

February 7, 1985.

Take notice that on January 11, 1985, Columbia Gas Transmission Corporation (Columbia Gas) 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed jointly in Docket No. CP85-217-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natrual gas on behalf of Victor F. Weaver, Inc. (Victor Weaver), under the certificates issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia Gas and Columbia Gulf (Applicants) propose to transport up to 600 million Btu equivalent of natural gas per day for Victor Weaver for a term through June 30, 1985. Applicants state that the gas to be transported would be purchased from Exxon Corporation (Exxon) by Victor Weaver and would be used for process gas in Victor Weaver's plant in New Holland, Pennsylvania.

It is indicated that Columbia Gulf would receive up to 600 million Btu equivalent of natural gas per day at existing interconnections with Exxon in offshore and onshore Louisiana and would deliver such gas to Columbia Gas at existing points of interconnection. It is stated that Columbia Gas would then redeliver the gas to UGI Corporation, the distribution company serving Victor Weaver.

Further, it is stated that Columbia Gulf would charge one of the rates set

forth in Rate Schedule T-2 of its FERC Gas Tariff, Original Volume No. 1, which are currently as follows: offshore to Kentucky—23.92 cents per dt equivalent and 1.69 percent retainage for company-use and unaccounted—for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent and 1.50 percent retainage; Rayne, Louisiana, to Kentucky 12.76 per dt equivalent and 1.50 percent retainage; and Corinth, Mississippi, to Kentucky—6.38 per dt equivalent and 0.75 percent retainage.

Columbia Gas indicates that it would charge one of the rates set forth in Rate Schedule TS-1 of its FERC Gas Tariff, Original Volume No. 1, which when within Columbia's customers total daily requirements (TDE), are as follows: Received from Columbia Gulf at Leach, Kentucky 21.16 cents per dt equivalent; and received from receipt points other than Leach, Kentucky—29.93 cents per dt. It is stated that the current rates for TS-1 when in excess of Columbia's customers' TDE, are as follows: Received from Columbia Gulf at Leach, Kentucky 32.50, cents per dt equivalent; and received from receipt points other than Leach, Kentucky—41.27 cents per dt. Columbia Gas states that it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. Columbia Gas also states that it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under this transportation agreement.

Applicants also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicants would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: March 25, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP85-210-000]

February 7, 1985.

Take notice that on January 8, 1985, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-210-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Motor Wheel Corporation (End User) under the certificate issued in Docket No. CP83-83 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant requests authority to transport gas on behalf of End-User pursuant to a transportation agreement dated November 13, 1984, among Applicant, Michigan Gas Storage Company (Shipper) and End-user (Agreement). The Agreement provides for Applicant to receive a transportation quantity of up to 2,800 Mcf of gas per day on an interruptible basis, at an existing point of interconnection between Applicant and Argonaut Energy Corporation (Seller) in Cimarron County, Oklahoma. Applicant would then transport and redeliver such gas, less a four percent reduction for fuel, to an existing point of interconnect with Shipper in Oakland County, Michigan. It is explained that Shipper would then transport and redeliver subject gas to Consumers Power Company (Consumers Power) which in turn would make ultimate delivery to End-User for its end-use at its plant in Lansing, Michigan. Shipper, it is said, is an existing jurisdictional customer of Applicant and Consumers Power is served by Shipper. It is further said that End-User is an existing end-use customer of Consumers Power.

Panhandle has released certain gas supplies of Seller. It is stated that these supplies are subject to the ceiling price provisions of section 103 of the Natural Gas Policy Act of 1978.

It is further indicated that End-User has purchased this released gas from Seller. Further, Panhandle states that it would charge its Rate Schedule OST contract service rate, currently 42 cents, plus 1.24 cents GRI surcharge, for each MMBtu redelivered at the point of redelivery.

It is indicated that the term of the transportation agreement is for a period of 18 months.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested would apply only to points related to sources of gas supply, not to delivery points in the market area. Applicant would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: March 25, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Mountain Fuel Resources, Inc.

[Docket No. CP85-234-000]

February 7, 1985.

Take notice that on January 18, 1985, Mountain Fuel Resources, Inc. (Resources), Post Office Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP85-234-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to replace two meter sets located at the Woodruff and Randolph meter stations in Rich County, Utah, under its certificate issued in Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Resources proposes to replace an American Singer GT4 turbine meter (capacity: 150 Mcf per hour at 125 psig) with an American model AL800 positive displacement meter (capacity: 7.28 Mcf per hour at 90 psig) at its Woodruff meter station and to replace another American Singer GT4 turbine meter with an American model AL2300 positive displacement meter (capacity: 21.4 Mcf per hour at 90 psig) at its Randolph meter station. The cost of replacing the Woodruff meter is estimated to be $5,330 and the cost of replacing the Randolph meter is estimated to be $6,450.

Resources states that the distinct advantage of the positive displacement meters lies in their measurement accuracy capabilities during periods of low flow. It is Resources' contention that the current flow rate through the metering stations is sufficiently low as to require the replacement of its turbine meters with the positive displacement meters to measure more accurately the volumes being delivered.

Comment date: March 25, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest

in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certficate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3540 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-196-000, et al.]

Mercy Hospital, et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

February 7, 1984.

Comment date: Comments must be received on or before March 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission:

1. Mercy Hospital

[Docket No. QF85-196-000]

On January 22, 1985, Mercy Hospital (Applicant), of 2200 Jefferson Avenue, Toledo, Ohio 43624, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1.13 MW topping-cycle cogeneration facility will be located at the Mercy Hospital, 2200 Jefferson Avenue, Toledo, Ohio 43624. The exhaust gases from the combustion turbine will be passed through a waste heat recovery boiler to generate steam to provide heating, hot water and refrigeration services to the hospital. The primary energy source of the cogeneration facility will be natural gas. The installation of this facility will begin in October 1985.

2. Cogenic Energy Systems, Inc.

[Docket No. QF85-197-000]

On January 22, 1985, Cogenic Energy Systems, Inc. (Applicant), of 9353 Activity Road, Suite D, San Diego, California 92126, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 0.13 MW topping-cycle cogeneration facility will be located at the Victor Valley Hospital, 14248 11th Street, Victorville, California 92392. The exhaust gases from the combustion turbine will be passed through a waste heat recovery boiler to generate steam for domestic hot water and heating. The primary energy source of the cogeneration facility will be natural gas. Installation of the facility will begin February 4, 1984.

3. MARMAC

[Docket No. QF85-192-000]

On January 17, 1985, MARMAC (Applicant), of 6415 Katella Avenue, Cypress, California 90630, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 22.5 MW small power production facility is located in Big Squaw Township, located near Greenville, Maine, in Piscataquis County. The facility consists of a steam turbine generating unit using waste wood from local commercial forest operations as the primary energy source.

4. J. W. Kelly Electric and Steam Plant

[Docket No. QF84-6-001]

On January 25, 1985, J. W. Kelly Electric and Steam Plant (Applicant), of 541 Hubbard Avenue, Pittsfield, Massachusetts 01201, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2.0 MW topping-cycle cogeneration facility is located at 541 Hubbard Avenue, Pittsfield, Massachusetts 01201. The facility consists mainly of a steam boiler and an extraction steam turbine generating unit using wood chips, sawdust and bark end product as the primary energy source. Steam produced by the facility is used in the Kiln drying of hardwood lumber. The facility has been in operation since May 1984.

5. Charles D. Howard

[Docket No. QF84-281-001]

On January 23, 1985, Charles D. Howard (Applicant), of 1139 Fall Avenue East, Suite B, Twin Falls, Idaho 83301 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1.9 megawatt hydroelectric facility (P. 6015) will be located on Rock Creek near Twin Falls, Idaho.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding

siting, construction, operation, licensing and pollution abatement.

6. American REF-FUEL Company of Essex County

[Docket No. QF85-206-000]

On January 24, 1985, American REF-FUEL Company of Essex County (Applicant), of c/o Carella, Byrne, Bain & Gilfillan, 6 Becker Farm Road, Roseland, New Jersey 07068-11739 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at 70-202 R Blanchard Street, Newark, New Jersey. The facility will consist of three boilers and two turbine generators. The primary energy source will be biomass in the form of commercial and municipal-type solid waste. The electric power production capacity will be 75 megawatts.

7. American REF-FUEL Company of Essex County

[Docket No. QF85-206-000]

On January 24, 1985, American REF-FUEL Company of Essex County (Applicant), of c/o Carella, Byrne, Bain & Gilfillan, 6 Becker Farm Road, Roseland, New Jersey 07068-11739 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at 70-202 R Blanchard Street, Newark, New Jersey. The facility will consist of three boilers and two turbine generators. The primary energy source will be biomass in the form of commercial and municipal-type solid waste. The electric power production capacity will be 75 megawatts.

8. Orin R. Young d.b.a. Young Electric

[Docket No. QF85-198-000]

On January 22, 1985, Orin R. Young, d.b.a. Young Electric (Applicant), of Box 370, Story, Wyoming 89842, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Melstone, Montana at the Sumatra Oil Field. The primary energy source will be natural gas. The electric power production facility will be 200 kilowatts. Waste heat recovered from the engine will be used in a greenhouse.

9. Pynolyl Corporation

[Docket No. QF85-210-000]

On January 3, 1985, Pynoyl Corporation (Applicant), 6505 Castle Pines, Spring, Texas 77379 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility located two miles south of Thornton in Limestone County, Texas, will use as its primary energy source low Btu gas, identified as "waste". The capacity of the facility is 1000 kilowatts and will increase to 200 kilowatts. No other facility owned by Applicant and using the same energy source is located within one mile of the facility.

10. Ener Park, Inc., et al.

[Docket No. QF85-186-000]

On January 14, 1985, Ener Park, Inc. and Medi-Waste, Ltd. (Applicant), of 64 Division Avenue, Levittown, New York 11756, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at 91 Eads Street, West Babylon, New York 11704. The facility will consist of up to 4-boilers and 8-250 kW turbine generators. The primary energy source will be red bag waste which is pathological and infectious material that must be incinerated. The power production capacity is expected to be 2 megawatts.

11. Alternative Fuel Industries, Inc.

[Docket No. QF85-200-000]

On January 22, 1985, Alternative Fuels Industries, Inc. (Applicant), of 8530 Southfield Drive, Utica, Michigan 48087 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at Alternative Fuels Industries, 100 Baxter Drive, Franklin, Ohio 45005. The facility will consist of a fluidized bed combustor and a steam turbine generator. The primary energy source will be a mixture of municipal solid waste and dewatered sewage sludge. The electric power capacity will be 2.5 megawatts.

12. Fluidized Energy Frackville Associates

[Docket No. QF85-204-000]

On January 24, 1985, Fluidized Energy Frackville Associates (Applicant), of 3141 Bordentown Avenue, Parlin, New Jersey 08859 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed facility will be located in Morea, Pennsylvania. The facility will consist of a fluidized bed combustor, a boiler and a 40 megawatt steam/turbine generator fueled by waste in the form of a low heating value anthracite coal refuse sometimes referred to as a "culm coal".

Standards Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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. 85-3541 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP72-110-038]

Algonquin Gas Transmission Co.; Filing of Report of Refund

February 7, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on January 29, 1985, tendered for filing a Report of Refund to flow through to Algonquin Gas' customers a refund received from Texas Eastern Transmission Corporation ("Texas Eastern").

Algonquin Gas states that on December 29, 1984 it received from

Texas Eastern a refund in the amount of $258,793.27.

Algonquin Gas states that the $258,793.27 refund received from Texas Eastern is a flow through of Algonquin Gas' portion of interest which has accrued on monies placed in escrow, with Manufacturers Hanover Trust Company, by Gulf Oil Corporation ("Gulf") relating to curtailments under Gulf's Warranty Contract with Texas Eastern. The escrowed funds relate to shortfalls in Gulf's delivery of gas to Texas Eastern during the period August, 1971 through October, 1976. This refund was made pursuant to orders of the Federal Energy Regulatory Commission ("Commission") issued December 18, 1981, February 4, 1982 and March 29, 1982 in Docket No. CI64-26.

Algonquin Gas states that since this amount was refunded to Algonquin Gas in relation to the underdeliveries Algonquin Gas experienced from Texas Eastern, such refund is being returned on the basis of the calculated differences between each individual customer's curtailment that would have occurred had Texas Eastern received the Gulf underdeliveries.

Algonquin Gas further states that such refund method is the same as that approved by the Commission's orders dated March 8, 1983, October 3, 1983, October 31, 1983, April 9, 1984 and October 19, 1984 relating to Algonquin Gas' Refund Reports filed June 23, 1982, July 12, 1982, August 3, 1983, February 3, 1984 and August 1, 1984 flowing through similar Gulf refunds from Texas Eastern.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state 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 protest should be filed on or before February 15, 1985. 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 proceding. 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. 85-3560 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-6-20-000]

Algonquin Gas Transmission Co.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

February 7, 1985.

Take note that Algonquin Gas Transmission Company ("Algonquin Gas") on January 29, 1985 tendered for filing Sixth Revised Sheet No. 201, Fourth Revised Sheet No. 231, First Revised Sheet No. 241 and Second Revised Sheet No. 311 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that the above-mentioned tariff sheets are being filed pursuant to Algonquin Gas' Purchased Gas Cost Adjustment Provision as set forth in Section 17 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. The rates as shown on Sixth Revised Sheet No. 201 reflect the following: (i) An adjustment to amortize the December 31, 1984 balance in Algonquin Gas' Unrecovered Purchased Gas Cost Account (Account 191) and (ii) an adjustment to reflect lower purchased gas cost to be charged by its supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), to Algonquin Gas proposed to be effective February 1, 1985, under Texas Eastern's Seventieth Revised Sheet No. 14D. Fourth revised Sheet No. 231 reflects Projected Incremental Pricing Surcharges for the period March, 1985 through August, 1985. First Revised Sheet No. 241 identifies the gas cost incuded in the sales rates as reflected in Sixth Revised Sheet No. 201. Second Revised Sheet No. 311 reflects the charge per MMBtu under Rate Schedule WS-1 Minimum Bill. The proposed effective date of such revised tariff sheets is March 1, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 protest should be filed on or before February 15, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3561 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-29-000]

Citizens Utilities Co.; Application

February 8, 1984.

Take notice that on January 31, 1985, Citizens Utilities Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act, in connection with the refunding of outstanding bonds, refunding a short-term indebtness and provision of funds for the construction, extension and improvement of public utility facilities through the issuance over a two-year period up to $50,000,000 of First Mortgage and Collateral Trust Bonds (New Bonds) (a) requesting an order exempting the issuance of New Bonds from compliance with competitive bidding requirements; and (b) authorizing negotiations for each issue of New Bonds with one prospective dealer, purchaser group or underwriter group and the issuance of New Bonds on the terms and conditions so negotiated.

Any person desiring to be heard or to make any protest with reference to said Application should on or before March 4, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3562 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-10-000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

February 7, 1984.

Take notice that Colorado Interstate Gas Company (CIG), on January 25, 1985 tendered for filing certain revisions to its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2, Books 1 and 2. CIG states that the purpose of this filing is to make miscellaneous update revisions to the Table of Contents and other minor changes. No substantive changes are proposed. An effective date of February 11, 1985 is requested for the revised tariff sheets.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3563 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-22-000 and TA85-1-22-001]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 7, 1985.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on January 30, 1985, filed revised tariff sheets pursuant to Sections 12 (PGA Clause), 12A (Incremental Pricing Surcharges), and 13 (Research, Development and Demonstration Cost Adjustment) of the General Terms and Conditions of its tariff. The revisions, shown on Second Revised Sheet No. 31, provide for Consolidated's semiannual PGA to be effective March 1, 1985.

Consolidated has included in its filing:

(a) Rate decreases from pipeline suppliers in the amount of $47.6 million;

(b) Rate increases from producer suppliers in the amount of $19.5 million;

(c) A surcharge of 12.59 cents per dekatherm to recoup amounts accumulated in account 191, Unrecovered Purchased Gas Costs.

(d) A refund credit of 1.83 cents per dekatherm to flow through supplier refunds.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Consolidated also files First Revised Sheet No. 136 to provide, in accordance with Opinion No. 226, that remittances to GRI shall be made within fifteen (15) days of collection rather than the thirty (30) days presently provided for in the tariff.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before February 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3564 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1267-000]

Duke Power Co.; Issuance of Annual License

February 7, 1985.

On February 3, 1982, the Duke Power Company, Licensee for the Buzzard's Roost Project No. 1267 filed an application for a new license pursuant to the Federal Power Act and Commission Regulations thereunder. Project No. 1267 is located on the Saluda River in Green, Laurens, and Newberry Counties, South Carolina.

The license for Project No. 1267 was issued for a period ending February 10, 1985. In order to authorize the continued operation and miantenance of project, pending Commission action on the Licensee's application, it is appropriate and in the public interest to issue an annual license to the Duke Power Company.

Take notice that an annual license was issued to the Duke Power Company for a period effective February 11, 1985, to February 10, 1986, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Project No. 1267 subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before February 10, 1986, an annual license will be issued each year thereafter, effective February 11 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

William H. Zietz,

Acting Secretary.

[FR Doc. 85-3565 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-104-002]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 7, 1985.

Take Notice that on January 31, 1985 Florida Gas Transmission Company (FGT), P.O. Box 44, Winter Park, Florida 32790 tendered for filing the following tariff sheets to its F.E.R.C. Gas Tariff.

First Revised Volume No. 1
  2nd Revised Sheet No. 8

Original Volume No. 2
  25th Revised Sheet No. 128

Reason for Filing

2nd Revised Sheet No. 8 and 25th Revised Sheet No. 128 contain revisions to FGT's Rate Schedules G and I and Rate Schedule T-3 respectively.

On December 20, 1984, the Florida Legislature increased the income tax imposed on corporations from 5% to 5½% and repealed the unitary taxation of multinational corporate income. The effective date of such changes was for tax years beginning on or after September 1, 1984.

FGT's Stipulation and Agreement in Docket No. RP83-104-000 includes a provision for tracking changes in Federal and State income taxes. The settlement cost of service included a provision for State income taxes which was calculated using the 5% income tax rate for Florida. The abovementioned tariff sheets reflect changes in FGT's jurisdictional rates due to the increase in the Florida State income tax rate.

Proposed Effective Date

Article X of the Stipulation and Agreement provides that such adjustments be made effective as of the effective date of the change in the tax rate. Pursuant to the Stipulation and Agreement tariff sheets reflecting such changes must be filed no later than forty-five (45) days after the enactment of any laws changing the Federal and State income tax rates.

For periods prior to the date of such filing, FGT is to calculate any increase and recover any amounts by charging (or crediting) such amounts, as appropriate, to a sub-account under FERC Account 191 and including such amount, together with appropriate interest, in its next PGA filing.

The attached tariff sheets reflect an effective date of January 1, 1985, which is the effective date of the change in the Florida State income tax rate. However, due to the de minimis increase in the rate adjustments being filed FGT requests a waiver of the provisions of Article X to the Stipulation and Agreement to permit FGT to place such rates into effect on April 1, 1985, the effective date of FGT's next PGA filing. FGT would calculate the increase caused by the change and recover any increase by charging such amount to a sub-account under FERC Account 191, together with appropriate interest.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 and interested State Commissions and is being posted.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3566 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-51-000 and TA85-2-51-001]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

February 7, 1985.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on January 31, 1985, tendered for filing the following revised tariff sheets to its FERC Gas Tariff proposed to be effective February 1, 1985.

First Revised Volume No. 1

Fourth Revised Sheet No. 52
Fourth Revised Sheet No. 53
Seventh Revised Sheet No. 54
Third Revised Sheet No. 54-A
Fifth Revised Sheet No. 55
Forty-Ninth Revised Sheet No. 57

Original Volume No. 2

Seventh Revised Sheet No. 123

Great Lakes states that the above revised tariff sheets reflect revisions in Great Lakes' Purchased Gas Cost Adjustment tariff provisions in order to specifically track to any customer or groups of customers any changes in the purchase cost of gas resulting from newly negotiated reduced prices for the purchase of volumes for resale to certain customers or for company use.

As a result of negotiations between Great Lakes and TransCanada Pipelines Limited ("TransCanada"), the sole supplier of natural gas to Great Lakes, the filing provides for a substantial reduction in the cost of gas for total system company use estimated to be $17.6 million on an annual basis, and in the cost of gas for certain small customers, namely Inter-City Gas Corporation, Peoples Natural Gas Company and Michigan Power Company, estimated to be $2.3 million annually. The filing further provides for a substantial reduction, estimated at $53 million on an annual basis, in the cost of gas resold by Great Lakes to Natural Gas Pipeline Company of America ("Natural") resulting from recent negotiations among Great Lakes, Natural and TransCanada. These reductions in the border price for Canadian gas have been negotiated to meet the competitive requirements of the respective markets being served.

Great Lakes has requested various waivers of the Commission's Regulations so as to permit the out-of-period PGA filing to become effective February 1, 1985.

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 February 15, 1985. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3567 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-269-000, et al.]

Electric Rate and Corporate Regulation Filings; Green Mountain Power Corp., et al.

Take notice that the following filings have been made with the Commission:

1. Green Mountain Power Corporation

[Docket No. ER85-269-000]

February 7, 1985.

Take notice that on February 1, 1985, Green Mountain Power Corporation (the "Company") tendered for filing proposed changes in its FERC Electric Tariff (Original Volume No. 1). One set of proposed changes (Level A rates) would increase revenues from jurisdictional sales and service by $369,110 based on the twelve month period ending December, 1985. The Company has also tendered for filing another set of proposed changes (Level B rates) and service by $502,788 based on the twelve month period ending December, 1985. In addition to revisions to terms and conditions relating to (1) the demand ratchet, (2) reimbursement for the cost of delivery points, (3) power factor penalty, (4) notice requirements and (5) miscellaneous provisions. In addition, the fuel adjustment clause has been revised.

The Company states that the proposed revisions in charges are designed to allow it to recover its costs in providing electric service, which risen substantially since the Company's last tariff revisions in 1976 and that most of the other revisions are necessary to conform the tariffs to current utility practice with its wholesale customers. The Company has requested effective date of April 5, 1984 for Level A rates and April 6, 1985 for Level B rates. In addition, it has requested that the Level A rates be withdrawn if the Level B rates are not suspended for more than one day.

Copies of the filing have been served on the Company's jurisdictional customers, the Vermont Public Service Board, the Vermont Public Service Department and the New Hampshire Public Utilities Commission.

Comment date: February 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER85-268-000]

February 7, 1985.

Take notice that on February 1, 1985, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, as an initial rate schedule, an agreement to provide interruptible transmission service to Pennsylvania Power & Light Company ("Penn P&L"), together with two supplements ("Supplement No. 1" and "Supplement No. 2"). The agreement provides for a charge of 2.3 mills per kilowatthour for transmission of power purchased by Penn P&L from the companies of the Northeast Utilities system (the "NU Companies.")

Supplement No. 1 increases the transmission charge from 2.3 mills to 2.6 mills and Supplement No. 2 increases the transmission charge from 2.6 mills to 2.7 mills per kilowatthour for interruptible transmission of power and energy purchased by Penn P&L from the NU Companies. Supplement No. 2 would increase annual revenues from jurisdictional service during Period I by $260.00.

Con Edison requests waiver of the notice requirements of § 35.3 of the Commission's regulations so that the Rate Schedule and Supplements No. 1 and No. 2 can be made effective as of April 29, 1983, August 15, 1983 and September 15, 1984, respectively.

Con Edison states that a copy of this filing has been served by mail upon Penn P&L.

Comment date: February 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corporation

[Docket No. ER85-244-000]

February 7, 1985.

Take notice that on January 22, 1985, Central Hudson Gas & Electric Corporation (Central Hudson) submitted for filing a Notice of Cancellation of Central Hudson Gas & Electric Corporation's Rate Schedule FERC No. 64 which was filed on January 10, 1984.

Service rendered by Central Hudson under this rate schedule consisted of the sale of firm capability and associated energy from Central Hudson's.

A copy of this filing has been sent to Philadelphia Electric Company.

Comment date: February 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER85-263-000]

February 6, 1985.

Take notice that on January 30, 1985, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, two supplements ("Supplement No. 3" and "Supplement No. 4") to its Rate Schedule FERC No. 56, an agreement to provide transmission service to Public Service Electric and Gas Company ("PSE&G"). Supplement No. 3 adds the companies of the Northeast Utilities system (the "NU Companies") as an additional source of power and energy to be transmitted to PSE&G under the Rate Schedule.

Supplement No. 4 increases the transmission charge from 2.6 mills to 2.7 mills per kilowatthour for interruptible transmission of power and energy purchased by PSE&G from Central Hudson Gas & Electric Corporation and from the NU Companies. Supplement No. 4 would increase annual revenues from jurisdictional service during Period I by $12,777.40.

Con Edison requests waiver of the notice requirements of § 35.3 of the Commission's regulations so that the Supplements No. 3 and No. 4 can be made effective as of May 11, 1983 and September 15, 1983, respectively.

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: February 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. The Montana Power Company

[Docket No. ER85-255-000]

February 7, 1985.

Take notice that on January 28, 1985, The Montana Power Company (Montana Power) tendered for filing Notices of Cancellation of Montana Power's Rate Schedules FPC No. 10, FPC No. 32 and FPC No. 34. Montana Power states that the associated agreements have been cancelled in accordance with their definitions, having expired by their own terms, and that Notices of Cancellation have been submitted to the participating parties. In addition, statements of concurrence have been filed with regard to Montana Power's FPC Rate Schedule 32.

Comment date: February 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. The Washington Water Power Company

[Docket No. ER85-254-000]

February 7, 1985.

Take notice that on January 28, 1985, The Washington Water Power Company (Washington) tendered for filing copies of a service schedule applicable to what Washington refers to as a Nonfirm Energy Sales Agreement between Washington and Northern California Power Agency (NCPA). Washington states that the nonfirm energy will be made available to NCPA from time to time as it is available from Washington's share of the Centralia coal-fired steam plant or from other Washington surplus resources.

Washington requests that the requirements of prior notice be waived and the effective date be December 18, 1984.

Comment date: February 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Southern Utilities Company

[Docket No. ER85-256-000]

February 7, 1985.

Take notice that Iowa Southern Utilities Company (Iowa Southern) on January 28, 1985, submitted for filing a Notice of Termination pursuant to § 35.15 of the Commission's Rules of Practice and Procedure.

Iowa Southern states that F.P.C. Rate Schedule Nos. 20, 21, and 22 terminated by their own terms on April 30, 1972, and that no certificates of concurrence accompanied the originally filed rate schedules.

Iowa Southern requests that the termination be effective as of April 1, 1985.

Copies of this filing have been served upon Southwestern Federated Power Cooperative, Inc., Iowa Electric Light and Power Company, Iowa Public Service Company and Iowa-Illinois Gas and Electric Company.

Comment date: February 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER85-261-000]

February 7, 1985.

Take notice that on January 29, 1985 Florida Power Corporation ("Florida Power") filed two revised sheets to its FPC Electric Tariff, First Revised Sheet No. 1. The revision relates to the provision giving the customer the right

to terminate service by giving one year's written notice within a specified period following a filing by Florida Power to change the tariff. As the provision currently reads, the customer must give that notice within six months after Florida Power's wholesale rate increase filing made in 1984 (Docket No. ER84-679-000). The present filing extends the deadline for giving notice until December 31, 1985. Florida Power agreed to the extension in recent negotiations with its wholesale customers. Florida Power requests that the revised sheets become effective 60 days from the date of this filing.

Comment date: February 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER85-258-000]

February 7, 1985.

Take notice that on January 28, 1985 Pacific Power & Light Company, an assumed business name of PacifiCorp, tendered for filing Notice of Cancellation of bilaterial Rate Schedule FPC No. 112, including Supplement No. 1 thereto. Pacific states that this Rate Schedule has expired by its own terms.

Pacific requests an effective date of sixty (60) days after date of filing.

Notice of the proposed cancellation has been served upon the following parties:

The Washington Water Power Company
Puget Sound Power & Light Company
Seattle City Light
Portland General Electric
City of Tacoma
P.U.D. No. 1 of Snohomish County
P.U.D. No. 1 of Grays Harbor County
Bonneville Power Administration
Western Area Power Administration
Public Utility Commission of Oregon
Washington Utilities and Transportation Commission

Comment date: February 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Gulf States Utilities Company

[Docket No. ER85-260-000]

February 7, 1985.

Take notice that on January 29, 1985, Gulf States Utilities Company ("Gulf States") tendered for filing a Power Delivery Agreement between it and the City of St. Martinville, Louisiana. Gulf States indicates that the Agreement provide for services at the parties' standard rates and terms for such services.

According to Gulf States, a copy of the filing was served upon the Public Utility Commission of Texas, the Louisiana Public Service Commission, and the City of St. Martinville, Louisiana.

Comment date: February 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER85-262-000]

February 6, 1985.

Take notice that on January 30, 1985, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, as an initial rate schedule, an agreement to provide interruptible transmission service to GPU Service Corporation ("GPU") together with three supplements ("Supplement No. 1," "Supplement No. 2" and "Supplement No. 3"). The agreement provides for transmission of power purchased by GPU from the companies of the Northeast Utilities system (the "NU Companies").

Supplement No. 1 establishes the initial transmission charge of 2.6 mills, and Supplement No. 2 increases the transmission charge from 2.6 mills to 2.7 mills per kilowatthour for interruptible transmission of power and energy purchased by GPU from the NU Companies. Supplement No. 3 adds Orange and Rockland Utilties, Inc., as an additional source of power and energy to be transmitted to GPU under the Rate Schedule. Supplement No. 2 would increase annual revenues from jurisdictional service during Period I by $43,343.20.

Con Edison requests waiver of the notice of requirements of § 35.3 of the Commission's regulations so that the Rate Schedule and Supplement No. 1 can be made effective as of August 15, 1983, and Supplements No. 2 and No. 3 effective as of September 15, 1984 and November 24, 1984, respectively.

Con Edison states that a copy of this filing has been served by mail upon GPU.

Comment date: February 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric

[Docket No. EC85-9-000]

February 7, 1985.

Take notice that Portland General Electric Company (PGE) has filed an application requesting that authority be granted under Title 16, U.S.C. 824b. (a) allowing PGE to purchase, acquire, hold and sell securities of other public utilities as part of a planned expansion of corporate investments.

PGE proposes to limit its holding or ownership of any given class of securities to an amount not to exceed one percent (1%) of the capital stock or funded debt outstanding. Additionally, PGE is requesting a modification of the reporting requirements under Title 18 CFR 33.8 to all an annual update and status report only. The application sets forth the limitations and requirements protecting the public interest.

Comment date: February 28, 1985, in accordance with Standard Paragraph E at the end of this notice.

13. Canal Electric Company

[Docket No. ER84-74-003]

February 7, 1985.

Take notice that on January 10, 1985, Canal Electric Company ("Canal") submitted for filing its compliance refund report pursuant to the Commission's order issued December 21, 1984.

Pursuant to Ordering Paragraph (C) of the Commission's order, Canal made refunds on December 26, 1984 of all charges collected under its Rate Schedule FERC No. 22 with interest calculated according to Section 35.19a of the Commission's regulations.

Copies of the tendered filing have been served by Canal upon Cambridge, Commonwealth and the parties to the proceeding.

Comment date: February 20, 1985, in accordance with Standard Paragraph H at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3558 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-45-000 and TA85-2-45-001]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

February 7, 1985.

Take notice that on January 24, 1985, Inter-City Minnesota Pipelines, Ltd., Inc. (Minnesota Pipelines) tendered for filing Twenty-Third Revised Sheet No. 4 and Fourth Revised Sheet No. 61 to Original Volume No. 1 of its FERC Gas Tariff to be effective November 1, 1984. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until January 29, 1985.

Minnesota Pipelines also further submitted supporting schedules and exhibits as required by Commission regulations. Both proposed tariff sheets are requested to become effective on the date approved by the National Energy Board of Canada for imposition of a revised contract between Minnesota Pipelines and its Canadian supplier, ICG Transmission Holdings Ltd. (Transmission). Transmission has requested that the NEB allow the contract and rates embodied therein to have retroactive effect and be implemented as of November 1, 1984. The tariff sheets and supporting schedules are based on the assumption that the November 1, 1984 effective date will be approved by the NEB.

Minnesota Pipelines further states that the reason for the proposed change in rates is to reflect a significant reduction in gas purchase rates negotiated by Minnesota Pipelines with its sole supplier, Transmission. In order that the benefits may be passed through as soon as possible, Minnesota Pipelines request waiver of the thirty-day notice provision.

Minnesota Pipelines also states that its renegotiated contract with Transmission establishes a two-part rate to replace the single rate previously in place. This change has no direct effect on the structure of Minnesota Pipelines, rates, but does require an amendment to its tariff to allow the calculation of its PGA to include both demand and commodity charges. For this reason, Minnesota Pipelines has filed Fourth Revised Sheet No. 61 setting out the PGA calculation in terms of both the demand and commodity components of the purchase from Transmission.

Minnesota Pipelines also requests waiver of the Commission's filing fee.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 15, 1985. Protests will be considered by the Commission in determining the approporiate action to be taken, but will not serve to make protestants parties to the proceedding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3568 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-60-000 and TA85-1-60-001]

Locust Ridge Gas Co.; Proposed Changes in FERC Gas Tariff

February 7, 1985.

Take notice that on January 30, 1985 Locust Ridge Gas Company (Locust Ridge) tendered for filing as a part of its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 3, the following tariff sheets to be effective March 1, 1985:

Original Volume No. 1—Eleventh Revised Sheet No. 1A

Original Volume No. 3—Eighteenth Revised Sheet No. 1A

Locust Ridge states that the purpose of this filing is to submit, for Commission approval, a revision in Locust Ridge's rate for gas resold reflecting proposed changes in the Purchased Gas Component of such rate. The filing projects an increase of $0.4408 per MMBtu in the company's weighted average cost of gas purchased for resale under the respective tariffs for the period beginning March 1, 1985 and ending September 30, 1985.

Locust Ridge requests waiver of the Commission's regulations to the extent, if any, required to place the proposed tariff sheets into effect March 1, 1985.

A copy of this filing has been mailed to Locust Ridge's jurisdiction customers affected by such filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3569 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-25-000 and TA85-1-25-001]

Mississippi River Transmission Corp.; Rate Change Filing

February 7, 1985.

Take notice that on January 30, 1985 Mississippi River Transmission Corporation ("Mississippi") tendered for filing Ninth Revised Sheet No. 4 and Third Revised Sheet No. 4A to its FERC Gas Tariff, Second Revised Volume No. 1. An effective date of March 1, 1985 is proposed.

Ninth Revised Sheet No. 4 is being submitted pursuant to Mississippi's gas tariff to track pipeline and producer rate changes and to recover gas costs which have accumulated in Mississippi's Unrecovered Purchased Gas Cost Account. Additionally, the filing reflects revised PGA procedures and base tariff rates contained in Mississippi's uncontested Stipulation and Agreement at Docket No. RP84-63 approved by Commission order dated January 11, 1985. Mississippi states that overall the PGA and implementation of the Docket No. RP84-63 base tariff rates results in a revenue reduction to Mississippi of $.2 million on an annual basis when compared to rates presently in effect.

Mississippi states that the PGA portion of the instant filing reflects an increase under Rate Schedule CD-1 of $.266 per Mcf in Demand Charge D-1, a decrease of $.0039 per Mcf in the D-2 Demand Charge, and a commodity rate increase of $.0895 per Mcf. The single part rate under Rate Schedule SGS-1

reflects a purchased gas cost increase of $.1075 per Mcf.

Mississippi states that Third Revised Sheet No. 4 indicates zero incremental pricing surcharges.

Mississippi states that copies of its filing have been served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 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 February 15, 1985. 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. 85-3570 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-27-000 and TA85-27-001]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

February 7, 1985.

Take notice that North Penn Gas Company (North Penn) on February 4, 1985, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 pursuant to its PGA Clause for rates to be effective March 1, 1985.

Specifically, North Penn has included in its semiannual PGA, to be effective March 1, 1985, the following:

1. An increase of 21.494¢ per Mcf to reflect changes in the cost of gas purchased.

2. A surcharge credit of 11.434¢ per Mcf resulting from amounts accumulated in the Unrecovered Purchased Gas Cost Account for the period July 1, 1984 through December 31, 1984; the jurisdictional portion of supplier refunds received by North Penn for the same six-month period; carrying charges computed in accordance with the Federal Regulatory Commission's (Commission) regulations; and a carry-over balance from the surcharge effective for the period March 1, 1984 through August 31, 1984.

As part of this filing, North Penn has also included Eleventh Revised Sheet No. 15H which reflects no incremental pricing surcharges under section 15 of the General Terms and Conditions of its tariff.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective March 1, 1985 as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and interested States.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commisison, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3571 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-70-000]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

February 7, 1985.

Take notice that Northwest Central Pipeline Corporation (Northwest Central) on January 31, 1985, tendered for filing to become a part of its FERC Gas Tariff:

Original Volume No. 1
- First Revised Sheet Nos. 59, 77, 79, 88, 119, 121, 123 and 125
- Second Revised Sheet Nos. 144, 149-152, and 154

Original Volume No. 2
- First Revised Sheet Nos. 17, 19, 38, 61, 78, 105, 112, 135, 153, 169, 173, 175, 176, 183, 210, 227, and 241
- Second Revised Sheet Nos. 161, 171, 172, 191, 207, 208 and 209

These pages comprise a general maintenance filing to update Northwest Central's FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2.

Northwest Central states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3572 Filed 2-12-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-402; FRL-2773-8]

Zoecon Corp.; Pesticide Tolerance Petitions; Zoecon Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, food and feed additive petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-402] and the petition number, attention Product Manager (PM-17), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with

procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy A. Gardner, (PM-17), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207 CM #2, 1921 Jefferson Davis Highway., Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP), food and feed additive petitions (FAP), from the Zoecon Corp., 975 California Ave., Palo Alto, CA 94304, relating to the establishment of tolerances for residues of the insecticide (alpha *RS*,2*R*)-fluvalinate [(*RS*)-alpha-cyano-3-phenoxybenzyl (*R*)-2-[2-chloro-4-(trifluoromethyl)anilino-3-methyl-butanoate] in or on certain agricultural commodities.

Initial Filings

1. *PP 5F3189.* Proposes to amend 40 CFR Part 180 by establishing tolerances for the residues of the insecticide in or on the commodities as follows:

Commodities	Parts per million (ppm)
Almonds, meat	0.2
Apples	3.0
Bell peppers	0.5
Broccoli, fresh	2.0
Brussels sprouts, fresh	1.0
Cabbage, fresh	1.5
Cauliflower, fresh	0.5
Celery, fresh	2.0
Citrus	2.0
Coffee	0.01
Corn, sweet	0.5
Eggs	0.01
Fat of cattle, goats, hogs, horses, poultry, and sheep	0.5
Lettuce, head	2.0
Meat of cattle, goats, hogs, horses, poultry, and sheep	0.05
Meat byproducts of cattle, goats, hogs, horses, poultry, and sheep	0.05
Milk	0.2
Pears, fruit	3.0
Pecans, meat	0.2
Potatoes, tuber	0.01
Soybeans, seed	0.01
Tomatoes	1.0
Walnuts, meat	0.01

The proposed analytical method for determining residues is gas chromatography.

2. *FAP 5H5451.* Proposes amending 21 CFR Parts 193 and 561 by establishing regulations permitting residues of the above insecticide in or on the commodities as follows:

CFR affected	Commodities	Parts per million (ppm)
21 CFR Part 193	Citrus oil	25.0
21 CFR Part 561	Alfalfa forage	15.0
	Alfalfa hay	30.0
	Alfalfa seed	0.5
	Almond hulls	20.0
	Apple pomace, dry	15.0
	Apple pomace, wet	5.0
	Citrus pell	5.0
	Corn, sweet, forage	10.0
	soybean fodder	10.0
	Soybean forage	5.0
	Tomato pomace, dry	25.0
	Tomato pomace, wet	10.0

(Secs. 408(d)(2) 68 Stat. 512, (21 U.S.C. 346a(d)(2)); 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)).

Dated: January 30, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-3225 Filed 2-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66117; FRL-2773-7]

Certain Pesticide Products; Intent to Cancel Registrations; Furman Co., Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. Distribution or sale of these products after the effective date of cancellation will be considered a violation of the Act unless continued registration is requested.

EFFECTIVE DATE: March 15, 1985.

ADDRESS: By mail, submit comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401, M St., SW, Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holdiays

FOR FURTHER INFORMATION CONTACT:

By mail: Lela Sykes, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460

Office location and telephone number: Rm. 718C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-2126).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
270-201	Flora-Guard Insecticidal Soap Concentrate.	Farnam Co., Inc., 2230 E. Magnolia St., Phoenix, AZ 85036	Apr. 6, 1983
279-1365	Trithion 25 Wettable Powder	FMC Corporation, Agricultural Chemical Division, 2000 Market St., Philadelphia, PA 19103	Oct. 3, 1958.
279-1433	Thithion Sulphur 3-25 Dust	do	June 18, 1959.
279-1807	Niagara Trithition 4.0 Flowable.	do	July 20, 1961.
279-2033	Niagara Trithion 3 Dust	do	May 1, 1963.
904-253	Malathion 50 Emulsifiable Liquid.	Pratt-Gabriel Division, Miller Chemical and Fertilizer Corp., 204 21st Ave., Paterson, NJ 07509	Jan. 21. 1964.
904-317	Malathion 50% Emulsifiable Concentrate.	do	July 10, 1964.
904-318	Malathion 8% Emulsifiable Concentrate.	do	Do.

Registration No.	Product name	Registrant	Date registered
1111-139	Malacorse	Hockwald Chemical Div. of Oxford Chem., 275 Valley Drive, Briscane, CA 94005	Nov. 9, 1972.
1145-101	Amoco Malathion LV Concentrate Insecticide.	The Cropmate Co., 320 Embassy Plaza, Omaha, NE 68114	Jan. 11, 1966.
1157-9	Moorman's Moormafume	Moorman Manufacturing Co., 1000 North 30th St., Quincy, IL 62301	Aug. 25, 1948.
1202-179	Pure Gro Trithion 25W	Pure Gro Co., 1275 Halyard Drive, West Sacramento, CA 95691	Aug. 24, 1970.
1258-844	Olin Omacide -24- Industrial Biocide.	Olin P.O. Box 30-275, Research Center, 275 South Winchester Ave., New Haven, CT 06511	Aug. 3, 1970.
1269-88	DeWitt Fitter Fly Killer	DeWitt Supply Co., Atlanta, GA 30301	May 11, 1967.
1270-169	Zep Turf Early Bird Pre-Emergence Weed Killer.	Zep Manufacturing Co., P.O. Box 2015, Atlanta, GA 30001	Aug. 6, 1973.
1307-24	Magnolia 50% Malathion Emulsifiable Concentrate.	Magnolia Chemical Co., P.O. Box 20179, 2646 Rodney Lane, Dallas, TX 75220	Jan. 10, 1955.
1307-55	Magnolia Mal-Mar Grain Protectant and Bin Spray.	do	Dec. 19, 1960.
1307-112	Magnolia 57% Emulsifiable Malathion.	do	Sept. 12, 1973.
1307-120	Magnolia Super Kill	do	July 16, 1976.
1421-53	Ponta-Five	Dettelbach, Chemical Corp., 2676 Apple Valley Rd., Atlanta, GA 30319	Nov. 15, 1954.
1526-407	Phoenix Brand Phosdrin 2 Soluble.	Chemical Distributors d.b.a. Arizona Agro-Chemical Co., P.O. Box 21537, Phoenix, AZ 85036	May 5, 1967.
1621-9	Tree Tanglefoot	The Tanglefoot Co., 314 Straight Ave., SW., Grand Rapids, MI 49504	Oct. 18, 1954.
1685-6	No. 1602-R State Roach and Ant Killer.	The State Chemical Manufacturing Co., 3100 Hamilton, Ave., Cleveland, OH 44114	Mar. 2, 1956.
1691-67	Malathion 57% Emulsifiable Conc.	Chemical Compounding Corp., 680 Elton Ave., Riverhead, NY 11901	Mar. 22, 1961.
1769-80	National Chemsearch N.J. 15 Insecticide Concentrate.	National Chemsearch, P.O. Box 2170, Irving, TX 75061	Dec. 5, 1960.
2098-16	Residuex Spray	Empire Chemical Co., Inc., 715 Lamar St., Los Angeles, CA 90031	Sept. 11, 1967.
2342-823	5% Captan-4% Malathion	Kerr-McGee Chemical Corp., Kerr-McGee Bldg., Oklahoma City, OK 73120	Aug. 9, 1973.
2342-840	50% Malathion Spray	do	Mar. 10, 1967.
2342-863	Tobacco Formula 16.25% Zineb-5% Sevin-4%.	do	June 13, 1962.
2472-5	Buckeye Brand Ecto-Spray with Malathion.	Columbus Serum Co., 2025 South High St., Columbus, OH 43207	May 14, 1959.
2869-7	Mosquito Fogging Insecticide	Crystal Chemical Corp., 505-08 east 118th St., New York, NY 10035	July 26, 1973.
3618-26	Industrial Formula Malathion 50% Emulsifiable Concentrate.	Industrial Colloids and Chemicals, 127 W. Jackson Ave., P.O. Box 1946, Knoxville, TN 37901	Feb. 28, 1975.
3885-16	Certified MTX Concentrate Insecticide.	Certified Laboratories Div. of NCH Corp., P.O. Box 2493, Ft. Worth, TX 76101	May 1, 1968.
4584-27	Rido Flea Killer	Gem, Inc., 1 Gem Blvd., Byhalia, MS 38611	June 26, 1961.
4887-17	Stephenson 4% Malathion Dust.	Stephenson Chemical Co., Inc., P.O. Box 198, College Park, GA 30022	Dec. 12, 1956.
4887-110	Stephenson Premium Grade 25% Malathion Wettable Powder.	do	June 2, 1965.
4887-131	Stephenson Chemicals Fruit Tree Spray Contains Malathion and Cpatan.	do	Mar. 20, 1967.
5481-81	Durham Malathion Dust 5	Amvac Chemical Corp., 4100 East Washington Blvd., Los Angeles, CA 90023	Feb. 26, 1973.
5481-82	Durham Malathion Sulphur Dust 5-50.	do	Do.
5535-23	Gro-Well 25% Malathion	J & L Adikes, Inc., 182-12 93rd Ave., Jamaica, NY 11423	Oct. 1, 1959.
7687-2	Hercules Wham	Hercules Chemical Co., 29 West 38 St., New York, NY 10018	Feb. 1, 1973.
8177-35	Gilt Edge Interior-Exterior Wood Sealer 506.	The Valspar Corp., 1101 Third St., South Minneapolis, MN 55415	Oct. 5, 1971.
8780-29	Turf Line Crab-grass Preventer Plus Fertilizer Formula for Established Lawns.	High Point Mills, Inc., 1225 Lehigh Station Rd., Henrietta, NY 14467	Nov. 10, 1971.
8934-69	Ring Around Brand MSMA-6	Ring Around Products, Inc., 12000 Ford Rd., Suite 300, Dallas, TX 75234	Apr. 15, 1969.
8997-16	2,4-DP Technical	Shepard Industries, Inc., Two Pennsylvania Plaza, Suite 1500, New York, NY 10001	Apr. 9, 1971.
9307-3	Pop-In Weed Control Spray	Encap Products Co., P.O. Box 278, Mt. Prospect, IL 60056	June 22, 1966.
13801-14	Diuron Technical	Dr. Charles C. Yeager, 127 Crestmor Circle, Pacifica, CA 94044	Oct. 2, 1972.
32259-3	Weatherlife Wood Preservative.	Hoboken Paints, Inc., 40 Industrial Rd., P.O. Box 420, Lodi, NJ 07644-0420	July 30, 1982.
35572-9	Spa Time Alagaecide 30	Chem-Tab Chemical Corp., 1253 E. Artesia Blvd., Carson, CA 90746	Sept. 3, 1980.
39511-5	Vertac Simazine Technical	Vertac Chemical Corp., 5100 Popular Ave., Memphis, TN 38137	Jan. 29, 1974.
39511-12	Vertac Simazine 80W	do	Mar. 14, 1974.
14775-10	Phosdrin 2 Insecticide	Asgrow Florida Co., P.O. Drawer D, Plant City, FL 33566	July 12, 1974.
144775-11	Phosdrin 4 Insecticide	do	June 24, 1974.
14775-23	Endophos 2-1 Emulsive Insecticide.	do	Jan. 9, 1975.

The Agency has agreed that each cancellation shall be effective March 15, 1985, unless within this time the registrant, or other interested persons with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue in commerce until the supply is exhausted, or for one year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Sale or distribution of any quantity of any of these products produced after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued may be submitted in triplicate to the Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66117]" and the specific registration number. Any comments

filed regarding this notice will be available for public inspection in Rm. 236, CM#2, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. (Sec. 6(a)(1) of FIFRA as amended, 86 Stat. 973, 89 Stat. (751, 7 U.S.C. 136))

Dated: January 30, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-3227 Filed 2-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240058; FRL-2774-6]

State Registration of Pesticides; Arizona, et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from 14 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Sandra English, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C.

Office location and telephone number: Rm. 726A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-7116).

SUPPLEMENTARY INFORMATION: Most of the registrations listed below were received by the EPA in October 1984. Receipts of State registrations will be published periodically. The following registrations do not involve changed use patterns. The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Arizona

EPA SLN No. AZ 84 0004. Wilbur Ellis Co. Registration is for Lorsban 50-SL to be used on cotton (delinted seed only) to control seed-corn maggots. October 22, 1984.

EPA SLN No. AZ 84 0005. Chemical Distributors dba Arizona Agrochemical Co. Registration is for Dimethoate E267 to be used on grapefruit, lemons, oranges, and tangerines during bloom to control thrips. October 22, 1984.

California

EPA SLN No. CA 84 0214. Imperial County Dept. of Agriculture. Registration is for Ammo 2.5 EC to be used on Bermuda grass grown for seed to control fulgorids. September 26, 1984.

EPA SLN No. CA 84 0215. California Dept. of Food and Agriculture Pest Detection. Registration is for Ethylene Dibromide to be used on citrus fruit (post-harvest) destined for export only to control fruit flies. October 16, 1984.

EPA SLN No. CA 84 0216. California Dept. of Food and Agriculture. Registration is for No-Pest Strip Insecticide II to be used in storage cabinets containing plant or animal specimens to control museum pests including *Anthrenus spp.* October 12, 1984.

EPA SLN No. CA 84 0217. California Dept. of Food and Agriculture. Registration is for No-Pest Strip Insecticide II to be used in malaise (tent) traps to control insects collected for research purposes. October 12, 1984.

EPA SLN No. CA 84 0218. Agricultural Commissioner of Orange County. Registration is for Monitor 4 Liquid Insecticide to be used on celery to control leafminers. October 30, 1984.

EPA SLN No. CA 84 0220. Solano County Agricultural Commissioner. Registration is for Pocket Gopher Bait to be used in artificial burrows to control pocket gophers. October 29, 1984.

EPA SLN No. CA 84 0221. San Benito County Agricultural Commissioner. Registration is for Chlorophacinone Rodent Bait to be used in bait stations located in dry concealed locations such as corners, along walls, in attics, near burrows or harborages to control Norway rats, roof rats, house mice, ground squirrels, chipmunks, meadow mice, and wood rats. October 30, 1984.

Florida

EPA SLN No. FL 84 0024. The Land (Epcot Center). Registration is for Pyronyl Crop Spray to be used on crops grown in The Land, Epcot Center, to control pests listed on EPA-registered label. October 17, 1984.

EPA SLN No. FL 84 0025. Shell Chemical Co. Registration is for Phosdrin 4 EC to be used on watercress to control aphibs. October 18, 1984.

EPA SLN No. FL 84 0026. AMVAC Chemical Corp. Registration is for Citrus Fix to be used to reduce preharvest or summer drop of navel oranges. October 8, 1984.

Georgia

EPA SLN No. GA 84 0006. Mobay Chemical Corp. Registration is for Sencor DF 75% Dry Flowable Herbicide to be used on soybeans to control sicklepod. October 3, 1984.

EPA SLN No. GA 84 0007. Penick Corp. Registration is for Scourge Insecticide w/SBP-1382/Piperonyl Butoxide 18%+54% MF Formula II to be used in recreational and residential areas and in municipalities around the outside of apartment buildings, golf courses, athletic fields, parks, campsites, woodlands, swamps, tidal marshes, and overgrown waste areas to control mosquitoes. October 17, 1984.

Hawaii

EPA SLN No. HI 84 0007. J.R. Simplot Co. Registration is for Blue Shield to be used on turf grass to control algae. October 17, 1984.

Idaho

EPA SLN No. ID 84 0011. Stauffer Chemical Co. Registration is for Prefar 4-E Selective Herbicide to be used on bulk onions to control watergrass, radroot pigweed, common lambsquarter, and foxtail. August 23, 1984.

Illinois

EPA SLN No. IL 84 0008. FMC Corp. Registration is for Furadan 4F to be used on corn and sorghum to control chinch bugs and green bugs. October 19, 1984.

Nebraska

EPA SLN No. NE 84 0008. Pfizer, Inc. Registration is for Floguard 1015 to be added to oil field injection fluid to protect xanthan biopolymer from microbial degradation in enhanced oil recovery chemical flooding applications, including polymer, micellar-polymer, and alkaline-polymer flooding. September 28, 1984.

EPA SLN No. NJ 84 0020. FMC Corp. Registration is for Furadan 4F to be used on nonbearing peach and nectarine trees to control nematodes. October 29, 1984.

New Mexico

EPA SLN No. NM 84 0006. FMC Corp. Registration is for Pounce 3.2 EC to be used on range grass to control range caterpillars. August 10, 1984.

EPA SLN No. NM 84 0007. Avitrol Corp. Registration is for Avitrol Double Strength Whole Corn to be used in the area of pecan, pistachio, and peanut

crops to control crows and ravens. August 14, 1984.

North Carolina

EPA SLN No. NC 84 0005. Mobay Chemical Corp. Registration is for Sencor DF 75% Dry Flowable Herbicide to be used on soybeans to control sicklepod. October 17, 1984

Oregon

EPA SLN No. OR 84 0006. Kocide Chemical Co. Registration is for Kocide 101 to be used on blueberries to control bacterial canker. October 9, 1984.

EPA SLN No. OR 84 0048. Lipha Chemicals, Inc. Registration is for Rozol Paraffinized Pellets to be used in orchards to control pine voles and meadow voles. October 16, 1984.

EPA SLN No. OR 84 0049. Tri-River Chemical Co., Inc. Registration is for Chem Hoe 135 and Glean to be used as a tank mixture on fallow land to be planted for winter wheat to control weeds. October 29, 1984.

EPA SLN No. OR 84 0050. American Cyanamid Co. Registration is for Cygon 400 Systemic Insecticide-Miticide to be used on cherries to control western cherry fruit flies. October 24, 1984.

Texas

EPA SLN No. TX 84 0020. Mobay Chemical Corp. Registration is for Monitor 4 to be used on melons to control melon aphids, leaf miners, pickleworms, melonworms, rindworm complex, green stink bugs, potatoe leafhoppers, spotted cucumber beetles, and two-spotted mites. October 4, 1984.

EPA SLN No. TX 84 0021. Nalco Chemical Co. Registration is for Nalco 7330 to be used in uranium field injection water systems to control slime-forming bacteria and sulfate-reducing bacteria. October 16, 1984.

Washington

EPA SLN No. WA 84 0068. American Cyanamid Co. Registration is for Cygon 400 systemic insecticide-miticide to be used on cherries to control western cherry fruit flies.

(Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136))

Dated: January 30, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-3219 Filed 2-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240059; FRL-2776-2]

State Registration of Pesticides; California, et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from five States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register.**

DATE: The last entry for each item is the date the State registration of that product became effective.

FURTHER INFORMATION CONTACT:

Sandra English, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C.

Office location and telephone number: RM. 726A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7116).

SUPPLEMENTARY INFORMATION: Most of the registrations listed below were received by the EPA in November 1984. Receipts of State registrations will be published periodically. The following registrations do not involve changed-use patterns. The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

California

EPA SLN No. CA 84 0219. San Bernardino County Dept. of Agriculture. Registration is for Volck Supreme Oil Spray to be used on water lillies to control aphids. November 16, 1984.

EPA SLN No. CA 84 0222. Yolo County Dept. of Agriculture. Registration is for Pocket Gopher Bait Strychnine Treated Grain (.50%) to be placed underground in main runways to control pocket gophers. November 21, 1984.

EPA SLN No. CA 84 0223. El Dorado County Dept. of Agriculture. Registration is for Pocket Gopher Bait Strychnine Treated Grain (2.63%) to be placed in artificial burrows to control pocket gophers. November 16, 1984.

EPA SLN No. CA 84 0224. El Dorado County Dept. of Agriculture. Registration is for Pocket Gopher Bait Strychnine Treated Grain (1.33%) to be placed in artificial burrows to control pocket gophers. November 16, 1984.

Florida

EPA SLN No. FL 84 0027. Shell Chemical Co. Registration is for Vendex 50 WP Water Soluble Bag Miticide to be used on citrus to control mites and spiders. November 15, 1984.

EPA SLN No. FL 84 0028. Shell Chemical Co. Registration is for Vendex 4L Miticide to be used on citrus to control mites and spiders. November 15, 1984.

Georgia

EPA SLN No. GA 84 0008. FMC Corp. Registration is for Furadan 4F (Tank Mix W/Nemacur 3) to be used on tobacco to control root knot nematodes, flea beetles, wireworms, and budworms. November 5, 1984.

Idaho

EPA SLN No. ID 84 0012. Lipha Chemicals, Inc. Registration is for Rozol Paraffinized Pellets to be used in orchards to control meadow voles. November 15, 1984.

Washington

EPA SLN No. WA 84 0069. Rohm & Haas Co. Registration is for KERB 50-W Herbicide to be used on fallow land to be rotated to winter wheat, barley, and oats to control weeds. November 1, 1984.

EPA SLN No. WA 84 0070. Gustafson, Inc. Registration is for PRO-GRO Dust Seed Protectant to be used on onion seeds for export to control onion smut. November 1, 1984.

EPA SLN No. WA 84 0071. E.I. DuPont de Nemours. Registration is for Du Pont Glean Herbicide to be used on fallow land rotated to winter wheat to control downey brome, volunteer wheat, volunteer barley, bulbous bluegrass, jointed goatgrass, and common rye. November 20, 1984.

(Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136))

Dated: February 1, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-3328 Filed 2-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66106A; PH-FRL 2753-4]

Dibromochloropropane Intent to Cancel Registrations of Pesticide Products Containing Dibromochloropropane (DBCP)

Correction

In FR Doc. 85-588, beginning on page 1122, in the issue of Wednesday, January 9, 1985, make the following correction:

On page 1128, in column two, in the first complete paragraph, on the first line, "191" should read "1981".

BILLING CODE 1505-01-M

[OPTS-53067; TS-FRL-2741-4]

Premanufacture Notices; Monthly Status Report for October 1984

Correction

In FR Doc. 84-33352 beginning on page 49899 in the issue of Monday, December 24, 1984, make the following corrections to the table:

1. On page 49899, in the entry for 85-7, in the second column, "xanthenel" should read "xanthene]".

2. On the same page and in the same column, the entry for 85-32, "mercaptothiadiazola" should have read "mercaptothiadiazole".

3. On page 49900, the entry for 84-1124, in the second column, "pllymer" should have read "polymer".

4. On the same page and in the same column, in the entry for 84-1130, the second "C_6" should have read "C_9".

5. On page 49901, in the entry for 84-1150, in the second column, "[4,6-1, 1-dimethylethyl)]" should have read "[4,6-bis(1,1-dimethylethyl)]".

6. On the same page and in the same column, in the entry for 84-1164, add the word "ester" at the end of the line.

7. On the same page and in the same column, in the entry for 84-1183, the line should have read "Generic name: Aminopolyamide-epichloro-hydrin polymer".

8. On the same page and in the same column, in the entry for 84-1216, the line should have read "Generic name: Acrylic copolymer".

9. On page 49902, in the second column, in the entry for 84-925, the line should have read "Generic name: Substituted anthraquinone".

10. On the same page and in the same column, in the entries for 84-931, 84-932 and 84-933, "(Z)-1-methylpropyl" should have read "(Z)-2-methylpropyl".

11. On page 49903, in the second column, in the entry for 84-987, "dihydroxied-pentasodium" should have read "dihydroxied=pentasodium".

12. On the same page and in the same column, in the entry for 84-1028, "1,4-dimethyiol" should have read "1,4 dimethylol".

BILLING CODE 1505-01-M

[SAB-FRL-2777-4]

Science Advisory Board; Clean Air Scientific Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board. The meeting will be held March 4-6 starting at 9:30 a.m. on March 4 at the Springfield Hilton Hotel, 6550 Loisdale Road, Springfield, Virginia. The meeting will continue through 11:00 a.m. on March 6.

The purpose of the meeting is to allow the Committee to review and provide its advice to EPA on the July 1984 external review draft of EPA's revised air quality criteria document for ozone and other photochemical oxidants.

Copies of the July 1984 draft criteria document may be obtained by writing or calling the Office of Research and Development Publications Center, CERI-FRN, U.S. EPA, 26 West St. Clair Street, Cincinnati, Ohio, 45268 (513) 684-7562. Please ask for EPA document 600/8-84-020A, Vols. I-V, July 1984.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or make a presentation should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A-101F), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460 (202) 382-2552, by close of business February 27, 1985.

Dated: February 7, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-3597 Filed 2-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00198; PH-FRC 2777-5]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Thursday, February 28, 1985, beginning at 8:30 a.m. and ending prior to 12 noon.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA. (703-485-1234).

FOR FURTHER INFORMATION CONTACT: By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7096).

SUPPLEMENTARY INFORMATION: The tentative agenda thus far includes the following topics:

1. Action items from the December 1984 meeting of the full Group.

2. Regional reports.

3. Working Committee reports.

4. Other topics which may have arisen during the February 25-27, 1985 meeting of the Association of American Pesticide Control Officials.

Dated: February 5, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 85-3595 Filed 2-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180664; PH-FRL 2777-6]

Emergency Exemptions; Florida Department of Agriculture and Consumer Services, et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption for the control of various pests to one State as listed below, during the period of December 7, 1984 to June 30, 1985. Also listed are four crisis exemptions initiated by Arkansas, Mississippi and Texas. These exemptions are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific and crisis exemption for the name of the contact person. The following information applies to all contact persons. By mail:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA has granted a specific exemption to the:

1. Florida Department of Agriculture and Consumer Services for the use of methamidophos on escarole/endive, parsley, and Chinese cabbage to control aphids and leafminers; December 7, 1984 to June 30, 1985. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on December 14, 1984, for the use of propionic acid on cottonseed to control spoilage by mold growth. Since it was anticipated that this program would be needed for more than 15 days, Arkansas has requested a specific exemption to continue it. The need for this program is expected to last until July 31, 1985. (Libby Welch)

2. Mississippi Department of Agriculture and Consumer Services on December 14, 1984, for the use of propionic acid on cottonseed to control spoilage by mold growth. Since it was anticipated that this program would be needed for more than 15 days, Mississippi has requested a specific exemption. This program will continue until EPA takes action on the specific exemption request. (Libby Welch)

3. Texas Department of Agriculture on December 27, 1984, for the use of propionic acid on cottonseed to control spoilage by mold growth. Since it was anticipated that this program would be needed for more than 15 days, Texas has requested a specific exemption to continue it. The need for this program is expected to last until July 31, 1985. (Libby Welch)

4. Texas Department of Agriculture on November 20, 1984, for the use of temephos on the Sulphur River to control black flies. The program ended on December 6, 1984. (Jim Tompkins)

(Sec. 18, as amended, 92 Stat. 819 [7 U.S.C. 136])

Dated: February 5, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 85-3594 Filed 2-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30085B; FRL-2777-3]

Fiscal Year 84/85 Pesticide Registration Standards and Special Reviews and Data Call-in Schedule for Review and/or Issuance; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction notice.

SUMMARY: In FR Doc. 84-33119 published in the **Federal Register** of December 20, 1984 (49 FR 49544), in the first column of page 49547 under the heading Special Review in Fiscal Year 1984, Position Document 4 (PD 4) was listed incorrectly for Cypermethrin. This document corrects the listing to read "Cypermethrin . . . PD 1/2/3."

FOR FURTHER INFORMATION CONTACT:

By mail: Cheryl Smith, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1114, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0592).

Dated: February 5, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-3596 Filed 2-12-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Ocean Cruise Lines, S.A. and Oceanic Endeavour S.A., c/o Ocean Cruise Lines, 2 Executive Drive, Fort Lee, New Jersey 07024.

Dated: February 8, 1985.

Bruce Dombrowski,

Assistant Secretary.

[FR Doc. 85-3635 Filed 2-12-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 85-1150—M.D.C Corporation's proposed acquisition of voting securities of Mitzel World Holdings, Inc.	Jan. 11, 1985.
(2) 84-1344—Sir James Goldsmith's proposed acquisition of voting securities of Crown Zellerbach Corporation.	Do.
(3) 84-1368—Takao Building Development Co., Ltd.'s, (Yukio Takahashi, UPE) proposed acquisition of assets of Holiday Waikiki Venture.	Do.
(4) 84-1396—Nortek, Inc.'s proposed acquisition of voting securities of Jensen Industries.	Do.
(5) 84-1398—Nortek, Inc.'s proposed acquisition of voting securities of Jensen Industries.	Do.
(6) 85-0009—E. Trine Starnes, Jr.'s proposed acquisition of voting securities of TreeSweet Products Co., (Di Giorgio Corporation, UPE).	Do.
(7) 84-1345—Holiday Stationstores, Inc.'s proposed acquisition of assets of El Gott Corp., (Larry Gottula, UPE).	Jan. 14, 1985.
(8) 84-1352—Centrust Savings and Loan Association's, (David L. Paul, UPE) proposed acquisition of voting securities of MassMutual Mortgage and Realty Investors.	Do.
(9) 84-1356—Hanson Trust PLC's proposed acquisition of voting securities of Powell Duffryn PLC.	Do.
(10) 84-1382—American Can Company's proposed acquisition of voting securities of The Reliable Corporation, (Earl and Bernice Meltzer, UPE's).	Jan. 16, 1985.
(11) 84-1383—American Can Company's proposed acquisition of voting securities of The Reliable Corporation, (Merrill Zenner, UPE).	Do.
(12) 84-1335—Bridgeport Brass Corp.'s, (Kerry Heyman, UPE) proposed acquisition of assets of National Distillers and Chemical Corp.	Jan. 4, 1985.
(13) 84-1357—Dana Corporation's proposed acquisition of voting securities of Warner Electric Brake & Clutch Company.	Jan. 17, 1985.
(14) 84-1358—Dana Corporation's proposed acquisition of voting securities of Warner Electric Brake & Clutch Company.	Do.
(15) 84-1359—Dana Corporation's proposed acquisition of voting securities of Warner Electric Brake & Clutch Company.	Do.
(16) 84-1370—Pennzoil Company's proposed acquisition of assets of Pinto, Inc., (Ernest H. Cockrell Texas Testamentary Trust and Carol Cockrell Jennings Texas Testamentary Trust, UPE).	Do.

Transaction	Waiting period terminated effective
(17) 84-1376—Booker McConnell PLC's proposed acquisition of voting securities of P. Leiner Nutritional Products Corporation.	Do.
(18) 84-1387—Equity Group Holdings' proposed acquisition of voting securities of Easco Corporation.	Do.
(19) 84-1399—ConAgra Inc.'s proposed acquisition of voting securities of Berger and Company.	Do.
(20) 85-0010—The Ohio Mattress Company's proposed acquisition of voting securities of Woodstuff Manufacturing, Inc.	Do.
(21) 85-0003—The Armstrong Rubber Company's proposed acquisition of voting securities of Blackstone Corporation.	Jan. 18, 1985.
(22) 84-1397—Westinghouse Electric Corporation's proposed acquisition of assets of Eastec, Inc.	Jan. 22, 1985.
(23) 85-0024—HBO & Company's proposed acquisition of voting securities of Amherst Associates Inc.	Do.
(24) 85-0025—HBO & Company's proposed acquisition of voting securities of Mediflex Systems Corporation.	Do.
(25) 85-0020—W.R. Grace & Company's proposed acquisition of voting securities of Carrows Restaurants, Inc. (David G. Nancarrow and DeEtta M. Nacarrow, UPE's).	Jan. 23, 1985.
(26) 85-0021—Carrows Restaurants, Inc.'s, (David G. & DeEtta M. Nancarrow, UPE's proposed acquisition of voting securities of W.R. Grace & Co.	Do.
(27) 84-1393—Genstar Corporation's proposed acquisition of assets of Bird Incorporated.	Do.
(28) 84-0200—Old Republic International Corporation's proposed acquisition of voting securities of Bitco Corporation.	Jan. 24, 1985.
(29) 84-1395—Old Republic International Corporations's proposed acquisition of voting securities of Bitco Corporation.	Do.
(30) 85-0012—1964 Simmons Trust's proposed acquisition of voting securities of Muse Air Corporation.	Do.
(31) 85-0018—Insilco Corporation's proposed acquisition of voting securities of Valentec International Corporation.	Do.
(32) 85-0026—Sybron Corporation's proposed acquisition of voting securities of Cryogenic Associates, Inc., (Beatrice Companies, Inc., UPE).	Do.
(33) 85-0027—Arthur Guiness & Sons, PLC's proposed acquisition of voting securities of Richter Brothers Incorporated, (Chola Pty, Ltd., UPE).	Do.
(34) 85-0040—Ashland Oil, Inc.'s proposed acquisition of voting securities of Devon Chemicals, Inc., (The British Petroleum Company, p.l.c., UPE).	Do.
(35) 85-0061—Burlington Northern Inc.'s proposed acquisition of assets of Portal Pipe Line Company, (RRH Corporation, UPE).	Do.
(36) 85-0015—The Stop & Shop Companies, Inc.'s proposed acquisition of voting securities of Almay Stores, Inc., (Federal Street Investors, Inc., UPE).	Jan. 25, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-3615 Filed 2-12-85; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of revised system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to revise a system of records that will be maintained by GSA. The system of records, Occupational Health and Injury Files, GSA/HRO-3, is revised to create an automated management information system that is required by section 19 of the Occupational Safety and Health Act. This information system will maintain data on injured employees for verifying payments and creating statistical reports.

DATES: Any interested party may submit written comments about this revised system. Comments must be received on or before the 30th day following publication of this notice. The routine use will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESS: Address comments to General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. William Hiebert, GSA Privacy Act Officer, telephone (202) 535-7647.

Background

The purpose of this system is to assemble information to process and maintain accident and other occupational health reports on employees and accumulate data for various statistical reports.

The revised system of records is as follows:

GSA/HRO-3

SYSTEM NAME:

Occupational Health and Injury Files.

SYSTEM LOCATION:

This system of records is located in the General Services Administration personnel offices at the locations listed in the appendix following the notices GSA/HRO-7; the Fire and Safety Division, Office of Federal Protection and Safety, Public Building Service; and the offices of all supervisors with employees who had occupational health problems or were injured on the job. The data base for the automated part of this system is on computers at the National Capital Regional Office, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are GSA employees who have had injuries or other occupational health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include accident reports (including CA 1 and 2: Federal Employees Notice of Injury or Occupational Disease), Claims for Compensation for Injury or Occupational Disease (CA 4), Claims for Continuances of Compensation on Account of Disability (CA 8), lists of employees receiving medical services, and health records. The automated management information system includes injury statistical records such as occupation and sex of employee, age group, cost per injury, days lost, cause and severity of injury, and anatomical location of injury.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chap 81 and 5 U.S.C. 7153 and 7901.

PURPOSE:

To assemble in one system information to process and maintain accident and other occupational health reports on employees, accumulate data for various statistical reports, and identify and record those employees who have had injuries or other occupational health problems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information that is needed by law to a Federal, State, or local public health service agency on individuals who have contracted certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition.

b. To disclose information to another Federal agency or a court when the Government is party to a judicial proceeding.

c. To disclose information to the Office of Workers Compensation Programs on a claim for benefits filed by an employee.

d. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry from that congressional office made in behalf of a constituent.

e. To disclose statistical reports to the Occupational Safety and Health

Administration as required by Section 19 of the Occupational Safety and Health Act.

f. To disclose statistical information to Central Office and regional office managers and supervisors to identify trends in injuries and provide better management of the program.

g. To disclose information to the Department of Labor to verify payments to employees for injuries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders. Magnetic tape and disk media in storage libraries. Computer records within a computer and attached equipment.

RETRIEVABILITY:

Filed numerically at each location by social security number and/or claim number.

SAFEGUARDS:

Records stored in lockable file cabinets or secured rooms. Computerized records protected by password system. Information release only to authorized officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Disposal of records is described in the HB, GSA Records Maintenance and Disposition system (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, General Services Administration (EP), 18th and F Streets, NW, Washington, DC 20405.

NOTIFICATION PROCEDURES:

Inquiries from current employees should be addressed to their supervisor or the personnel officer at the address listed in the appendix following the notice GSA/HRO-7. Former employees should address inquiries to the personnel officer at the address listed in the appendix.

RECORD ACCESS PROCEDURES:

Requests from current employees should be addressed to their supervisor, the personnel officer at the address listed in the appendix following the notice GSA/HRO-7, or the system manager, whichever is applicable. Former employees should address requests to the personnel officer at the address listed in the appendix. For identification requirements, refer to the agency regulations outlined in 41 CFR Part 105-64.

CONTESTING RECORD PROCEDURES:

GSA rules for contesting the contents and appealing initial decisions are issued in 41 CFR Part 105-64, of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individuals themselves, or the personnel specialists preparing various records for claims.

Dated: February 4, 1984.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 85-3555 Filed 2-12-85; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Addition to Senior Executive Service Performance Review Board Membership

Title 5, U.S.C. 4314(c)(4) of the Civil Service Reform Act of 1978, Pub. L. 95-484, requires that the appointment of Performance Review Board members be published in the **Federal Register**.

On October 30, 1984, the Department of Health and Human Services PRB membership was published in the **Federal Register**. The following member is hereby added to that membership: Donald R. Hopkins.

Dated: February 6, 1985.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

[FR Doc. 85-3649 Filed 2-12-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 85N-0022]

Determination of Regulatory Review Period for Purposes of Patent Extension; Pentoxifylline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the human drug product pentoxifylline and is hereby publishing a notice of the determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that product.

FOR FURTHER INFORMATION CONTACT: Philip Spiller, Office of Legislation and Information (HFW-14), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3793.

SUPPLEMENTARY INFORMATION: The "Drug Price Competition and Patent Term Restoration Act of 1984" (Pub. L. 98-417) authorizes up to 5 years of extension of the term of a patent which claims any human drug product, medical device, or a food or color additive, or a method of using or manufacturing such a product, device, or additive so long as the product was subject to a Federal regulatory review period in accordance with that act before the product, device, or additive was marketed.

Under 35 U.S.C. 156(g), a regulatory review period consists of two periods of time: a period during which the product is being tested, followed by a period during which an application or petition for marketing approval is pending before FDA. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing time must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period will include all of the testing and application times as specified in 35 U.S.C. 156(g)(1)(B) and (3)(B).

Pentoxifylline

Pentoxifylline is the active ingredient in Trental tablets (Hoechst-Roussel, Inc.) which was approved for marketing by FDA on August 30, 1984, for treatment of pain due to impaired blood flow to the extremities. FDA has determined that the total length of the regulatory review period for pentoxifylline was 3,486 days, or approximately 9.5 years. Of this time, 1,985 days, or approximately 5.4 years, occurred during the testing phase of the regulatory review period while 1,501 days, or approximately 4.1 years, occurred during the application phase. These periods of time were derived from the following dates:

a. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* February 14, 1975. (Note that under FDA regulations (21 CFR 312.1(b)(4)), an exemption usually does not become effective until 30 days after a notice of claimed investigational exemption for a new drug is received by FDA.)

b. *The date the application was initially submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* July 22, 1980. (For purposes of

verification, FDA regards the date of initial submission as being the date that FDA actually received the application.)

c. *The date the application was approved:* August 30, 1984.

FDA was able to verify these dates against agency records.

Dated: February 6, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-3543 Filed 2-12-85; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Privacy Act of 1974; New Computer Matching Program

AGENCY: Social Security Administration (SSA), Department of Health and Human Services.

ACTION: Notice of a Computer Matching Program—SSA/State and Federal agencies administering workers' compensation (WC) programs.

SUMMARY: SSA is issuing public notice of its intent to conduct a matching program with the various State and Federal agencies administering WC programs. SSA, Office of System Requirements, will perform the match using certain data provided by the States and the Department of Labor (DOL). The matching program will be an interface involving SSA's Master Beneficiary Record (MBR) **Federal Register**, dated October 13, 1982, pages 45626–45628), the Supplemental Security Income Record (SSR) (**Federal Register**, dated October 13, 1982, pages 45635–45636), and the Black Lung Payment System (**Federal Register**, dated October 13, 1982, pages 45610–45611) matched against extracts of the WC payments files maintained by the State agencies and the DOL system of records, DOL/ESA-13 (**Federal Register**, dated July 13, 1982, page 3382). The purpose of the match is to detect and/or prevent erroneous payments of SSA benefits.

DATE: The data exchange will begin in fiscal year 1985. An analysis will be undertaken to determine the cost benefit of the matching operation. If it is cost-effective, it will be continued.

ADDRESS: Interested individuals may comment on this proposal by writing to the Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at 3-F-1 Operations Building at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Gasparotti, Chief, State and Federal Programs Interface Branch, Office of System Requirements, 3-J-7 Operations Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, area code (301) 594-6080.

SUPPLEMENTARY INFORMATION: The matching program which SSA will conduct will be a computerized interface involving SSA's MBR **Federal Register**, dated October 13, 1982, pages 45626–45628), the SSR (**Federal Register**, dated October 13, 1982, pages 45635–45636), and the Black Lung Payment System (**Federal Register**, dated October 13, 1982, pages 45610–45611) matched against extracts of the WC payment files maintained by the State Agencies and the DOL system of records, DOL/ESA-13 (**Federal Register**, dated July 13, 1982, page 3382). The purpose of the match is to detect and prevent erroneous payments of SSA benefits.

Obtaining WC data through a matching operation will permit timely, proper payment of title II and title XVI benefits under the Social Security Act and Black Lung benefits under title IV of the Federal Mine Safety and Health Act as well as detect and prevent erroneous payments. Presently, verification data are generally through voluntary reporting of beneficiaries, who often claim to be unaware of the need to report or accurately furnish such data.

Further information regarding the matching program including the authority for the program, a description of the program, the personal records to be matched, the dates of the program, security safeguards, and plans for disposition of the records are provided in the text below. This information is required by paragraph 5.f.l of the Revised Supplemental Guidance for Conducting Computerized Matching Programs (**Federal Register**, May 19, 1982, pages 21657–21658). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Dated: Janaury 17, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Notice of a Computer Matching Program Social Security Administration (SSA) Matching With State and Federal Workers' Compensation (WC) Records

A. *Authority:* Sections 224, 1631(e)(1)(B), and 1631(f) of the Social Security Act; section 412(b) of the Black Lung Benefits Act.

B. *Description of Computer Matching Program:*

1. *Organizations Involved:* SSA, the State agencies administering WC programs and the Department of Labor (DOL) are the involved components.

2. *Purpose:* This matching operation essentially emanated from an October 1979 General Accounting Office (GAO) report entitled: "Social Security Should Obtain and Use State Data to Verify Benefits for All Its Programs." The report criticized SSA for not using State and local data in the enforcement of its payment programs. In addition, a September 1983 GAO report entitled "Better Case File Monitoring of the Workers' Compensation Offset Provision by the Social Security Administration Could Save Millions" recommended that SSA work with DOL to establish regular matches with DOL's WC files. State as well as Federal WC data will be used to verify appropriate title II and Black Lung (BL) offset applications, as well as title XVI unearned income adjustments. Obtaining State and Federal WC payment data through a matching operation will permit timely, proper payment of title II, XVI and BL benefits as well as assist SSA to detect and/or prevent erroneous payments. Presently, verification data are obtained through voluntary reporting by beneficiaries, who often claim to be unaware of the need to report or accurately furnish such data.

3. *Procedures:* The State WC agencies and DOL will furnish extracts of their payment files containing identifying data (name, Social Security number, date of birth) and pertinent WC data (date of award, type of WC, basis of the award, payment history, lump sum information, and the WC claim number). This file will be processed against SSA's record of all title II, XVI and BL beneficiaries. For those records matched, action will be taken to assure that SSA benefits have been adjusted appropriately. For the title XVI program, the WC information will be treated as a third-party lead requiring confirmation with the individual concerned prior to payment adjustment. For the title II and BL programs, the WC information will be used in payment computation, but affected individuals will be afforded due process prior to implementation of the payment modification. SSA will make no further subsequent contacts with the States or DOL as part of this matching program, except in specific cases where there is an inconsistency.

C. *Records to be Matched:* SSA will match the Master Beneficiary Record (MBR), (HHS/SSA/OURV 09-60-0090, **Federal Register** dated October 13, 1982, pages 45626–45628), the Supplemental

Security Income Record (SSR), (HHS/SSA/OURV 09-60-0103, **Federal Register** dated October 13, 1982, pages 45635–45636), and the Black Lung Payment System (HHS/SSA/OSR 09-60-0045, **Federal Register** dated October 13, 1982, pages 45610–45611) against extracts of the payment files maintained by the State WC agencies and the DOL system of records, DOL/ESA-13 (**Federal Register** dated July 13, 1982, page 3382).

D. *Projected Starting and Ending Dates:* The match will begin in fiscal year 1985. An analysis will be undertaken to determine the cost benefit of the matching operation. If it is cost effective, it will be continued.

E. *Security Safeguards:* Security safeguards pertaining to the MBR as reflected in the **Federal Register** dated October 13, 1982, pages 45626–45628; the SSR as reflected in the **Federal Register** dated October 13, 1982, pages 45635–45636, and the Black Lung Payment System as reflected in the **Federal Register** dated October 13, 1982, pages 45610–45611) will apply. All magnetic tapes and disks are within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have special badges which are issued only to authorized personnel. The same safeguards will apply to the State and DOL tapes while they are in the possession of SSA. All microfilm and paper files are accessible only by authorized personnel with a need to know. Safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail.

F. *Disposition of Records:* Data received will be used only for the purposes of this matching program and will be returned to the State WC agencies and DOL after the matching operation. A record of the "hits" will be placed in the claims folders of selected individuals. Information regarding matched records will be incorporated into the MBR, SSR or BL Payment System, as appropriate.

G. *Other Comments:* For those records matched, SSA will take proper action to assure that Social Security benefit payments are adjusted accordingly, after providing due process procedures to the individual concerned. Disclosures are made pursuant to routine uses published in the **Federal Register** for the various systems of records previously identified.

[FR Doc. 85-3616 Filed 2-12-85; 8:45 am]
BILLING CODE 4910-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-85-1493; FR-2081]

Housing Development Grant Program

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

ACTION: Invitation for applications.

SUMMARY: This notice invites cities, urban counties, and States acting on behalf of units of general local government, that submitted applications in response to the invitation for applications published June 20, 1984 (49 FR 25396) and that were notified that their applications failed to meet certain threshold requirements, to make certain limited corrections/revisions to their applications and resubmit their applications.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Development Grant Division, Room 6110, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410-8000, telephone (202) 755-6140. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 20, 1984, the Department of Housing and Urban Development (HUD) published a notice in the **Federal Register** (49 FR 25396) inviting the submission of applications for grants under HUD's Housing Development Grant program. That invitation for applications (IFA) noted that HUD had been authorized to provide $200 million during Fiscal Year 1984, and an additional $115 million during Fiscal Year 1985. It also alerted potential applicants that "HUD may base Fiscal Year 1985 funding decisions on applications submitted pursuant to this IFA."

Results

A total of 263 applications were received on or before the August 14, 1984 deadline contained in the IFA. Of this total, 141 applications requesting a cumulative grant amount of $288,090,254 passed the threshold requirements and were found eligible for rating and possible selection on the basis of the selection factors and priorities set forth in the program regulations, IFA, and Application Packet. On October 23, 1984, Secretary Samuel R. Pierce, Jr. announced that preliminary funding approval had been granted for these 141 applications.

Competition for Remaining Funds

HUD has determined that the competition for the remaining $26.9 million in Housing Development Grant funds should be limited to the applications submitted on or before August 14, 1984 that failed to meet the threshold requirements. Accordingly, the applicants responsible for these applications are invited to correct deficiencies and resubmit complete applications.

Limitations on Corrections

Changes of site, total number of units, unit size (number of bedrooms), or building type are not permitted. The number of lower income units may be increased (but not decreased), and the requested grant amount may be reduced (but not increased). It is recognized that because of these limitations on corrections, some applicants may be unable to correct deficiencies and, therefore, will not submit a revised application.

Application Submission Requirements

The instructions and requirements set forth in the Interim Rule published June 14, 1984 (49 FR 24634) (24 CFR Part 850), the IFA published June 20, 1984, (49 FR 25396) and the Application Packet dated June 1984 apply with the following exceptions:

(1) *Deadline*—The deadline for receipt of revised applications is close of business April 30, 1985. Close of business for HUD Headquarters is 5:15 p.m. Close of business at the appropriate field office must be determined by the applicant. Revised applications must be filed concurrently with Headquarters and the appropriate field office.

(2) *Number of Copies*—A total of *five copies* are required. *Three copies* are required to be submitted to the appropriate HUD field office and *two copies* are required for HUD Headquarters.

(3) *Application Identification*—The binders containing the revised applications shall be tabbed and clearly identified as REVISED APPLICATION FOR (*Project Name*).

(4) *Revision to Project Selection Factor*—To earn maximum points for the family housing selection factor, assisted units in the project must average three bedrooms or more.

(5) *Clarifications*—HUD may request additional information or clarification of information in the application after the deadline for submission has passed.

Complete Applications

Revised applications must be *complete* and fully responsive to the

instructions in the Application Packet, the Part 850 Regulations and the June 20, 1984, IFA. Amendments or additions to previously submitted applications will not be considered complete applications.

Advice and Guidance

Applicants are urged to contact the appropriate HUD field office or Headquarters staff to obtain advice and guidance in preparing and submitting a revised application.

Other Matters

The Catalog of Federal Domestic Assistance program number and title are 14.174, Housing Development Grants.

The information collection requirements contained in this notice have been approved by the Office of Management and Budget under OMB Control No. 2502-0323.

Authority: Sec. 17(d), United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 7, 1985.

Shirley McVay Wiseman,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 85-3544 Filed 2-12-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Crow Indian Irrigation Project; MT; Changes of Irrigation Operation and Maintenance Assessment Rate

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Withdrawal of public notice.

SUMMARY: The Bureau of Indian Affairs is withdrawing a public notice published in the Thursday, December 13, 1984, issue of the **Federal Register** (49 FR 48619).

The public notice was lacking critical supplementary information and will be resubmitted for publication in the near future. The public notice addressed the irrigation operation and maintenance assessment rates at the Crow Indian Irrigation Project, Montana.

EFFECTIVE DATE: This notice shall become effective when published and remain in effect until changed by public notice.

FOR FURTHER INFORMATION CONTACT: Mort S. Dreamer, Irrigation and Power Engineer, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245; telephone number: (202) 343-5696.

Dated: February 4, 1985.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 85-3542 Filed 2-12-85; 8:45 am]

BILLING CODE 4310-02-M

Indian Tribal Entities [1] Recognized and Eligible To Receive Services

January 25, 1985.

This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 5 U.S.C. 2 and 9; and 209 DM 8.

Notice is hereby given in accordance with 25 CFR 83.6 (b) (formerly 25 CFR 54.6 (b)) by the Bureau of Indian Affairs of those Indian tribal entities which are recognized as having a special relationship with the United States. Because of this special relationship, they are eligible for services administered by the Bureau of Indian Affairs. The listed entities are not necessarily eligible for programs administered by other Federal Agencies.

Indian Tribal Entities [1] Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, Palm Springs, California
Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation, Arizona
Alabma-Quassarte Tribal Town of the Creek Nation of Indians of Oklahoma
Alturas Indian Rancheria of Pit River Indians of California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Barona Capitan Grande Band of Diegueno Mission Indians of the Barona Reservation, California
Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan
Berry Creek Rancheria of Maidu Indians of California
Big Bend Rancheria of Pit River Indians of California
Big Lagoon Rancheria of Smith River Indians of California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mona Indians of California
Big Valley Rancheria of Pomo & Pit River Indians of California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria of California
Bridgeport Paiute Indian Colong of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Indian Colony, Oregon
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Indian Tribe of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of the Capitan Grande Reservation, California
Cayuga Nation of New York
Cedarville Rancheria of Northern Paiute Indians of California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria of California
Cherokee Nation of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation of Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Band of Potawatomi Indians of Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Coast Indian Community of Yurok Indians of the Resighini Rancheria, California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho

[1] Includes within its meaning Indian tribes, bands, villages, communities and pueblos as well as Eskimos and Aleuts

Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Indian Tribe of Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Wahington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakima Indian Nation of the Yakima Reservation, Washington
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Covelo Indian Community of the Round Valley Reservation, California
Cow Creek Band of Umpqua Indians of Oregon
Coyote Valley Band of Pomo Indians of California
Creek Nation of Oklahoma
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
Death Valley Timbi-Sha Shoshone Band of California
Delaware Tribe of Western Oklahoma
Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria of Smith River Tolowa Indians of California
Ely Indian Colony of Nevada
Enterprise Rancheria of Maidu Indians of California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community of Wisconsin Potawatomie Indians, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada
Fort McDowell Mohave-Apache Indian Community, Fort McDowell Band of Mohave Apache Indians of the Fort McDowell Indian Reservation, Arizona
Fort Mojave Indian Tribe of Arizona
Fort Sill Apache Tribe of Oklahoma
Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe of the Hoopa Valley Reservation, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Tribe of the Hualapai Indian Reservation, Arizona
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Iowa Tribe of Indians of the Iowa Reservation in Nebraska and Kansas
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown Band of Clallam Indians of Washington
Jamul Indian Village of California
Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Indian Tribe of Oklahoma
Keweenaw Bay Indian Community of L'Anse, Lac Vieux Desert and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan
Kialegee Tribal Town of the Creek Indian Nation of Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma (includes Texas Band of Kickapoo Indians)
Kiowa Indian Tribe of Oklahoma
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the LaJolla Reservation, california
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
lookout Rancheria of Pit River Indians, California
Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community of the Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Pt. Arena Rancheria, California
Manzanita Band of Dieugeno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Menominee Indian Tribe of Wisconsin, Menominee Indian Reservation, Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six Component reservations: Boise Forte Band (Nett Lake), Fond du Lac Band, Grand Portage Band, Leech

Lake Band, Mille Lac Band, White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Montgomery Creek Rancheria of Pit River Indians of California
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Narragansett Indian Tribe of Rhode Island
Navajo Tribe of Arizona, New Mexico and Utah
Nez Perce Tribe of Idaho, Nez Perce Reservation, Idaho
Nisqually Indian Community of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshone Indians of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin, Oneida Reservation, Wisconsin
Onondaga Nation of New York
Osage Tribe of Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Oklahoma
Paiute Indian Tribe of Utah
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Papago Tribe of the Sells, Gila Bend and San Xavier Reservations, Arizona
Pascua Yaqui Tribe of Arizona
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Indian Tribe of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Indian Tribe of the X-L Ranch Reservation, California
Poarch Band of Creek Indians of Alabama
Ponca Tribe of Indians of Oklahoma
Port Gamble Indian Community, Port Gamble Band of Clallam Indians, Port Gamble Reservation, Washington
Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Indians of Kansas
Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Oklahoma
Quartz Valley Rancheria of Karok, Shasta and Upper Klamath Indians of California
Quechan Tribe of the Fort Yuma Indian Reservation, California
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin, Red Cliff Reservation, Wisconsin
Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota
Redding Valley Rancheria of Pomo Indians of California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Roaring Creek Rancheria of Pit River Indians of California
Robinson Rancheria of Pomo Indians of California
Rohnerville Rancheria of Bear River or Mattole Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Tribe of Missouri of the Sac & Fox Reservation, in Kansas and Nebraska
Sac & Fox Tribe of Indians of Oklahoma
Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation, Michigan
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
San Carlos Apache Tribe of the San Carlos Reservation of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of the San Pasqual Reservation, California
Santa Rosa Indian Community of the Santa Rosa Rancheria of California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Tribe of the Santee Reservation, of Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress and Brighton Reservations, Florida
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
Sheep Ranch Rancheria of Me-Wuk Indians of California
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota

Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria of California
Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
Sokoagon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation, Wisconsin
St. Regis Band of Mohawk Indians of New York
Standing Rock Sioux Tribe of the Standing Rock Reservation, North & South Dakota
Stockbridge-Munsee Community of Mohican Indians of Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of the Summit Lake Reservation, Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians of California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of of the Sycuan Reservation, California
Table Bluff Rancheria of Wiyot Indians of California
Table Mountain Rancheria of California
Te-Moak Bands of Western Shoshone Indians of the Battle Mountain, Elko & South Fork Colonies of Nevada
Thlopthlocco Tribal Town of the Creek Indian Nation of Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Indians of Arizona
Torres-Martinez Band of Cahuilla Mission Indians of the Torres-Martinez Reservation, California
Tule River Indian Tribe of the Tule River Indian Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians, Turtle Mountain Indian Reservation, North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Luiseno Mission Indians of the Twenty-Nine Palms Reservation, California
United Keetoowah Band of Cherokee Indians, Oklahoma
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaiti Paiute Tribe of the Benton Paiute Reservation, California
Viejas Baron Long Capitan Grande Band of Diegueno Mission Indians of the Viejas Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville and Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Indian Reservation, Arizona
Wichita Indian Tribe of Oklahoma
Winnebago Tribe of the Winnebago Reservation of Nebraska
Winnemucca Indian Colony of Nevada
Wisconsin Winnebago Indian Tribe of Wisconsin
Wyandotte Tribe of Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Indian Community of the Camp Verde Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Yurok Tribe of the Hoopa Valley Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs

Akhiok, Native Village of Akhiok
Akiachak, Native Village of Akiachak
Akiak Native Community
Akutan, Native Village of Akutan
Alakanuk, Village of Alakanuk
Alatna Village
Alegnagik, Village of Alegnagik
Allakaket Village
Ambler, Village of Ambler
Anaktuvuk Pass, Village of Anaktuvuk Pass
Angoon Community Association
Aniak, Village of Aniak
Anvik Village
Arctic Village
Atka, Native Village of Atka
Atkasook Village
Atmauthluak, Village of Atmauthlauk
Barrow Native Village (Point Barrow)
Beaver Village
Belkofsky, Native Village of Belkofsky
Bethel Native Village
Bettles Field/Evansville Village
Birch Creek Village
Brevig Mission Village
Buckland, Native Village of Buckland
Cantwell, Native Village of Cantwell
Chalkyitsik Village
Chanega (Chenega), Native Village of Chanega
Chuathbaluk, Village of Chuathbaluk
Chefornak, Village of Chefonak
Chevak Native Village
Chickaloon Village
Chignik, Native Village of Chignik
Chignik Lagoon, Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village of Klukwan
Chilkoot Indian Association of Haines
Chistochina, Native Village of Chistochina
Chitina, Native Village of Chitina
Circle Village
Clark's Point, Village of Clark's Point
Copper Center Village
Craig Community Association
Crooked Creek, Village of Crooked Creek
Deering, Native Village of Deering
Dillingham, Native Village of Dillingham
Diomede, Native Village of Diomede (aka Inalik)
Dot Lake, Village of Dot Lake
Douglas Indian Association
Eagle, Village of Eagle
Eek, Native Village of Eek
Egegik Village
Eklutna Native Village
Ekuk, Native Village of Ekuk
Ekwok Village
Elim, Native Village of Elim
Emmonak Village
Eyak Native Village
False Pass, Native Village of False Pass
Fort Yukon, Native Village of Fort Yukon
Gakona, Native Village of Gakona
Galena Village (aka Louden Village)
Gambell, Native Village of Gambell
Golovin, Village of Golovin
Goodnews Bay, Native Village of Goodnews Bay
Grayling, Orgainzed Village of Grayling (aka Holikachuk)
Gulkana Village
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Hooper Bay, Native Village of Hooper Bay
Hughes Village
Huslia Village

Hydaburg Cooperative Association
Igiugig Village
Iliamna, Village of Iliamna
Inupiat Community of the Arctic Slope
Ivanoff Bay Village
Kake, Organized Village of Kake
Kaktovik Village of Barter Island (aka Barter Island)
Kalskag, Village of Kalskag
Kanatak, Native Village of Kanatak
Karluk, Native Village of Karluk
Kasaan, Native Village of Kasaan
Kasigluk, Native Village of Kasigluk
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Kiana Village
King Cove Village
King Island Native Community
Kipnuk, Native Village of Kipnuk
Kivalina, Native Village of Kivalina
Klawock Cooperative Association
Knik Village
Kobuk Village
Kokhanok Village
Kongiganak Native Village
Kotlik, Village of Kotlik
Kotzebue, Native Village of Kotzebue
Koyuk, Native Village of Koyuk
Koyukuk Native Village
Kwethluk, Organized Village of Kwethluk
Kwigillingok, Native Village of Kwigillingok
Kwinhagak, Native Village of Kwinhagak (aka Quinhagak)
Larsen Bay, Native Village of Larsen Bay
Levelock Village
Lime Village
Lower Kalskag, Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Marshall, Native Village of Marshall (aka Fortuna Ledge)
McGrath, Native Village of McGrath
Mekoryuk, Native Village of Mekoryuk, Island of Nunivak
Mentasta Village (aka Mentasta Lake)
Metlakatla Indian Community, Annette Islands Reserve, Alaska
Minto, Native Village of Minto
Mountain Village, Native Village of Mountain Village
Naknek Native Village
Napakiak, Native Village of Napakiak
Napaskiak Traditional Village
Nelson Lagoon, Native Village of Nelson Lagoon
Nenana Native Association
Newhalen Village
New Stuyahok Village
Newtok Village
Nightmute, Native Village of Nightmute
Nikolai Village
Nikolski, Native Village of Nikolski
Noatak, Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Nulato Village
Nunapitchuk, Native Village of Nunapitchuk
Old Harbor, Village of Old Harbor
Oscarville, Oscarville Traditional Village
Ouzinkie, Native Village of Ouzinkie
Pedro Bay Village
Perryville, Native Village of Perryville
Petersburg Indian Association
Pilot Point, Native Village of Pilot Point
Pilot Station Traditional Village
Pitka's Point, Native Village of Pitka's Point
Platinum Traditional Village
Point Hope, Native Village of Point Hope
Point Lay, Native Village of Point Lay
Portage Creek Village
Port Graham Village
Port Heiden, Native Village of Port Heiden
Port Lions, Native Village of Port Lions
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Rampart Village
Red Devil, Village of Red Devil
Ruby, Native Village of Ruby
Russian Mission, Native Village of Russian Mission (Yukon)
Sand Point Village
Savoonga, Native Village of Savoonga
Saxman, Organized Village of Saxman
Scammon Bay, Native Village of Scammon Bay
Selawik, Native Village of Selawik
Shageluk Native Village
Shaktoolik, Native Village of Shaktoolik
Sheldon's Point, Native Village of Sheldon's Point
Shishmaref, Native Village of Shishmaref
Shungnak, Native Village of Shungnak
Sitka Community Association
Sleetmute, Village of Sleetmute
South Naknek Village
Stebbins Community Association
Stevens, Native Village of Stevens
Stony River, Village of Stony River
St. Mary's Village (aka Algaaciq)
St. Michael, Native Village of St. Michael
Takotna Village
Tanacross, Native Village of Tanacross
Tanana, Native Village of Tanana
Tatitlek, Native Village of Tatitlek
Tazlina, Native Village of Tazlina
Telida Village
Teller Native Village
Tetlin, Native Village of Tetlin
Togiak, Traditional Village of Togiak
Tlingit & Haida Indians of Alaska
Toksook Bay, Native Village of Toksook Bay
Tuluksak Native Community
Tuntutuliak, Native Village of Tuntutuliak
Tununak, Native Village of Tununak
Twin Hills Village
Tyonek, Native Village of Tyonek
Ugashik Village
Unalakleet, Native Village of Unalakleet
Venetie, Native Village of Venetie
Wainwright Village
Wales, Native Village of Wales
White Mountain, Native Village of White Mountain
Wrangell Cooperative Association

For additional information contact Patricia Simmons, Division of Tribal Government Services, Branch of Tribal Relations, 1951 Constitution Avenue, NW., Washington, D.C. 20245, telephone number, 202-343-4045.

John W. Fritz,
Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85-3621 Filed 2-12-85; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

[5-22823-GP5]

Intent To Prepare an Environmental Impact Statement; Certain Counties in Wyoming, Montana, and North Dakota

AGENCY: Bureau of Land Management (BLM, Department of the Interior).

ACTION: Prepare an environmental impact statement (EIS) and conduct mail-out scoping on the construction and operation of a carbon dioxide (CO_2) pipeline proposed by Exxon Company USA (Exxon) from MP 27 of the Rangely CO_2 pipeline (currently under NEPA analysis), to Tioga, North Dakota, and an enhanced oil recovery project and ancillary facilities proposed by Amoco Production Company (Amoco) near Bairoil, Wyoming. The proposed project is in Sweetwater, Fremont, Natrona, Johnson, and Campbell counties, Wyoming; Power River, Carter, and Fallon counties, Montana; and Golden Valley, Billings, Stark, Dunn, McKenzie, and Williams counties, North Dakota.

SUMMARY: This notice describes the action to be analyzed in the EIS; the geographic area that would be affected; the preliminary list of issues and concerns; the scoping process to be used; the locations of offices that have information for public review, both during and at the completion of the process; and the BLM contact for further information.

The action to be analyzed in the EIS consists of the construction and operation of projects proposed by two companies:

Exxon—a 111-mile-long, 20-inch-diameter CO_2 pipeline from MP 27 of the Rangely CO_2 pipeline to near Bairoil, Wyoming; a 19-mile-long, 12-inch-diameter spur pipeline to Bairoil; and a 531-mile-long pipeline from near Bairoil to Tioga, North Dakota.

Amoco—a 111-mile-long, 20-inch-diameter CO_2 pipeline from MP 27 of the Rangely CO_2 pipeline to near Bairoil, Wyoming; a 19-mile-long, 12-inch-diameter CO_2 spur pipeline to Bairoil; a 19-mile-long, 10-inch-diameter condensate pipeline from Bairoil to the Frontier pipeline; a 150,000-barrel storage tank on the Frontier pipeline corridor; a gas processing plant at Bairoil; and field facilities for an enhanced oil recovery project.

The CO_2 would be produced in the Exxon's Shute Creek gas processing plant and carried via the Rangely CO_2 pipeline (Final EIS to be filed with EPA February 8, 1985). The CO_2 would be injected into oil-bearing formations at Bairoil for enhanced oil recovery. Exxon plans to deliver CO_2 to Amerada Hess and unidentified markets in the Williston Basin for enhanced oil recovery. The scope of the document would include the Bairoil enhanced oil recovery activities because they would be associated with the gas separation plant right-of-way application.

BLM will be preparing the EIS on the Bairoil/Williston CO_2 Projects, and the BLM Wyoming State Director is the administrative lead on the EIS. Other agencies have been queried as to their interest in becoming cooperating agencies and thus far, the U.S. Forest Service will be a cooperating agency.

Geographic Area

The geographic area to be analyzed for effects is in southern and eastern Wyoming, eastern Montana, and western North Dakota. The CO_2 pipeline would extend from near Rock Springs to Bairoil, Wyoming, then up through eastern Montana past Baker, and on to Tioga, North Dakota. Alternate routes have not yet been developed but would be expected to be in the same general region. Regional and cumulative impacts may extend somewhat beyond these geographic areas.

Issues and Concerns

The following important issues and concerns have been identified to date:

—Air quality effects from the proposed gas treatment plant to Bairoil, Wyoming
—Potential of crossing coal or other minerals leases
—Crossing the Little Missouri Grasslands
—Crossing of Lake Sakakawea and rivers
—Historical trail cossings and cultural resource impacts
—Potential impacts to wildlife and habitat, recreation, visual resources, and land uses
—Crossing the "Little Missouri Breaks"
—Crossing agricultural lands

The public is encouraged to present their ideas and views on these and other issues and concerns. All issues and concerns will be considered in preparing the EIS.

The scoping process used to collect issues and concerns on the proposed activities will involve two public meetings and a mail-out packet, which individuals may request, fill out, and return to the BLM Division of EIS Services at the following address: BLM Division of EIS Services, 555 Zang Street, First Floor East, Denver, Colorado 80228, Attn: Janis VanWyhe, Project Leader.

DATES: The scoping packets will be distributed after February 13, 1985. Responses and comments will be accepted through March 7, 1985. The public meetings will be held at the following times and locations:

February 26, 1985—Baker High School, 1015 South 3rd West, Baker, Montana, 7:00 p.m.

February 27, 1985—Broadus High School, 500 N. Trautman, Broadus, Montana, 7:00 p.m.

The packet is being mailed to interested persons selected, in part, from the mailing lists from various BLM offices within the area.

ADDRESSES: Information and scoping mail-out packets for the proposed CO_2 pipeline and the EIS can be obtained by writing or visiting the following offices:

BLM, Wyoming State Office, 2515 Warren Ave., P.O. Box 1828, Cheyenne, WY 82003

BLM, Montana State Office, Granite Tower, 222 N. 32nd Street, P.O. Box 36800, Billings MT 59107

BLM, Casper District Office, 951 North Poplar Street, Casper, WY 82601

BLM, Divide Resource Area, P.O. Box 670, 1300 Third Street, Rawlins, WY 82301

BLM, Big Sandy Resource Area, P.O. Box 1170, 79 Winston Drive, Rock Springs, WY 82902-1170

BLM, Miles City District Office, West of Miles City, P.O. 940, Miles City, MT 59301

BLM, Dickinson District Office, P.O. Box 1229, Dickinson, ND 58602

Scoping comments should be sent to the BLM Division of EIS Services office in Denver.

FOR FURTHER INFORMATION CONTACT: Janis L. VanWyhe, Bureau of Land Management, Division of EIS Services, 555 Zang Street, First Floor East, Denver, Colorado 80228.

If, at any time during the EIS process, any person wishes to raise issues for consideration in the EIS, he/she should feel free to do so by contacting any of the above BLM offices.

Charles R. Tulloss,

Chief, Division of EIS Services, Bureau of Land Management.

[FR Doc. 85-3545 Filed 2-12-85; 8:45 am]

BILLING CODE 4310-22-M

[INT-FES-85-4; 5-22823-GP5-]

Rangely Carbon Dioxide Pipeline Project; Environmental Impact Statement; Final Availability

AGENCY: Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement (FEIS).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, BLM has prepared a FEIS for the proposed Rangely Carbon Dioxide Pipeline Project.

SUPPLEMENTARY INFORMATION: BLM has prepared a FEIS for the Rangely Carbon Dioxide Pipeline Project. Chevron USA, Inc. has applied to the BLM Wyoming, Utah, and Colorado State Offices for a right-of-way permit to build and operate a 176-mile-long, 16-inch-diameter pipeline to carry carbon dioxide from Exxon Corporation's proposed La Barge gas plant at the Shute Creek site northeast of Opal, Wyoming, to the Rangely Weber Sand Unit oil field (Colorado) where the carbon dioxide would be used for enhanced oil recovery. Ancillary facilities to be built would include a microwave communication system, a Supervisory Control and Data Acquisition (SCADA) system to detect leaks, and a booster compressor station (Sand Wash Alternative only).

FOR FURTHER INFORMATION CONTACT: Janis VanWyhe, Project Leader, Division of EIS Services, Bureau of Land Management, 555 Zang Street, First Floor East, Denver, Colorado 80228, (303) 236-1080.

Copies of the FEIS may be inspected at the following locations:

Bureau of Land Management, Public Affairs, Interior Building, 18th and C Streets, NW., Washington, D.C. 20240

Bureau of Land Management, Wyoming State Office, 2525 Warren Avenue,

P.O. Box 1828, Cheyenne, Wyoming 82003

Bureau of Land Management, Colorado State Office, 1037 20th Street, Denver, Colorado 80202

Bureau of Land Management, Utah State Office, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111

Bureau of Land Management, Division of EIS Services, 555 Zang Street, First Floor East, Denver, Colorado 80228

Bureau of Land Management, Rock Springs District Office, P.O. Box 1869, Rocks Springs, Wyoming 82901

Bureau of Land Management, Craig District Office, P.O. Box 248, Craig, Colorado 81625

Bureau of Land Management, Vernal District Office, 170 South 500 East, Vernal, Utah 84078

Copies of the FEIS may be obtained from BLM's Division of EIS Services at the address listed above, and a limited number of single copies may be obtained from BLM's Rock Springs District Manager at the address listed above.

Dated: February 5, 1985.

Jack Belmain,

Bureau of Land, Acting Wyoming State Director.

[FR Doc. 85-3546 Filed 2-12-85; 8:45 am]

BILLING CODE 4310-22-M

Recreation and Public Purposes Classification; Winnebago County, WI

AGENCY: Bureau of Land Management, Interior.

ACTION: Land Classification for Recreation and Public Purposes, Winnebago County, Wisconsin, ES-16412.

SUMMARY: The following public island has been examined and found to be suitable for classification and sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869):

Fourth Principal Meridian, Wisconsin

ES-16412, James Island, Winnebago County, T.20N., R.17E., Tract 37, 1.81 Acres, island in Little Lake Butte des Morts, Fox River.

The City of Menasha, Menasha, Wisconsin has applied for this island so that it can be added to Menasha's Park System as a nature-study area to be used for recreational purposes.

The island is physically suited to the proposed use and is not of national significance. Since the island is valuable for a local program it is considered chiefly valuable for public purposes and therefore suitable for classification and sale under the Recreation and Public Purposes Act. This action is consistent with local and Federal government plans, programs and policies.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States.

The classification of this island will segregate it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. Segregation will terminate upon issuance of a patent; or eighteen (18) months from the date of this notice; or upon publication of a notice of termination, whichever occurs first.

Comments

For a period of 45 days from the date of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this classification. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53201, or by calling Paulette Francis at (414) 291-4415.

Chuck Steele,

District Manager.

[FR Doc. 85-3548 Filed 2-12-85; 8:45 am]

BILLING CODE 4310-PN-M

Sales of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Competitive, and Direct Sale Offerings of Public Lands in Bonner, Kootenai, Shoshone, Idaho and Latah Counties, Idaho.

SUMMARY: The public land tracts described below were examined and through land use planning and public input were determined to be suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976. Fair market value is to be determined by appraisal and will be available no less than 30 days prior to the sale date. Sealed bids are required but must be no less than fair market value.

Tract No.	Case file No.	Legal description	County	Acres
		COMPETITIVE SALES		
I-6-8	I-21487	T.57N., R.1W., B.M., Sec. 7, Lot 5.	Bonner	7.76
I-6-15	I-21488	T.56N., R.5W., B.M., Sec. 7, Full Moon Lode.	Bonner	19.63
I-6-25	I-21535	T.49N., R.5W., B.M., Sec. 1, NE¼SW¼.	Kootenai	40.00
I-6-39	I-21489	T.48N., R.1W., B.M., Sec. 2, Lot 8.	Kootenai	5.18
I-6-83	I-21490	T.49N., R.5E., B.M., Sec. 5, Lot 5, Sec. 6, Lot 1 and 2.	Shoshone	2.38
I-6-122	I-18774	T.48N., R.3E., B.M., Sec. 4, Lot 7.	Shoshone	19.11
I-6-177	I-21493	T.40N., R.1W., B.M., Sec. 32, NE¼NW¼.	Latah	40.00
I-6-188	I-21491	T.38N., R.2W., B.M., Sec. 13, SE¼SE¼.	Latah	40.00
I-6-223	I-21492	T.32N., R.1W., B.M., Sec. 9, Lot 4.	Idaho	0.44
		DIRECT SALE		
I-6-224	I-20246	T.48N., R.4E., B.M., Sec. 13, Lot 23, Sec. 14, Lot 14.	Shoshone	6.55

The lands described above are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending final disposition of this action.

Tract I-6-224 will be offered to the Zanetti family through the Blue Wing Mining Company for fair market value because of historic use, adjacent land ownership and value added by them to the land. Fair market value has been determined to be $22,900. Failure of the proponent to resolve existing conflicts and settle outstanding damages ($6,500) prior to the sale date of May 15, 1985, and to submit an acceptable bid upon the sale date will result in cancellation of the direct sale and the lands will be sold at a later date to the highest bidder.

The lands when patented will be subject to the following reservations to the United States:

1. Right-of-way Reservation to the United States for ditches and canals (43 U.S.C. 945).

2. All valid existing right-of-way granted of record.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws pending disposition of this action.

Sale of tract I-6-186 may be subject to temporary continued use of existing grazing privileges.

Sealed bids for tracts I-6-186, I-6-171, and I-6-223 must be received in the Cottonwood Resource Area Office no later than 10:00 a.m., Monday, June 24, 1985. Sealed bids for the remaining tracts must be received in the Coeur d'Alene District Office no later than 10:00 a.m., Friday, June 28, 1985.

A bid will constitute an application for conveyance of mineral interest. The subject tracts have no known mineral values. A $50 nonreturnable filing fee (43 CFR 2710.1-2(c)) for processing conveyance of mineral interests along with one-tenth (10%) of the full bid price, must accompany each bid. Failure to submit the $50 filing fee and 10% of the bid price by either a certified check, postal money order, bank draft or cashiers check will result in the disqualification of bid. Any unsold parcel will be offered over-the-counter at the appraised value every Tuesday until sold or the offering is suspended.

The BLM Authorized Officer may cancel or withdraw the offering of any tract at any time he may determine that the sale would not be fully consistent with applicable laws and the regulations.

DATE AND ADDRESS: The sale offering of tracts I-6-186, I-6-171 and I-6-223 will be held on June 24, 1985 at 10:00 a.m. in the Cottonwood Resource Area Office, Route 3, Box 181, Cottonwood, Idaho 83522.

The sale offering of the remaining tracts will be held on June 28, 1985 at 10:00 a.m. in the Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION: Detailed information concerning the sale terms and conditions, bidding procedures, and other information can be obtained by contacting: Ron Grant of the Cottonwood Office at the above address or by calling (208) 962-3245 or, Bob Olson of the Coeur d'Alene Office at the above address, or by calling (208)-765-7356.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments or protests to the Coeur d'Alene District Manager at the above address.

Dated: February 5, 1985.

Wayne Zinne,

District Manager.

[FR Doc. 85-3554 Filed 2-12-85; 8:45 am]

BILLING CODE 4310-GG-M

Draft Revision; Royalty Reduction Guidelines for Federal Coal, Phosphate, Potassium, Sodium, Sulphur, and Tar Sand Leases

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Draft Guidelines and Request for Public Comment.

SUMMARY: This Notice sets forth draft guidelines reflecting the Department of the Interior's administration of section 39 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 209). When final, these guidelines will be used by Bureau of Land Management and Minerals Management Service personnel to determine whether a Federal solid mineral lease is eligible for a temporary reduction in the royalty rate paid on production pursuant to 43 CFR 3485.2(c), 43 CFR 3503.3-2(d), 43 CFR 3140.4(c)(3), 43 CFR 3141.5-3(b), 43 CFR 3103.3-1, and 43 CFR 3503.3-2(d).

These draft guidelines address application requirements for the operator/lessee, application content, detailed Bureau of Land Management and Minerals Management Service processing procedures, final action procedures and State coordination. This notice also invites public comments on the draft guidelines.

DATE: Comments must be submitted on or before March 15, 1985.

ADDRESS: Director (660), Bureau of Land Management, 18th and "C" Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Paul W. Politzer, Chief, Solid Mineral Operations Division, (202) 343-7722, (FTS) 343-7722.

SUPPLEMENTARY INFORMATION: Section 39 of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 209), provides the authority to reduce royalties below the minimums established by statute and the rate specified in a lease. The regulations at 43 CFR 3485.2(c) implement that statutory authority for Federal coal leases. The regulations at 43 CFR 3503.3-2(d) implement that authority to act on royalty reduction applications for Federal phosphate, potassium, sodium, and sulphur leases. For tar sand in Federal combined hydrocarbon leases, that authority is implemented at 43 CFR 3140.4(c)(3), 43 CFR 3141.5-3(b), and 43 CFR 3103.3-1, in accordance with procedures contained in the regulations at 43 CFR 3503.3-2(d). Regulations which will implement section 39 of the Mineral Leasing Act of 1920, as amended, regarding royalty reductions for oil shale, gilsonite, and hardrock leasable minerals are scheduled for publication as proposed rulemaking by the Bureau of Land Management during 1985. The Bureau of Land Management State Director is authorized to act on royalty reduction applications under the existing and prospective regulations.

The Department has been processing royalty reductions utilizing guidelines promulgated in 1980. Those guidelines are being revised for reasons of consistency among solid leasable minerals, simplification, and policy conformance. These proposed guidelines apply to all solid leasable minerals, and, the guidelines dispense with the discounted-cash-flow analysis of the 1980 guidelines. Also, they would: Require annual operating costs to exceed annual revenues; strengthen approval criteria; provide for a royalty reduction of up to three years with annual recertification of conditions that warranted a royalty reduction in the first year; and provide for analysis of the applicant's submitted accounting and financial data by the Minerals Management Service. All actions on royalty reduction applications are suspended until publication of final guidelines. The draft guidelines are set forth below.

The principal author of these draft guidelines is Harold W. Moritz, Chief, Branch of Technical Support, Solid Mineral Operations Division, Bureau of Land Management; assisted by David E. Hoglund and Allen B. Agnew, Branch of Technical Support, Solid Mineral Operations Division, Clyde Topping of the Office of Minerals Policy Analysis and Program Coordination, other Bureau of Land Management and Minerals Management Service field and headquarters personnel, and the Office of the Solicitor, Department of the Interior.

Dated: February 7, 1985.

Robert F. Burford,

Director.

Draft Revision; Royalty Reduction Guidelines for Federal Coal, Phosphate, Potassium, Sodium, Sulphur, and Tar Sand Leases

A. Introduction

Secretarial Order No. 3087, dated December 3, 1982, transferred the authority of the Minerals Management Service for onshore leasable minerals operations to the Bureau of Land Management. That authority includes responsibility for approval or rejection of an application filed for a royalty reduction. Bureau of Land Management Instruction Memorandum No. 83-384 delegated to the State Directors the authority to act for the Secretary on

royalty reduction requests. A Bureau of Land Management/Minerals Management Service Memorandum of Understanding, dated December 16, 1983, delineates the specific responsibilities of the two Bureaus:

The process for the review and recommendation of approval (or rejection) of requests for a reduction in Federal mineral royalty rates involves the combined efforts of Bureau of Land Management and Minerals Management Service personnel, with the Bureau of Land Management retaining final approval authority * * * [t]his process involves the Bureau of Land Management receiving the application and submitting it for an initial joint review by the Bureau of Land Management and Minerals Management Service. The Bureau of Land Management and Minerals Management Service will review the application for compliance with submission guidelines and assign the task of evaluating the application to appropriate Bureau of Land Management and Minerals Management Service technical personnel who will work together to review the application and reach a final recommendation.

B. Authority

The authority to reduce royalties below the minimums established by statute and the rate specified in a lease is contained in section 39 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 209), which, in part, states:

The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal * * * oil shale, gilsonite (including all vein-type solid hydrocarbons), phosphate, sodium, potassium, and sulphur, and in the interest of conservation of natural resources, is authorized to * * * reduce the royalty on an entire lease, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgment it is necessasry to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein. Provided, however, that in order to promote development and the maximum production of tar sand, at the request of the leasee, the Secretary shall review, prior to commencement of commercial operations, the royalty rates established in each combined hydrocarbon lease issued in special tar sand areas.

The State Director's authority to act on royalty reduction applications for Federal coal leases is contained in the regulations at 43 CFR 3485.2(c).

The State Director's authority to act on royalty reduction applications for Federal phosphate, potassium, sodium, and sulphur leases is contained in the regulations at 43 CFR 3503.3–2(d).

For tar sand in Federal combined hydrocarbon leases, the State Director's authority is contained in the regulations at 43 CFR 3140.4(c)(3), 43 CFR 3141.5–3(b), and 43 CFR 3103.3–1, in accordance with the procedures contained in the regulations at 43 CFR 3503.3–2(d).

Regulations which will implement section 39 of the Mineral Leasing Act of 1920, as amended, regarding royalty reductions for oil shale, gilsonite, and hardrock leasable minerals are scheduled for publication as proposed rulemaking by the Bureau of Land Management during 1985.

C. Royalty Reduction Consideration

In order for an application to be approved, at least one of the following criteria must exist:

1. The lease(s) must be part of an ongoing mining operation: (a) Which is experiencing an overall loss at the time of application, as determined pursuant to section D.19 of these guidelines (the loss must be projected to continue for the duration of the royalty reduction period requested); and (b) for which 12 months of verifiable cost, sales, revenue, and other financial data are available; or,

2. The lease(s) is not currently part of a mining operation that has been ongoing for 12 months, but will be in production on the lease within 1 year of application submittal. Twelve months of verifiable cost, sales, revenue, and other financial data are required. While the regulations (43 CFR 3485.2(c)(1)(ii)) currently allow for the use of data from a mine "in close proximity" to justify a reduction on a non-operating lease, the use of this provision is discouraged. The State Director is responsible for determining whether such data may be used. If the data are to be used, the State Director also must certify in the final decision document that such data are *verifiable and from a mine with similar operating characteristics;* or,

3. The greatest ultimate recovery of the mineral resource would occur with a royalty reduction. In this situation, the lease is located within proximity of minable reserves and such reserves could be mined at a clear competitive profit advantage due to a royalty rate differential to the lease upon which a royalty reduction application has been submitted. In the absence of a reduction, a bypass of the lease would most likely occur.

D. Factors Governing Royalty Reduction Decisions

1. Minimum Lease Royalty Rates Set by Statute and Regulation

The Mineral Leasing Act of 1920, as amended, requires a statutory minimum production royalty rate of 12½ percent for surface mined coal (30 U.S.C. 207); the minimum production royalty rate of 8 percent for underground coal mining is set by regulation (43 CFR 3473–3.2(a)). A minimum production royalty rate of 5 percent is required for phosphate (30 U.S.C. 211) and sulphur (30 U.S.C. 372). A minimum production royalty rate of 2 percent is required for sodium (30 U.S.C. 262) and potassium (30 U.S.C. 282). The minimum production royalty rate for oil shale is specified in the lease document (30 U.S.C. 241) and a minimum rate of 12½ percent is required for tar sand (30 U.S.C. 226). Current departmental policy is to specify a rate of 12½ percent for oil shale. The statutory and regulatory minimum rates, or higher rates specified in the lease documents at the time of issuance, readjustment, or renewal, are unaltered by any temporary royalty reduction approved under these guidelines.

2. Royalty Reductions Versus Lease Issuance, Readjustment, or Renewal

Royalty reductions shall be acted upon separately from lease issuance, lease readjustment (coal, potassium, phosphate, oil shale, gilsonite, and tar sand), or lease renewal (sodium, sulphur). In no case may a reduction in royalty rate, as determined in accordance with 43 CFR 3485.2(c) or 3503.3–2(d), be specified in the terms of an initial lease issuance, in readjustment terms, or in renewal terms.

3. Royalty Reductions Versus Payment of Advance or Minimum Royalty

Royalty reductions will have no effect on the payment of advance or minimum royalty *in lieu* of annual production (e.g., advance royalty will be paid at the production rate(s) specified in Federal coal lease or logical mining unit documents). The utilization of advance royalty payments as justification for a royalty reduction will not be permitted, as these are not considered to be cost data under C1 or C2 above.

4. Royalty Reduction Floor

The 43 CFR Group 3400 and Group 3500 regulations do not set the minimum royalty rate allowable under a royalty reduction. However, no royalty can be reduced to zero (30 U.S.C. 209).

5. Date Royalty Reduction Becomes Effective

The effective date of a royalty reduction is the date of the first royalty reporting period following the approval date. Under no circumstances will a reduction be made retroactive.

6. Duration of Royalty Reduction

The effective duration for a royalty reduction shall be based on the expected temporary duration of the

mining difficulties and/or economic difficulties the operator/lessee is encountering. A royalty reduction cannot normally be approved for more than 1 year. In special circumstances, where the State Director determines there is specific reason, a royalty reduction may be approved for up to 3 years. Supporting documentation for such cases must clearly demonstrate that the conditions which necessitate a royalty reduction are long term and certification of the conditions is submitted by the company on an annual basis, prior to the 1-year anniversary date. For tar sand royalty reductions, the maximum duration is 5 years. Any application to continue a previously approved royalty reduction will be considered a "new application" under these guidelines and will be subject to all the procedures and requirements of these guidelines. A "new application" to continue a previously approved royalty reduction may not be submitted prior to 90 days before expiration of the term of the currently approved royalty reduction. Upon expiration of the term of the currently approved royalty reduction. Upon expiration of the term of the approved royalty reduction or termination of the royalty reduction by the State Director, the royalty rate automatically reverts to the royalty rate specified in the lease document. Upon termination, the Bureau of Land Management will send written notice to the operator/lessee, the Minerals Management Service, and the State Governor.

7. Royalty Reductions for Nonproducing Tar Sand Leases

A royalty reduction for tar sand on a combined hydrocarbon lease that has not yet produced shall not be granted unless the lease is part of an existing mine or ongoing mining operation, *and* the lease is expected to be in production within 5 years after the application is filed. Tar sand leases may have the royalty rate reduced either prior to, or after, the startup of mining operations (43 CFR 3141.5–3(b)) on that lease.

8. Associated Minerals

Any associated minerals, including by-products, co-produced minerals or other recovered products, upon which a Federal royalty is paid, also will be considered in evaluating a royalty reduction application.

9. Stage of Production or Development

The stage of production or development of the mining operation is a factor in determining whether a royalty reduction is appropriate. Generally, an operation in a "developmental stage" will not be considered for a royalty reduction. The term "developmental stage" means any activities conducted by the operator/lessee to prepare a mine for commercial production.

10. Accounting and Auditing

In accordance with the Bureau of Land Management/Minerals Management Service Memorandum of Understanding of December 16, 1983, each application will be routed to the Minerals Management Service for review and consultation on accounting, auditing, and product-value issues. The Minerals Management Service will review the applicant's submitted accounting and financial accounting records for the affected operation, unless the submitted application clearly justifies a denial of the royalty reduction request (e.g., where the data show that the ongoing mining operation is being successfully operated at a profit). Where required due to identified inadequacies of the submittal, the Minerals Management Service may conduct an independent analysis. The Minerals Management Service will supply the State Director a written report of the findings of the analysis.

11. Evaluation Criteria

Each royalty reduction application will be evaluated by the Bureau of Land Management utilizing several criteria.

a. The royalty reduction application must show to the State Director's satisfaction that:

(1) The reduction will encourage the greatest ultimate recovery of the resource. (Evidence presented must include actual or estimated mineral tonnage that will be affected.);

(2) The reduction is in the interest of conservation. (The application must address the effect of the proposed reduction on the resource to be saved, recovered, and/or wasted.); and

(3) The reduction will promote development or will enable an otherwise inoperable lease to be successfully mined.

These criteria will be carefully reviewed considering the specific situation for the particular resource, including: Type of mining; site-specific, geological characteristics; local or regional economics or markets; impact on the region; other mining in the area; and other factors.

b. The Bureau of Land Management will conduct a comprehensive economic evaluation of the operating costs and revenue directly associated with the operation. Further, the Bureau of Land Management will review the applicant's approved plan of operation(s), mine plan(s), and/or ongoing mining activities, the conservation and efficiency of resource extraction, future resource extraction projections, and any other resource-associated information. Finally, the Bureau of Land Management will conduct site inspections and verify production.

The Mineral Leasing Act of 1920, as amended, states that royalties may be reduced for the purposes of encouraging the greatest ultimate recovery of the resource and in the interest of conservation. Consequently, all applications will be reviewed with these purposes in mind. The applicant must establish to the satisfaction of the Bureau of Land Management that the recovery and conservation will be positively affected by the reduction, based on whatever reason or rationale is given for promoting development or enabling the lease to be successfully operated. This means that the application must contain an estimate of the *tonnages or reserves affected by approval or denial* of the application.

c. The Minerals Management Service will review the application for royalty account status. It will review the submitted accounting and financial records for the subject operation and conduct the independent analysis referred to above, if necessary. The review is to ensure that reasonable accounting practices were used, and that all accounts and records reflecting past, present, and future operating and capital costs, depreciation, sales, and financing costs associated with the applicant's lease operation are proper and accurate. See Processing Procedures in F. below for further detail.

12. Efficiency of Operations

In determining whether a royalty reduction is warranted, the State Director will consider the operating efficiency of the operation for which the royalty reduction has been requested. The State Director will disapprove applications where, in the State Director's judgment, the operator is utilizing inefficient operating practices.

13. Bypass

Each application will be examined to determine if a refusal to grant a royalty reduction would result in the bypass of Federal mineral resources. If the applicant states that a bypass will occur, such bypass must be fully and conclusively demonstrated by information contained in the application. A royalty reduction may be granted to prevent bypass only where it is shown in the application that alternative reserves are available at an economic advantage. The applicant

must conclusively demonstrate that mining the alternative reserves would provide a competitive profit advantage due to a royalty rate differential compared to the lease upon which a royalty reduction application has been submitted.

14. Final Review Procedures

Each application will be reviewed by the State Director prior to final approval or disapproval. In addition, the Solid Mineral Operations Division (WO-660) will monitor application review and processing to ensure necessary policy consistency in processing of applications.

15. State Governor Coordination

The State Director will coordinate these efforts and ensure that the State Governor is aware of the rationale for approving or disapproving the application. Where the State Governor disagrees with the proposed decision, the conflict resolution process may be invoked from the Bureau of Land Management/Minerals Management Service Memorandum of Understanding (See attached flow chart from the Bureau of Land Management/Minerals Management Service Memorandum of Understanding.)

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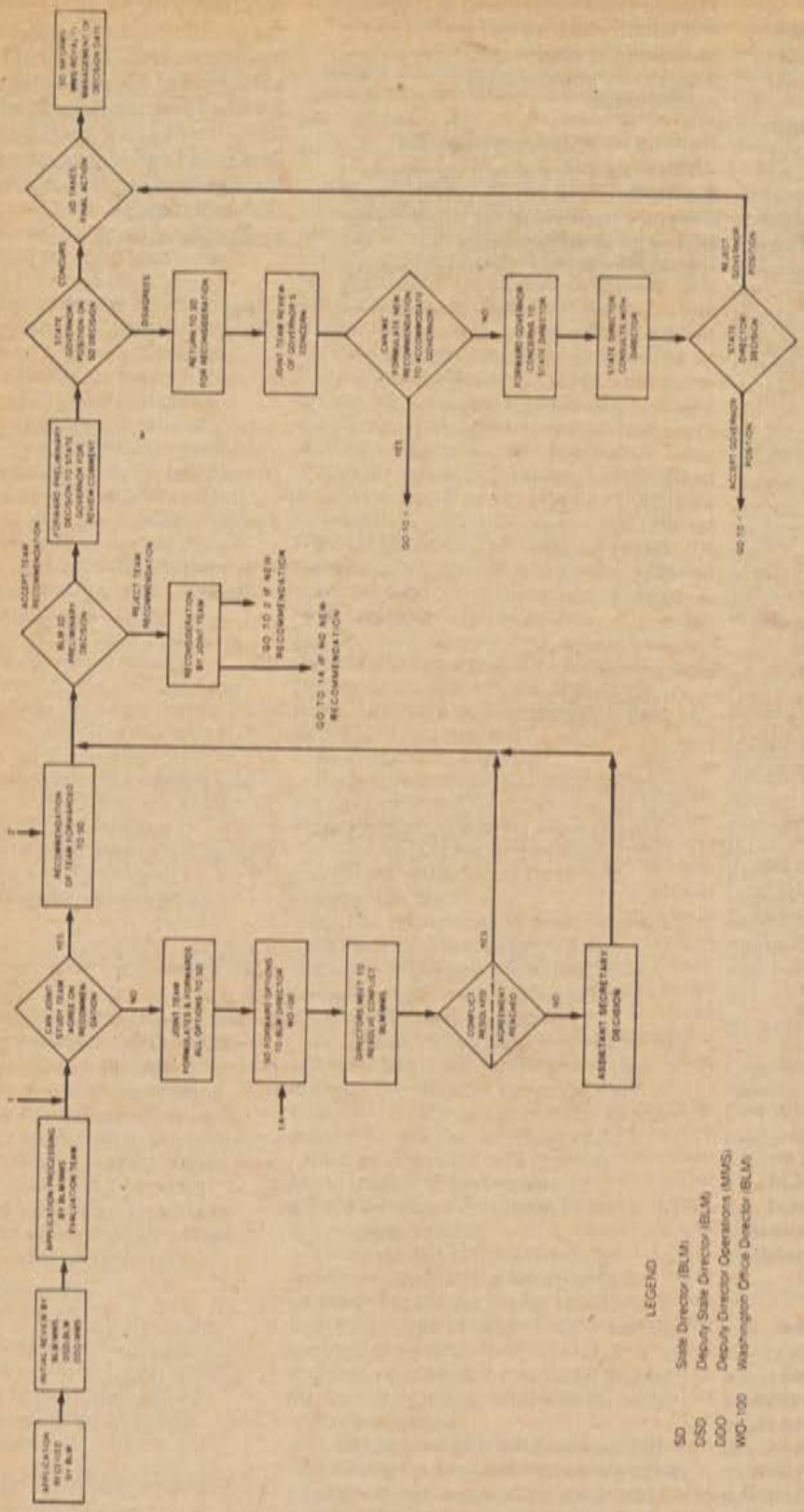
FLOW CHART FOR PROCESSING ROYALTY RATE REDUCTION REQUESTS



LEGEND

SD	State Director (BLM)
DSD	Deputy State Director (BLM)
DOO	Deputy Director Operations (MMS)
WO-100	Washington Office Director (BLM)

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16. Decision Document

The criteria for approval of the royalty reduction and the procedures utilized to determine whether the criteria are met will be summarized in a decision document prepared and signed by the State Director. The decision document shall state whether the Minerals Management Service and Bureau of Land Management reviews found the data to be acceptable and accurate and shall also state whether the analysis of the data submitted by the applicant supports a royalty reduction based on the Copies of the decision document will be sent to the applicant, the Minerals Management Service, and the State. No proprietary information shall be included in the State Director's decision document.

17. Transferability of Royalty Reductions

The following would void any royalty reductions in effect at the time of a transfer: (a) Any total or partial transfer of interest, or sale of the lease(s) for which a royalty reduction has been granted; (b) the sale of the company holding the lease(s); or, (c) any other business transaction interpreted by the State Director to be a *de facto* transfer of ownership. The Bureau of Land Management will notify the Minerals Management Service and the State Governor that the royalty reduction has been terminated and that the royalty rate contained in the lease applies as of the date of transfer. The new lessee (transferee) may apply for a royalty reduction under these guidelines, applicable statutes, and regulations.

18. Confidentiality of Data Submitted

Confidential information in an application for a royalty reduction for a Federal lease, which is identified as such by the lessee, shall be subject to the provisions of 43 CFR Part 2, 43 CFR 3481.3, and 43 CFR 3571.2. Department policy regarding inspection of records is governed by the Freedom of Information Act (5 U.S.C. 522). That Act exempts certain categories of records from disclosure. Information for which the lessee requests proprietary status because of privileged or confidential information may be exempt from public disclosure, *Provided that* such status is determined by the State Director to be warranted. Proprietary information that is requested to be kept confidential shall be clearly identified by the lessee by marking the top of each page that contains proprietary information with the words "CONFIDENTIAL INFORMATION." As appropriate, proprietary information will be shared with the Minerals Management Service.

19. Financial Analysis

For purposes of the financial analysis, *operating lease income* is computed from *net lease sales* minus *lease operating costs* in the financial accounts. "Net lease sales" means *gross lease sales* minus *excise taxes and royalties*. "Lease operating costs" means *mining costs* plus *inventory decrease*. Mine test period lease sales and expenses for purposes of estimating test period lease operating income must be adjusted for special mine or lease conditions, provided unadjusted and adjusted amounts are shown and fully explained. Mine revenues and expenses will be allocated to each lease on the basis of production, if available. Return on capital and off-site overhead will not be included as part of operating costs. All royalty passthrough provisions shall be reflected in the lease revenues. A complete financial analysis of how this financial situation may be continued or changed during the royalty reduction period must also be shown.

An important factor in the decision process on any application will be the findings of the Minerals Management Service analysis of the applicant's submitted accounting and financial records. The analysis will ensure that reasonable accounting practices were used and that all accounts and records, reflecting past, present, and future operating and capital costs, depreciation, sales, and financing costs associated with the applicant's lease operation are properly related. The Minerals Management Service will determine: (a) The effect of a royalty reduction on an operation's profitability; (b) the trade-off analysis associated with royalty loss to the Government-vs-opportunity costs lost for underutilization of resources (this information will be determined by Bureau of Land Management economic analysis); and, (c) the royalty loss implications of a projected decision to other similar requests. Only if all analyses show that on a test-period and projected-period basis the expected lease operating costs exceed the expected net sales, will a royalty reduction be granted.

The test-period and projected-period data will be analyzed to determine the royalty rate that would make inferred lease operating costs equal to net sales value during the respective periods. The lesser of the rate reductions for the test-period and projected-period will apply for the duration of the royalty reduction, if approved.

20. Reduction of Overrides

Federal overriding royalty interests, production payments, or similar interest shall be held in suspension during the times when royalty reductions are in effect.

E. Application Content

The royalty reduction application must be filed in triplicate with the appropriate State Director. All the information submitted in the application must be certified as being correct by the applicant or the applicant's authorized representative *and* by a licensed independent Certified Public Accountant. The Minerals Management Service will verify the analysis of the applicant's submitted accounting and financial data. These guidelines and the regulations at 43 CFR 3485.2 and 3503.3-2(d)(2)(i) detail the data that are needed for a proper analysis. The State Director retains the right to refuse to process any application deemed to contain insufficient data.

The cost and sales data for a royalty reduction must be obtained from the same ongoing mining operation from which the lease(s) covered by the application will be mined (except as provided at 43 CFR 3485.2(c)(2)(ii) for coal only). The State Director will determine whether a lease is part of an ongoing mining operation. It is required that all data must be fully verifiable.

The following information also must be submitted:

1. Each application must show how the reduction will encourage the greatest ultimate recovery of the resource and is in the interest of conservation of the resource. In addition, each application must contain data and a narrative illustrating how the royalty reduction will promote development and/or explaining why the lease(s) cannot be successfully operated under the existing royalty rate(s);

2. The applicant's own financial analysis by lease, *and by mine*, using the applicant's data for the 12-month test period to justify the royalty reduction request. The financial analysis also must detail changes in this financial situation which are likely to occur during the royalty reduction period. The basis for all financial data and analyses submitted must be fully explained;

3. The reduced royalty rate and duration requested, with full justification supplied by the applicant;

4. The mine maps, showing the extent of mining operations on the lease(s), required by 43 CFR 3482.1(c)(4), 3485.2, and 3503.3-2(d)(2)(i);

5. For *in situ* tar sand development, location of all production and injection wells, surface-treatment facilities, product-storage facilities, roads, and projected pipelines;

6. Detailed explanations of all subsurface engineering activities and treatment processes utilized in *in situ* tar sand development;

7. Complete mineral sales data for the latest 12 months segregated by Federal and non-Federal lease, by customer, by mine area (if applicable), and royalty paid by month. The expected sales and prices for bitumen recovered from *in situ* tar sand development projects also should be provided. Anticipated tonnage to be sold and the price expected, by year, for the period for which the royalty reduction is requested also should be provided. Normalized data also should be provided if the test-period data submitted do not reflect normal production, as well as any customer-contract clauses which affect the sales price of the mineral (e.g.; passthrough clauses, mineral quality and tonnage—minimum and maximum, as appropriate—requirements);

8. Where production during the 12-month period has been interrupted due to *force majeure* or any other interruption of mining operations, the cost and revenue data shall be expanded to include 12 months of actual production and associated costs. Costs incurred during such interruptions cannot be utilized to justify a royalty reduction;

9. Complete copies of all contracts for each customer receiving minerals from the area under application for a royalty reduction;

10. A detailed breakdown for the 12-month test period of all operating revenue, costs and financial data for the mine, allocated to each Federal lease covered by the application. Any anticipated changes in mining costs, cost-passthrough provisions, or revenues for the period of the requested royalty reduction also should be clearly identified and explained. The data must be complete through the most recent quarter at the time of the application; updates may be required if delays in processing occur. For the purposes of tar sand production from a combined hydrocarbon lease, these revenues and costs may be anticipated where there have not been 12 months of prior production;

11. Descriptions of current or planned mining or *in situ* method(s), recovery rates, and anticipated stripping ratios and limits (where applicable);

12. Mine production (total and by Federal lease(s)) by month and average production, per day, for the period from which the sales and cost data were obtained for the application for the royalty reduction. A minimum of 12 months of production is required. For *in situ* tar sand production from combined hydrocarbon leases, monthly production of bitumen should be submitted and may include anticipated production if production is not currently ongoing; and

13. Detailed data, analyses, and conclusions which clearly and conclusively demonstrate any bypass that may occur if this application is not granted.

F. Detailed Processing Procedures

1. The State Director:

a. Receives the application from the lessee;

b. Transmits two complete sets of the application to the Minerals Management Service;

c. Requests the Bureau of Land Management Deputy State Director for Mineral Resources to form an Evaluation Team consisting of:

(1) Bureau of Land Management minerals staff;

(2) Bureau of Land Management Economic Evaluation staff; and

(3) Minerals Management Service Royalty Management staff;

d. Designates the Deputy State Director for Mineral Resources as team leader for the evaluation of the application and preparation of evaluation results and recommendations for the State Director;

e. Determines whether adequate, in-house economic evaluation expertise is available and, if not, makes arrangements with other Sate Directors for the economic evaluation;

f. Transmits necessary documentation to the Chief, Solid Mineral Operations Division (WO-660) when it becomes necessary to invoke one of the conflict resolution processes of the Bureau of Land Management/Minerals Management Service Memorandum of Understanding and to submit the disagreement to the Director;

g. Transmits his proposed decision based on the recommendation of the Deputy State Director for Mineral Resources, including pertinent facts and rationale for the decision, to the Chief, Solid Mineral Operations Division (WO-660) for policy review and to obtain the Director's concurrence prior to the State Director's formal consultation with the State;

h. Consults with the State Governor;

i. Takes final action on application, not later than 90 days after receipt;

j. Notifies the Minerals Management Service and the appropriate State officials in writing of approved royalty reductions and their effective dates, terms, and durations;

k. Notifies the applicant in writing of the decision, outlining the rationale for the approval, denial, or partial denial of the royalty reduction. If appropriate, the notification shall state that the royalty rate will *automatically* revert to the rate specified in the lease when the current, approved royalty reduction expires, but in any case the royalty reduction will be subject to annual review by the Deputy State Director for Mineral Resources and possible revocation. The notification will also state the applicant's right of appeal pursuant to 43 CFR Part 4; and

l. Upon expiration of the current, approved royalty reduction period, notifies the applicant, the Minerals Management Service, and the State Governor in writing that the royalty reduction has expired and that the royalty rate has *automatically* reverted to the rate specified in the lease.

2. The Deputy State Director for Mineral Resources will:

a. Coordinate the Evaluation Team Activities, evaluate the findings made by the Evaluation Team and the Minerals Management Service report, and determine whether a royalty reduction is appropriate in consideration of those findings;

b. Transmit necessary documentation to the State Director where the conflict resolution process under the Bureau of Land Management/Minerals Management Service Memorandum of Understanding should be invoked;

c. Determine the rate, term, and duration of the royalty reduction, if any, to be granted using best professional judgment. Document in writing the rationale for the decision, forward it to the State Director for concurrence, and place that documentation on file;

d. Transmit this recommendation, including pertinent facts and rationale for the decision, to the Chief, Solid Mineral Operations Division (WO-660) for review and coordination prior to any formal consultation with the State;

e. Review written reports from the responsible District Office and report to the State Director, as necessary, on the operation; and

f. Review the annual recertification submitted by an applicant whose reduction period exceeds 1 year. Based on this review, recommend to the State Director that the reduction either continue or be terminated.

3. The Bureau of Land Management District Office will:

a. Monitor the ongoing mining operation with an approved royalty reduction during normal inspections to

ascertain whether conditions that warranted the approved reduction continue to exist; and

b. When it is determined that the conditions that warranted the approved reduction have changed or no longer exist, submit a written report of the circumstances to the Deputy State Director for Mineral Resources for review and appropriate action.

4. The Minerals Management Service staff will:

a. Determine whether the submitted accounting and financial reports are accurate and adequate for use in making a decision on the application and whether the application shows conformance with generally accepted, industry accounting practices;

b. When required, conduct an analysis of the applicant's accounts and records for the affected operation, as appropriate, and review each application for a royalty reduction for product-value considerations;

c. Determine the royalty loss implications of a projected decision to other similar requests;

d. Furnish the State Director a written report of its findings and recommendations on a, b, and c above. The report also may include the Minerals Management Service's determination of: (1) The effect of a royalty reduction on the operation's profitability for the period of reduction in the application; (2) the trade-off analysis associated with royalty loss to the Government-vs-opportunity costs lost for underutilization of the resources, as will be detailed in the Bureau of Land Management Economic Evaluation staff's report; and (3) the royalty loss implication of a proposed decision on other similar requests; and

e. Where feasible, work at the same location as the evaluation team.

5. The Evaluation Team will:

a. Review the application for completeness of the submission of required technical and financial information;

b. Determine whether the stage of production or development is appropriate for consideration of a royalty reduction application;

c. Determine whether the lease(s) contained in the application is part of the ongoing mining operation specified in the application;

d. Analyze the application to determine how the reduction would promote development and/or explain why the lease(s) cannot be successfully operated under existing terms;

e. Review the application for "greatest ultimate recovery" and "interest of conservation" considerations;

f. Analyze the ongoing mining operation for its technical efficiency and productivity;

g. Verify the mine operating costs, sales, revenue, and other financial data;

h. Verify evidence presented regarding actual or estimated mineral tonnage affected (saved, recovered, and/or wasted);

i. Verify that the evidence submitted conclusively demonstrates that a bypass will occur absent approval of the application;

j. Review the application and historical record for overriding royalty considerations;

k. Review the application for regulatory and statutory compliance;

l. Coordinate with the Minerals Management Service on financial and audit issues;

m. Determine the likely effects on the conservation of the resource, royalty collected, mineral recovery, and promotion of development as a result of approval or denial of the royalty reduction;

n. Determine the overall advantages and disadvantages to the Federal Government resulting from the approval or denial of the requested royalty reduction; and

o. Recommend an appropriate duration (not to exceed 3 years) of a reduction where the application contains a request for more than 1 year.

G. Final Processing and State Coordination

Once the State Director has determined that the application is complete and that all supplementary information have been received, the State Director will render a decision as to whether a royalty reduction should be granted based on the findings of the Evaluation Team and Minerals Management Service analysis. Prior to making the final decision, however, the State Director shall consult with the appropriate State Governor or designated official to inform them of the pending decision. The State will be provided 30 days for response. If no formal response is received from the State within 30 days, the State Director will continue processing the application while discussions continue with the State to obtain an official position. Any disagreements by the Governor which are not resolved through Bureau of Land Management/Minerals Management Service staff consultation would be resolved by the Director, with appropriate documentation being sent to the Chief, Solid Mineral Operations Division (660).

Thirty days after the notification of the pending decision has been sent to the State and after the Director's concurrence has been received, the State Director shall notify the applicant in writing of that decision and, if approved, that decision will specify the royalty rate that will apply during the reduction period and the duration of the royalty reduction period. The rationale for the decision will be provided in the decision letter to the applicant. If the royalty reduction is approved, the letter shall state that the rate reduction may be varied upward, thereby increasing the royalty rate or that the reduction may be terminated if the factors upon which the royalty reduction are based change or cease to exist. The State Director's decision also shall notify the lessee in writing of the lessee's right of appeal pursuant to 43 CFR Part 4.

When a decision is rendered on a royalty reduction, the State Director shall send copies of the written decision to the State Governor. The State Director also shall send copies of the written decision to the appropriate Bureau of Land Management and Minerals Management Service offices so that the decision may be made a part of the lease record file.

Note.—Royalty reductions are *temporary* and do not constitute a change in the permanent royalty rate specified in the lease document.

If a royalty reduction was approved for more than 1 year, the applicant must submit annual certification of the relevant information which substantiate the need for the reduction to continue. Non-submittal of this information will result in the termination of any reduction.

Upon termination of the effective period of an approved royalty reduction, the royalty rate payable by the lessee shall *automatically* revert to the rate specified in the lease.

[FR Doc. 85-3600 Filed 2-12-85; 8:45 am]

BILLING CODE 4310-84-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal

for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection

The proposed information collection is for use by the Commission in connection with investigation No. 332-135 for the monthly preliminary report on U.S. production of selected synthetic organic chemicals, instituted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)).

Summary of Proposal

(1) Number of forms submitted: One.

(2) Title of form: Preliminary Report on U.S. Production of Selected Synthetic Organic Chemicals (Including Synthetic Plastics and Resins Materials).

(3) Type of request: Reinstatement.

(4) Frequency of use: Monthly.

(5) Description of respondents: Firms manufacturing selected synthetic organic chemicals in the United States.

(6) Estimated number of respondents: 260.

(7) Estimated total number of hours to complete the forms: 3,120.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or comment

Copies of the proposed form and supporting documents may be obtained from James A. Emanuel, telephone (202) 523-0334. Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Francine Picoult, Desk Office of the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Ms. Picoult's telephone number is (202) 395-7231. Copies of any comments should be provided to E. William Fry (U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436).

Issued: February 8, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-3638 Filed 2-12-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-207]

Certain Automotive Transmission Shifters; Commission Decision Not To Review Initial Determination Terminating Two Respondents on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Termination of two respondents on the basis of settlement agreement.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) terminating respondents Toyota Motor Sales Co., Ltd., and Toyota Motor Sales, U.S.A., Inc., in the above-captioned investigation. On December 19, 1984, complainant Grand Haven Stamped Products Division of JSJ Corporation and the Toyota Motor Corporation on behalf of above-named respondents filed a joint motion (Motion No. 207-1) to terminate the aforementioned parties as respondents in the investigation based upon a settlement agreement. The administrative law judge issued on ID granting the motion for termination on January 7, 1985.

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0375.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53). Notice of the ID was published in the **Federal Register** of January 16, 1985 (50 FR 2349). No petitions for review of the ID were filed, nor were any comments received from Government agencies or the public.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Issued: February 6, 1985.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-3641 Filed 2-12-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-225 through 234, 731-TA-213 through 217, 731-TA-219, 731-TA-221 through 226, and 731-TA-228 through 234 (Preliminary)]

Certain Carbon Steel Products From Austria, Czechoslovakia, East Germany, Hungary, Norway, Poland, Romania, Sweden, and Venezuela; Determinations

On the basis of the record [1] developed in its countervailing duty investigations involving certain carbon steel products from Austria, Sweden, and Venezuela, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following products which are alleged to be subsidized by the Governments of the cited countries:

Carbon steel plates, whether or not in coils, provided for in item 607.66 of the Tariff Schedules of the United States (TSUS), from—

Sweden [investigation No. 701-TA-225 (Preliminary)] [2] and

Venezuela [investigation No. 701-TA-226 (Preliminary)]; [2]

Hot-rolled carbon steel sheets, provided for in TSUS items 607.67 and 607.83, from—

Austria [investigation No. 701-TA-227 (Preliminary)],[3]

Sweden [investigation No. 701-TA-228 (Preliminary)],[3] and

Venezuela [investigation No. 701-TA-229 (Preliminary)]; [3] and

Cold-rolled carbon steel plates and sheets, provided for in TSUS item 607.83, from—

Austria [investigation No. 701-TA-230 (Preliminary)].[4]

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairwoman Stern and Commissioner Rohr determine that there is a reasonable indication that the domestic industry is materially injured. Commissioners Eckes and Lodwick determine that there is a reasonable indication that the domestic industry is threatened with material injury. Vice Chairman Liebeler made a negative determination.

[3] Commissioners Eckes and Lodwick determine that there is a reasonable indication that the domestic industry is threatened with material injury. Chairwoman Stern determines that there is a reasonable indication that the domestic industry is materially injured. Commissioner Rohr determines that there is a reasonable indication that the domestic industry is materially injured or threatened with material injury. Vice Chairman Liebeler made a negative determination.

[4] Commissioners Eckes and Lodwick determine that there is a reasonable indication that the domestic industry is threatened with material injury. Chairwoman Stern determines that there is a

Continued

Sweden [investigation No. 701-TA-231 (Preliminary)],[4] and
Venezuela [investigation No. 701-TA-232 (Preliminary).[4]

The Commission determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of the following products which are alleged to be subsidized by the Governments of the cited countries:

Galvanized carbon steel sheets, provided for in TSUS items 608.07 and 608.13, from—
Austria [investigation No. 701-TA-233 (Preliminary)] and
Venezuela [investigation No. 701-TA-234 (Preliminary)].

On the basis of the record developed in its antidumping investigations involving certain carbon steel products from Austria, Czechoslovakia, East Germany, Hungary, Norway, Poland, Romania, and Venezuela, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following products which are alleged to be sold in the United States at less than fair value (LTFV):

Carbon steel plates, whether or not in coils, provided for in TSUS item 607.66, from—
Czechoslovakia [investigation No. 703-TA-213 (Preliminary)],[5]
East Germany [investigation No. 731,-TA-214 (Preliminary)],[5]
Hungary [investigation No. 731-TA-215 (Preliminary)],[5]
Poland [investigation No. 731-TA-216 (Preliminary)],[5] and
Venezuela [investigation No. 731-TA-217 (Preliminary)];[5]

Hot-rolled carbon steel sheets, provided for in TSUS items 607.67 and 607.83, from—
Austria [investigation No. 731-TA-219 (Preliminary)],[6]
Hungary [investigation No. 731-TA-221 (Preliminary)],[6]
Romania [investigation No. 731-TA-222 (Preliminary)],[6] and
Venezuela [investigation No. 731-TA-223 (Preliminary)];[6]

Cold-rolled carbon steel plates and sheets, provided for in TSUS item 607.83, from—
Austria [investigation No. 731-TA-224 (Preliminary)],[7]
Czechoslovakia [investigation No. 731-TA-225 (Preliminary)],[7]
East Germany [investigation No. 731-TA-226 (Preliminary)],[7]
Romania [investigation No. 731-TA-228 (Preliminary)],[7] and
Venezuela [investigation No. 731-TA-229 (Preliminary)];[7] and

Carbon steel angles, shapes, and sections having a maximum cross-sectional dimension of 3 inches or more, provided for in TSUS item 609.80, from—
Norway [investigation No. 731-TA-234 (Preliminary)],[8] and
Poland [investigation No. 731-TA-235 (Preliminary)].[8]

The Commission determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of the following products which are alleged to be sold in the United States at less than fair value:

Galvanized carbon steel sheets, provided for in TSUS items 608.07 and 608.13, from—
Austria [investigation No. 731-TA-230 (Preliminary)],
East Germany [investigation No. 731-TA-231 (Preliminary)],
Romania [investigation No. 731-TA-232 (Preliminary)], and
Venezuela [investigation No. 731-TA-233 (Preliminary)].

reasonable indication that the domestic industry is materially injured. Commissioner Rohr determines that there is a reasonable indication that the domestic industry is materially injured or threatened with material injury. Vice Chairman Liebeler made a negative determination.

[4] Chairwoman Stern and Commissioner Rohr determine that there is a reasonable indication that the domestic industry is materially injured. Commissioners Eckes and Lodwick determine that there is a reasonable indication that the domestic industry is threatened with material injury. Vice Chairman Liebeler made a negative determination.

[5] Commissioners Eckes and Lodwick determine that there is a reasonable indication that the domestic industry is threatened with material injury. Chairwoman Stern determines that there is a reasonable indication that the domestic industry is materially injured. Commissioner Rohr determines that there is a reasonable indication that the domestic industry is materially injured or threatened with material injury. Vice Chairman Liebeler made a negative determination.

[6] Commissioners Eckes, Lodwick, and Rohr determine that there is a reasonable indication that the domestic industry is threatened with material injury. Chairwoman Stern and Vice Chairman Liebeler made negative determinations.

[7] Commissioners Eckes, Lodwick, and Rohr determine that there is a reasonable indication that the domestic industry is threatened with material injury. Chairwoman Stern and Vice Chairman Liebeler made negative determinations.

Background

These investigations were instituted in response to petitions filed with the Commission and the Department of Commerce by the United States Steel Corp., Pittsburgh, PA, and Chaparral Steel Co., Midlothian, TX, on December 19, 1984, and by Bethlehem Steel Corp., Bethlehem, PA, on December 20, 1984. The petitions allege that imports of certain carbon steel products from Austria, Czechoslovakia, East Germany, Finland, Hungary, Norway, Poland, Romania, Sweden, and Venezuela are being subsidized by the respective foreign Governments (countervailing duty petitions) and/or sold in the United States at less than fair value (antidumping petitions) and that industries in the United States are materially injured or threatened with material injury by reason of such imports.

Notice of the institution of the Commission's investigations and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 2, 1985 (50 FR 186). The conference was held in Washington, DC, on January 9, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

On January 18, 1985, Bethlehem Steel Corp., the petitioner in all of the Commission's antidumping investigations concerning imports of certain carbon steel products from Finland, withdrew its petitions. On January 25, 1985, the Commission was notified by the Department of Commerce that, based on the withdrawal of the petitions, it was terminating its investigations concerning imports of such merchandise from Finland. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the following investigations were terminated:

Carbon steel plates in coils from Finland (investigation No. 731-TA-218 (Preliminary));
Hot-rolled carbon steel sheets from Finland (investigation No. 731-TA-220 (Preliminary)); and
Cold-rolled carbon steel sheets from Finland (investigation No. 731-TA-227 (Preliminary)).

The Commission transmitted its report on these investigations to the Secretary of Commerce on February 4, 1985. A public version of the Commission's report, Certain Carbon Steel Products

from Austria, Czechoslovakia, East Germany, Hungary, Norway, Poland, Romania, Sweden, and Venezuela (investigations Nos. 701-TA-225-235 (Preliminary) and 731-TA-213-217, 219, 221-226, and 228-235 (Preliminary), USITC Publication 1642, February 1985) contains the views of the Commission and information developed during the investigations.

Issued: February 4, 1985.
By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 85-3645 Filed 2-12-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-196]

Certain Apparatus for Installing Electrical Lines and Components Therefor; Commission Decision To Review Portions of the Initial Determination; Request for Written Submissions on Those Portions and on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Review of portions of an initial determination (ID) finding two respondents in default and granting complainant's motion for summary determination; request for written submission on those portions of the ID and on remedy, the public interest and bonding.

SUMMARY: The Commission has determined to review part of the administrative law judge's (ALJ's) ID in the above-captioned investigation finding two respondents in default and granting the motion of complainant Scoggins Manufacturing, Inc. (SMI), for summary determination of violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), except as to respondent Ming Chang Carpenter Auger Bit Co., Ltd. The Commission has determined to review the ALJ's findings of no direct infringement, no contributory infringement as to the flexible drill, and the existence and infringement of a common law trademark, and to request written submissions on those issues and on remedy, the public interest, and bonding. The Commission has determined not to review the ALJ's findings regarding the remaining issues in the ID.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of General Counsel, tel. 202-523-0499.

SUPPLEMENTARY INFORMATION: On May 14, 1984, complainant SMI filed a complaint alleging unfair methods of competition and unfair acts in the importation and sale of certain apparatus for installing electrical lines. On June 20, 1984, the Commission instituted an investigation to determine whether there is a violation of section 337 by reason of: (1) Direct, contributory, and induced infringement of the claims of U.S. Letters Patent Nos. 3,697,188 and 3,611,549; (2) infringement of complainant's common law trademark; (3) false advertising; and (4) passing off. On December 27, 1984, the ALJ issued an ID which found two respondents in default and granted complainant's motion for summary determination of violation of section 337. The ALJ determined that there was a violation of section 337 in the unauthorized importation and sale of certain apparatus for installing electrical lines and components therefor, based on findings of (1) contributory infringement of the coupling device; (2) induced infringement of the flexible drill and the coupling device; (3) the existence and infringement of a common law trademark; (4) passing off; and (5) false advertising. Complainant filed a petition for review. No other petitions for review or agency comments were received.

After examining the petition for review, the brief in support of the petition, and the response thereto, the Commission has concluded that this case presents certain issues that warrant review. Specifically, based on the petition for review, the Commission has determined to review the following issues:

1. Whether there is a violation of section 337 by reason of direct infringement of U.S. Letters Patent No. 3,697,188 and/or 3,611,549. In addition to the points raised in the petition for review, the Commission requests written submissions on whether in the absence of direct infringement, there can be contributory or induced infringement. The Commission also requests written submissions on the question of whether the drill apparatus is being imported separate and apart from the coupling device and, if so, what effect this fact should have on the Commission's determination regarding violation of section 337.

2. Whether there is contributory infringement of the flexible drill of U.S. Letters Patent 3,697,188.

3. Whether there is contributory infringement of the process patent, U.S. Letters Patent 3,611,549.

On its own motion, the Commission has determined to review the issue of the existence and infringement of a common law trademark. The Commission will specifically examine whether in light of the recent decision of the Court of Appeals for the Federal Circuit in *Textron, Inc.* v. *U.S. International Trade Commission*, Appeal No. 84-1261 (January 24, 1985), complainant SMI has established *prima facie* evidence of secondary meaning of a common law trademark. If secondary meaning has not been established, the Commission wishes to be advised whether complainant desires a remand to the ALJ in order to submit further evidence on this issue.

The Commission's review will be limited to the above issues. No other issues will be considered.

Notice of this investigation was published in the **Federal Register** of June 20, 1984, at 49 FR 25318.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930 and in §§ 210.50-210.56 of the Commission's Rules of Practice and Procedure (49 FR 46137 (November 23, 1984); to be codified at 49 CFR 210.50-210.56).

Written Submissions

The parties to the investigation are requested to file submissions on the issues under review not later than the close of business on the day that is fourteen (14) days after publication of this notice in the **Federal Register**.

If the Commission determines that there is a violation of section 337, it may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States and/or (2) cease-and-desist orders forbidding unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of relief, if any, that should be ordered.

If the Commission contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or cease-and-desist orders would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles that are like or directly competitive with those that are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting relief would have on the public interest.

If the Commission orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an

amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond, if any, that should be imposed.

The parties to the investigation and interested Government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease-and-desist orders for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions on remedy, the public interest, and bonding must be filed not later than the close of business on the day that is fourteen (14) days after publication of this notice in the **Federal Register**. Reply written submissions on remedy, the public interest, and bonding must be filed not later than the close of business on the day that is twenty-one (21) days after publication of this notice in the **Federal Register**.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the ALJ. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissons will be available for public inspection at the Secretary's office.

Issued: February 5, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-3646 Filed 2-12-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-203]

Certain Floppy Disk Drives and Components Thereof; Commission Decision Not To Review Initial Determinations Terminating Three Respondents on the Basis of Consent Orders; Issuance of Consent Orders

AGENCY: International Trade Commission.

ACTION: Termination of respondents Jay J. Ahn (Ahn), Herbert Berger (Berger), and G. Edward Wilka (Wilka) on the basis of consent orders.

SUMMARY: The U.S. International Trade Commission has determined not to review two initial determinations (IDs) (Orders Nos. 22 and 23) terminating respondents Ahn, Berger, and Wilka in the above-captioned investigation on the basis of consent orders.

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1693.

SUPPLEMENTARY INFORMATION: On November 14, 1984, complainant Tandon Corp., respondents Berger and Wilka, and the Commission investigative attorney jointly moved (Motion No. 203-22) to terminate this investigation as to respondents Berger and Wilka on the basis of a consent order incorporating a consent order agreement and a settlement agreement. On December 6, 1984, complainant Tandon Corp., respondent Ahn, and the Commission investigative attorney jointly moved (Motion No. 203-31) to terminate this investigation as to respondent Ahn on the basis of a consent order incorporating a consent order agreement and a settlement agreement. On December 28, 1984, the administrative law judge issued two IDs terminating the investigation with respect to respondents Ahn, Berger and Wilka on the basis of consent orders. No petitions for review of the IDs, or comments from Government agencies or the public were received.

Termination of the investigation as to respondents Ahn, Berger, and Wilka on the basis of the consent orders furthers the public interest by conserving Commission resources and those of the parties involved.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.51 and 210.53 of the Commission's rules (49 FR 46, 123; to be codified at 19 CFR 210.51 and 210.53). Notice of the initial determinations was published in the **Federal Register** of January 9, 1985 (50 FR 1136).

Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Issued: February 5, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-3644 Filed 2-12-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-187]

Certain Glass Construction Blocks; Commission Decision Not To Review Initial Determination Deleting Respondent From the Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Deletion of respondent Weck America Inc. from the notice of investigation.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) deleting respondent Weck America Inc. (Weck) from the notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

SUPPLEMENTARY INFORMATION: On November, 27, 1984, complainant Pittsburg Corning Corporation filed a motion (Motion No. 187-27) to amend its complaint to withdraw respondent Weck from the investigation, and to amend the notice of investigation to delete Weck from the notice of investigation. On November 16, 1984, the administrative law judge issued an ID (Order No. 23) deleting respondent Weck from the notice of investigation, published in the **Federal Register** of March 14, 1984 (49 FR 9627), on the grounds that there is no entity named Weck America Inc. No petitions for review of the ID were filed nor were any comments received from Government agencies.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule § 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are

available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Issued: February 4, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-3636 Filed 2-12-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-171]

Certain Glass Tempering Systems; Amendment of an Erroneous Finding of Fact and Denial of Respondents' Petition for Reconsideration

AGENCY: International Trade Commission.

ACTION: Amendment of an erroneous finding of fact and denial of respondents' petition for reconsideration.

SUMMARY: The Commission has granted a motion to amend Finding of Fact 276 contained in the initial determination (ID) on violation, which is now the Commission's determination in this investigation. This finding of fact will now indicate that two of the sales of glass tempering systems that were made in the United States by respondents involve glass tempering systems that can produce 96-inch-wide tempered galss instead of 84-inch-wide tempered glass.

The Commission has denied respondents' petition for reconsideration because the Commission's reliance on the erroneous finding of fact in its opinion on remedy, the public interest, and bonding was harmless error and because the respondents had ample opportunity to correct the record before this finding of fact was relied on by the Commission.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.

SUPPLEMENTARY INFORMATION: On November 16, 1984, the Commission issued a limited exclusion order in this investigation against infringing glass tempering systems produced by AB Kyro OY of Finland. This order was based on an unreviewed ID by the administrative law judge that there was a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). After considering submissions on remedy, the public interest, and bonding, the Commission decided that there were no public interest factors precluding issuance of a limited exclusion order.

Respondents moved (Motion 171-30) for amendment of Finding of Fact 276, which was relied on by the Commission when it indicated in a footnote to its opinion that the record did not support respondents' allegations that they had sold in the United States glass tempering systems with the capability of producing 96-inch-wide glass tempering systems. Respondents also petitioned for reconsideration of the Commission's decision to issue its limited exclusion order because the Commission had relied on an erroneous finding of fact.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E. Street NW., Washington, DC 20436, telephone 202-523-0161.

Issued: February 7, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-3639 Filed 2-12-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-235 (Preliminary)]

Iron Ore Pellets From Brazil; Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury,[2] by reason of imports from Brazil of iron ore pellets, provided for in item 601.24 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Brazil.

Background

On December 20, 1984, a petition was filed with the Commission and the Department of Commerce by counsel for the Cleveland-Cliffs Iron Co., Oglebay Norton, Co., Pickands Mather & Co., and the United Steelworkers of America, on behalf of the domestic industry producing iron ore pellets, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of iron ore pellets from Brazil. Accordingly, effective December 20, 1984, the Commission instituted preliminary countervailing duty investigation No. 701-TA-235 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 27, 1984 (49 FR 50314). The conference was held in Washington DC, on January 10, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce of February 4, 1985. The views of the Commission are contained in USITC Publication 1640 (February 1985), entitled "Iron Ore Pellets from Brazil: Determination of the Commission in Investigation No. 701-TA-235 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: February 5, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-3643 Filed 2-12-85; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairwoman Stern and Commissioner Lodwick determine that there is a reasonable indication that an industry in the United States is threatened with material injury only.

[Investigation No. 337-TA-206]

Certain Surgical Implants for Fixation of Bone Fragments; Commission Decision Not To Review Initial Determination Joining Respondent

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination (ID) joining respondent.

SUMMARY: The Commission has determined not to review an ID granting a motion to amend the complaint and notice of investigation to join I.Q.L., S.A., Valencia, Spain, as a party respondent in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202-523-0493.

SUPPLEMENTARY INFORMATION: On January 4, 1985, the Commission's administrative law judge issued an ID granting a motion to join I.Q.L., S.A., as a respondent on the ground that it is the successor in interest to present respondent DePuy, S.A. The Commission received neither a petition for review of the ID nor comments from other Government agencies.

The authority for the Commission's action is found in 19 U.S.C. 1337 and Commission rule § 210.53. (49 FR 46137) to be codified at 19 CFR 210.53.

Issued: February 4, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-3647 Filed 2-12-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-198 (Final) and 701-TA-220 (Final)]

Certain Welded Carbon Steel Pipes and Tubes From Spain

AGENCY: International Trade Commission.

ACTION: Termination of investigations.

SUMMARY: On January 18, 1985, the Commission received a letter from petitioner in the subject investigations (The Committee on Pipe and Tube Imports) which stated, with respect to each of the cited investigations, that ". . . The Committee on Pipe and Tube Imports hereby withdraws . . . antidumping and countervailing duty petitions filed by it on July 17, 1984." Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the following investigations are terminated.

Certain Weldon Carbon Steel Pipes and Tubes from Spain (investigation No. 731-TA-198 (Final)); and

Certain Weldon Carbon Steel Pipes and Tubes from Spain (investigation No. 701-TA-220 (Final)).

EFFECTIVE DATE: February 4, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202-523-0399), Office of Investigations, U.S. International Trade Commission, 701 E Street NW, Washington, DC 20436.

Authority: These investigations are being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

Issued: February 5, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-3642 Filed 2-12-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-180]

Certain X-Ray Image Intensifier Tubes; Designation of Investigation as "More Complicated"; Extension of Deadline for Completion

AGENCY: International Trade Commission.

ACTION: Designation of investigation as "more complicated" and extension of deadline for completion of investigation.

SUMMARY: The Commission has designated the about-captioned investigation "more complicated" pursuant to 19 U.S.C. 1337(b)(1) and has changed the deadline for completing the investigation from February 1, 1985, to March 15, 1985.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTAL INFORMATION:

Background

The investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 U.S.C. 1337a in the importation or sale of certain X-ray image intensifier tubes. The proceedings were instituted on the basis of a complaint filed by Varian Associates, Inc., alleging infringement of two U.S. patents owned by Varian. The respondents are the Dutch corporation N.V. Philips Gloeilampenfabricken and related U.S. companies North American Philips Corp. and Philips Medical Systems, Inc. (See 49 FR 4046 (February 1, 1984), as amended at 49 FR 6416 (February 21, 1984).)

On November 1, 1984, the presiding administrative law judge (the ALJ) issued an initial determination (ID) holding that there is a violation of section 337 and 19 U.S.C. 1337a, as alleged in the complaint. On December 19, 1984, the Commission ordered a review of portions of the ID relating to the validity and enforceability of the patents in controversy. Before a notice of review could be issued, the parties entered into a patent licensing agreement. On January 23, 1985, complainant Varian moved to terminate the investigation (Motion No. 180-6"C").

The 1-year statutory deadline for completing the subject investigation was February 1, 1985. (See 19 U.S.C. 1337(b)(1).) Completion by that date was not possible for the following reasons.

First, the deadline for the nonmoving parties to respond to the complainant's motion to terminate was February 4, 1985.

Second, there is a dispute among the parties concerning the application of Commission rule § 210.51(b)(1) (the submission of a public version of the licensing agreement). Although Varian provided a public inspection copy of the agreement along with the motion to terminate, on January 28, 1985, Philips filed a motion requesting that the Commission withhold Varian's nonconfidential version from public inspection and grant confidential treatment to the agreement in its entirety (Motion No. 180-7"C"). The motion goes on to say that if a version of the agreement must be available for public inspection, only the provisionally nonconfidential version supplied by Philips should be used for that purpose. The deadline for Varian and the Commission investigative attorney to respond to Philips' motion is February 11, 1985.

Finally, once the reponses to both motions have been received, adequate time must be allotted for the Commission to consider the parties' arguments and determine whether to grant the motions.

The Commission determined that the aforesaid circumstances constitute "other significant factors" that warrent designating the investigation "more complicated" and extending the deadline for completion. (See 19 CFR 210.59, as amended in 49 FR 46123 (November 23, 1984) and 19 U.S.C. 1337(b)(1).)

Public Inspection

All nonconfidential documents on the records of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471.

Issued: February 6, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-3640 Filed 2-12-85; 8:45 am]

BILLING CODE 7020-02

INTERSTATE COMMERCE COMMISSION

Chicago & North Western Transportation Co.; Intent To File an Application for the Construction and Operation of a Railroad Line in Campbell County, WY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of intent to prepare an environmental assessment and invitation to comment.

SUMMARY: The Chicago and North Western Transportation Company (C&NW) intends to file an application for authority to construct and operate a 10-mile rail line as an extension to the Powder River Basin line which it jointly owns and operates with the Burlington Northern Railroad Company. The proposed extension would enable the C&NW to provide competitive rail service to three additional coal mines in northwest Wyoming. The purpose of this notice is to announce our intention to prepare an environmental assessment and to invite comment.

Comments: Interested persons are invited to submit written comments on our intention to prepare an environmental assessment and on any other pertinent environmental matters. Written comments should be addressed to: Section of Energy and Environment, Interstate Commerce Commission, Room 4143, 12th & Constitution Avenue NW., Washington, D.C. 20423.

DATES: Written coments should be submitted to the above address on or before March 15, 1985.

FOR FURTHER INFORMATION CONTACT: Elaine Kaiser, (202) 275-0800.

The Chicago and North Western Transportation Company (C&NW) and its wholly owned subsidiary, Western Railroad Properties, has notified the Commission's Section of Energy and Environment that they intend to file an application for authority to construct and operate approximately 10 miles of rail line in order to expand rail service in the Powder River Basin. The proposed construction would extend north from the Powder River Basin coal line which is jointly owned and operate by the N&NW and the Burlington Northern Railroad Company (BN). C&NW plans to locate the new line in the corridor that closely parallels the existing BN line north of Coal Creek Junction. More specifically, the proposed rail line would extend from the vicinity of Coal Creek Junction to the Caballo mine of Carter Mining Company (a subsidiary of Exxon Coal USA, Inc.) located about 15 miles south of Gilette in Campbell County, Wyoming. C&NW has submitted a map showing the corridor for the proposed extension. The precise alignment for the new rail line has not been finalized.

In addition to Exxon's Caballo mine, the new line would serve Amax Coal Company's Belle Ayr Mine and Mobil Coal Producing, Inc.'s Caballo Rojo Mine. C&NW states that the proposed extension would enable it to provide desired competitive rail service to these three mines which produce approximately 24 million tons of coal a year. It would also enable C&NW to offer competitive service to utilities that use or could use the coal produced by these mines.

C&NW states it will forego the proposed construction if BN voluntarily grants C&NW access to its line north of Coal Creek Junction on terms similar to those governing the ownership and operation of the Powder River Basin line. In the absence of such an agreement, C&NW will proceed with its rail constructionplan.

Under the Commission's environmental rules (49 CFR Part 1105), rail line construction projects normally require preparation of an environmental impact statement. In this case, however, based on our initial review of C&NW's submission and a preliminary investigation, we have identified no potentially significant or unmitigable environmental effects associated with the proposed line extension. Accordingly, we intend, at least initially, to evaluate the environmental ramifications of applicant's proposal in an assessment. Our analysis will include examination of alternative routes within C&NW's broadly defined corridor. Also, in conducting our assessment, we will coordinate and consult with other Federal and State agencies as needed.

Interested persons are invited to comment on our preliminary determination to conduct an environmental assessment as well as any specific environmental issues which may be relevant to the proposed extension.

Dated: February 5, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85-3469 Filed 2-12-85; 8:45 am]

BILLING CODE 7035-01-M

[Section 5a Application No. 46; Am dt. No. 15]

Southern Motor Carriers Rate Conference, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Southern Motor Carriers Rate, Conference, Inc. (SMCRC), has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980, an application for approval of its ratemaking agreement [1] under 49 U.S.C. 10706(b). Because several modifications are required before the agreement receives final approval, and because of the new and complex questions involved in determining whether the agreement is consistent with the 1980 Act and the decision implementing it, the Commission has decided to solicit public comment on its interpretation and application of specific rate bureau provisions. Copies of SMCRC's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC, 20423, and from applicant's representatives: L. Vernon Farriba, Sherman D. Schwartzberg, Southern Motor Carriers Rate, Conference, Inc., 1307 Peachtree Street, NE., Atlanta, GA 30309.

Copies of the complete Commission decision are available for inspection and copying at the Interstate Commerce Commission, or may be purchased from TS Infosystems, Inc., Room 2227, Interstate Commerce Commission Building, 12th St. and Constitution Ave., NW., Washington, DC 20423; or call toll free (800) 424-5403, or (202) 289-4357 in the Washington, DC, metropolitan area.

DATES: Comments from interested persons are due March 15, 1985. Replies are due April 1, 1985.

ADDRESS: An original and fifteen copies, if possible, of comments should be sent to: Section 5a Application No. 46, Room 2203, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Leonard L. Arnaiz, (202) 275-7831.

or

Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Southern Motor Carriers Rate Conference, Inc.

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[1] Southern Motor Carriers Rate Conference, Inc.'s agreement contains a separate agreement between SMCRC and Niagara Frontier Tariff Bureau, Inc., entitled "South-Ontario/Quebec Interterritorial Agreement." Provisions of this agreement correspond to those in SMCRC's main amended agreement. The Commission has provisionally determined that the interbureau agreement should not be treated as a separate collective ratemaking agreement subject to the terms of Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureaus-Implementation of P.L. 96-296*, 364 I.C.C. 464 (1980).

(SMCRC) has filed an application for approval of its proposed amended collective ratemaking agreement as required by section 14(e) of the Motor Carrier Act of 1980 (MCA), Pub. L. 96-296 (1980). Since filing its application, SMCRC has been obligated to observe the requirements of Section 14 of the MCA and the standards set forth in our decision implementing Section 14, found in Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureaus-Implementation of Pub. L. 96-296*, 364 I.C.C. 464 (1980), and 364 I.C.C. 921 (1981), in order to enjoy antitrust immunity for certain activities.

We have provisionally approved SMCRC's agreement as consistant with 49 U.S.C. 10706(b) and Ex Parte No. 297 (Sub-No. 5), *supra*, subject to certain conditions and modifications including the following subject areas: Identification and description of member-carriers; employee docketing; final disposition of cases; single-line rates; and general increases and decreases and zone of rates freedom. In addition we have requested clarification of proxy voting. We have also offered comments and imposed requirements concerning the agreement generally. SMCRC has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision provisionally approving the agreement.

In light of the complex interpretation involved in determining whether the agreement is consistent with the MCA and Ex Parte No. 297 (Sub-No. 5), *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria generally, and their application to SMCRC's agreement in particular. In addition, we request comments on our determination that the proposed interterritorial agreement should be considered part of SMCRC's main amended agreement and not as a separate collective ratemaking agreement subject to the terms of Ex Parte No. 297 (Sub-No. 5), *supra*.

A copy of any comments filed with the Commission must also be served on SMCRC, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that SMCRC must submit to the Commission as a condition precedent to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: February 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioner, Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-3584 Filed 2-12-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Dockets Nos. 84-1 and 84-2]

Revocation of Registration; Unarex of Plymouth Road d.b.a. Motor City Prescription and Unarex of Dearborn, d.b.a. Motor City Prescription Center

On December 22, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed Orders to Show Cause to Unarex of Plymouth Road, d/b/a Motor City Prescription, 20510 Plymouth Road, Detroit, Michigan 48228 and to Unarex of Dearborn, d/b/a Motor City Prescription Center, 22433 Michigan Avenue, Dearborn, Michigan 48124, the Respondents herein. The Orders to Show Cause sought to revoke DEA Certificates of Registration AU3119220 and AU4109927 issued previously to these pharmacies, and to deny any pending applications for renewal registrations.

The statutory predicate under 21 U.S.C. 824(a)(2) for the Order to Show Cause directed to Unarex of Plymouth Road was the November 5, 1982 conviction in the United States District Court for the Eastern District of Michigan of Melvin Boyer, R.Ph., the practicing pharmacist and a former officer and director of Unarex of Plymouth Road. Boyer was convicted of conspiracy to possess with intent to distribute, and to distribute, controlled substances in violation of 21 U.S.C. 846, a felony relating to controlled substances. The statutory predicate for the Order to Show Cause directed to Unarex of Dearborn was the July 14, 1983, conviction in the United States District Court for the Eastern District of Michigan of Erwin Wolf, R.Ph., the practicing pharmacist and a former shareholder of Unarex of Dearborn. Wolf was convicted of two counts of unlawful distribution of controlled substances in violation of 21 U.S.C. 841 (a)(1) and two counts of aiding and abetting, in violation of 18 U.S.C. 2, felony offenses relationg to controlled substances.

Respondent pharmacies, through counsel, requested a hearing on the issues raised by the Orders to Show Cause and these matters were placed on the docket of Administrative Law Judge Francis L. Young. Following preliminary proceedings, including consolidation of these matters for hearing, Judge Young presided at the hearings held in Ann Arbor, Michigan on May 22 and 23, 1984.

On November 21, 1984, Judge Young issued his recommended ruling, findings of fact and conclusions of law, in which he recommended revocation of the subject registrations and the denial of any pending applications for renewal. Counsel for Respondents timely filed exceptions to the recommended ruling pursuant to 21 CFR 1316.66 and on December 24, 1984, the Matters were referred to the Administrator for consideration. The Administrator has carefully reviewed all the evidence in the record, including the exceptions filed by Respondents. After examining the record in its entirety, the Administrator hereby adopts the findings of fact and conclusions of law recommended by the Administrative Law Judge. For the reasons set forth below, the Administrator also adopts the recommended ruling of the Administrative Law Judge, and hereby revokes Certificates of Registration AU3229220 and AU4109927, and denies any pending applications for renewal.

Findings of Fact—Unarex of Plymouth Road

Judge Young found that the investigation that eventually led to the conviction of Melvin Boyer, and many others, began in October 1979 when a DEA Diversion Investigator learned that one Nellie Belle Kassim was transporting large quantities of Preludin, Desoxyn and Dilaudid from Detroit to Wasington, DC. Ms. Kassim obtained these drugs by having certain physicians working in so-called "clinics" in the Detroit area write prescriptions for which no legitimate medical need existed. The prescriptions were then filled at several cooperating pharmacies, including Unarex of Plymouth Road. Ms. Kassim initially operated a clinic at 3800 Woodward Avenue in Detroit called the Downtown Medical Center. There she employed one Alan D. Fields, D.O. Visits to this clinic by undercover police officers verified that persons could, and did obtain prescriptions for Preludin tablets there without undergoing any physical examination and without manifesting any symptoms that would require medication with Preludin. The

Administrator revoked Dr. Fields' registration in 1981. See 46 FR 48345 (1981).

The existence of lines of persons waiting to get into the clinic prompted complaints from legitimate physicians with offices in the building and in April, 1980, the building management evicted the Downtown Medical Clinic from 3800 Woodward Avenue. Ms. Kassim promptly reopened the clinic for business at 1553 Woodward Avenue in Detroit. In late April 1980 undercover officers of the Ypsilanti and Inkster Police Departments obtained prescriptions for Preludin there without either a showing of medical necessity or benefit of physical examination. The clinic, changing its name to Medical Center Medical Clinic and later to Bariatric Medical Center moved in the summer of 1980 to 9964 Gratiot Avenue in Detroit. In mid-September, 1980, a Detroit police officer operating undercover obtained a prescription for Preludin from Dr. Fields at the Bariatric Medical Center. Again, this purchase of a prescription was without any showing of medical necessity and without benefit of a physical examination. Certain persons were regularly going to the Gratiot Avenue address and, without any legitimate medical need or examination, were obtaining as many as 50 or 60 Preludin prescriptions at a time and taking them to the cooperating pharmacies where they were filled. On September 22, 1980, DEA Special Agents executed a search warrant at the premises at 9964 Gratiot Avenue and uncovered records documenting extensive illegal prescribing of controlled substances by Dr. Fields and other physicians working there. The clinic moved in October, 1980, to a location at 18055 Greenfield in Detroit.

In a 15-day period between December 5 and December 20, 1980, three of the Motor City Prescription Center stores, one of which was Unarex of Plymouth Road, purchased a total of 50,200 dosage units of phenmetrazine (Preludin) from a wholesale drug distributor in Chicago, who informed DEA investigators in Chicago of their concern about filling such large orders of phenmetrazine. Unarex of Plymouth Road was one of the pharmacies which cooperated with Nellie Belle Kassim and her prescription-mill clinics. Frequent telephone calls were made between the clinic and Unarex of Plymouth Road in December, 1980 and in January, 1981. On one occasion Ms. Kassim gave a clinic employee a package to take to Unarex of Plymouth Road where he later retrieved a package containing Preludin. The employee, who at one point was being paid in prescriptions for his work at the clinic, drove Ms. Kassim to the Unarex of Plymouth Road store on another occasion. Ms. Kassim's sister was arrested in Washington, D.C. for possession of controlled substances with intent to distribute. When she was arrested, she had in her possession a large quantity of Preludin. Some of it had come from Melvin Boyer. Ms. Kassim had not paid Boyer for the drugs. Boyer was sending the drug to be sold on his own behalf. Ms. Kassim's sister was expected to sell 9,000 tablets of this Preludin for at least $5 apiece. Large quantities of the Preludin diverted from legitimate channels in the Detroit area by the Kassim clinics and their cooperating pharmacies found their way into North Carolina and to Washington, D.C.

On July 10, 1981, DEA Diversion Investigators served a notice of inspection on Melvin Boyer as the practicing pharmacist at Unarex of Plymouth Road. The investigators were looking for Schedule II prescriptions written by Dr. Fields or other physicians working at the clinics from late Spring 1980 to July 10, 1981. Large numbers of such prescriptions were found at Unarex of Plymouth Road. During a previous investigation of the Unarex of Plymouth Road pharmacy, Detroit Police Department officers visited the pharmacy in 1971 and early 1972, and inspected Melvin Boyer's prescription file. Boyer stated that he resented the officer's intrusion into the store and the he had no intention of verifying the prescriptions. He told the officers that he had no time to sit down and discuss the matter with them and that his primary duty was to serve his customers and to keep up the store's profits.

The DEA Investigator who headed the Kassim investigation was present with an investigator of the State of Michigan Department of Licensing and Regulation in November, 1982, when the Michigan officer served Melvin Boyer with a notice of suspension of Boyer's pharmacist license. On this occasion Boyer informed the investigataor that if administrative proceedings were brought against the pharmacy due to his, Boyer's, conviction, he, Boyer, would simply put the pharmacy in his wife's name. Boyer continued to fill prescriptions in the presence of the investigators even though he was no longer in possession of a valid license. Boyer told the investigators that he would be acting as "the highest paid pharmacy technician in the city." When informed that a pharmacy technician could not fill prescriptions except under the supervision of a registered pharmacist, Boyer telephoned another store and desisted from filling prescriptions until a registered pharmacist was sent over from that store.

Melvin Boyer continues to work at Unarex of Phymouth Road. He supervises clerical employees who worked for him before he was convicted and incarcerated. Boyer works at a desk ten feet from the storage area for controlled substances. He is being paid $700 a week as an insurance clerk at the pharmacy. By contrast, the registered pharmacist on duty earns $30,000 a year, or less than $580 per week. Such a difference in compensation is not normal. In mid-1982 Melvin Boyer resigned as an officer and director of Unarex of Plymouth Road. Linda Boyer, his wife, replaced him as a director. Melvin Boyer, transferred all of his ownership interest in Unarex of Plymouth Road to her. She thus became a 25% owner of that pharmacy business. Unarex of Plymouth Road enjoyed profits of approximately $250,000 in 1983, one quarter of which went to Linda Boyer. Thus Linda Boyer enjoyed an income of approximately $60,000 in 1983 from the operation of Unarex of Plymouth Road. Linda Boyer received $500,000 a year as her husband's transferee/shareholder in a number of pharmacies owned by a group of investors, most of whom are pharmacists. She and Melvin Boyer live in a very affluent Bloomfield Hills neighborhood in a home worth about $300,000. They own a yacht and a new Cadillac. Unarex of Plymouth Road turned a profit of $200,000 in 1980 and 1981; and $150,000 in 1979.

Findings of Fact—Unarex of Dearborn

The Federal Bureau of Investigation (FBI) began an investigation in January, 1982, into the Med-Care and United Physicians Medical Clinics in Detroit. Physicians at Med-Care were selling prescriptions for such controlled substances as Talwin, Desoxyn, Preludin, Ambenyl and Tussionex for prices ranging from $20 to $30 per perscription, in groups between three and 100 prescriptions at a time. The prescriptions were being filled at various pharmacies in the Detroit area and as far away as Flint and Pontiac, Michigan, up to 80 miles away. A physician who worked at the clinics, and cooperated with the Government in its investgation, told the FBI that the physicians at the clinics would merely write prescriptions and not see patients or conduct physical examinations. The clinics were prescription mills. Clinic employees or the physicians themselves

would sell the prescriptions for controlled substances to drug dealers.

Two clinic employees also cooperated with the Government in the investigation. One of these, the office manager, told FBI Special Agents that the prescriptions were often taken to Unarex of Dearborn. She told the Special Agents that one Frank Haskins was her employer although he lived in Tennessee. He owned the Med-Care Medical Clinic and managed it from Tennessee by telephone. Haskins would periodically telephone the clinic and request large orders of Preludin from the office manager, who, in turn, would telephone Erwin Wolf, the pharmacist at Unares of Dearborn, and place the orders for Preludin over the phone. Subsequently, she would furnish Wolf with prescriptions written by physicians at the clinic and he, in turn, would give her the controlled substances and be paid for his services. All of this activity, of course, was illegal. In the aftermath of the investigation Mr. Haskins pled guilty to operating a continuing criminal enterprise, was convicted on that plea, and was sentenced to 11 years incarceration.

Another physician working at the Med-Care and United Physicians Clinics also set up his own prescription mill known as the Great Lakes Medical Clinic. On March 15, 1982, he, the cooperation physician and another man, visited Wolf at Unarex of Dearborn and discussed with him the availability of prescription controlled substances at that pharmacy.

On April 21, 1982, Special Agents of the FBI served a search warrant at Med-Care Clinic. They uncovered a large quantity of controlled substances and various financial and other records. The office manager explained the records to FBI Special Agents by saying that she would telephone Wolf and tell him how many Preludin tablets she would need. She would later pay Wolf for the Preludin. Records seized from the Clinic indicated, *inter alia*, that Wolf was paid a total of $11,205 between April and July, 1981.

The office manager kept the drugs obtained from Wolf at Unarex of Dearborn in a safe in the clinic office until Frank Haskins came in person or sent someone from Tennessee to pick them up. The drugs were then taken to Tennessee where they would be sold. The office manager took prescriptions to Unarex of Dearborn for filling between six and twelve times. The names and addresses on these prescriptions were fictitious. While some prescriptions written by physicians at the clinics appeared in many pharmacies throughout the Detroit area, only Unarex of Dearborn would fill prescriptions sent by Frank Haskins in bulk, up to 30 at a time.

In January, 1981, Unarex of Dearborn attempted to purchase 30,000 dosage units of Preludin from a drug wholesaler located in Puerto Rico. It is unusual for Detroit area pharmacies to purchase Schedule II substances from wholesalers in Puerto Rico. On July 9, 1981, a DEA diversion investigator served a notice of inspection at Unarex of Dearborn. He uncovered a total of 582 Schedule II prescriptions dating from late Spring 1980 through July 9, 1981 written, or appearing to have been written, by physicians at the clinics operated by the Kassim organization. The majority of these prescriptions were written for Preludin.

Melvin Boyer was a director of the Dearborn store. Erwin Wolf resigned his position as treasurer of Dearborn six days after he was sentenced, but was replaced immediately in that office by his wife, Harriet, to whom he also transferred his ownership interest. Linda Boyer, the wife of Melvin Boyer, is also a director of Dearborn, after the transfer of the interest held by Melvin Boyer. Linda Boyer was assigned the interest from approximately 24 pharmacies owned by a group of investors including the wife of the convicted Erwin Wolf, Paul Mittleman, Nathan Pack, and others. Neither Linda Boyer nor Harriet Wolf are active partners, directors or investors in these pharmacies.

Discussion

These registrants were responsible for the diversion of huge quantities of controlled substances over a protracted period of time. The financiers of the prescription mill "clinics" and the unscrupulous physicians who wrote the prescriptions would have been out of business without the services of these pharmacies. The pharmacists who operated these registrants filled the purported prescriptions by the thousands. The corporations that own these pharmacies profited handsomely by the illegal activity of their agents, Boyer and Wolf, and Messrs. Boyer and Wolf reaped significant earnings from their wrongdoing. Melvin Boyer continues to share indirectly in the profits of all of the pharmacies in which his wife is a partner, including Unarex of Plymouth Road and Unarex of Dearborn.

The Administrator is asked to believe that Boyer no longer exerts influence over the operation of Unarex of Plymouth Road. Boyer works not ten feet from the controlled substances storage area. While supposedly working as an insurance clerk, he is paid 20% more in salary than the managing pharmacist. Two clerks who formerly regarding him as their employer work for him now. The Administrative Law Judge noted that Boyer appears to be fulfilling the promise he made to the investigators in November 1982. He may well be the highest paid insurance clerk in Detroit. Like the Administrative Law Judge, the Administrator cannot believe that Boyer does not have the opportunity to repeat the same kind of mischief at the Plymouth store for which he has been convicted.

As the Unarex of Dearborn, the Administrator notes that Erwin Wolf transferred his directorship and ownership interests to his wife, Harriet. Erwin Wolf shares indirectly in the profits of the Dearborn store through the ownership interests of his wife. It is appropriate that both registrations be revoked in light of this continued benefit by Boyer and Wolf.

Conclusions of Law

The Administrator finds that there is a lawful basis for the revocation of both registrations and the denial of any pending applications for renewal. The Administrator has revoked or suspended the registrations of other pharmacies based on the conviction of the pharmacy's owner, director, practicing pharmacist or other key employee. See, among many others, *Woodfield Drugs, Inc.*, Dk. No. 80-20, 46 FR 35397 (1981); *Big T Pharmacy*, Dk. No. 80-34, 48 FR 51830 (1982); *Bourne Pharmacy, Inc.*, Dk. No. 83-22, 49 FR 32816 (1984). Under remarkably similar circumstances, the Administrator revoked two registrations in *Lawson & Sons Pharmacy and Fenwick Pharmacy*, 48 FR 16140 (1983) where the convicted pharmacist had transferred his stock ownership to his wife, who, like Mrs. Boyer and Mrs. Wolf, was not a pharmacist. Despite affidavits from the wife of the pharmacist that she maintained control over the pharmacies, the Administrator revoked the registrations since he could not conclude that the convicted pharmacist would not attempt to exert some form of control over one or both of the pharmacies.

Respondents, in their exceptions and elsewhere, argue that the Administrator cannot revoke these registrations since Boyer and Wolf, and not Unarex of Plymouth Road and Unarex of Dearborn, were convicted. The Administrator is not persuaded by this argument. Congress, in enacting the Controlled Substances Act, intended that pharmacies, and not pharmacists, be registered. Pharmacies are the instrumentality through which one or

more pharmacists work. In these cases, the pharmacists used the instrumentality to obtain excessive quantities of controlled sustances and sell them illegally. Pharmacies do not operate by themselves. They require human intervention to operate. When the human intervention is malevolent, and is convicted of controlled substance-related felonies, the Administrator sees his duty clearly to revoke the registrations of those pharmacies if circumstances warrant, as they do so manifestly in these two instances. Congress has demonstrated great concern with diversion of legitimate controlled substances, evidenced most recently by the enactment of Pub. L. 98-473, part of which is the Dangerous Drug Diversion Control Act of 1984. In light of that concern, the Administrator would not be fulfilling his congressionally mandated responsibilities if he revoked the registrations of convicted physicians and dentists but not those of pharmacies whose pharmacists are convicted of controlled substance-related felonies. See *River Forest Pharmacy* v. *Drug Enforcement Administration*, 501 F.2d 1202 (7th Cir. 1974), affirming the suspension of a pharmacy's registration based on the conviction of the pharmacist.

Respondents also argue that the changes in corporate ownership somehow shield the Respondents from revocation. Again, the Administrator is not swayed by this argument. The Administrator has revoked the registration of pharmacies whose corporate structure changed after the conviction. As the Administrator stated in *Big T Pharmacy, Supra:* "Congress did not intend to exempt pharmacies from the reach of the law, merely because they happen to be organized along corporate lines as opposed to being sole proprietorships." The Administrator will continue to revoke the registrations of pharmacies that seek to evade their responsibility under the Controlled Substance Act by reincorporating or otherwise shuffling their ownership. Congress could not have intended that the registration of Unarex of Plymouth Road be beyond action by this agency, when the convicted pharmacist is paid 20% more than the practicing pharmacist to be a "clerk," and his wife is a director of the corporation that owns the pharmacy.

Conclusion

Having examined the record in these matters, the Administrator concludes that revocation of these registrations, and denial of any pending applications for renewel, is appropriate under all the facts and circumstances herein.

Therefore, having concluded that the facts herein require revocation and having determined that there is a lawful basis for such revocation, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration AU3119220 and AU4109927 be, and hereby are, revoked, and any pending applications for renewal be denied, effective March 15, 1985.

Dated: February 7, 1985.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 85-3592 Filed 2-12-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-32; Exemption Application No. D-5055 et al.]

Grant of Individual Exemptions; Thomas B. Carmany, M.D., P.A., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) 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).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Thomas B. Carmany, M.D., P.A. Retirement Plan (the Plan) Located in Gallup, New Mexico

[Prohibited Transaction Exemption 85-32; Exemption Application No. D-5055]

Exemption

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 the purchase of a parcel of underdeveloped real property (the Property) located in McKinley County, New Mexico, by the Plan from Dr. Thomas B. Carmany for $39,423, provided such amount is not greater than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 2, 1985 at 50 FR 190.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Texland Petroleum Inc. Profit Sharing Plan (the Plan) Located in Fort Worth, Texas

[Prohibited Transaction Exemption 85-33; Exemption Application No. D-5322]

Exemption

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, effective December 1, 1983, to the sale of water rights in a parcel of real property by the Plan to Texland Petroleum, Inc., the sponsor of the Plan, provided that the terms and conditions of the sale are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: This exemption is effective December 1, 1983.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 14, 1984 at 49 FR 48820.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Telephone Real Estate Equity Trust (the Trust) Located in New York, New York

[Prohibited Transaction Exemption 85-34; Exemption Application No. D-5456]

Exemption

The restrictions of section 406(a) 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 (D) of the Code, shall not apply, effective October 21, 1983, to the use of a portion of the purchase price paid by the Trust in connection with purchase of three industrial parks located in Orange and Los Angeles Counties, California to pay off outstanding mortgages held by the Pacific Mutual Life Insurance Company and the First Interstate Mortgage Company, parties in interested with respect to the Trust.

For a more complicate statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 16, 1984 at 49 FR 45507.

Effective Date: This exemption is effective October 21, 1983.

Written Comment: The Department received one written comment with respect to the proposed exemption. The commentator states that Heitman Advisory Corporation (Heitman), the investment manager of the trust responsible for the transaction, made an error with respect to the acquisition of the properties and should bear the appropriate expenses for such error.

The Department notes that although Heitman did not discover the relationship of the two lenders to the Trust until a date after it made the decision to acquire the industrial parks for the Trust, neither of the mortgagees or their affiliates had any discretion with respect to Heitman's decision to acquire the industrial parks. In this regard, Heitman represents that it is completely independent of the mortgages and negotiated the transaction without regard to the fact that the mortgagees are parties in interest with respect to the Trust. After discovering the relationship of the mortgagees to the Trust, Heitman, as fiduciary to the Trust, again determined that it was in the Trusts' interest to acquire the properties.

Accordingly, after consideration of the entire record, including the comment submitted, the Department has concluded that the exemption be granted as proposed.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (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) These exemptions are 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; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 7th day of February, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-3599 Filed 2-12-85; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

Announcement of Availability of Funds for the Provision of Legal Services in the States of Arkansas and Mississippi

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) announces the availability of grant funds for the provision of legal services to the eligible migrant client population in the states of Arkansas and Mississippi.

DATE: All applications for grant funds must be received on or before April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gail D. Francis, Manager, Grants and Budget Unit, Office of Field Services, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C., 20005; (202) 272-4080.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation, the national, independent organization charged with implementing the federally-funded system of legal services for low income people, announces the availability of grant funds for the provision of legal services to the eligible migrant client population in the states of Arkansas and Mississippi.

The annualized level of Legal Services Corporation funding for these service areas will be $46,349 and $169,949, respectively, for clendar year 1985. The exact level of funding for the remainder of 1985 will be contingent on staff recommendations concerning the successful applicant(s) needs.

All groups and persons interested in applying for these grant funds should request a grant application from the Grants Assistant, Grants and Budget Unit, Office of Field Services, 733 Fifteenth Street, NW., Washington, D.C. 20005. Applications will be considered for individual or joint coverage of these service areas. Subsequent to the application deadline, April 1, 1985, a public hearing may be held at which applicants and other interested parties can make presentations regardaing provision of legal services in the applicable service area.

Three copies of the application should be submitted to the Regional Director, Atlanta Regional Office, 915 Peachtree Street, NE., Ninth Floor, Atlanta, Georgia 30308; and, one copy of the grant application should be sent to the Grants Assistant at the Washington D.C. address noted above.

Any grant application recommended by the Legal Services Corporation will, pursuant to section 1007(f) of the LSC Act, be announced in the **Federal Register**, and additional comments and recommendations will be requested at least thirty days prior to final approval of the grant.

Thomas J. Opsut,

Interim President.

[FR Doc. 85-3589 Filed 2-12-85; 8:45 am]

BILLING CODE 6820-35-M

Announcement of Transfer of LSC Grant for Eligible Native American Clients Residing in the State of Michigan

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Statute 378, 42 U.S.C. 2996-2996/, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly . . . such grant, contract, or project . . ."

The Legal Services Corporation (LSC) hereby publicly announces the transfer of responsibility of the LSC grant for legal services to eligible Native American clients residing in the state of Michigan from Upper Peninsula Legal Services, Inc. to Michigan Indian Legal Services for the 1985 grant year.

DATE: All comments related to this action must be received by the Office of Field Services within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gail D. Francis, Manager, Grants and Budget Unit, Office of Field Services, Legal Services Corporation, 733 Fifteenth Street NW., Washington, D.C. 20005; (202) 272-4080.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation, the national, independent organization charged with implementing the federally-funded system of legal services for low income people, announces the transfer of responsibility of the LSC grant for legal services to eligible Native American clients residing in the state of Michigan from Upper Peninsula Legal Services, Inc. (UPLS), located in Saulte Ste. Marie, Michigan to Michigan Indian Legal Services (MILS), located in Traverse City, Michigan.

Since the inception of the LSC grant for these purposes (1981), UPLS has subcontracted the provision of this legal services work to MILS. All parties mutually agree that beginning in grant year 1985 the LSC grant will be made directly to MILS. The annualized level of Legal Services Corporation's funding for this service area is $114,541 for calendar year 1985.

All groups and persons interested in submitting comments related to this transfer should submit such to the Grants Assistant, Grants and Budget Unit, Office of Field Services, 733 Fifteenth Street NW., Washington, D.C. 20005 before the deadline.

Thomas J. Opsut,

Interim President.

[FR Doc. 85-3588 Filed 2-12-85; 8:45 am]

BILLING CODE 6820-35-M

NUCLEAR REGULATORY COMMISSION

International Atomic Energy Agency Draft Safety Guide; Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is completing development of a number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides are in the following five areas: Government Organization, Design, Siting, Operation, and Quality Assurance. All of the codes and most of the proposed safety guides have been completed. The purpose of these codes and guides is to provide guidance to countries beginning nuclear power programs.

The IAEA codes of practice and safety guides are developed in the following way: The IAEA receives and collates relevant existing information used by member countries in a specified safety area. Using this collation as a starting point, an IAEA working group of a few experts develops a preliminary draft of a code or safety guide which is then reviewed and modified by an IAEA Technical Review Committee corresponding to the specified area. The draft code of practice or safety guide is then sent fo the IAEA Senior Advisory Group which reviews and modifies as necessary the drafts of all codes and guides prior to their being forwarded to the IAEA Secretariat and thence to the IAEA Member States for comments. Taking into account the comments received from the Member States, the Senior Advisory Group then modifies the draft as necessary to reach agreement before forwarding it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG-D11, "General Design Safety Principles for Nuclear Power Plants," has been developed. The working group, consisting of Mr. K. Koeberlein from the Federal Republic of Germany; Mr. J. Shepherd from the United Kingdom; and Mr. J. F. Mallay (Management Analysis Company; formerly with Babcock and Wilcox) from the United States of America, developed the initial draft of this guide from an IAEA collation. This draft was subsequently modified by the IAEA Technical Review Committee for Design and the Senior Advisory Group, and we are now soliciting public comment on a modified draft (Rev. 8, dated June 28, 1984). Comments received by the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, by March 18, 1985, will be particularly useful to the U.S. representatatives to the Technical Review Committee and the Senior Advisory Group in developing their positions on its adequacy prior to their next IAEA meetings.

Single copies of this draft Safety Guide may be obtained by a written request to the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Washington, D.C. this 8th day of February 1985.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-3623 Filed 2-12-85; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by

the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, FC 404-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Guide for the Preparation of Applications for Licenses for the Use of Sealed Sources in Nonportable Gauging Devices" and is intended for Division 10, "General." It is being developed to provide guidance in conformance with the new NRC Form 313 for preparing license applications for the use of byproduct material in nonportable gauging devices.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by April 12, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 6th day of February 1985.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-3622 Filed 2-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-528, Construction Permit No. CPPR-141, License No. NPF-34, EA 83-30, EA 83-130]

Arizona Public Service Co.; Order Imposing a Civil Monetary Penalty

I

Arizona Public Service Company, Palo Verde Nuclear Generating Station, Unit No. 1, P.O. Box 21666, Phoenix, Arizona, 85036 (the "Licensee") was the holder of Construction Permit CPPR-141 issued by the Nuclear Regulatory Commission ("NRC" or the "Commission"). The Construction Permit authorizes construction of the Palo Verde Nuclear Generating Station facility in Maricopa County, Arizona. The Construction Permit was issued on May 25, 1976, and terminated upon issuance of NRC License No. NPF-34, dated December 31, 1984.

II

A special inspection of the licensee's activities under the Construction Permit was conducted at the Palo Verde plant during the period of June 1, 1982-March 11, 1983. As a result of the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated December 12, 1983. The Notice stated the nature of the violations, the provisions of the NRC regulations violated, and the amount of the civil penalties proposed for each of the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties in letters dated January 31, 1984 and December 26, 1984. The violation identified in Paragraph I.A of said Notice was the subject of NRC's Order Imposing a Civil Monetary Penalty dated April 3, 1984, which was timely paid by the licensee.

III

Upon consideration of the licensee's replies to the Notice of Violation and Proposed Imposition of Civil Penalties and argument for remission of the proposed civil penalty for Item I.B in the Notice on the ground that the admitted violation did not constitute a Severity Level III violation, the Director, Office of Inspection and Enforcement, for the reasons set forth in the Appendix to this Order, has determined that the penalty proposed for the identified violation did occur as set forth in the Notice and that these is no adequate basis for mitigation or remission of the proposed penalty.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, Pub. L. 96-295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Forty Thousand Dollars ($40,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, DC 20555.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings; if payment has not been made by the time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated Appendix B requirements as set forth in paragraph I.B of the Notice of Violation and Proposed Imposition of Civil Penalties; and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 7th day of February 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

The NRC staff's evaluation and conclusions regarding the licensee's response dated December 26, 1984, pertaining to the violation and proposed civil penalty identified in Item I.B of the

Notice of Violation and Proposed Imposition of Civil Penalties dated December 12, 1983 ("Notice") are as follows:

Restatement of Violation I.B.

Item I.B. of the Notice of Violation dated December 12, 1983 provides as follows:

"I. Violations Assessed Civil Penalties

B. Criterion V of Appendix B to 10 CFR Part 50 requires that, "Activities affecting quality shall be prescribed by documented instructions * * * and shall be accomplished in accordance with these instruction * * *"Also, Criterion XVII requires that, "Sufficient records shall be maintained to furnish evidence of activities affecting quality * * *" Bechtel work plan procedures/quality control instruction WPP/QCI-255.0, requires "Cable Terminations," that termination installation cards be completed for all Class 1E electrical terminations. These cards include the signature of the electrician making the termination and the crimp tool number of the crimp tool used to make the termination.

Contrary to these requirements, the record of Unit 1 Class 1E electrical termination 1E2122AC1RE2 dated November 13, 1981 was signed by an individual other than the person who actually performed the work as documented. Additionally, the serial number of the crimp tool used on this termination record appears not to be the serial number of the crimp tool actually used to make the termination. Approximately 50 to 100 of the estimated 7,000 to 8,000 termination cards for the Class 1E electrical terminations may have been similarly completed by individuals other than those who had performed the work.

This is a Severity Level III Violation (Supplement VII). (Civil Penalty $40,000)."

Licensee Admissions

On the basis of the Investigation Report, the Special Inspection Report of Region V and the licensee's own investigations, the licensee admitted that:

1. Prior to July 12, 1982, a very small number of Class Q nuclear safety-related replacement termination installation cards (TICs) may have been signed by some electricians who did not perform the terminations identified by such TICs.

2. Each such instance constituted a violation of WPP/QCI-255.0.

3. The root cause for such violations of WPP/QCI-255.0 was that WPP/QCI-255.0 did not provide adequate directions and instruction for the preparation of replacement TICs.

Licensee Denials

On the basis of the Investigation Report, the Special Inspection Report of Region V and the licensee's own investigations, the licensee denied that:

1. Any violations of WPP/QCI-255.0 violated any requirement imposed by any NRC regulation that an electrician sign a TIC and identify the crimp tool used in making terminations.

1. Any violations of WPP/QCI-255.0 was committed with the intent or purpose of circumventing any quality control inspection or requirement imposed by any NRC regulation.

1. Any violations of WPP/QCI-255.0 had any safety significance.

Licensee's Request for Remission of Proposed Civil Penalty

The licensee requested remission of the proposed civil penalty of $40,000 on the grounds that the admitted violations of WPP/QCI-255.0 do not constitute Severity Level III violations and asserted that:

1. All investigations of the matter demonstrated that the root cause of violations of WPP/QCI-255.0 was the inadequacy of the procedure itself.

2. WPP/QCI-255.0 was promptly corrected on July 12, 1982 when its inadequacy came to the attention of the licensee management.

3. The inadequacy of WPP/QCI-255.0 prior to July 12, 1982 did not constitute a breakdown in the licensee's quality assurance program or involve deficient construction or construction of unknown quality which, under Supplement II to Appendix C of 10 CFR Part 2, are prerequisites of a Severity Level III violation.

4. The improper completion of replacement TICs by electricians did not have any safety significance.

Licensee's Corrective Action and Results Achieved

The licensee asserted that WPP/QCI-255.0 was revised on July 12, 1982 to require that each TIC prepared to replace a lost TIC must be marked "DUPLICATE" and the termination identified by the DUPLICATE TIC must be reperformed by the electrician signing such DUPLICATE TIC. Training in the use of the revised WPP/QCI-255.0 by electricians performing terminations and their supervisors has been completed.

This corrective action has eliminated the root cause of the previous violations of WPP/QCI-255.0.

NRC Evaluation

The information provided in Section III of 10 CFR Part 2, Appendix C describes the severity levels of violations. As stated therein, Severity Level III includes those violations that are cause for significant concern. Supplements I thru VIII of the policy provide examples of violations for determining the appropriate severity level of a violation and are neither exhaustive nor controlling. The examples are designed to illustrate the significance which NRC places on a particular type of violation of NRC requirements.

Supplement VII of the policy, referred to in the Notice of Violation, provided examples of material false statements at the time of issuance of the Notice of Violation. Since that time, examples of violations involving falsification of records were included on March 8, 1984. The Supplement now contains an example under the heading of Severity Level III which reads:

"2. Deliberate falsification, or falsification by or with knowledge of management, of records which the NRC requires be kept that did not involve significant information."

The licensee's response dated December 26, 1984 state on page 4 of Attachment F in part:

"The crimp tool serial number and date recorded on the front of termination cards provides a means for identifying specific crimps accomplished during certain time periods. By utilizing this number and dates a total listing of all terminations made by a specific tool during a given time period may be obtained from the computerized data base developed from the information on the front of the termination cards. The capability to obtain such a listing is not required or useful for quality control purposes. It can be useful, however, if or when a crimping tool is found to be out of calibration, to identify the terminations made by that tool in the period between calibrations which will have to be reinspected.

"The termination identified in the Notice of Violation, has been inspected and was found to be acceptable."

The management of any organization involved with NRC licensed activitives must create a working atmosphere such that all employees understand the importance of not only performing quality work but also the need for maintaining the accuracy of the related records. The NRC must rely on licensees to develop adequate procedures to assure that quality related activities are properly performed, inspected and

documented. As indicated by the licensee, the record containing false information could have and would have been used for a quality related check had a termination tool been found out of calibration. Since the tool number shown on the record was false, had the tool that had been actually used to make the termination been subsequently found to be out of calibration, the subject termination would not have been rechecked as required by the licensee's Quality Assurance Program which is required to be implemented by the NRC requirements of 10 CFR Part 50, Appendix B.

The inspection and investigations reports of this matter show that recording of false information was not limited to the knowledge of the craftsman but was known or should have been known by several levels of lower management, i.e., Foremen, the General Foreman and the Field Superintendent reponsible for the subject electrical terminations.

Therefore, even though the number of electrical terminations containing false information was small and, fortuitously, the consequences were nil, the fact that individuals including members of management evidently believed it to be permissable to enter false information on a quality record is a matter of significant concern to the NRC. Such action shows that upper management had neglected to create the necessary environment to assure that the employees would exercise the necessary care and discipline in their activities of the type expected from those reponsible for the adequacy of constructing nuclear power plants; i.e., under no circumstances can falsification of quality records be condoned or justified by anyone in an organization conducting NRC licensed activities.

NRC Conclusion

After carefully reconsidering the circumstances of this case, the staff has concluded that the violation did occur as cited and that the amount of the civil penalty originally proposed is appropriate.

[FR Doc. 85-3628 Filed 2-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 OLA-2, et al.]

Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4); Order Scheduling Prehearing Conference

Before Administrative Judges: Dr. Robert M. Lazo, Chairman, Dr. Richard F. Cole, Dr. Emmeth A. Luebke.

In the matter of Florida Power and Light Company (Turkey Point Nuclear Generating Plant, Units 3 & 4); Docket Nos. 50-250 OLA-2, 50-251 OLA-2, ASLBP No. 84-504-07 LA, (Spent Fuel Pool Expansion), Docket Nos. 50-250 OLA-3, 50-251 OLA-3, ASLBP No. 84-505-08 LA, (Increased Fuel Enrichment), February 7, 1985.

Please take notice that a prehearing conference in the two above-identified proceedings will be held on March 27 and 28, 1985, commencing each day at 9:30 a.m., local time, at a location in the greater Miami area to be announced at a later date, in order to:

1. Permit identification of the key issues in these proceedings;

2. Take any steps necessary for further identification of the issues;

3. Consider the intervention petitions filed by the Center for Nuclear Responsibility, Inc., and Joette Lorion (Petitioners) to allow the presiding Atomic Safety and Licensing Board to make such preliminary or final determinations as to the parties to the proceedings as may be appropriate; and

4. Establish a schedule for further actions in the two proceedings.

Further, pursuant to 10 CFR 2.714(b), by February 25, 1985, the Petitioners shall file a supplement to their petition for leave to intervene in each proceeding which must include a list of the contentions which petitioners seek to have litigated in the matter and the bases for each contention set forth with reasonable specificity. A response addressing the admissibility of contentions set forth in the supplements to the petitions to intervene, shall be filed by the Licensee on or before March 11, 1985, and by the NRC Staff on or before March 18, 1985.

Dated at Bethesda, Maryland, this 7th day of February 1985

It is so ordered.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 85-3625 Filed 2-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-371]

Renewal of Special Nuclear Material License No. SNM-368; UNC Naval Products, Division of UNC Resources, Inc.; Montville, New London County, CT; Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Special Nuclear Material License No. SNM-368 for the continued operation of the UNC Naval Products facility at Montville, New London County, Connecticut.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License No. SNM-368. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed license renewal action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment (NUREG-1112) is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of NUREG-1112 may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Silver Spring, Maryland this 7th day of February 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-3626 Filed 2-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-123]

University of Missouri—Rolla Research Reactor; Consideration of Extension of License Expiration Date

The U.S. Nuclear Regulatory Commission (the Commission) is considering a request for an extension of the expiration date of the operating license for the University of Missouri-Rolla Research Reactor. On January 14, 1985, the Commission issued Amendment No. 7, which renewed the subject license authorization until November 20, 1989, in response to the licensee's request dated October 15, 1979. On December 14, 1984, before Amendment No. 7 was issued, the licensee requested that the renewal period be extended for 20 years instead of 10 years. The Safety Evaluation Report and the Environmental Assessment prepared in connection with Amendment No. 7 address the safety of the operation and the environmental

impacts associated with the continued operation of the facility, and were not limited to the 10 year extension requested in October 1979.

The additional period of operation that would be authorized by the amendment covered by this Notice, if granted, is the period from November 20, 1989 to ten years from that date, or November 20, 1999.

By March 15, 1985 the licensee may file a request for a hearing with respect to extension of time of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceeding" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licening Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the preceeding; (3) the possible effect of any order which may be entered in the proceeding on the petition's interest. The petitions should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must statisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the renewal action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, at 1717 H Street NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Cecil O. Thomas: (petitioner's name and telephone number); (date petition was mailed); (University of Missouri-Rolla); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request that the petition has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and § 2.714(d).

For further details with respect to this action, see (1) the application for license extension dated December 14, 1984, (2) Amendment No. 7 to License No. R-79; and (3) the Commission's related Safety Evaluation Report and Environmental Impact Appraisal. These items are available for public inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC.

The Safety Evaluation Report (NUREG-1066) can also be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 7th day of February 1985.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 85-3827 Filed 2-12-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Options Evaluation Task Force; Regular Meeting Notice

AGENCY: Options Evaluation Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Critical Water Planning.
- Combustion Turbines vs. Coal.
- Update on Decision Model.
- Public comment.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Options Evaluation Task Force.

DATE: Tuesday, February 19, 1985, 9:30 a.m.

ADDRESS: The meeting will be held at the Council Central Office at 850 SW Broadway; Suite 1100, in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Wally Gibson (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-3574 Filed 2-12-85; 8:45 am]

BILLING CODE 0000-00-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Programs: U.S. Postal Service and City

of Philadelphia, and Philadelphia School District, and final notice of modification to an existing system of records.

SUMMARY: The purpose of this document is to provide information concerning the conduct of a computer matching program, and to publish final notice of the addition of a new temporary routine use to system USPS 050.020, Finance Records—Payroll System.

EFFECTIVE DATE: February 13, 1985.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office, (202) 245-5568.

SUPPLEMENTARY INFORMATION: The Postal Service hereby publishes final notice of a new temporary routine use for system USPS 050.020, Finance Records—Payroll System, in connection with its plans to identify postal employees who are also on the employment rolls of the (1) City of Philadelphia, and (2) Philadelphia, Pennsylvania School District. The routine use will be in effect for a period of one year from its effective date. The purpose of this action is to determine whether suspected violations of federal or state laws or Postal Service regulations have occurred in connection with the improper receipt of dual benefits by these employees. Of particular concern is the possible misuse of sick leave or the improper receipt of continuation of pay under the workers' compensation program.

A few years ago the Postal Service published final notice of a similar computer matching effort between the Philadelphia School District and the Philadelphia Post Office (48 FR 22395 dated May 18, 1983). The result of that effort led to the identification and initiation of disciplinary action against several employees.

Advance notice of the proposed adoption of the temporary routine use was published on November 28, 1984, at 49 FR 46845, where additional details of the proposal, as required by OMB's matching guidelines (47 FR 21656), were described. One comment was received expressing concern regarding the proposal to release postal employee information in carrying out the matching program. In responding to the comment, the Postal Service specified that only information relevant to the purpose of the match would be disclosed (i.e., time/attendance/payment files) and that written agreement had been obtained from the City of Philadelphia and the Philadelphia School District to use the disclosed information for the sole purpose of the match, and to safeguard it from unauthorized access.

System Modification to Add New Routine Use

On a one-time basis, the Postal Service will disclose a limited amount of information from the payroll records of certain postal employees to the Internal Controller's Office of the Philadelphia, Pennsylvania School District (PSD) and the City of Philadelphia (CP). This information will be used to identify postal employees who may have fraudulently received compensation benefits from either the Postal Service, the PSD, or the CP. The Postal Service believes that an integral part of the reason that employee payroll records are maintained is to protect the legitimate interests of the Government, and therefore such a routine use is compatible with the purpose of maintaining these records. System 050.020 last appeared in 49 FR 46846 dated November 28, 1984. Accordingly, system USPS 050.020, Finance Records—Payroll System is modified to add a new temporary routine use to allow this disclosure as follows:

USPS 050.020.

System Name:

Finance Records—Payroll System, 050.020.

* * * * *

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

* * * * *

34. (Temp.) Disclosure of information about postal employees on the employment rolls of the Philadelphia, Pennsylvania School District (PSD) and on the employment rolls of the City of Philadelphia (CP) may be made to the PSD and CP for a one-time comparison with the PSD's and CP's time/attendance/payment files. Note—This routine use will be in effect for a period of one year ending February 13, 1986.

* * * * *

A complete statement of system USPS 050.020, as modified by this notice, appears below.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System.

SYSTEM LOCATION:

Payroll system records are located and maintained in all Departments, facilities and certain contractor sites of the Postal Service. However, Postal data centers are the main locations for payroll information. Also, certain information from these records may be stored at emergency records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees and postmaster relief/replacement employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain general payroll information including retirement deduction, family compensations, benefit deductions, accounts receivable, union dues, leave data, tax withholding, allowances, FICA taxes, salary, name, social security number, payments to financial organizations, dates of appointment or status changes, designation codes, position titles, occupation code, addresses records of attendance, and other relevant payroll information. Also includes automated Form 50 records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1003.5 U.S.C. 8339.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—

1. Information within the system is for handing all necessary payroll functions and for use by employee supervisors for the performance of the managerial duties.

2. To provide information to USPS Management and executive personnel for use in section decisions and evaluation of training effectiveness. These records are examined by the Selection committee and Regional Postmasters General.

3. To compile various lists and mailing list, i.e., Postal Leader, Women's lists, i.e., Postal Leader, Women's Programs, Newsletter, etc.

4. To support LSPS Personnel Programs such as Executive Leadership, Non-Bargaining Positions Evaluations of Probationary Employees, Merit Evaluation, Membership and Identification Listings, Emergency Locator Listings, Mailing Lists, Women's Programs, and to generate retirement eligibility information and analysis of employees in various ranges.

Use—

1. Retirement Deduction—To transmit to the Office of Personnel Management a roster of all USPS employees under Title 5 U.S.C. 8334, along with a check.

2. Tax Information—To disclose to Federal, State and local government agencies having taxing authority, pertinent records, relating to individual employees, including name, home address, social security number, wages and taxes withheld for other jurisdiction.

3. Unemployment Compensation Data—To reply to State Unemployment Offices at the request of separated USPS employees.

4. Employee Address File—For W-2 tax mailings and Postal mailing such as Postal Life, Postal Leaders, etc.

5. Salary payments and allotments to financial organizations—To provide pertinent information to organizations receiving salary payments or allotments as elected by the employee.

6. FI (SS Tax) Deduction—To SS Administration as record of earnings under the SS act for all casual employees not under retirement.

7. Determine eligibility for coverage and payments of benefits under the Civil Service Retirement System, the Federal Employees Group Life Insurance Program and the Federal Employees Health Benefits Program and transfer related records as appropriate.

8. Determine the amount of benefit due under the Civil Service Retirement System, the Federal Employees, Group Life Insurance Program and the Federal Employees Health Benefits program and authorizing payment of that amount and transfer related records as appropriate.

9. Transfer to Office of Workers Compensation Program, Veterans Administration Pension Benefits Program, Social Security Old Ages, Survivor and Disability Insurance and Medicare Programs, military retired pay programs, and Federal Civilian employee retirement systems other than the Civil Service Retirement System, when requested by that program or system or by the individual covered by this system or by the individual covered by this system of records, for us in determination an individual's claim for benefits under such system.

10. Transfer earnings information under the Civil Service Retirement System to the Internal Revenue Service as requested by the Internal Revenue Code of 1954, as amended.

11. Transfer information necessary to support a claim for life insurance benefits under the Federal Employees' Group Life Insurance, 4 East 24th Street, New York, NY 10010.

12. Transfer information necessary to support a claim for health insurance benefits under the Federal Employees' Health Benefits Program to a health insurance carrier or plan participating in the program.

13. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature to the appropriate agency whether Federal, State, or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

14. To request or provide information from or to a Federal, state, or local agency maintaining Civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefits.

15. As a data source for management information of production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies, may also be utilized to respond to general requests for statistical information (without personal identification of Individuals) under the Freedom of Information Act or to locate specific individual for personnel research or other personnel management functions.

16. May be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

17. Certain information pertaining to Postal Supervisors may be transferred to the National Association of Postal Supervisors.

18. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

19. Disclosure may be made from the record of an individual, where pertinent, in any legal proceeding to which the Postal Service is a party before a court or administrative body.

20. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

21. Inactive records may be transferred to a GSA Federal Records Center prior to destruction.

22. To provide to the Office of Personnel Management (OPM) approximately 19 data elements (including SSAN, DOB, service competition date, retirement system, and FEGLI status) for use by OPM's Compensation Group collected are not for the purpose of making determinations about specific individuals but are used only as a means of ensuring the integrity of the active employee/annuitant data systems and for analyzing and statistically projecting Federal retirement and insurance system costs. The same data submission will be used to produce summary statistics for reports of Federal employment.

23. Information contained in this system of records may be disclosed to an authorized investigator appointed by the Equal Employment Opportunity Commission, upon his request, when that investigation of a formal complaint of discrimination filed against the U.S. Postal Service under 29 CFR Part 1613, and the contents of the requested record are needed by the investigator in the performance of his duty to investigate a discrimination issue involved in the complaint.

24. Records in this system are subject to review by an independent certified public accountant during an official audit of Postal Service finances.

25. May be disclosed to a Federal or State agency providing parent locator services or to other authorized persons as defined by Pub. L. 93-647.

26. Disclosure of information about particular postal employees may be made to requesting states in connection with approval computer matching programs, limited to only those data elements considered relevant to making a determination of eligibility under unemployment insurance programs administered by the states (and by those states to local governments); to improve program integrity; and to collect debts and overpayments owed to those governments and their components.

27. To union-sponsored insurance carriers for the purposes of determining eligibility for coverage and payments of benefits under union-sponsored, non-Federal insurance plans and transferring related records as appropriate.

28. (Temp.) To provide the Department of Education home address information on former postal employees for the purposes of notifying those individuals of their indebtedness to the United States under programs administered by the Secretary of Education and for taking subsequent actions to collect those debts.

Note.—This routine use will be in effect for a period of one year ending February 3, 1985.

29. (Temp.) Disclosure of information about particular postal employees on the employment rolls of the City of New Orleans, Louisiana, may be made to the New Orleans' Department of City Civil

Service (NOCCS) for comparison with the NOCCS time/attendance/payment file.

Note.—This routine use will be in effect for a period of one year ending June 15, 1985.

30. (Temp.) Disclosure of information about particular postal employees who work in the District of Columbia and in the States of Maryland and Virginia may be made to the Government of the District of Columbia, Department of Human Service (DC-DHS) for comparison with the DC-DHS welfare program files.

Note.—This routine use will be in effect for a period of one year ending September 24, 1985.

31. (Temp.) To provide the Department of Housing and Urban Development the names, social security account numbers and home addresses of postal employees for the purpose of notifying those individuals of their indebtedness to the United States under programs administered by the Secretary of Housing and Urban Development and for taking subsequent actions to collect those debts.

Note.—This routine use will be in effect for a period of five years ending September 24, 1989.

32. To provide to the Department of Defense (DOD) upon request, on a semiannual basis, the names, social security account numbers and home addresses of current postal employees for the purposes of identifying those employees who are indebted to the United States under programs administered by the Secretary, DOD, and for taking subsequent actions to collect those debts.

33. To provide to the Department of Defense (DOD), upon request, on an annual basis, the names, social security account numbers, and salaries of current postal employees for the purposes of updating DOD's listings of Ready Reservists and reporting reserve status information to the Postal Service and the Congress.

34. (Temp.) Disclosure of information about postal employees on the employment rolls of the Philadelphia, Pennsylvania School District (PSD) and on the employment rolls of the City of Philadelphia (CP) may be made to the PSD and CP for a one-time comparison with the PSD's and CP's time/attendance/payment files.

Note.—This routine use will be in effect for a period of one year ending February 13, 1986.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Preprinted forms, magnetic tape, microforms, punched cards, computer reports and card forms.

RETRIEVABILITY:

These records are organized by location, name and social security number.

SAFEGUARDS:

Records are contained in locked filing cabinets; are also projected by computer passwords and tape library physical security.

RETENTION AND DISPOSAL:

Records are retained and updated throughout employment with the Postal Service. Upon separation records become historical data, this data is retained at the local site for two years then forwarded to the Federal Records Center nearest the pay location.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Finance Department and APMG, Employee Relations Department at Headquarters.

NOTIFICATION PROCEDURE:

Request for information on this system of records should be made to the head of the facility where employed, giving full name and social security number. Headquarters employees should submit requests to the System Manager.

RECORD ACCESS PROCEDURES:

See Notification above.

RECORD SOURCE CATEGORIES:

Information is furnished by employees, supervisors and the Postal Source Data System.

[FR Doc. 85-3583 Filed 2-12-85; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21726; SR-OCC-85-1]

Self-Regulatory Organizations; Options Clearing Corp.; Filing and Immediate Effectiveness of a Proposed Rule Change

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 January 3, 1985, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the rule change.

OCC's proposes to extend Section 2 of OCC's Shareholder Agreement ("Agreement") for ten years. This provision controls the voting of shares by OCC's Participant Exchanges, OCC's sole shareholders.[1] In accordance with the corporate law of Delaware (OCC's state of incorporation), this "voting trust" provision terminated on January 3, 1985, after a period of ten years. The proposal would add Amendment No. 3 to the Agreement. The Amendment, after execution by Participant Exchange representatives, will extend the provisions of Section 2 for ten years after execution. OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act in that it advances the public interest by ensuring the smooth and efficient administration of OCC's Board from year to year.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after this notice is published in the **Federal Register.** Please refer to File No. SR-OCC-85-1, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available at the Commission's Public Reference Room and at the principal office of OCC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

February 6, 1985.

[FR Doc. 85-3587 Filed 2-12-85; 8:45 am]

BILLING CODE 8010-01-M

[1] Section 2 of OCC's Stockholder Agreement provides that all OCC stockholders agree to vote all their shares in favor of: (a) The election of those individuals nominated by the Nominating Committee or the clearing membership to serve as Member Directors, in accordance with Article III, section 5 of OCC's By-Laws; (b) OCC's President as the Management Director; and (c) the election of those individuals nominated by the Nominating Committee to serve on the next year's Nominating Committee in accordance with Article III, section 5.

[Release No. 14354; 812-5944]

First Investors New York Tax Free Fund, Inc.; Application

February 5, 1985.

Notice is hereby given that First Investors New York Tax Free Fund, Inc. ("Applicant"), 120 Wall Street, New York, New York, 10005, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company filed an application on September 24, 1984, and an amendment thereto on December 5, 1984, for an order, pursuant to section 6(c) of the Act, exempting Applicant from the provisions of section 22(d) of the Act to permit holders of units of New York Insured Municipals Income Trust, Series I and past and subsequent series (the "Trust") to invest their distributions of interest income, capital gains or principal in shares of Applicant at net asset value plus a reduced sales charge. 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 for the complete text of the relevant provisions.

According to the application, Applicant's objective is to provide a high level of investment income exempt from federal, New York State and New York City income taxes by investing in a diversified, professionally managed portfolio consisting primarily of tax-exempt obligations issued by New York State, its local governments or other public authorities, or tax-exempt obligations issued by the territories or possessions of the United States. Applicant states that its shares may be purchased at net asset value plus a sales charge, which ranges from 7.25% to 1.25%. Applicant states that those sales charges are described in its current prospectus. Applicant states that its investments are managed by First Investors Managment Company, Inc. Van Kampen Merritt, Inc. is sponsor of the Trust ("Sponsor") and Bradford Trust Company is the Trustee.

Applicant wishes to permit holders of Trust units ("Units") to reinvest their semi-annual, quarterly, or monthly distributions of interest, capital gains or principal in Applicant's shares at net asset value plus a sales charge of 1.5% of the public offering price, a purchase price which is less than the current public offering price described in Applicant's prospectus. According to the application, all Unitholders will be eligible to participate in the reinvestment program but will be required to reinvest the entire amount of their semi-annual, quarterly, or monthly distributions of interest income, capital gains, or principal, from any series of the Trust.

Applicant states that First Investors Managment Company, Inc., will retain one third of the sales charge and will bear the expenses of offering the reinvestment program to Unitholders while the remainder of the sales charge (1.0% of Applicant's public offering price) will be reallocated to the Sponsor and respective dealers. Administrative Data Managment Corp. will maintain separate accounts for each Unitholder who reinvests distributions of his Units into shares of Applicant and will mail to the participating Unitholder confirmation of the transactions in Applicant's shares. Applicant states that its prospectus will be amended to state that Unitholders will be permitted to invest their distributions in Applicant's shares at net asset value plus the reduced sales charge. Applicant states that all prospectuses for the Trust will disclose the existence of the reinvestment privilege and the means to indicate an interest in reinvesting distributions in Applicant's shares.

Applicant asserts that reducing its sales charge as described above is both fair and equitable and is in the best interest of Applicant's shareholders. Applicant believes that sales costs will be less for shares purchased in the reinvestment program than shares not purchased in the reinvestment program for which commissions to sales representatives must be made and other costs incurred in connection with public solicitation. Applicant further believes that the savings resulting from such reduced costs should be passed on to investors in the form of a lower sales charge. Applicant asserts that 0.5 of Applicant's public offering price is sufficient to cover the increase in distribution expenses arising from the reinvestment of distributions into Applicant's shares. It is asserted that shareholders will benefit from an increase in Applicant's cash flow, which will enable Applicant to meet redemptions without liquidating portfolio investments and to further deversify securities holdings.

Applicant states that the purpose of section 22(d) of the Act is to ensure that all investors purchase investment company securities on an equal basis and to prevent dilution of existing shareholder equity. Applicant submits that the dangers against which section 22(d) is directed are not present with respect to the proposed reinvestment priviledge and that therefore its requested exemption is appropriate in the public interest and consistent with the protection of investors.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 4, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues 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 Managment, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-3586 Filed 2-12-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirement Under OMB Review

ACTION: Notice of Reporting and Recordkeeping Requirement Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in the Federal Register that the agency has made such a submission.

DATE: Comments must be received on or before March 8, 1985. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible before the comment deadline.

Copies: Copies of forms, request for clearance (S.F. 83), supporting statements, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer:

Elizabeth M. Zaic, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.
OMB Reviewer: Kenneth B. Allen, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-3785

Information Collections Submitted for Review

Title: Application for Loan Pool and Application to become a Loan Pool Assembler
Form Nos: SBA 1454, 1455
Frequency: On occasion
Description of Respondents: Forms will be used by loan pool assemblers to apply for status as a pool assembler for SBA guaranteed loans and to supply SBA with the information necessary for those loans that the pool assembler desires to put into a pool
Annual Responses: 500
Annual Burden Hours: 1600
Type of Request: New.

Title: Certification of SBA Loan Status by Applicants for Employment in Disaster Loan Making Positions
Form No: SBA 1335
Frequency: On occasion
Description of Respondents: Form is used to ascertain prior loan status of applicants for disaster loan making positions. Prevents unknowingly hiring loan making personnel who have noncurrent loan debt to agency
Annual Responses: 500
Annual Burden Hours: 10
Type of Request: Extension.

Title: Disclosure Transfer and Assignment Certification
Form No: SBA 1088
Frequency: On occasion
Description of Respondents: Form is used to collect information from owners to accomplish the transfer of ownership of an SBA guaranteed certificate.
Annual Responses: 3000
Annual Burden Hours: 6000
Type of Request: New.

Title: Management Development Plan
Form Nos: SBA 933, 1099, 1100
Frequency: On occasion
Description of Respondents: SBA counselor completes forms using information provided voluntarily by the client during a management counseling session. Forms are used to help define small business management problems and to assist the counselor and the client to develop a set of corrective actions.
Annual Responses: 35000
Annual Burden Hours: 128260
Type of Request: Extension.

Dated: February 8, 1985.

Elizabeth M. Zaic,

Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 85-3613 Filed 2-12-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5352]

ABC Capital Corp.; Issuance of a Small Business Investment Company License

On October 16, 1984, a notice was published in the **Federal Register** (49 FR 40520) stating that an application has been filed by ABC Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business November 15, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-5352 on January 9, 1985, to ABC Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 7, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-3612 Filed 2-12-85; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Meeting; Honolulu, HI

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 9:00 a.m., on Wednesday, March 6, 1985, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Room 6122 (6th floor), Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call David K. Nakagawa, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850, (808) 546-8950.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 7, 1985.

[FR Doc. 85-3610 Filed 2-12-85; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Meeting; Indianapolis, IN

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Indianapolis, Indiana, will hold a public meeting at 10:30 a.m. EST, Tuesday, March 5, 1985, at North Meridian Inn, Indianapolis, Indiana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Minton-Capehart Federal Building, Room 578, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1584—(317) 269-7275.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 7, 1985.

[FR Doc. 85-3611 Filed 2-12-85; 8:45 am]

BILLING CODE 8025-01-M

[Public Notice 930]

DEPARTMENT OF STATE

Soviet and Eastern European Research and Training Act

On January 14, 1985 the Department of State approved the recommendations of the Soviet and Eastern European Research and Training Advisory Committee and made the following awards for FY-85:

1. *American Council of Teachers of Russian*—$54,500 to provide additional tuition and travel fellowships for *in situ* graduate study of Russian.

2. *Council for International Exchange of Scholars*—$100,000 to fund intensive language and area training to non-area Fulbright scholars prior to their departure for assignment abroad.

3. *Harvard Russian Research Center*—$83,333 to organize and conduct a national competition among editorial boards of scholarly journals in the field for publications of works by young scholars.

4. *Hoover Institutional/Stanford University*—$166,667 to fund additional post-doctoral fellowships.

5. *University of Illinois*—$121,360 to partially fund the University's Slavic Reference Service and Summer Research Laboratory on Russia and Eastern Europe.

6. *International Research and Exchange Board*—$905,800 [1] to provide improved field access to the US scholarly community by funding (1) short-term visits by senior specialists; (2) regular contact with the non-Russian areas of the USSR; (3) training in the less-commonly-taught languages of the USSR and Eastern Europe; (4) expanded binational project-based cooperation in the social and policy sciences; (5) improving the area competence of specialists on the cutting edge of social science research; (6) better preparation for specialists' first field experiences; and (7) better dissemination of the results of field experience to the entire specialist community.

7. *The Joint Committee on Eastern Europe* of the ACLS and SSRC—$411,750* to fund a graduate training program, to establish an Eastern European journal, to conduct *in situ* language training and together with the Woodrow Wilson Center to sponsor an East European Institute at the Center comparable to the Kennan Institute for Russian Studies.

8. *The Joint Committee for Soviet Studies* of the SSRC and ACLS—$741,150 [1] to fund a national fellowship program designed to attract and retain junior scholars, including shared cost with universities for initial academic assignments and support for collaborative research projects, and to conduct a national competition for grants to American institutions that offer intensive training in the Russian language.

9. *The National Council for Soviet and East European Research*—$1,399,950 [1] to augment existing programs designed to develop and sustain long-term fundamental research dealing with major Soviet and East European policy issues on the basis of a national research agenda, soliciting responsive bids through an annual national competition, and the awarding of contracts.

10. *The Woodrow Wilson* Center of the Smithsonian Institution—$655,880 [1] to provide additional support to the Kennan Institute for Adanced Russian Studies and to help establish a new East European Institute in their research and dissemination programs.

Unsuccessful applicants may apply to award winners. Another national competition for FY-86 will be held depending upon availability of funds.

Dated: January 31, 1985.

Paul K. Cook,

Executive Director, Soviet and Eastern European Studies Advisory Committee.

[FR Doc. 85-3552 Filed 2-12-85; 8:45 am]

BILLING CODE 4710-32-M

[1] The actual amount may vary depending upon the outcome of negotiations over administrative expenses.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[BS-Ap-Nos. 2342 and 2343]

Atchison, Topeka and Santa Fe Railway Co.

The Atchison, Topeka and Santa Fe Railway Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the automatic block signal systems on two main tracks between Each Tower Interlocking and Amarillo Junior Interlocking, a distance of about 3.6 miles near Amarillo, Texas, and between BN Crossing Interlocking and Lubbock Junction, a distance of about 3.0 miles near Lubbock, Texas, on its Plains Division. These proceedings are identified as FRA Block Signal Application Nos. 2342 and 2343, respectively.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10:00 a.m. on April 10, 1985, in Room 112 of the Federal Building at 205 East 5th Street, Amarillo, Texas.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued Washington, D.C. on February 4, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-3590 Filed 2-12-85; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. IP85-4; Notice 1]

Avon Tyres Limited; Receipt of Petition for Determination of Inconsequential Noncompliance

Avon Tyres Limited of Wiltshire, England, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars*. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Avon Tyres Limited has manufactured approximately 600 Avon Radial MKII truck tires, size 10.00R20, in molds that were not specifically labeled for the American market. These tires, labeled with European type markings, were shipped to a tire dealer in the United States for sale to the general public.

Specifically, the tires are not marked with five items of information required by paragraph S6.5. These are the tire identification number required by 49 CFR Part 574, the maximum load rating and corresponding inflation pressure, the actual number of plies and cord material in the sidewall, and if different, in the tread area, the words "tube type," and the letter designating the Load Range.

Avon Tyres Limted argues that the noncompliances are inconsequential because they are unrelated to any safety or performance characteristics of the tires and do not result in any wrong or misleading information being conveyed to the purchaser. It states that all the necessary information is contained in the markings that do appear on the tire sidewall, which can be readily understood by anyone familiar with such labeling. For example, the tires are labeled with the International Standards

Organization Service Index as part of the tire size designation, i.e., 146/143L, which indicates a maximum load of 3,000-kg. when used in single formation and 2,725-kg. when used in dual formation provided the operating speed does not exceed 120 km/hr. The tires are labeled "16 ply rating" which is equivalent to Load Range H and are designed to carry the highest permitted load permitted for this tire size designation. Therefore, there is no possibility of tires being overloaded in service due to lack of understanding of sidewall markings. The tires are not labeled "tube type" and this does not create a safety hazard because generally all 20-inch diameter tires are for use with tubes and mounted on multi-piece rims and could not be mounted on tubeless type rims. The lack of the tire identification number, the petitioner claims, is inconsequential as the tires are clearly marked with the manufacturers name "Avon" and "Made in England" and also the tire size, 10.00R20, is in clear figures. The absence of the number of plies and the material used is inconsequential as these tires are designed for the maximum service conditions allowed for the tire size designation 10.00R20 encountered in the United States.

Interested persons are invited to submit written data, views, and arguments on the petition of Avon Tyres Limited, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the closing of business on the closing date indicated below will be considered. The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 15, 1985.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on February 8, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-3549 Filed 2-12-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

Application For Recordation of Trade Name; American Fan Retail Association, Inc.

Correction:

In FR Doc. 85-2693 appearing on page 4828 in the issue of Friday, February 1, 1985, make the following correction: In the third column, fifth line, the date "April 12, 1985" should read "April 2, 1985".

BILLING CODE 1505-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 30
Wednesday, February 13, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW, Washington, D.C., Room 512.

DATE AND TIME: Monday, February 11, 1985, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report for January :
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. Consideration of the *Grove City* Decision
V. Further Discussion on Project Concepts:
  A. Prejudice in America: Attitudes on Race and Gender
  B. Testing Controversies: Do Tests Discriminate?
IV. Briefing: What We Do and Don't Know About Provery, June O'Neill, Director, Women and Family Policy Program, Urban Institute
VII. Civil Rights Developments in the Midwestern Region

FOR FURTHER INFORMATION PLEASE CONTACT: Barbara Brooks, Press and Communications Division (202) 736–8311.

Lawrence B. Glick,
Solicitor.

[FR Doc. 85-3771 Filed 2-11-85; 3:16 pm]

BILLING CODE 6335-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, February 19, 1985.

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 R. 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: February 8, 1985.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 85-3634 Filed 2-11-85; 11:03 am]

BILLING CODE 6210-01-M

3

LEGAL SERVICES CORPORATION

Committee on Appropriations and Audit

TIME AND DATE: The meeting will commence at 8:30 a.m. on Thursday, February 21, 1985 and continue until all official business is completed.

PLACE: Hotel Washington, 515 15th Street NW., Washington, D.C.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Draft Minutes December 19, 1984.
3. FY 1986 Budget Mark Impact:

—Service to Native Americans
—Service to Migrants
—Reginald Heber Smith Fellowship Program
—National and State Support Providers
—Computer Assisted Legal Research

4. Reconsideration of Line Item Allocations in FY '86 Appropriations Request.

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office (202) 272–4040.

Dated: February 11, 1985.

Dennis Daugherty,
Acting Secretary.

[FR Doc. 85-3799 Filed 2-11-85; 4:09 am]

BILLING CODE 6820-35-M

4

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: Meeting will commence at 12:00 p.m. (Noon) and continue until all official business is completed Friday, February 22, 1985.

PLACE: Hotel Washington, 515 15th Street NW., Washington, D.C.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes—February 13, 1985.
3. Report from the Office of General Counsel:

—45 CFR Part 1601 (By-Laws)
—45 CFR Part 1612 (Lobbying)
—45 CFR Part 1614 (Private Attorney Involvement)
—45 CFR Part 1620 (Priorities)
—45 CFR Part 1622 (Sunshine Act)

4. Discussion of Comments on Above Cited Regulations.
5. Recommendations to full Board on Above Cited Regulations.
6. Other Regulations Adopted after April 27, 1984.

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office (202) 272–4040.

Dated: February 11, 1985.

Dennis Daugherty,
Acting Secretary.

[FR Doc. 85-3800 Filed 2-11-85; 4:09 pm]

BILLING CODE 6820-35-M

5

LEGAL SERVICES CORPORATION

Special Committee on Presidential Search

TIME AND DATE: Meeting will commence at 8:30 a.m. and continue until 12:00 p.m. or all official business is completed Friday, February 22, 1985.

PLACE: Hotel Washington, 515 15th Street NW., Washington, D.C.

STATUS OF MEETING: Open [Portion of meeting is to be closed to discuss matters related to Presidential Search as authorized under The Government in the Sunshine Act (5 U.S.C. 552b(c) (2), (6) and (9)(B)) and 45 CFR 1622.5 (a), (e) and (g) and 1622.6(b).]

MATTERS TO BE CONSIDERED:

1. Recommendations from Public on Criteria for Selection of President.
2. Matters related to Presidential Search (closed).

CONTACT PERSON FOR MORE INFORMATION: Tim Baker, Office of General Counsel. Telephone (202) 272–4010.

Dated: February 11, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-3798 Filed 2-11-85; 4:09 pm]

BILLING CODE 6820-35-M

6

NATIONAL SCIENCE BOARD

DATE AND TIME: February 22, 1985:

9:00 a.m., closed session

9:30 a.m., open session

PLACE: National Science Foundation, Washington, D.C.

STATUS: Most of this meeting will be open to the public. Part of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSION:

5. Minutes—January 1985 Meeting.
6. Director's Report.
7. Report of Excellence in Science and Engineering Committee.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

1. Minutes—January 1985 Meeting
2. NSB and NSF Staff Nominees
3. Interim Report of Vannevar Bush Award Committee
4. Grants, Contracts, and Programs

Margaret L. Windus,

Executive Officer.

[FR Doc. 85-3756 Filed 2-11-85; 2:48 pm]

BILLING CODE 7555-01-M

7

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open. The Council may hold an executive session closed to the public to discuss legal matters.

TIME AND DATE: February 20-21, 1985, 9:00 a.m.

PLACE: Boise State University, Student Union Building, Nez Perce Room, Boise, Idaho.

MATTERS TO BE CONSIDERED:

February 20

- Staff Presentation on Federal Agency Fiscal Year 1986 Budgets (Bonneville Power Administration, U.S. Army Corps of Engineers, and others) and Update on Office of Management and Budget Proposal for Expedited Repayment of BPA Debt.
- Council Decision on Resource Financial and Economic Assumptions.
- Council Decision on Environmental Criteria for Resource Acquisition.
- Briefing by Bonneville Power Administration on Washington Public Power Supply System Nuclear Plan No. 3 Settlement.
- Council Business.

February 21

- Status Report on BPA Program to Reimburse Local Governments for Costs of Model Conservation Standards Enforcement and Inspection.
- Staff Presentation on Analysis of Conservation Availability and Cost (Conservation Supply Function Issue Paper).
- Staff Presentation on Hood River, End Use Load and Conservation Assessment Project (ELCAP) and Elmhurst Conservation Demonstration Projects.
- Staff Presentation on Preliminary Load Forecasts.
- Council Decision on Amendment of Section 201 (Goals Process) of Columbia River Fish and Wildlife Program.[1]
- Council Decision on Bonneville's Proposed Work Plan for Offsite Enhancement Projects (Program Section 704(d)).[2] Public comment will follow each item.

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[1] The Comment period on this proposed amendment ended February 1, 1985. No additional Comment will be taken at this meeting.

[2] Copies of the proposed work plan may be obtained by calling Judy Allender at the Council's toll-free numbers: 1-800-222-3355 (regional), 1-800-452-2324 (Oregon only) or 1-503-222-5161 (all other).

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong (503)222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-3674 Filed 2-11-85; 11:17 am]

BILLING CODE 0000-00-M

8

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 4299, January 30, 1985.

STATUS Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, January 23, 1985.

CHANGE IN THE MEETING: Additional meeting. The following items were considered at a closed meeting scheduled for Thursday, February 7, 1985, at 10:00 a.m.:

Reject Settlement of injunctive action.
Institution of injunctive actions.

Commissioners Cox, Peters and Marinaccio determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bill Fowler at (202) 272-3077.

Dated: February 8, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-3690 Filed 2-11-85; 11:33 am]

BILLING CODE 8010-01-M

federal register

Wednesday
February 13, 1985

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice; Proposed Regulation With Request for Comment

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Proposed regulation with request for public comment.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing for public comment a proposed regulation to implement the formula grant program authorized by Part B of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984 (Pub. L. 98–473, October 12, 1984). The 1984 Amendments reauthorize and modify the Federal assistance program to State and local governments and private not-for-profit agencies for juvenile justice and delinquency prevention improvements authorized under title II, Part B, Subpart I of the Act (42 U.S.C. 5611 et seq.). The proposed regulation provides guidance to States in the formulation, submission, and implementation of State formula grant plans.

DATE: Comments are due on or before April 1, 1985. All comments will be considered in the publication of the final regulation.

ADDRESS: Address all comments to Mr. Alfred S. Regnery, Administration, OJJDP, 633 Indiana Avenue, NW., Room 1142 B, Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Emily C. Martin, Acting Director, Formula Grants and Technical Assistance Division, OJJDP, 633 Indiana Avenue, NW., Room 768, Washington, D.C. 20531; telephone 202/724–5921.

SUPPLEMENTARY INFORMATION:

Statutory Amendments

The statutory changes instituted by the new legislation include new programmatic emphasis on programs for juveniles, including those processed in the criminal justice system, who have committed serious crimes, programs which seek to facilitate the coordination of services between the juvenile and criminal justice systems, education and special education programs, involvement of parents and other family members in addressing the deliquency related problems of juveniles, drug and alcohol abuse programs, law-related education, and approaches designed to strengthen and maintain the family units of delinquent and other troubled youth. The regulation implements significant statutory changes related to the jail removal requirement, including a change in the statutory exception and an extension of the date for States to achieve full compliance from December 8, 1987 to December 8, 1988.

The proposed regulation details procedures and requirements for formula grant applications under the revised Act. Additional requirements for grant administration and fund accounting are set forth in the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M 7100.1.

The Administration has recommended no budget for the Act in Fiscal Year 1986. Consequently, the final outcome concerning the future of the program remains uncertain. However, because this draft regulation also impacts Fiscal Year 1985 plans, there is no reason to delay receiving public comment.

Objectives

OJJDP has revised the regulation to accomplish three objectives:

(1) Implement the 1984 Amendments which affect the formula grant program;

(2) Simpify the regulation, where possible, in order to maximize State flexibility and reduce paperwork, while still providing appropriate Federal guidance, where necessary; and

(3) Simplify and clarify the requirements of section 223(a) (12), (13), (14), and (15) in a way that will permit States the widest possible latitude in meeting these objectives in a manner that is consistent with both Federal law and State law, priorities, and resources.

OJJDP seeks public comment on the proposed changes and solicits and invites additional comments and suggestions designed to further accomplish the three objectives.

Description of Major Changes

Family Programs

The Act places increased emphasis on programs which seek to address the problem of delinquency and its prevention by strengthening and maintaining the family unit. Section 223(a) (10) and (17) was amended to reflect the role of the family in addressing problems of juvenile delinquency. The State must now provide an assurance that consideration and assistance will be given to programs designed to strengthen and maintain the family unit to prevent delinquency.

Deinstitutionalization

The 1984 Amendments defined "valid court order" in section 103(16). This definition has been incorporated in the regulation but, consistent with Congressional intent, it does not necessitate any change in § 31.303(f)(3) of the regulation.

The definition of "secure", as used to define a detention or correctional facility, (§ 31.304(b)) has been clarified to indicate that it does not include staff secure facilities. Under section 223(a)(12)(A) of the JJDP Act, status offenders and nonoffenders may be held for purposes of their own safety in a facility which is "staff secure", i.e., does not include fixtures designed to physically restrict the movements and activities of those placed therein. Such juveniles may be held for a limited and reasonable period of time, or such time allowed by State law, in order to assure their own protection and safety.

Jail Removal

Section 223(a)(14) was amended to provide additional clarification and flexibility for the States in complying with the objective of removing juveniles from adult jails and lockups. The Act was amended to provide an explicit, limited exception. The proposed regulation (§ 31.303(f)(4)) parallels the statutory exception. The statute establishes six conditions which must be met before a juvenile can be detained in an adult jail. They are: (1) The juvenile must be accused of a criminal-type offense; (2) the juvenile is awaiting an initial court appearance; (3) the State in which the juvenile is detained has an enforceable State law requiring an initial court appearance within 24 hours after being taken into custody, excluding Saturdays, Sundays and holidays; (4) the area is outside a Metropolitan Statistical Area; (5) no existing acceptable alternative is available; and (6) the jail or lockup provides sight and sound separation between juvenile and adult offenders. The statutory amendment and the proposed implementing regulation should be viewed as an attempt to assist States, particularly those with large rural areas, in complying with the jail removal requirement, while at the same time providing for both the protection of the public and the safety of those juveniles who require temporary placement in secure confinement.

Two other exceptions to the jail removal requirement serve this objective. The first excepts juveniles who are under criminal court jurisdiction, i.e. where a juvenile has been waived, transferred, or is subject

to original or exclusive criminal court jurisdiction based on age and offense limitations established by State law and felony charges have been filed (See § 31.303(e)(2)). The second exception provides that a juvenile arrested or taken into custody for committing an act which would be a crime if committed by an adult may be temporarily held for up to 6 hours in an adult jail or lockup for purposes of identification, processing, or transfer to other facilities (See § 31.303(f)(5)(iv) (G) and (H)).

Section 223(c) of the JJDP Act was amended to allow States *three* additional years to achieve full compliance with the jail removal requirement if the State achieves a minimum 75 percent reduction in the number of juveniles held in adult jails and lockups and makes an unequivocal commitment to achieving full compliance within the additional three year period. Thus, full compliance must be demonstrated after December 8, 1988.

The regulation establishes, for the first time, criteria which will be applied by OJJDP in determining whether a State has achieved full compliance, with de minimis exceptions, with the jail removal requirement. States requesting a finding of full compliance with de minimis exceptions should submit the request at the time the annual monitoring report is submitted or as soon thereafter as all information required for a determination is available. Additional de minimis criteria, based on the model originally developed to measure full compliance with de minimis exceptions with section 223(a)(12)(A), will be developed by OJJDP after substantial compliance data has been received from the States. These criteria will establish a violation rate per 100,000 juvenile population which will be considered de minimis, thereby providing States with additional flexibility. Determinations of full compliance, with de minimis exceptions, with section 223(a)(14) would then be made annually by OJJDP and individual States required to show progress toward achieving an 100 percent reduction in order to maintain eligibility for funding.

Finally, on January 17, 1984, OJJPD issued in the **Federal Register** (49 FR 2054) a position statement on the minimum requirements of section 223(a)(14) of the JJDP Act. The position statement addressed the applicability of the jail removal requirement when a juvenile facility and an adult jail or lockup are located in the same building or on the same grounds. In an effort to combine all policies and regulations related to the formula grant program, OJJDP has incorporated into the regulations the four mandatory requirements contained in the position statement. In determining whether a facility in which juveniles are detained or confined is an adult jail or lockup, the separateness of facilities located in the same building or on common grounds must be assessed in order to determine whether each of the four requirements is met.

Audit of State Monitoring Systems

Section 204(b)(7) of the JJDP Act requires the OJJDP Administrator to provide for the auditing of State monitoring systems required under section 223(a)(15) of the Act. The State plan for monitoring compliance with sections 223(a) (12), (13) and (14) is a part of each State's three year plan. The monitoring plan requirements (§ 31.303(f)(1)) have been clarified to ensure that States established a comprehensive monitoring plan and to enable OJJDP to review the plan for adequacy. The proposed regulation does not expand the requirements for monitoring, rather it clarifies what constitutes an adequate system in order to assist the States in their monitoring efforts. OJJDP will undertake a periodic audit of each State's monitoring system and the reliability and validity of the data submitted in the State's monitoring report. The initial step in this process is to review the plans which States develop to monitor for compliance.

Executive Order 12291

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This proposed rule, if promulgated, will not have "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96-354).

Paperwork Reduction Act

The collection of information requirements contained in this guideline have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h). Comments on these requirements should be directed to OJJDP and the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Justice.

List of Subjects in 28 CFR Part 31

Grant programs, Juvenile delinquency.

Accordingly, it is proposed to revise 28 CFR Part 31 to read as follows:

PART 31—FORMULA GRANTS

Subpart A—General Provisions

Subpart B—Eligible Applicants

Subpart C—General Requirements

Subpart D—Juvenile Justice Act Requirements

Subpart E—General Conditions and Assurances

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 et seq.).

Subpart A—General Provisions

§ 31.1 General.

This part defines eligibility and sets forth requirements for application for and administration of formula grants to State governments authorized by Part B, Subpart I, of the Juvenile Justice and Delinquency Prevention Act.

§ 31.2 Statutory authority.

The Statute establishing the Office of Juvenile Justice and Delinquency Prevention and giving authority to make grants for juvenile justice and delinquency prevention improvement programs is the *Juvenile Justice and Delinquency Prevention Act of 1974*, as amended (42 U.S.C. 5601 et seq.).

§ 31.3 Submission date.

Formula Grant Applications for each of Fiscal Years 1985 through 1988 should be submitted to OJJDP by August *1st* (60 days prior to the beginning of the fiscal year) or within 60 days after the States

are officially notified of the fiscal year formula grant allocations.

Subpart B—Eligible Applicants

§ 31.100 Eligibility.

All States as defined by section 103(7) of the JJDP Act.

§ 31.101 Designation of State Agency.

The Chief Executive of each State which chooses to apply for a formula grant shall establish or designate a State agency as the sole agency for supervising the preparation and administration of the plan. The plan must demonstrate compliance with administrative and supervisory board membership requirements established by the OJJDP Administrator pursuant to section 261(c) of the JJDP Act. States must have available for review a copy of the State law or executive order establishing the State agency and its authority.

§ 31.102 State Agency Structure.

The State agency may be a discrete unit of State government or a division or other component of an existing State crime commission, planning agency or other appropriate unit of State government. Details of organization and structure are matters of State discretion, provided that the agency: (a) is a definable entity in the executive branch with the requisite authority to carry out the responsibilities imposed by the JJDP Act; (b) has a supervisory board (i.e., a board of directors, commission, committee, council, or other policy board) which has responsibility for supervising the preparation and administration of the plan and its implementation; and (c) has sufficient staff and staff capability to carry out the board's policies and the agency's duties and responsibilities to administer the program, develop the plan, process applications, administer grants awarded under the plan, monitor and evaluate programs and projects, provide administration/support services, and perform such accountability functions as are necessary to the administration of Federal funds, such as grant close-out and audit of subgrant and contract funds.

§ 31.103 Membership of Supervisory Board.

The State advisory group appointed under section 223(a)(3) may operate as the supervisory board for the State agency, at the discretion of the Governor. Where, however, a State has continuously maintained a broad-based law enforcement and criminal justice supervisory board (council) meeting all the requirements of section 402(b)(2) of the Justice System Improvement Act of 1979, and wishes to maintain such a board, such composition shall continue to be acceptable provided that the board's membership includes the chairman and at least two additional citizen members of the State advisory group. For purposes of this requirement a citizen member is defined as any person who is not a full-time government employee or elected official. Any executive committee of such a board must include the same proportion of juvenile justice advisory group members as are included in the total board membership. Any other proposed supervisory board membership is subject to case by case review and approval of the OJJDP Administrator and will require, at a minimum, "balanced representation" of juvenile justice interests.

Subpart C—General Requirements

§ 31.200 General.

This subpart sets forth general requirements applicable to formula grant recipients under the JJDP Act of 1974, as amended. Applicants must assure compliance or submit necessary information on these requirements.

§ 31.201 Audit.

The State must assure that it adheres to the audit requirements enumerated in the "Financial and Administrative Guide for Grants" OJARS Guideline Manual 7100.1 (current edition). Chapter 8 of the Manual contains a comprehensive statement of audit policies and requirements relative to grantees and subgrantees.

§ 31.202 Civil rights.

(a) To carry out the State's Federal civil rights responsibilities the plan must:

(1) Designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as liaison in all civil rights matters with OJJDP and the OJP Office of Civil Rights Compliance (OCRC); and

(2) Provide the Council's Equal Employment Opportunity Program (EEOP), if required to maintain one under 28 CFR 42.301, et seq., where the application is for $500,000 or more.

(b) The application must provide assurance that the State will:

(1) Require that every applicant required to formulate an EEOP in accordance with 28 CFR 42.201 et seq., submit a certification to the State that it has a current EEOP on file, which meets the requirement therein;

(2) Require that every criminal or juvenile justice agency applying for a grant of $500,000 or more submit a copy of its EEOP (if required to maintain one under 28 CFR 42.301, et seq.) to OCRC at the time it submits its application to the State;

(3) Inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with OCRC for investigation;

(4) Cooperate with OCRC during compliance reviews of recipients located within the State; and

(5) Comply, and that its subgrantees and contractors will comply with the requirement that, in the event that a Federal or State court or administration agency makes a finding of discrimination on the basis of race, color, religion, national origin, or sex (after a due process hearing) against a State or a subgrantee or contractor, the affected recipient or contractor will forward a copy of the finding to OCRC.

§ 31.203 Open meeting and public access to records.

The State must assure that the State agency and its supervisory board established pursuant to section 261(c)(1) and the State advisory group established pursuant to section 223(a)(3) will follow applicable State open meeting and public access laws and regulations in the conduct of meetings and the maintenance of records relating to their functions.

Subpart D—Juvenile Justice Act Requirements

§ 31.300 General.

This subpart sets forth specific JJDP Act requirements for application and receipt of formula grants.

§ 31.301 Funding.

(a) *Allocation to States.* Each State receives a base allotment of $225,000 except for the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands where the base amount is $56,250. Funds are allocated among the States on the basis of relative population under 18 years of age.

(b) *Funds for Local Use.* At least two-thirds of the formula grant allocation to the State must be used for programs by local government, or local private agencies unless the State applies for and is granted a waiver by the Office of Juvenile Justice and Delinquency Prevention.

(c) *Match.* Formula grants under the JJDP Act shall be 100% of approved costs, with the exception of planning

and administration funds, which require a 100% cash match (dollar for dollar), and construction projects funded under section 227(a)(2) which also require a 100% cash match.

(d) *Funds for Administration.* Not more than 7.5% of the total annual formula grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring evaluation. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government or combinations on an equitable basis. Each annual application must identify uses of such funds.

(e) *Nonparticipating States.* Pursuant to section 223(d), the OJJDP Adminstrator shall endeavor to make ose(s) of
achieving deinstitutionalization of status offenders and nonoffenders, separation of juveniles from incarcerated adults, and/or removal of juveniles from adult jails and lockups. Absent the demonstration of compelling circumstances justifying the reallocation of formula grant funds back to the State to which the funds were initally allocated, or the pendency of administrative hearing proceedings under section 223(d), formula grant funds will be reallocated on October 1 following the fiscal year for which the funds were appropriated. Reallocated funds will be competitively awarded to eligible recipients, as special emphasis funds, pursuant to program announcements published in the **Federal Register.**

§ 31.302 Applicant State Agency.

(a) Pursuant to section 223(a)(1), section 223(a)(2) and section 261(c) of the JJDP Act, the State must assure that the State agency approved under section 261(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) *Advisory Group.* Pursuant to section 223(a)(3) of the JJDP Act the Chief Executive:

(1) Shall establish an advisory group pursuant to section 223(a)(3) of the JJDP Act. The State shall provide a list of all current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this Section of the Act; and

(2) Should consider, in meeting the statutory membership requirements of section 223(a)(3) (A)–(E), appointing at least one member who represents each of the following: A law enforcement officer such as a police officer; a juvenile or family court judge; a probation officer; a corrections official; a prosecutor; a parents or other organization concerned with teenage drugs and alcohol abuse; and a high school principal.

(c) The State shall assure that it complies with the Advisory Group Financial support requirement of section 222(d) and the composition and function requirements of section 223(a)(3) of the JJDP Act.

§ 31.303 Substantive requirements.

(a) *Assurances.* The State must certify through the provision of assurances that it has complied and will comply (as appropriate) with section 223(a)(4), (5), (6), (7), (8)(C), (9), (10), (11), (16), (17), (18) and 229, (19), (20), and (21), and section 261(d), in formulating and implementing the State plan. The Formula Grant Application Kit can be used as a reference in providing these assurances.

(b) *Serious Juvenile Offender Emphasis.* Pursuant to sections 101(a)(8) and 223(a)(10) of the JJDP Act, the Office encourages States that have identified serious and violent juvenile offenders as a priority problem, to allocate a minimum of 30% of the formula grant award to programs designed for serious and violent juvenile offenders. Particular attention should be given to improving sentencing procedures, providing resources necessary for informed dispositions, providing for effective rehabilitation, and facilitating the coordination of services between the juvenile justice and criminal justice systems. In accord with Administration policy direction, the Office will attempt to assist States to reach this goal.

(c) *Deinstitutionalization of Status Offenders and Non-Offenders.* Pursuant to section 223(a)(12)(A) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable covering the three-year planning cycle, for assuring that the requirements of this section are met. Refer to § 31.303(f)(3) for the rules related to the valid court order exception to this Act requirement;

(2) Describe the barriers the State faces in achieving full compliance with the provisions of this requirement;

(3) For those States that have achieved "substantial compliance" as outlined in section 223(c) of the Act, indicate the unequivocal commitment to achieving full compliance. Attach documentation;

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(12)(A) may, in lieu of addressing paragraphs (c)(1), (2), and (3) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance; and

(5) Submit the report required under section 223(a)(12)(B) of the Act as part of the annual monitoring report required by section 223(a)(15) of the Act.

(d) *Contact with Incarcerated Adults.* (1) Pursuant to section 223(a)(13) of the JJDP Act the State shall:

(i) Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term *regular contact* is defined as sight and sound contact with incarcerated adults, including inmate trustees. This prohibition seeks as complete a separation as possible and permits no more than haphazard or accidental contact between juveniles and incarcerated adults. In addition, include a timetable for compliance and justify any deviation from a previously approved timetable.

(ii) In those isolated instances where juvenile criminal-type offenders remain confined in adult facilities or facilities in which adults are confined, the State must set forth the procedures for assuring no regular sight and sound contact between such juveniles and adults.

(iii) Describe the barriers which may hinder the separation of alleged or adjudicated criminal-type offenders, status offenders and non-offenders from incarcerated adults in any particular jail, lockup, detention or correctional facility.

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with section 223(a)(13) may, in lieu of addressing paragraphs (d)(1)(i), (ii), and (iii) of this section, provide an assurance that adequate plans and resources are available to maintain compliance.

(v) Assure that adjudicated offenders are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of segregating adults and juveniles in correctional facilities. This does not prohibit or restrict waiver of juveniles to criminal court for prosecution, according to State law. It does, however, preclude a State from administratively

transferring a juvenile offender to an adult correctional authority or a transfer within a mixed juvenile and adult facility for placement with adult criminals either before or after a juvenile reaches the statutory age of majority. It also precludes a State from transferring adult offenders to a juvenile correctional authority for placement.

Implementation. The requirement of this provision is to be planned and implemented immediately by each State in light of identified constraints on immediate implementation. Immediate compliance is required where no constraints exist. Where constraints exist, the designated date of compliance in the latest approved plan is the compliance deadline. Those States not in compliance must show annual progress toward achieving compliance until compliance is reached.

(e) *Removal of Juveniles from Adult Jails and Lockups.* Pursuant to section 223(a)(14) of the JJDP Act, the State shall:

(1) Decribe its plan, procedure, and timetable for assuring that requirements of this section will be met by December 8, 1985. Refer to § 31.303(f)(4) to determine the regulatory exception to this requirement;

(2) Describe the barriers which the State faces in removing all juveniles from adult jails and lockups. This requirement excepts only those juveniles formally waived or transferred to criminal court and criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been involved through the filing of criminal felony charges;

(3) (i) In determining whether or not a facility in which juveniles are detained or confined is an adult jail or lockup, in circumstances where the juvenile and adult facilities are located in the same building or on the same grounds, each of the following four requirements, initially set forth in Section II of the OJJDP policy established in the January 17, 1984 **Federal Register** (49 FR 2054–2055), must be met in order to ensure the requisite separateness of the two facilities. The requirements are:

(A) Total separation between juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities.

(B) Total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities.

(C) Separate juvenile and adult staff, including management, security staff, and direct care staff such as recreation, education, and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both.

(D) In States that have established State standards or licensing requirements for secure juvenile detention facilities, the juvenile facility meets the standards and is licensed as appropriate.

(ii) The State must initially determine that the four requirements are fully met. Upon such determination, the State must submit to OJJDP a request to concur with the State finding that a separate juvenile facility exists. To enable OJJDP to assess the separateness of the two facilities, sufficient documentation must accompany the request to demonstrate that each requirement is met.

(4) For those States that have achieved "substantial compliance" with section 223(a)(14) as specified in section 223(c) of the Act, indicate the unequivocal commitment to achieving full compliance. Attach documentation.

(5) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(14) may, in lieu of addressing paragraphs (e)(1), (2), and (4) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(f) *Monitoring of Jails, Detention Facilities and Correctional Facilities.* (1) Pursuant to section 223(a)(15) of the JJDP Act, and except as provided by paragraph (f)(7) of this section, the State shall:

(i) Describe its plan, procedure, and timetable for annually monitoring jails, lockups, detention facilities, correctional facilities and non-secure facilities. The plan must at a minimum describe in detail each of the following tasks including the identification of the specific agency(s) responsible for each task.

(A) *Identification of Monitoring Universe:* This refers to the identification of all residential facilities which might hold juveniles pursuant to public authority and thus must be classified to determine if it should be included in the monitoring effort. This includes those facilities owned or operated by public and private agencies.

(B) *Classification of the Monitoring Universe:* This is the classification of all facilities to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure or nonsecure facility.

(C) *Inspection of facilities:* Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping. The inspection must include (*1*) a review of the physical accommodations to determine whether it is a secure or non-secure facility or whether adequate sight and sound separation between juvenile and adult offenders exist *and* (*2*) a review of the record keeping system to determine whether sufficient data is maintained to determine compliance with section 223(a)(12), (13) and/or (14).

(D) *Data Collection and Data Verification:* This is the actual collection and reporting of data to determine whether the facility is in compliance with the applicable requirement(s) of section 223(a)(12), (13) and/or (14. The length of the reporting period should be 12 months of data, but in no case less than 6 months. If the data is self-reported by the facility or is collected and reported by an agency other than the State agency designated pursuant to section 223(a)(1) of the JJDP Act, the plan must describe a statistically valid procedure used to verify the reported data.

(ii) Provide a description of the barriers which the State faces in implementing and maintaining a monitoring system to report the level of compliance with section 223(a)(12), (13), and (14) and how it plans to overcome such barriers.

(iii) Describe procedures established for receiving, investigating, and reporting complaints of violation of section 223(a)(12, (13), and (14). This should include both legislative and administrative procedures and sanctions.

(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act a secure detention or correctional facility is any secure public or private facility used for the lawful custody of *accused* or adjudicated juvenile offenders or nonoffenders, *or* used for the lawful custody of accused or convicted adult criminal offenders.

(3) *Valid Court Order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent

jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juveniles in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juveniles and to his attorney and/or to his legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violating hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juveniles may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3), (f)(3)(i), (ii), (iii) of this section) and the applicable due process rights (paragraphs (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

(4) *Removal Exception (section 223(a)(14)).* The following conditions must be met in order for an accused juvenile criminal-type offender, awaiting an initial court appearance, to be detained up to 24 hours (excluding weekends and holidays) in an adult jail or lockup:

(i) The State must have an enforceable State law requiring an initial court appearance within 24 hours after being taken into custody (excluding weekends and holidays);

(ii) The geographic area having jurisdiction over the juvenile is outside a metropolitan statistical area pursuant to the Bureau of Census' current designation;

(iii) A determination must be made that there is no existing acceptable alternative placement for the juvenile pursuant to criteria developed by the State approved by OJJDP;

(iv) The adult jail or lockup muct have been certified by the State to provide for the sight and sound separation of juveniles and incarcerated adults; and

(v) The State must provide documentation that the conditions in paragraphs (f)(4)(i) thru (iv) of this section have been met and received prior approval for OJJDP.

(5) *Reporting Requirement.* The State shall report annually to the Administrator of OJJDP on the results of monitoring for section 223(a)(12), (13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than 6 months. Three copies of the report shall be submitted to the Administrator of OJJDP no later than December 31 of each year.

(i) To demonstrate the extent of compliance with section 223(a)(12)(A) of the JJDP Act, the report must at least include the following information both the baseline and the current reporting periods.

(A) Dates of baseline and current reporting period.

(B) Total number of public and private juvenile detention and correctional facilities AND the number inspected on-site.

(C) Total number of accused status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(f)(2) for longer than 24 hours (not including weekends and holidays), excluding those held pursuant to the valid court order provision as defined in paragraph (f)(3) of this section.

(D) Total number of adjudicated status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(f)(2), excluding those held pursuant to the valid court order provision as defined in paragraph (f)(3) of this section.

(E) Total number of status offenders held in any secure detention or correctional facilities pursuant to a judicial determination that the juvenile violated a valid court order as defined in paragraph (f)(3) of this section.

(ii) To demonstrate the extent to which the provisions of section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and non-offenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the progress toward and extend of compliance with section 223(a)(13) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Designated date for achieving full compliance.

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months AND the number inspected on-site.

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide adequate separation.

(D) The total number of juvenile offenders and non-offenders NOT adequately separated in facilities used for the secure detention and confinement of both juveniles and adults.

(vi) To demonstrate the progress toward and extent of compliance with section 223(a)(14) of the JJDP Act the report must at least include the following information for the baseline and current reporting periods:

(A) Dates of baseline and current reporting period.

(B) Total number of adult jails in the State AND the number inspected on-site.

(C) Total number of adult lockups in the State AND the number inspected on-site.

(D) Total number of adult jails holding juveniles during the past twelve months.

(E) Total number of adult lockups holding juvenile during the past twelve months.

(F) Total number of adult jails and lockups in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section including a list of such facilities and the county or jurisdiction in which it is located.

(G) Total number of juvenile criminal-type offenders held in adult jails in excess of six hours.

(H) Total number of juvenile criminal-type offenders held in adult lockups in excess of six hours.

(I) Total number of accused and adjudicated status offenders and non-offenders held in any adult jail or lockup.

(J) Total number of juveniles accused of a criminal-type offense who were held less than 24 hours in adult jails and lockups in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section.

(6) *Compliance.* The State must demonstrate the extent to which the requirements of section 223(a)(12)(A), (13), and (14) of the Act are met. Should the State fail to demonstrate compliance with the requirements of this Section within designated time frames, eligibility for formula grant funding shall terminate. The compliance levels are:

(i) *Substantial compliance* with section 223(a)(12)(A) requires within three years of initial plan submission achievement of a 75% reduction in the aggregate number of status offenders and non-offenders held in secure detention or correctional facilities or removal of 100% of such offenders from secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within two additional years. *Full compliance* is achieved when a State has removed 100% of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with *de minimis* exceptions pursuant to the policy criteria contained in the **Federal Register** of January 9, 1981 (46 FR 2566–2569).

(ii) *Compliance* with section 223(a)(13) has been achieved when a State can demonstrate that:

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of section 223(a)(13); or

(B)(*1*) State law, regulation, court rule, or other established executive or judicial policy clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of section 223(a)(13);

(*2*) All instances of noncompliance reported in the last submitted monitoring report were in violation of, or departures from, the State law, rule, or policy referred to in paragraph (f)(6)(ii)(B)(*1*) of this section;

(*3*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; and

(*4*) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (f)(6)(ii)(B)(*1*) of this section are such that the instances of noncompliance are unlikely to recur in the future.

(iii) *Substantial compliance* with section 223(a)(14) requires the achievement of a 75% reduction in the number of juveniles held in adult jails and lockups by December 8, 1985 and that the State has made an unequivocal commitment, through appropriate executive or legislative action, achieving full compliance within three additional years. *Full compliance* is achieved when a State demonstrates that the last submitted monitoring report, covering a full and actual 12 months of data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14). *Full compliance with de minimis exceptions* is achieved when a State demonstrates either Paragraph (f)(6)(iii) (A) or (B) of this section:

(A)(*1*) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);

(*2*) All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from, the State law, rule, or policy referred to in paragraph (f)(6)(iii)(A)(*1*) of this section;

(*3*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;

(*4*) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (f)(6)(iii)(A)(1) of this section are such that the instances of noncompliance are unlikely to recur in the future; and

(*5*) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(A)(4) of this section.

(B) [Reserved]

(7) *Monitoring Report Exceptions.* States which have been determined by the OJJDP Administrator to have achieved full compliance with section 223(a)(12)(A) and compliance with section 223(a)(13) of the JJDP Act and which wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to enable an annual determination of State compliance with section 223(a)(12)(A), (13), and (14) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of section 223(a)(12)(A) and (13) of the JJDP Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Time frames for monitoring compliance with the statute are specified; and

(C) Adequate sanctions and penalties that will result in enforcement of statute and procedures for remedying violations are set forth.

(g) *Juvenile Crime Analysis.* Pursuant to section 223(a)(8) (A) and (B) the State shall conduct an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs.

(1) *Analysis.* The analysis must be provided in the multi-year application. A suggested format for the analysis is provided in the Formula Grant Application Kit.

(2) *Product.* The product of the analysis is a series of brief written problem statements set forth in the application that define and describe the priority problems.

(3) *Programs.* Applications are to include descriptions of programs to be supported with JJDP Act formula grant funds. A suggested format for these programs is included in the application kit.

(4) *Performance Indicators.* A list of performance indicators must be developed and set forth for each program. These indicators show what data will be collected at the program level to measure whether objectives and performance goals have been achieved and should relate to the measures used in the problem statement and statement of program objectives.

(h) *Annual Performance Report.* Pursuant to section 223(a) and section 223(a)(22) the State plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals. The annual performance report shall describe progress made in addressing the problem of serious juvenile crime, as documented in the juvenile crime analysis pursuant to section 223(a)(8)(A).

(i) *Technical Assistance.* States shall include, within their plan, a description of technical assistance needs. Specific direction regarding the development and inclusion of all technical assistance needs and priorities will be provided in the "Application Kit for Formula Grants under the JJDPA."

(j) *Other Terms and Conditions.* Pursuant to section 223(a)(23) of the JJDP Act, States shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the formula grant.

§ 31.304 Definitions.

(a) *Private agency.* A private non-profit agency, organization or institution is:

(1) Any corporation, foundation, trust, associaiton, cooperative, or accredited institution of higher education not under public supervision or control; and

(2) Any other agency, organization or institution which operates primarily for scientific, education, service, charitable, or similar public purposes, but which is not under public supervision or control, and not part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of section 501(c)(3) of the 1954 Internal Revenue Code.

(b) *Secure.* As used to define a detention or correctional facility this term includes residential facilities which have fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities which are "staff secure", i.e., where physical restriction of movement or activity is provided solely through facility staff.

(c) *Facility.* A place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

(d) *Juvenile who is accused of having committed an offense.* A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

(e) *Juvenile who has been adjudicated as having committed an offense.* A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

(f) *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law, i.e., a criminal-type offender or a status offender.

(g) *Criminal-type offender.* A juvenile offender who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(h) *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(i) *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

(j) *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

(k) *Other individual accused of having committed a criminal offense.* An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction.

(l) *Other individual convicted of a criminal offense.* An individual, adult or juvenile, who has been convicted of a criminal offense in court exercising criminal jurisdiction.

(m) *Adult jail.* A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

(n) *Adult lockup.* Similar to an adult jail except that an adult lock-up is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

(o) *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juvenile for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States.

(p) *Local Private Agency.* For the purposes of the pass-through requirement of section 223(a)(5), a local private agency is defined as a private non-profit agency or organization that provides program services within an identifiable unit or a combination of units of general local governments.

Subpart E—General Conditions and Assurances

§ 31.400 Compliance with statute.

The applicant State must assure and certify that the State and its subgrantees and contractors will comply with applicable provisions of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, as amended, and with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93–415, as amended, and the provisions of the current edition of OJP Financial and Administrative Guide of Grants, M 7100.1.

§ 31.401 Compliance with other Federal laws, orders, circulars.

The applicant State must further assure and certify that the State and its subgrantees and contractors will adhere to other applicable Federal laws, orders and OMB circulars. These general Federal laws and regulations are described in greater detail in the Financial and Administrative Guide for Grants, M7100.1, and the Formula Grant Application Kit.

§ 31.402 Application on file.

Any Federal funds awarded pursuant to an application must be distributed and expended pursuant to and in accordance with the programs contained in the applicant State's current approved application. Any departures therefrom, other than to the extent permitted by current program and fiscal regulations and guidelines, must be submitted for

advance approval by the Administrator of OJJDP.

§ 31.403 Non-discrimination.

The State assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination requirements, including:

(a) Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and made applicable by Section 262(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

(b) Title VI of the Civil Rights Act of 1964;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975; and

(f) The Department of Justice Non-discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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February 13, 1985

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On July 8, 1983, the Department proposed changes intended primarily to reduce the regulatory burden on State and local agencies which administer the Special Supplemental Food Program for Women, Infants and Children (WIC Program). Two hundred and forty-six comments were received during the 60-day comment period. This final rule responds to the provisions set forth in the proposed rule and the recommendations of the commenters. This rule: (1) Makes a number of technical revisions as proposed; (2) reorganizes the regulations to more clearly identify major progran areas and groups related sections together under them; and (3) makes substantive revisions to a number of areas affecting program operations, such as the State Plan and the participant priority system. The Department expects this rule to reduce State and local burdens, streamline program operations, and provide State agencies greater administrative discretion.

DATES: *Effective date:* March 15, 1985. *Implementation date:* State and local agencies must implement the mandatory provisions in this rule no later than June 13, 1985.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302, (703) 756-3746. Comments are available for pubic inspection in Room 407, 3101 Park Center Drive, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5 p.m.), Monday through Friday.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291 and has been classified as *not major*. The Department does not anticipate that this rule will have an impact on the economy of $100 million or more. This rule will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local agencies; or geographic regions. Nor will this rule 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.

This rule has been reviewed with regard to the requirements of the Regulation Flexibility Act (Pub. L. 96-354). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that this final rule does not have a significant economic impact on a substantial number of small entities. The reporting and recordkeeping requirements identified in § 246.28 have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

The WIC Program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983).

Background

On February 17, 1981, President Reagan issued Executive Order 12291, which established procedures for review of existing regulations, to assure their compliance with the goal of reducing regulatory burdens. In implementing this Order, the Department, in cooperation with State and local agencies and participant advisors, evaluation the impact of regulatory requirements on State agencies and identified provisions which could be deleted or modified to: (a) Reduce program administrative requirements; (b) reduce program costs; (c) increase State and local flexibility; and (d) combat fraud, waste, and program abuse.

In response to this Executive Order, the Department published a proposed rule for the WIC Program in the **Federal Register** (48 FR 31502) on July 8, 1983. The proposal was designed to reduce the regulatory burden on State and local agencies that administer the WIC Program in a manner consistent with the maintenance of effective program accountability. The Department provided a 60-day comment period which ended on September 6, 1983. During that comment period, 246 comments were received from a variety of sources, including State and local health professionals, other State and local agency staff, advocacy groups, professional organizations, and several Federal agencies. The Department would like to thank all of those commenters who responded to the proposal. Especially appreciated were the many detailed suggestions which proved helpful in formulating this final rule.

General Comments

While most commenters tended to support the Department's efforts to reduce the regulatory burden, the diversity of issues addressed made it difficult to identify trends. Reaction to the proposal was very clearly issued-oriented with a preponderance of commenters concerned about: The definition of migrant farmworker, State Plan requirements, clarification of income guidelines policy, the participant priority system, processing timeframes and infant certification periods.

Since commenters did not express any concern regarding reorganization of the WIC regulations, the Department has adopted the new format. A redesignation table has been provided at the end of this preamble to facilitate use of this final rule. The redesignation table indicates the old section numbers and titles and the corresponding new section numbers. All regulatory citations identified in the preamble refer to the redesignated sections unless otherwise indicated.

The remainder of this preamble discusses the major concerns expressed by commenters and the specific changes being made to the regulatory requirements presented in the proposed rule. For ease in reference, the changes are presented under the final rule section headings. Sections in which the final rule remains essentially as proposed and no substantive objections were raised by commenters are not adressed in this preamble. The regulatory text for those sections remains as proposed. Several segments of this final rule were not proposed for comment (formerly § 246.8 and § 246.10, redesignated § 246.10 and § 246.12, respectively, and former paragraphs (d) and (e), redesignated paragraphs (c) and (d), respectively, of § 246.4) and are reprinted to present program regulations in their entirety.

Subpart A—General

Section 246.2 Definitions.

The Department proposed to replace the term "operational and administrative costs" with *"administrative costs"* and to abbreviate the definitions by referring to § 246.14 for a listing of allowable costs. Several commenters opposed the proposed change since the term "administrative costs" would not

accurately reflect a number of program services, e.g., nutrition education, which are allowable under the administrative cost category. For that reason, the term "administrative costs" has been replaced by "administrative and program services costs," and the definition has been expanded to provide examples of both administrative costs and program services cost.

Definitions for Office of Management and Budget (OMB) Circulars *"A-87"*, *"A-102"*, and *"A-110"*, have been deleted, as have references to these Circulars throughout the regulatory text. The proposed definition of 7 CFR Part 3015, the Department's Uniform Federal Assistance Regulations, has been expanded to clarify that Part 3015 implements the policies established under OMB Circulars A-21, A-87, A-102, A-110, and A-122 as well as OMB Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977. Thus, the deletion of references to specific circulars does not indicate a shift in policy; rather, it represents a clarification of terminology.

Twenty-seven commenters addressed the proposed inclusion in the definitation of *"competent professional authority"* of professional requirements previously listed in the certification section of the regulations. While the majority of commenters supported the shift of requirements to the definition, several commenters recommended that the definition be further expanded to include licensed practical nurses. The Department believes that the phrase "State or local medically trained health officials" allows a licensed practical nurse to be considered a competent professional authority by State determination, provided that the State or local medical training qualification is met.

Several commenters recommended ways to limit the definition, thus excluding various categories of persons the State agency may authorize to serve as competent professional authorities. Given limited funding levels and the diversity of State operations, such exclusions might hamper a State's administration of the program and unnecessarily restrict the flexibility needed to meet local level needs. Furthermore, section 17(b)(4) of the Child Nutrition Act of 1966 defines the term "competent professional authority"; thus, while the Department may clarify congressional intent, it does not have the authority to exclude categories of persons listed in the statute. For these reasons, the definition remains essentially as proposed. A new sentence has been added to reflect the longstanding language in § 246.7(d) which acknowledges that the term "competent professional authority" also applies to persons not on the local agency staff who are qualified to submit data to the local agency which can be used in nutritional risk determinations.

A new definition *"CSFP"*, Commodity Supplemental Food Program, has been added to shorten references to this program in the regulatory text.

Several commenters expressed concerns that the use of the term *"disqualification"* carries a punitive connotation. The Department recognizes the need to stress that "disqualification" means the act of ending program participation for administrative as well as punitive reasons and will work towards eliminating unnecessarily negative usage of the term. The definition of "disqualification" in the final rule has been expanded to include the concept of ending the program participation of a State agency, an aspect overlooked in the proposal.

As proposed, the definition of *"dual participation"* meant simultaneous participation in the WIC Program at more than one local agency or participation in the WIC Program and the CSFP. The final rule revises this definition to include simultaneous participation in one or more than one clinic. This change is designed to prohibit simultaneous participation in more than one local agency, in more than one clinic of a single local agency, and in a single clinic (i.e., participation under more than one name).

To be consistent with the term used by the Department of Health and Human Services (DHHS), the final rule substitutes the term "poverty income guidelines" for *"income poverty guidelines."* The definition has been revised to eliminate the farm and nonfarm distinction, to reflect a change in the official statistical definition of poverty and to substitute "Department of Health and Human Services" for "Office of Management and Budget" as DHHS is not responsible for annually revising the Federal poverty income guidelines. As described in the notice of poverty income guidelines issued June 1, 1983 (48 FR 24403), the guidelines prescribed for Guam are identical to those used for the contiguous 48 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Marianas, and the Trust Territory of the Pacific Islands. The definition incorporates this change.

The Department-proposed definition for *"migrant farmworker"* is similar to one used for migatory agricultural workers by the DHHS. Forty-one comments were received on the proposal. Almost all commenters expressed support for the use of a national definition; however, about one-fourth recommended modifications to the proposed definition. The recommended modifications would expand the definition to include family members of the migrant farmworker, individuals employed in seasonal industries such as canneries, forestry and fishery, and individuals seeking employment in agricultural work in the last 24 months. The Department has decided to retain the proposed definition with minor adjustments. The words "principal," "establishes" and "purposes," are substituted for "prime," "had established" and "purpose," respectively, making the definition identical to that used by the DHHS. The Department believes that the use of the DHHS definition allows for the development of a consistent reporting system and promotes consistent treatment of itinerant farmworkers as they travel from one State to another. In response to commenters' requests to include reference to the family members of migrant farmworkers in the definition of "migrant farmworker," the regulatory text has been revised to reference both the migrant farmworker and his or her family members.

Section 246.3 Administration.

The proposed rule made no changes to the State staffing standards specified under § 246.3(d); however, 14 commenters expressed reservations regarding the qualification of the WIC coordinator listed under paragraph (d)(3). Several commenters recommended deleting some or all of the requirements identified in paragraphs (d)(3) (i), (iii), (iv), and (v). Other commenters recommended adding new requirements, such as limiting the consideration of recipients of Bachelor of Science or Bachelor of Arts degrees to degrees earned from a four-year institution accredited by the American Dietetic Association. These commenters also recommended that recipients of Bachelor of Arts or Sciences, or Master's degrees also be required to be Registered Dietitians (RD) or RD-eligible.

This final rule reflects the provisions as proposed. The Department believes that any changes in this area have the potential for disruption of State agency operations; for this reason no action is being taken.

Subpart B—State and Local Agency Eligibility

Section 246.4 State Plan.

Executive Order 12372, issued July 14, 1982, mandates that, where permitted by law, Federal agencies allow for simplification and consolidation of State plans. Pursuant to the Executive Order, the Office of Managaement and Budget revoked Circular A-95, which directed State and local agencies to follow federally prescribed review procedures. In response to the Executive Order and the revocation of A-95, the Department proposed to: (a) Limit the content requirements of the Plan to the legislative requirements of Section 17 of the Child Nutrition Act of 1966, as amended, and the information essential to support the legislative requirements; (b) allow the States to submit a separate WIC State Plan or a WIC State Plan that has been consolidated with other federally required State planning documents; and (c) remove the requirements surrounding the State Plan submission to the Governor and the requirement for the signature of the Chief State Health Officer.

Fifty-seven commenters addressed the proposed revision of the State Plan requirements. Three-fourths of these commenters supported the proposed provisions. Most of the commenters expressing opposition to the proposal addressed specific areas of § 246.4. Concern was expressed about the deletion of provisions in the areas of affirmative action, outreach, nutrition education, and financial management. These commenters stated that the reduction of State Plan requirements might have a deleterious effect on the program; e.g., reducing its effectiveness, diminishing its visibility, and possibly removing the program from the broader health network. These commenters recommended retaining the 1979 WIC State Plan provisions.

Given the intent of the Executive Order and the support of the majority of commenters, the Department has decided to retain the proposal with minor modifications to accommodate the concerns and recommendations of the commenters.

Several commenters expressed concern regarding the proposed provision which would require State agencies to report, as part of the Affirmative Action Plan, the "relative percentages" of persons in each priority level, as defined in § 246.7(d)(4). This proposed requirement was intended to provide a means for measuring the degree to which benefits are being directed to persons at greatest nutritional risk. Although a few commenters indicated that it might be difficult for some State agencies to provide counts by priority level, the Department believes that the need to accurately assess the distribution of benefits must be met. However, the Department also recognizes that the reporting necessary to meet this need should be integrated into the Program reporting system, rather than incorporated into an annual planning document. Accordingly, this reporting requirement has been relocated, with modifications, to § 246.25, Records and Reports. An explanation of the revised requirement appears in the preamble discussion of that section.

The relocation of this requirement to § 246.25 entails a corresponding change to § 246.4 of the proposal. Section 246.4(a)(5)(ii) now requires only that State agencies report which priorities are being reached in each of the areas served by the Program. This constitutes a reinstatement of language from the previous final regulations.

In response to commenter recommendations concerning § 246.7(d)(4), State agencies have been provided with new options for modifying the participant priority system. As a result, § 246.4(a)(11), the procedure manual segment of the State Plan, has been revised. The revision requires State agencies which intend to exercise these options to describe how they will implement them.

In response to requests for clarification, § 246.4(a)(14)(vii) is revised to clarify that the required description of the food delivery system must include the names of companies, *excluding authorized food vendors*, with whom the State agency has contracted to participate in the operation of the food delivery system. This provision refers to banks, automated data processing firms, and the like.

Section 246.4(a)(15) requires State agencies to enter into an agreement with CSFP agencies for the detection and prevention of dual participation when the two programs operate in the same State. The previous final regulations included the requirement that Indian State agencies which operated in the same area as a geographic State agency enter into a similar agreement. There was no intention to change this requirement in the proposed rule. Therefore, the phrase regarding Indian State agencies which was inadvertently omitted has been reinstated.

The Department of Justice Title VI coordination regulation (28 CFR 42.410) requires that each State agency establish a Title VI compliance program for itself, local agencies, and clinics. This program is to be made available to the public. Section 246.4(a)(16) has been revised to require a description of all procedures the State agency establishes in order to comply with the Department of Justice's regulation. While this provision is new to the State Plan section of the regulations, it is not a new requirement. Rather, this provision formalizes a requirement identified in FNS instructions and reflects existing State Plan submissions.

Based on commenter concerns regarding the fair hearing process, the Department has reinserted the requirement for a State agency to include a description of its fair hearing process in the State Plan. This provision is found in § 246.4(a)(17).

Commenters requesting clarification of the alternative State Plan submissions, consolidation with other federally required documents, and the internal State review procedures should refer to the final rule entitled Intergovernmental Review of the Department of Agriculture Programs and Activities, published in the **Federal Register** on June 24, 1983 (48 FR 29100).

Commenters requested further clarification on whether the State Plan must still be submitted to the Governor and whether the signature of the Chief State Health Officer continues to be required. Executive Order 12372 enables States to design internal procedures for State Plan review and approval. In keeping with the Executive Order and the June 24, 1983, final rule, the Department proposed to delete the required procedures surrounding the submission of the plan to the Governor and the required signature of the Chief State Health Officer or equivalent. The final rule has been revised to require that the State Plan and any amendments to be signed by the State-designated official responsible for ensuring that the Program is operated in accordance with the State Plan. The Department considers the signature of a State-designated official necessary to ensure that the State Plan and any amendments received by FNS reflect the State agency's intended operations for the forthcoming fiscal year. In keeping with the goal of increased State flexibility embodied in the Executive Order, the final rule allows the State agency to designate the responsible individual rather than requiring that he or she be the Chief State Health Officer or equivalent.

In specifying an appropriate time frame for public hearings, Section 17(f)(2) of the Child Nutrition Act of 1966, as amended, mandates that hearings be held one month prior to the submission of the State Plan to the

Governor. At the time this provision was enacted, OMB Circular A-95 required that State Plans be submitted to a State's Governor prior to submission to the grantor agency. The legislative history for section 17(f)(2) indicates the intent of the provision was to enable the public to participate in the development of State Plans. Since States may now establish procedures which obviate the submission of the State Plan to the Governor, § 246.4(b) requires that public hearings be held at least one month before the submission of the State Plan to the designated State Plan clearance official, thus allowing time for public participation in the development of the Plan as required by section 17(f)(2).

State agencies are reminded that while this rule becomes effective March 15, 1985, and may be implemented at that time, they are required to be in full compliance with all new mandatory provisions no later than June 13, 1985. Amendments needed to bring the 1985 State Plan into compliance with the mandatory provisions of this final rule must be submitted no later than June 13, 1985. Revisions to the State Plan necessitated by decisions to exercise State options newly established by this rule in accordance with § 246.4(a)(11)(i), may be submitted whenever such decisions are made. The June 13, 1985, implementation date does not apply to Plan modifications resulting from State options.

Section 246.5 Selection of local agencies.

One-hundred and seventeen comments were received concerning the selection of local agencies. Well over three-fourths of these comments focused on paragraphs (e) and (f), which deal with disqualification due to limited resources and periodic review of local agency qualifications, respectively.

Commenters discussing paragraphs (a), (b), (c), and (d) offered support for the proposed provisions, including the proposed elimination of the requirement that the State agency provide a preapplication package to any interested agency. The final rule reflects the proposed provisions and a minor revision to paragraph (d) which is intended to provide State agencies more flexibility in the selection of local agencies. The previous final rule mandated that State agencies select local agencies in compliance with the local agency priority system. In the proposal, State agencies were required to consider this system as a minimum standard for selecting local agencies. This final rulemaking further clarifies the State agencies' discretion by requiring that they establish their own local agency selection criteria, provided that they continue to consider the local agency priority system set forth in paragraph (d)(1).

Of the 56 commenters addressing paragraph (e), the majority offered support or conditional support of the State agency's authority to disqualify a local agency on the basis of limited administrative resources. Several commenters recommended revising the proposed 60-day advance notice; however, no consensus of alternatives to the advance notice timeframe was achieved. The Department did, however, clarify the wording to require that any disqualified local agency, including those whose contracts have not been renewed, be provided with *not less than* 60 days advance written notice. Each State agency will establish its own advance notification period, providing that it complies with the regulatory minimum.

Paragraph (e) was also revised to more fully address circumstances under which State agencies may disqualify local agencies. Noncompliance with Program regulations is now specified as a cause for such actions. The final rule also clarifies that a local agency can be disqualified if, in reviewing the qualifications of local agencies in accordance with paragraph (f) of this section, the State agency determines that another local agency can more effectively and efficiently operate the Program. Paragraph (f) has also been revised to reflect this clarification.

Several commenters recommended that disqualification be based on past performance. The Department believes proposed paragraphs (e)(1) (i) and (f) provided State agencies with the flexibility to consider past performance when determining the efficiency and effectiveness of a local agency. Another area of concern was the availability of fair hearings to a local agency disqualified under paragraph (e); however, § 246.18(a)(1) provided that local agencies have the right to a fair hearing for a disqualification. Proposed paragraph (e)(2)(ii) required the State agency to notify the local agency of its right to appeal under § 246.18. The Department has finalized these proposed provisions with no substantive revisions.

Several commenters addressing proposed paragraph (f) recommended that the State agency be required to publish or otherwise notify local agencies of the criteria used to disqualify a local agency. The Department concurs with commenter concerns and has revised paragraph (e)(2) to require State agencies to notify local agencies of any State-established criteria used in addition to the criteria to disqualify a local agency set forth in paragraph (e)(2)(i-v) of this section.

Section 246.6 Agreements with local agencies.

No changes were proposed in § 246.6; however, this final rule revises the wording in paragraph (a) to reflect the provision in § 246.18 whereby expiration of a contract or agreement is not subject to appeal, but written notice of the pending expiration of an agreement must be given in accordance with §§ 246.5(e)(3)(ii) and 246.18(b)(1).

Subpart C—Participant Eligibility

Section 246.7 Certification of participants.

Residency requirements: Ten commenters objected to the optional nature of paragraph (b)(1), which required an applicant to "reside within the jurisdiction of the State or local agency if such a requirement is established by the State agency." Commenters pointed out that the requirement, as written, would enable a State to certify individuals residing in another State, thuse jeopardizing data collection efforts and funding foundations and possibly excluding eligible applicants within its own geographical boundaries from the program. The Department concurs with commenter concerns and has revised paragraph (b)(1) so that applicants under the jurisdiction of a geographic State agency are required to reside within the jurisdiction of the State. This requirement does not, however, apply to Indian State agencies, since the jurisdiction of an Indian State agency may be based on non-geographic considerations, or may encompass parts of more than one State. Under this final rule, Indian State agencies continue to have the option of requiring applicants to reside within their jurisdiction. All State agencies, including Indian State agencies, may continue to determine a service area for a local agency and may require an applicant to reside within the service area.

The revision to paragraph (b)(2) applies to all certifications which take place after the State implements it. The Department does not intend that out-of-State participants be disqualified before the end of their certification periods as a result of this provision.

The Department would like to remind all State agencies that length of residency may not be used as an eligibility requirement. Thus, for example, migrant farmworkers currently

residing in a State, regardless of the length of their stay, are to be accorded the same program access as are less transient residents. The residency requirement is intended primarily to address data collection problems and is in no way intended to be construed as a mechanism to limit participation.

Income eligibility criteria: The Department proposed to clarify the income eligibility criteria established in § 246.7(c)(1). As proposed, State agencies may (a) adopt the Federal income guidelines used for reduced-price school meals, or (b) establish guidelines identical to State or local income guidelines for free or reduced-price health care. Should a state elect to establish guidelines identical to the State or local free or reduced-price health care guidelines, those guidelines must fall between 100 percent and 185 percent (the current legislative reduced-price guideline) of the poverty income guidelines issued annually by DHHS.

Of the 32 commenters addressing this issue, the majority supported the proposed clarification of the regulatory language. Several commenters expressed reservations regarding the ability of a State to establish guidelines identical to the free or reduced-price health care guidelines. Some local agencies may employ several different poverty income guidelines to accommodate the various health services provided. In such cases, the highest percentage guideline would be sufficient to establish the WIC eligibility guideline, provided that the guideline falls within the 100–185 percent range.

Income determination: The proposed § 246.7(c)(2) presented no substantive changes in the area of income determination, although changes in terminology and clarifications were provided.

Of the 34 comments received, the majority either supported or conditionally supported the proposed provisions. Commenters indicating conditional support identified reservations regarding the best method of determining income and the definition of income.

Commenters questioned the wording in § 246.7(c)(2)(i) which permits State agencies to direct local agencies to consider both the family's income during the past 12 months and the family's current rate of income to "determine which is the best indicator of income." These commenters observed that performing two income checks could work to the detriment of the applicant or participant, who might be eligible under one but not both. They recommended that eligibility be determined on the basis of whichever income test promotes eligibility. However, the sole purpose of evaluating both the family's income over a 12-month period and the family's current rate of income is to enable the local agency to more *accurately* identify the family's income status. Therefore, the final regulations have been modified to specify that the purpose of evaluating both current and averaged income is to determine "which indicator more accurately reflects the family's status."

Regarding the definition of income stated in § 246.7(c)(2)(ii), several commenters recommended that military housing allowances be excluded as a source of income. The Department is fully aware of the potential inequity in the existing policy of defining income for WIC eligibility purposes as "all cash income." However, while cash income may not be the best indicator of need, it is, of necessity, the most expedient, and the most cost-effective. The alternative would be to develop formulas to convert a wide variety of in-kind benefits to cash, a rather intricate and involved process, which would substantially increase the cost of certification. Through Pub. L. 95–627, Congress made it clear that income certification is to be a simple process, and the policy of defining income as "all cash income" is an attempt to uphold that intent. It also should be noted that the policy of converting in-kind benefits to their cash value could result in the exclusion of presently eligible persons. Given the administrative complexity of the recommendation, which would increase certification costs, the Department remains committed to the definition of income as proposed, and, therefore, continues to consider military housing allowances as a source of income.

The final rule also clarifies § 246.7(c)(2)(iii), which authorizes State agencies to use the State or local definition of income when the State or local agency employs the State or local free or reduced-price health care income guidelines for WIC purposes. The clarification serves to remind State and local agencies that the definition of income used must not make families eligible to participate if their gross income is in excess of the the reduced-price school meal guideline.

Frequency of instream migrant income eligibility: The Department proposed to revise the provision which allowed instream migrant farmworker participants with expired Verification of Certification cards to be declared income eligible indefinitely without a redetermination of the family's income. The revision set forth in § 246.7(c)(2)(vii) of the proposal would require redetermination of instream participants' income eligibility at least once every 12 months.

Of the 12 comments received on this issue, the majority were against the proposed requirements. Concerns focused on the possible inappropriateness of income determination once every 12 months and the resultant administrative burden.

Commenters also expressed some concerns that the proposed provisions would make the frequency of migrant certifications similar to that of other participants. This concern is not, however, supported by either the proposed or final regulatory text. Participants who are instream migrant farmworkers or who are family members of instream migrant farmworkers would be subject to income redetermination once every 12 months, unlike all other participants (except pregnant women and, at the State agency's discretion, infants certified prior to their sixth month of age) who are subject to redetermination at every certification, about every six months.

The final regulations require a redetermination of income eligibility of instream migrant participants once every 12 months. Migrants may be instream continuously for years. Thus, what was intended in the previous final regulation to minimize the administrative burden could become a de facto cancellation of the legislatively mandated income eligibility requirement. The WIC Program is intended to serve those most in need; this provision is one of many reaffirming that intent.

(Please note that concerns about the need this provision creates for expansion of the information which must be included on the Verification of Certification cards are addressed in the preamble under "Transfer of Certification.")

In response to requested clarification of the term "instream migrant farmworker participant," the Department has substituted the more accurate wording "instream migrant farmworkers and their family members."

Determination of nutritional risk: Section 246.7(d)(1) of the proposed regulations clarified that height or length and weight are to be obtained for *all* participants, including those at nutritional risk based solely on the nutritional risk of another person.

Of the 48 commenters addressing this provision, a slight majority approved of the proposed clarification; opponents identified several problems inherent in taking measurements for all participants, particularly young infants. Commenters suggested that this provision would produce an increased

local agency burden, resulting, in part, from the number of postpartum women who wish to come to the clinics without their infants.

The Department believes that anthropometric data is necessary for all WIC participants to ensure that adequate and appropriate health and nutritional services are provided. Thus, the final rule retains the regulatory language as proposed. This provision should not result in an increased local agency burden, as suggested, since it does not represent a change in rules. Further, the provision allows local agencies to obtain the required data either by direct measurement or through birth or medical records.

Several commenters based opposition to § 246.7(d)(1) on the hematological tests required of infants six months to one year of age. Commenters recommended various other age restrictions for hematological tests. Some recommended requiring such tests only after the ninth month, while others recommended waiting until the twelfth month.

Performing hematological tests on infants six to 12 months of age serves to identify those infants with anemia. Clearly, WIC's low-income, high-risk target population is more susceptible to anemia than the infant population at large. Early identification of depleted iron stores enables the local agency to assess the nutritional needs of the infant and ensure the provisions of appropriate health care services, WIC supplemental foods and nutrition education. In the absence of a clear consensus in the medical community concerning the age at which hematological tests become appropriate, the Department has chosen not to alter the proposal.

Of the 19 commenters addressing proposed paragraph (d)(1)(ii), there was overwhelming support for the provisions which enable breastfeeding woman to be certified if her infant is determined to be at nutritional risk and a breastfed infant to be certified if his or her mother is determined to be at nutritional risk. The provision would require the breastfeeding mother and infant to be placed in the highest priority level for which either is qualified. Commenters stated this is a positive step toward promoting breastfeeding in WIC. One commenter stated that the provisions will eliminate unnecessary paperwork and make it easier to place breastfed infants in WIC. Accordingly, final regulations are issued essentially as proposed; paragraphs (d)(1)(i–iv) have been redesignated to reflect a nonsubstantive consolidation.

Thirty-seven commenters addressed proposed paragraph (d)(1)(iv), redesignated paragraph (iii), which provided State agencies with the authority to limit the number of times and circumstances under which participants may be certified due to possible regression. A slight majority of these commenters supported the provision. Those opposing this provision believed that certification based on regression should be left to the discretion of the competent professional authority. These commenters were concerned that any limitations on this discretion could compromise the competent professional authority's flexibility.

While the Department recognizes the concerns of the commenters, States should be free to establish some standards on the use of regression to ensure that program benefits are targeted to those most in need of supplemental foods. For this reason, the final rule remains as proposed. State agencies are, however, encouraged to consult with local agencies and competent professional authorities to establish policies on the number of times and the circumstances in which regression can be used as a nutritional risk criterion.

As recommended by commenters, the term "toxemia" in § 246.7(d)(2)(ii) has been replaced by the more acceptable term, "pre-eclampsia."

Several commenters expressed some concern that § 246.7(d)(2) did not emphasize examples of nutritional risk for high-risk postpartum women, especially postpartum teens. The Department did not intend this list to be all-inclusive, but rather to offer State agencies some guidance in the development of their definition of nutritional risk. States may address this concern in their State Plan definition of nutritional risk.

Commenters will note that paragraph (iv) has been expanded to include history of low birth weight, premature births, or neonatal loss as factors associated with high-risk pregnancy. The list of conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions has been expanded to include lead poisoning. In addition, infants born of women with alcohol or drug abuse histories or mental retardation have been included. These conditions were inadvertently dropped from the proposal.

Participant Priority Sytems: A total of 222 commenters addressed the three participant priority alternatives presented in § 246.7(d)(4). Eighty-one of these commenters supported Alternative A, 17 supported Alternative B, and 66 supported Alternative C. Fifty-eight commenters proposed various priority systems as alternatives to A, B, and C.

Alternative A, which received the most support, reflects the existing priority system; that is:

(i) *Priority I.* Pregnant women, breastfeeding women and infants at nutritional risk as demonstrated by hematological or anthropometric measurements, or other documented nutritionally related medical conditions which demonstrate the person's need for supplemental foods.

(ii) *Priority II.* Except those infants who qualify for Priority I, infants up to 6 months of age of WIC participants who participated during pregnancy, and infants up to 6 months of age born of women who were not WIC participants during pregnancy but whose medical records document that they were at nutritional risk during pregnancy due to nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions which demonstrate the person's need for supplemental foods.

(iii) *Priority III.* Children at nutritional risk as demonstrated by hematological or anthropometric measurements or other documented medical conditions which demonstrate the child's need for supplemental foods.

(iv) *Priority IV.* Pregnant women, breastfeeding women, and infants at nutritional risk because of an inadequate dietary pattern.

(v) *Priority V.* Children at nutritional risk because of an inadequate dietary pattern.

(vi) *Priority VI.* Postpartum women at nutritional risk.

Commenters supporting *Alternative A* indicated that this alternative has worked well in the past and, compared to the other alternatives, offers the best approach. Commenters also found this alternative most responsive to gradations of nutritional risk. A number of commenters offered suggestions to refine Alternative A. Suggestions focused on the placement of high-risk postpartum women and infants and the issue of subprioritization.

Thirty commenters recommended placing high-risk postpartum women higher in the priority system, with specific suggestions to place them in Priority I, II, or III. More than half of these commenters identified postpartum teens as a potential high-risk group and recommended placement in higher priorities; some commenters urged placement in Priority I.

Several commenters supported the Department's intention to confirm the State's authority to establish sub-

priority levels within the priority system on the basis of standards other than income. While this has long been the Department's policy, the previous final regulatory text referenced only sub-priority levels based on income. In response to commenter support and in order to update the regulations to clearly reflect authorized operating procedures, this final rule retains the provision as proposed.

Alternative B, which received the least support, was similar to Alternative A, except that Priorities III and IV were reversed, and a new Priority VII, Regression, was added. While the addition of Priority VII was identified with Alternative B, it was stated in the proposal that this option was available to each of the alternatives.

It appears that one of the attractions of Alternative B was the inclusion of Priority VII. Several of the commenters recommended reversing Priorities III and IV (i.e., keeping them in the order established in the previous final rule) which, in effect, is support of Alternative A with the addition of Priority VII.

Alternative C, which received the second-most support, reflected a three-tiered priority system. Priority I focused on individuals with special nutritional risk conditions. Priority II was limited to women and infants, other than those in Priority I, and Priority III included children other than those in Priority I.

Commenters supporting Alternative C approved of the increased State flexibility it would provide. Commenters also believed this alternative would be easier to explain and would facilitate administration of the WIC Program. Several concerns were also expressed, including the potential for inequities and wide disparities among the States, and the potential for an increased administrative burden resulting from the needed screening of all applicants for special nutritional risk conditions.

A number of commenters suggested revising Alternative C. Several recommended adding a Priority IV for postpartum women; others recommended adding a Priority IV for regression. One commenter offered a compromise position, i.e., adding a Priority IV for regression and a Priority V for postpartum women.

As noted above, 58 commenters recommended participant priority systems other than Alternatives A, B, and C in the proposed rule. The commenters' systems were so numerous and so widely varying that they are not easily summarized. Nor could a composite system be constructed which would accurately encompass the full range of concerns implicit in the commenters' counter-proposals. However, several trends can be identified. A number of commenters tended to rank pregnant women, breastfeeding women, and infants at risk solely on the basis of their categorical status. High-risk postpartum women were deemed to be in greater need than children with inadequate diets, and postpartum teens were determined to be at high risk.

The Department was very pleased with the quality of the comments received on this issue. Commenters expressed great sensitivity regarding the need to balance administrative convenience with the responsibility to direct benefits towards those individuals at greatest nutritional risk. In keeping with the recognized need for a balanced approach, the Department has made several revisions to Alternative A which are expected to provide States with the flexibility needed to resolve the deficiencies of the existing priority system cited by commenters. The primary perceived shortcomings are the inability of the existing priority system to address the needs of high-risk postpartum women and the lack of limits on the use of regression as a nutritional risk.

The final rule requires States to fill vacancies which occur after a local agency has reached its maximum participation level on the basis of the existing participant priority system (Alternative A). States may, however, make several adjustments to that priority system. The State may add a new Priority VII, Regression, which is reserved for previously certified participants who might regress in nutritional status without continued provision of supplemental foods. Creation of this priority level will ensure that individuals who currently have nutritionally related medical conditions or dietary deficiencies receive benefits before those individuals who do not, but might regress in nutritional status.

In order to provide States with the flexibility to deal with high-risk postpartum women, a sentence has been added to § 246.7(d)(4) which would enable State agencies to expand Priority III, IV, or V to include high-risk postpartum women.

Should a State agency opt to make any adjustments to the priority system to accommodate high-risk postpartum women or to establish a Priority VII, corresponding changes which reflect these adjustments must be made in the procedure manual required under § 246.4(a)(11). Such adjustments would, in the case of high-risk postpartum women, include the State's definition of high risk relative to postpartum women and an explanation of how the State will sub-prioritize high-risk postpartum women within Priority III, IV, or V, as appropriate.

Processing standards: The Department proposed a number of changes to both the standards for maintaining a waiting list when a local agency is at maximum caseload and the timeframes for processing applicants when the local agency is not yet serving maximum caseload.

Section 246.7(e)(1) proposed to grant local agencies the authority to limit the number of applicants placed on the waiting list to those individuals who visit the local agency expressing interest in receiving program benefits *and* who may reasonably be expected to be enrolled. If, however, an applicant specifically requests to be placed on the waiting list, the proposal required the local agency to do so.

Of the 24 commenters addressing the proposed changes, the majority supported the proposal. A number of commenters argued that applicants should not have to physically visit the local agency to apply. One commenter requested clarification of the wording "may reasonably be expected to be enrolled."

Final regulations have been modified to address commenter concerns. The wording "may reasonably be expected to be enrolled" has been revised so that local agencies are now required to maintain a waiting list of individuals who visit the local agency to express interest in receiving program benefits and who are "likely to be served."

In addition, the final rule acknowledges some commenters' position that an individual should not be required to visit the local agency in order to request placement on the waiting list. However, the concern for facilitating access to waiting lists must be reconciled with the need for local agencies to use their limited administrative resources as effectively as possible. Individual State agencies are in the best position to balance these interests. Therefore, § 246.7(e)(1) of the final regulations stipulate that the State agency *may* establish a policy which permits or requires local agencies under its jurisdiction to enter persons on their waiting list in response to requests made by telephone. Of course, this provision would apply only to persons likely to be served or who insisted on waiting list placement. Local agencies would be required to notify such persons of their placement on the waiting list within 20 days after their telephone request.

Some commenters also recommended that persons be able to initiate the application process by phone when the local agency is not at maximum caseload. This recommendation was not acted upon because the application process cannot be meaningfully initiated until the applicant appears at the local agency.

Section 246.7(e)(2) proposed changes to the expedited service timeframes. The proposal would have allowed State agencies to decide which groups require expedited service, except that migrant farmworkers and members of their families who will soon leave the area must be included. In addition, the State agency was provided the authority to extend the notification of eligibility for individuals requiring expedited service from 10 to 15 days in those cases where a local agency, in the opinion of the State agency, must operate under special circumstances. This provision could, for example, apply to satellite clinics in outlying areas which operate only two days a month.

Of the 63 commenters addressing this provision, more than half supported the proposal. Two commenters objected to the deletion of required expedited service for Priority I pregnant women and infants under six months of age. Commenters also expressed a number of concerns regarding the 10 and 15-day timeframes. Generally, commenters believed that the timeframes are too short, especially in rural areas where clinics operate on very limited schedules. Another related concern was that clinics are too crowded and backlogged to comply. Several commenters feared that an extension of the 10-day period to 15 days would lead to abuses, while some others expressed concerns that those pregnant women and infants currently offered expedited services might, under the proposal, be excluded from such services.

The final rule remains substantially as proposed; however, § 246.7(e)(2)(iii) has been expanded to require expedited service at a minimum for pregnant women eligible as Priority I participants as well as migrant farmworkers and their families who soon plan to leave the area. The Department notes that some research on the WIC Program has suggested that birth weights increase as the duration of WIC participation by the mother during pregnancy increases. In recognition of this and in order to maximize the length of participation of those pregnant women most at risk, § 246.7(e)(2)(iii) has been expanded to require expedited service for Priority I pregnant women. However, the provision has not been revised to require expedited service for infants under six months of age, as suggested by two commenters. Section 17(f)(7) of the Child Nutrition Act of 1966 requires expedited service for those determined to be at special nutritional risk. The Department believes that to require expedited service for all infants under six months of age could impair the ability of State agencies to provide expedited service to those most in need; infants may meet the criteria for Priority I, II, or IV and can present a wide variation in nutritional risk. It should be noted that the required categories are considered only to be a minimum standard for State agencies to meet in adopting criteria for identifying persons at special nutritional risk.

The Department firmly believes an extension from 10 to 15 days for expedited service will accommodate those local agencies operating under special circumstances. Any extension beyond the 15 days would, however, unduly delay program access to the especially needy. In order to ensure that extensions are limited to local agencies operating under special circumstances, the final rule indicates that State agencies can grant extensions to individual local agencies only upon written request. Furthermore, State agencies will be expected to monitor the implementation of extensions as a part of their standard review procedures. The Department would like to point out that these timeframes represent the *maximum* length of time available. More timely service should be given to applicants whenever possible.

In addition to the above revisions, paragraph (e)(2)(iv) has been revised to reference § 246.12(s)(8) (i) and (ii). This change responds to commenter's request that paragraph (e)(2)(iv), which grants local agencies the authority to mail initial food instruments, be cross-referenced to § 246.12(s)(8) (i) and (ii), which identify the criteria for mailing food instruments.

Certification periods: In § 246.7(f)(1)(iv), the Department proposed that State agencies be given the option of increasing infant certification periods from six months to a maximum of one year. However, the proposal encouraged State agencies to consider a six-month certification period when health services are not readily available to provide frequent and ongoing health care for infants.

The proposal did not clearly state the Department's intent to authorize State agencies to allow certification of infants up to their first birthday. Thus, infants under six months of age could be certified for up to a maximum of months, depending on their age at the time of certification. While many commenters interpreted the proposal correctly, a number of others erroneously understood it to authorize a one-year certification period for infants, regardless of their ages when certified. Under this incorrect interpretation, infants could potentially participate through their twenty-third month without recertification. Due to their varying interpretations, the approximately 190 comments on the provision proved difficult to categorize. It would appear that a slight majority opposed the proposal. However, a number of these opposed the unintended unconditional one-year infant certification period, rather than the intended certification up to the infant's first birthday.

The major concern expressed by the commenters was the possibility of jeopardizing the provision of ongoing health care for infants. Some commenters recommended that the proposal be modified to include a mid-certification health assessment. The Department evaluated and accepted recommendations to modify the provision. The final rule emphasizes that the State agency may use its discretion to determine whether or not to establish the maximum infant certification period. Furthermore, the final rule clarifies that an infant under six months of age may be certified up to his or her first birthday, provided that the quality and accessibility of health services are not diminished.

The Department is revising § 246.7(f)(2) of the proposal. The proposed provision permitted the State agency to establish shorter certification periods for individual cases. Of the 19 commenters addressing this provision, the majority expressed concern regarding the implied limitation that only a State agency can establish a shorter certification period. The final rule clarifies the Department's intent to require State agencies to establish guidelines for local agency implementation of this provision. Clearly, circumstances exist under which shorter certification periods would be appropriate, e.g., for persons with less serious nutritional risk conditions. Similarly, situations exist in which shorter certification periods would be inappropriate. States are reminded that the existing certification periods should continue to be the norm.

In § 246.7(f)(4), the Department proposed a change in the use of medical data collected prior to the time of certification. The proposal permitted a person to be certified for a full

certification period based on medical data collected by a non-WIC health professional within the six-month period preceding certification. Sixty-one commenters addressed the provision. The comments were almost evenly distributed (31 in favor, 29 against, and 1 unclear). Some commenters favoring the proposal stated it would facilitate coordination of WIC with other health care services. Many of the commenters expressed concern about the data being outdated and invalid in determining nutritional status. Various time periods were recommended as alternatives to the proposed six-month period. The Department evaluated the recommendations and agrees that six-month-old data may not accurately reflect the applicant's current status. Therefore, the final rule restricts the use of data gathered before the time of eligibility determination to that which is contemporaneous with the applicant's current categorical status. For example, a postpartum applicant cannot be certified using data collected during her pregnancy, nor can a child be certified on the basis of data taken during infancy. Furthermore, the final rule requires that certification intervals based on data collected before entrance into the program, other than for pregnant women, commence on the date data were taken rather than the date of enrollment. State and local agencies are reminded that discretion should be exercised in the use of medical data antedating the nutritional risk determination to ensure that such determinations are accurate.

Mid-certification disqualification: The proposed rule clarified the circumstances under which State or local agencies may disqualify participants or withhold benefits. Section 246.7(g) specified that individuals may be disqualified for (a) program abuse, such as the sale of food instruments; (b) failure to pick up food instruments or supplemental foods for a number of consecutive months as specified by the State agency; and (c) a change in a participant's circumstances making him or her ineligible for the WIC Program.

Of the 27 commenters addressing this issue, 20 supported the proposed provision. Several commenters recommended strengthening the provision to enable local agencies to disqualify participants on the basis of the threat of physical abuse or harrassment of clinic staff. A number of commenters expressed concerns regarding disqualification on the basis of income reassessment. Commenters believed that selective reassessment of income might be perceived as a discriminatory action.

The proposed provision has been made final with a redesignation of paragraphs and one technical change. Commenters recommending an expansion of the possible reasons for disqualification should refer to § 246.12(k)(2), which provides a list of abuses for which a State can establish sanctions including disqualification. Among this list is physical abuse or the threat of physical abuse. The final rule cross-references § 246.12(k)(2).

The Department recognizes commenter concerns regarding the problems inherent in selective eligibility reassessment; however, any restrictions on a State or local agency's ability to disqualify a participant on this basis would seriously compromise the mandates to target benefits to individuals most in need and to combat program abuse. If, for example, a local agency is informed that a participant's income exceeds the poverty income guidelines, the local agency should reassess that individual's income eligibility. Should the reassessment indicate that disqualification is the appropriate course of action, the local agency must proceed in accordance with § 246.7(i)(6). The State or local agency may want to document the reasons for selective reassessment. Such reasons might include complaints received from other program participants, or other interested parties; or the rehiring of temporarily laid-off workers.

Paragraph (g)(2), as proposed, clarified circumstances under which State or local agencies may discontinue benefits due to funding shortages. This paragraph authorized State or local agencies either to disqualify participants or to withhold benefits with the expectation of providing them again when funds become sufficient.

Forty-two commenters addressed this issue; 23 were in opposition. A number of those opposed recommended that the current participant priority system should be used to determine which participant's program benefits are to be discontinued. These commenters should be aware that the priority system is a resource already available to State and local agencies; the final rule remains as proposed. Other commenters suggested that efficient caseload management would preclude the need for discontinuing benefits.

Paragraph (g)(3) of the proposal prohibited a State agency from enrolling new participants while discontinuing benefits of certified participants. Of the 14 comments received, 11 commenters expressed opposition to the proposal. A number of commenters recommended allowing high-risk applicants to be enrolled at the same time as certified participants at less risk are having benefits discontinued. The Department believes that groups of participants should not be disqualified during their certification periods unless funding is insufficient to maintain current caseload and all other alternatives have been exhausted. The commitment implicit in the length of the certification period should be kept if at all possible. Authorizing group mid-certification disqualifications on any other grounds than economic necessity would be inappropriate. Therefore, the final rule remains as proposed.

Transfer of certification: The Department did not propose any changes to § 246.7(j). The provisions of this section require the issuance of a Verification of Certification card for every participant who is a member of a family in which there is a migrant farmworker or any other participant who is likely to be relocating during the certification period.

Several commenters addressing these provisions, recommended that the card also include the date of income determination. In response to commenters' recommendation, § 246.7(j)(4) is revised to require the date income eligibility was determined to be placed on the Verification of Certification card. This change is necessary for implementation of the requirement that income eligibility of instream migrants be redetermined at least once every 12 months, as established under § 246.7(c)(2)(vii).

Section 246.8 Nondiscrimination

The proposal amended paragraph (a) by adding prohibitions against discrimination on the basis of age, sex, and handicap. These changes are mandated by law. Prohibitions against discrimination on the basis of age and sex apply only to persons who are categorically eligible for the program. For example, pregnant women may not be discriminated against on the basis of their age, nor may infants be discriminated against due to their sex. However, a local agency may first target limited benefits to subcategories of older or younger women, infants or children who, by virtue of their age, are deemed to be at greater nutritional risk. When age is a factor directly related to nutritional risk of a category of participants, such age distinctions do not constitute program discrimination. A total of 16 commenters addressed this paragraph. All were supporters of the provision as proposed; thus, the

regulatory text has been finalized as proposed, with minor technical revision.

A revision was made to paragraph (a)(3) of the final rule to clarify that the collection of racial/ethnic participation data is a requirement of Title VI of the Civil Rights Act of 1964, which prohibits discrimination in federally assisted programs on the basis of race, color or national origin.

A new paragraph (a)(4) has been added to the final rule to require States to establish grievance procedures for handling complaints based on sex and handicap. This requirement is in accordance with Departmental regulations implementing Title IX of the Education Amendment of 1972 and Section 504 of the Rehabilitation Act of 1973, i.e., 7 CFR Part 15a and 7 CFR 15b, respectively. The final rule deletes the proposed requirement that States refer sex and handicap complaints to FNS.

The proposed paragraph (b) has been revised to indicate that complaints received by State and local agencies which allege discrimination based on race, color, or national origin must be referred to the Secretary of Agriculture or the Dirctor, Office of Equal Opportunity, USDA. At this time, State agencies have not been delegated the authority to handle title VI complaints. This revision is in accordance with Departmental Regulations 7 CFR 15.6 and Administrative Regulations 9 AR 51. In accordance with Departmental policy, all age discrimination complaints must also be referred to the Secretary of Agriculture or the Director, Office of Equal Opportunity, USDA.

Paragraph (c) has been revised to require that when a significant number of portion of the population eligible to be served by the program speaks a non-English language, the State agency will take "reasonable" steps to provide required program information in the appropriate language, except for materials which are used exclusively by local agency staff. This revision was made in accordance with Department of Justice's Title VI coordination regulation, 28 CFR 42.405(d). A corresponding change has been made in § 246.7(i) and § 246.11(c)(3).

Section 246.9 Fair hearing procedures for participants.

Several modifications to the fair hearing procedures were proposed in § 246.9. Of the 61 commenters addressing this section, an overwhelming number supported the proposal. Given this support, § 246.9 remains as proposed with the following exceptions.

Paragraphs (a), (f)(4) and (g) of this section were amended in the proposal to eliminate fair hearings for individuals who are unable to make any showing of categorical eligibility for Program benefits. While most commenters supported this proposal, several commenters expressed concern about whether it would be more appropriate for a hearing official rather than the local agency to determine whether to hear a case. Other commenters recommended a prehearing to determine whether a case should be heard. In order to avoid any question regarding when a person has a right to an appeal, § 249.6 of the final rule has been revised to provide all aggrieved applicants and participants a fair hearing. This will also avoid any question regarding what constitutes sufficient documentation of categorical ineligibility and eliminate the potential burden of creating special rules for documenting an applicant's categorical status as compared with those rules for determining other eligibility.

Paragraph (k)(3) has also been amended to stipulate that the decision of a hearing official at the local level is binding on the local agency and the State agency unless it is appealed to the State level and overturned by the State hearing official. This modification is necessary to ensure the integrity of the fair hearing system by eliminating the possibility that a State level WIC Program official could take an action inconsistent with the ruling of the hearing official at the final level of review.

Subpart D—Participant Benefits

Section 246.10 Supplemental foods.

Section 246.10, Supplemental Foods, was not proposed for public comment. Therefore, no changes, other than editorial, have been made to this section. It is reprinted in order to provide the user with a consolidated version of Part 246.

Section 246.1 Nutrition Education.

Local agencies must make nutrition education available to participants, but they cannot require a participant to accept it. In recognition of this limitation, the Department has replaced the term "provide (nutrition education) to" with "make available" throughout § 246.11.

Nutrition education plan: The Department proposed to delete the content requirements for the local agency nutrition education plan and to retain the requirement in paragraph (d)(2) that the plan be consistent with the State's nutrition education component of program operations and in accordance with regulations and FNS guidelines. There were 24 comments on this change, and the majority were in support of the proposed revision. Therefore, the Department has adopted the paragraph as proposed.

Type and content: In order to allow State and local agencies flexibility in addressing participants' varying needs, the Department proposed to delete the requirements in paragraph (e)(1) which specified the type and content of nutrition education contacts. The Secretary is authorized to prescribe standards which ensure that adequate nutrition education services are provided. The regulatory provision places responsibility to establish such standards for the content of participant contacts on State agencies. Standards which States develop will be included in State Plans, as required under § 246.4(a)(9), and reviewed by FNS. All but one of the more than 20 comments on this provision were supportive. This change underscores the Department's confidence in the ability of State and local professional staff to meet the nutrition education needs of participants.

Under paragraph (e)(1), the Department proposed one exception to allowing State agencies to develop standards for nutrition education content. The Department wishes to continue to require that breastfeeding be encouraged in contacts with all pregnant participants unless medically contraindicated. Fifty-four commenters believed that this requirement should be maintained. However, a majority of the commenters believed that medical contraindication should not be the sole reason for not encouraging breastfeeding. The commenters believed that other reasons, e.g., social and emotional, should also be considered contraindications to encouraging breastfeeding. Therefore, the Department has modified this requirement so that breastfeeding will not have to be encouraged when contraindicated for health reasons.

Frequency of contacts: Numerous comments were received concerning the frequency of nutrition education contacts for adult and child participants as proposed in § 246.11(e)(2). These commenters believed that the requirement of two contacts was minimally adequate, but at least four should be offered. It is not the intent of the Department in any way to restrict the number of contacts provided to program participants. The Department encourages health professionals to exercise their own discretion concerning the number of nutrition education contacts provided per certification

period as long as the required two are made available.

Infant certification period: Under § 246.7(f)(1), the Department proposed to extend the maximum certification period for infants to their first birthday. In tandem with that proposal, the Department proposed to revise § 246.11(e)(3) to require that at least one nutrition education contact during each quarter of the certification period be provided to parents or caretakers of infant participants certified until their first birthday. Eighteen commenters addressed this provision. Approximately three-fourths opposed the revision to paragaph (e)(3); all of these also opposed the one-year certification period proposed under § 246.7(f)(1). Some recommended that the scheduling of the contacts be left to the local competent professional authority so that one contact need not be provided within each quarter. The Department evaluated the recommendations and agrees that the proposal would restrict flexibility. The final rule authorizes the State agency to provide local agencies with discretion in scheduling the required nutrition education contacts, provided that these contacts are made available at a quarterly rate; they need not take place within each quarter.

Individual care plan: Under paragraph (e)(5), the Department proposed to delete the requirement for an individual care plan for the high-risk participants, although the Department would continue to require that such plans be provided to any participant upon request. This change was made to further augment State and local agency authority to exercise professional judgment in providing nutrition education services. Several comments were received on this revision. The commenters believed that the requirement for the provision of a care plan for high-risk participants should be maintained. The Department does not view the deletion of this requirement as limiting nutrition education services provided to program participants. Health professionals may continue to provide individual care plans when they believe such plans are needed. The Department is simply allowing health professionals to determine the scope of nutrition education services based on individual participant needs. Therefore, the Department has adopted the revision as proposed.

Section 246.12 Food delivery system.

Section 246.12, Food Delivery System, was not proposed for public comment. Nevertheless, a few changes have been made to this section in order to update the citations and make this section conform to the revisions made in 246.18.

Section 246.18 establishes the appeal procedures by which vendors and local agencies may appeal adverse action taken during the contract or agreement performance period. Section 246.18(b)(1) requires the State agency to provide vendors with not less than 15 days advance written notice of adverse action to be taken during the course of the contract or agreement performance period. Section 246.18(a) denies food vendors and local agencies the right to appeal expiration of a contract or agreement.

In response to the restriction on appeal rights, established under § 246.18(a)(1), § 246.12 has been revised to extend the advance notification requirement established under 246.18(b)(1) to those vendors whose contract or agreement is about to expire. Good management practice dictates providing advance notice of the expiration of a contract or agreement. For this reason, paragraph (f) has been expanded to require the State or local agency to provide vendors with not less than 15 days advance written notice of the expiration of a contract or agreement.

In addition to the above change, paragraph (s)(2)(ii) of § 246.12 has been revised to clarify that rather than entering the actual date by which each food instrument must be used, the State agency may print food instruments with a notice that participants must transact the food instruments within a specified number of days after the first date upon which it can be used. This clarification does not change existing policy.

Section 246.14 Program costs.

The Department proposed a number of revisions to § 246.14. Commenters were generally supportive of these revisions; however, a number of commenters focused on issues related to specified allowable costs, such as nutrition education and certification.

Nutrition education expenditures: The Department proposed to clarify paragraph (c)(1) concerning the amount to be expended on nutrition education, which is calculated by taking one-sixth of total administrative expenditures or the amount of the administrative and program services grant, whichever is less. Of the 23 commenters addressing this provision, the majority supported the proposed clarification.

A number of commenters recommended including the cost of dietary assessment as part of nutrition education costs. Others recommended inclusion of the costs associated with issuance of the food package, such as the administrative time required for tailoring. Dietary assessment is clearly a part of the certification process, independent of nutrition education. Although they, too, may be related to nutrition education, issuance costs are also separate. It is necessary to relate nutrition education to the specific contents of the food package, particularly when it has been tailored. However, prescribing the food package, even in instances of tailoring, remains identifiably separate from nutrition education. Given commenters' overall support for the provision, the final rule remains as proposed.

Several clarifications have been made to paragraph (c)(2), the cost of WIC Program certification procedures. Under the proposal, paragraphs (i) and (ii), medical fees and supplies necessary to determine eligibility were considered allowable costs. This language was determined to be too broad since § 246.7(d) limits participation to categorically eligible individuals who are at nutritional risk. Thus, paragraphs (i) and (ii) have been revised to clarify that laboratory fees and expendable medical supplies are allowable costs only as they are necessary to determine the nutritional risk of categorically eligible persons.

A similar change has been made to § 246.14(c)(2)(iii) which addresses the purchase of medical equipment. Previous final regulations limited the purchase of medical equipment other than expendable supplies to a specific list of instruments. The Department recognizes, however, that new equipment might be developed to serve the same basic purposes as the listed items: anthropometric measurement and blood testing for anemia, as required under § 246.7(d)(1). Therefore, in the proposal, allowable equipment was not limited to the listed items. However, it was not clear that unlisted items would be allowable only if they were used for these basic functions. The final rule so stipulates in § 246.14(c)(2)(iii).

Section 246.14(d)(2) of the proposed rule sought to increase from $2,500 to $5,000 the cost of capital expenditures that must be approved by FNS. Although 10 commenters supported the proposed increase, the final rule retains the $2,500 level set forth in the previous final rule. The Department has reconsidered the proposed increase based on a concern that the reduction in approval responsibilities would not be significant enough to justify risking the possible results of relaxed accountability.

Recovery of vendor claims: The Department proposed to revise the provision in paragraph (e) which allows

State agencies to retain up to one-half of the funds recovered as a result of a *post-payment* review of vendor claims. The proposed revision would expand paragraph (e) to allow those States which conduct a *pre-payment* rather than *post-payment* review of vendor claims to retain up to one-half of the funds that were claimed for payment but were found to be ineligible for payment to vendors as a result of the pre-payment review.

Of the 33 commenters addressing this provision, the majority supported it. Several commenters recommended allowing the State agency to reward a local agency diligent in its monitoring of vendors with additional funds. Current regulatory language permits a State agency to do so.

As a result of commenter support, the Department has finalized the prepayment provision as proposed. However, one clarification to both this and the post-payment provision has been made. This clarification ensures that these provisions will be implemented in full accord with the rights and prerogatives which the regulations provide to vendors. Final determination of the amount of validly prevented or recovered improper food payments, and transfer of a percentage of that amount to the State agency's administrative and program services account, must be postponed until after the vendor has had full opportunity to correct or justify the claim per § 246.12(s)(5)(iii).

State agencies are remined that procedures for exercising the provisions of paragraph (e) constitute a part of their financial management system. Therefore, State agencies choosing to exercise this option must describe their implementation procedures in their State Plan submission.

Section 246.15 Program income other than grants.

Paragraph (a) of the proposal required interest earned on advances of program funds to be remitted to FNS, except for interest earned by States.

While few commenters addressed this provision, one State agency pointed out that the regulatory language was not consistent with the requirements of 7 CFR Part 3015. Specifically, § 3015.46(b) states that, in accordance with Intergovernmental Cooperation Act of 1968, "States, as defined in the Act, shall not be accountable to the Federal Government for interest or investment income earned by the State itself, or by its subrecipients, where this income is attributable to grants-in-aid, as defined in the Act." Thus, in accordance with 7 CFR Part 3015, paragraph (a) has been revised. Under the final rule, State and local agencies and clinics may retain interest earned on advances of program funds. However, State agencies are reminded that drawdowns on their Letters of Credit are to be limited to the cash-as-needed basis specified under § 246.13(i).

Section 246.16 Distribution of funds.

The proposed rule revised paragraph (c) by reducing the list of factors that State agencies must consider when distributing funds to local agencies. Among the factors proposed was one directing State agencies to allocate administrative funding on the basis of procedures developed in cooperation with several local agencies.

Of the nine commenters addressing this issue, three commenters observed that the provision no longer required State agencies to develop administrative funding procedures in cooperation with a "representative sample of local agencies." It was suggested that the requirement of a "representative sample" be reinstated because it guaranteed that various types of local agencies would be involved in the development of allocation procedures. This, in turn, would facilitate the development of equitable procedures. The Department concurs with the commenters' concerns and has revised the provision to require State agencies to develop procedures in cooperation with several representative local agencies.

Recent Office of Inspector General audit findings indicate that some State agencies have made excessive cash advances to local agencies for administrative and program services expenses. This problem may relate to a misunderstanding of regulatory requirements. Therefore, § 246.16(c) is revised to state more clearly the proper procedures for issuing advances. This does not constitute a substantive change.

Specifically, it should now be clear that the State agency may maintain, on an ongoing basis, up to one month's advance funding for local agencies. In turn, each local agency must submit a report of actual expenditures at least monthly. The State agency will maintain the advance by reimbursing local agencies each month for the actual expenses reported. This process should provide sufficient cash balances at the local agencies to meet immediate disbursement needs.

Section 246.17 Closeout procedures.

The proposed rule sought to make only one minor nondiscretionary revision, i.e., incorporation of reference to 7 CFR Part 3015. However, the Department is making an additional clarification to paragraph (b)(3). In concert with sound management practices and the limitations established in 7 CFR Part 3015, the Department has clarified that FNS will reimburse State agencies for allowable costs up to the original grant level to the extent that sufficient funds are available for the fiscal year pertaining to the request.

Section 246.18 Administrative appeal of State agency decisions.

The Department proposed four revisions to this section. Paragraph (a)(1) provided that the expiration of agreements with local agencies and vendors is not subject to appeal. Paragraph (a)(3) allowed adverse action against vendors to be effected after a 15-day advance notice period has elapsed, whether or not the decision is appealed. Paragraph (b)(1) required States to provide written notification of adverse action to vendors and local agencies disqualified for noncompliance not less than 15 days before the effective date of the action. It also provided that local agencies disqualified on the basis of inadequate funding or a periodic review of qualifications be provided 60 days advance notice. Finally, paragraph (b)(4) of the proposal permitted State agencies to establish a limit on the number of times local agencies and vendors can reschedule their hearing dates, provided that a minimum of two dates is allowed. There were a total of 91 comments on the revisions to this section. The majority of the commenters believed that the revisions would facilitate the administrative hearing process. The Department has adopted the revisions as proposed, with only two modifications. In the final rule, all disqualified local agencies, regardless of the reason for their disqualification, are entitled to not less than 60 days advance notification period. The Department believes that this period of time is necessary to ensure a smooth, coordinated transfer of program administration from one local agency to another without interruption of benefits to participants. In addition, paragraph (b)(1) has been expanded to require State agencies to provide vendors and local agencies with the effective date of the adverse action.

Paragraph (b)(9) has also been revised to clarify that a written notification of the decision concerning the local agency or vendor appeal must be made by the State agency within 60 days from the date of *receipt* of the request for a hearing. This clarification guarantees that the State agency will have, as

intended, the full 60 days for appeal processing. Starting the 60-day period with the date of the request, as proposed, could reduce the State agency's processing time if, for example, a delay occurred between the preparation and mailing of the request.

Subpart F—Monitoring and Review

Section 246.19 Management evaluations and reviews.

The proposed § 246.19(a) deleted the requirement for FNS to conduct on-site reviews of State agencies at least once every two years. Over half of the 45 comments addressing this provision supported it. Some of the commenters opposing the proposal recommended retaining the two-year site review requirement. Some recommended other intervals for on-site review. The Department is retaining the provision as proposed in the belief that it allows FNS to target technical assistance and oversight efforts to State agencies most in need.

In § 246.19(b)(3), the Department proposed lowering the required frequency of State agency on-site reviews of local agencies from every year to once every two years. It also proposed allowing State agencies to determine the appropriate level of clinic monitoring. Although the majority of commenters supported this proposal, those opposing it expressed concern that problems could go undetected and uncorrected and thus compromise the quality of the Program if the two-year review frequency was adopted. The Department has reconsidered this proposal in light of these comments and concurs with the concerns expressed by commenters. The Department believes that retaining the requirement of annual reviews of local agencies is necessary to maintain Program accountability and integrity. Therefore, the final rule reinstates the annual requirement of the previous final rule. For the same reasons, the portions of the previous final rule which set forth the minimum number of clinics in each local agency to be reviewed has been retained. Thus, under the final rule, State agencies must continue to conduct annual monitoring reviews of local agencies, including on-site reviews of a minimum of 20 percent of the clinics in each local agency or one clinic, whichever is greater.

Section 246.20 Audits.

With the exception of paragraph (b)(3), which contains a discretionary change, all amendments proposed for this section incorporated requirements of 7 CFR Part 3015. Paragraph (b)(3) required that computation of the program's pro rata share of organization-wide audit costs be based on the State or local agency's administrative and program services funding, not on its total program funding. Three-fourths of the 12 comments received on this section were in favor of the proposal. Therefore, this provision is retained in the final rule.

Public Law 98-502, the Single Audit Act of 1984, signed into law on October 19, 1984, significantly revises Federal audit requirements. A key provision requires, with certain exceptions, that "each State and local government which receives a total amount of Federal financial assistance equal to or in excess of $100,000 for any fiscal year of such government shall have an audit made for such fiscal year * * *." Accordingly, the reference to biennial audit frequency has been stricken from § 246.20(b)(1) and (b)(2)(v) of the final rule. Public Law 98-502 applies to State and local governments with respect to their fiscal years beginning after December 31, 1984. The Office of Management and Budget will issue policies, procedures, and guidelines to implement the Single Audit Act of 1984.

Section 246.22 Administrative appeals.

Paragraph (b)(2) requires State agencies appealing sanctions asserted against them by FNS to submit to FNS five copies of the materials pertinent to the appeal. The final rule reduces the number of copies to be submitted to three.

Section 246.25 Records and reports.

The proposal incorporated references to 7 CFR Part 3015 and further revised § 246.25(a) to specify which records and reports State and local agencies are expected to maintain. Further, paragraph (a)(3) was revised to require that records of nonexpendable property be retained for three years after its final disposition.

Of the 10 commenters addressing this section, the majority supported the proposal. Therefore, these changes have been incorporated in the final rule.

As indicated in the foregoing discussion of revisions to § 246.4, the Department believes that, in the interest of sound Program management at all levels, it is necessary to monitor and assess how each State agency distributes benefits among categories of eligible persons within each priority level. This entails State agency reporting activity which is more appropriately addressed in this section than as part of annual State Plan requirements. The priority system at § 246.7(d)(4) provides a sound framework for identifying persons at greatest nutritional risk. However, since some priority levels encompass several categories (e.g., pregnant and breastfeeding women and infants in Priority I), more detailed information is needed. Furthermore, it has been determined that annual reporting might not accurately represent the composition of enrollment or capture changes in that composition which could take place during the year.

Accordingly, a new sentence has been added to § 246.25(b), requiring that State agencies report semi-annually, on a schedule provided by FNS, the number of persons enrolled by category (i.e., pregnant, breastfeeding, and postpartum women; infants; and children) within each level of the priority system established in § 246.7(d)(4). Section 246.25(b) has also been expanded to include examples of information which the State agency may be required to report on a monthly basis.

Several commenters requested clarification of the authority for the three-year record retention for nonexpendable property. This provision is required under 7 CFR Part 3015. One commenter questioned why § 246.25 does not require retention of the medical information specified under § 246.26(c). Such record retention would be inherent in the § 246.25(a)(1) reference to retention of certification records.

Section 246.26 Other provisions.

Ten commenters requested clarification of the wording in paragraph (d) which requires each State agency to restrict the use or disclosure of information obtained from program applicants or participants to persons directly connected with the administration or enforcement of the program. Persons "directly connected" with the program would include any authorized representative of the Secretary. In the event that applicability of this restriction is questionable in a particular instance, the State agency should contact FNS for specific guidance.

In certain instances the Comptroller General has the statutory authority to audit and examine WIC Program records. A phrase has been added to eliminate any inconsistency between this authority and the confidentiality provision.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

Redesignation Table

The redesignation table shown below reflects the realignment of sections in the following revision of 7 CFR Part 246:

REDESIGNATION TABLE

Old	Title	New
246.1	General purpose and scope	246.1
246.2	Definitions	246.2
246.3	Administration	246.3
246.4	State agency plan of program operations and administration	246.4
246.5	Selection of local agencies	246.5
246.6	Agreements with local agencies	246.6
246.7	Certification	246.7
246.8	Supplemental foods	246.10
246.9	Nutrition education	246.11
246.10	Food delivery system	246.12
246.11	Financial management systems	246.13
246.12	Program costs	246.14
246.13	Program income	246.15
246.14	Distribution of funds	246.16
246.15	Records and reports	246.25
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246.17	Procurement and property management standards	246.24
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246.19	Management evaluation and reviews	246.19
246.20	Audits	246.20
246.21	Investigations	246.21
246.22	Nondiscrimination	246.8
246.23	Fair hearing procedures for participants	246.9
246.24	Administrative appeal of State agency decisions	246.18
246.25	Miscellaneous provisions	246.26 246.27
None	Administrative appeal of FNS decisions	246.22

Accordingly, 7 CFR Part 246 is revised to read as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

Authority: Sec. 3, Pub. L. 95-627, 92 Stat. 3611 (42 U.S.C. 1786); sec. 203, Pub. L. 96-499, 94 Stat. 2599; sec. 815, Pub. L. 97-35, 95 Stat. 521.

Subpart A—General

§ 246.1 General purpose and scope.

This part announces regulations under which the Secretary of Agriculture shall carry out the Special Supplemental Food Program for Women, Infants and Children (WIC Program). Section 17 of the Child Nutrition Act of 1966, as amended, states in part that the Congress finds that substantial numbers of pregnant, postpartum and breastfeeding women, infants and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. The purpose of the Program is to provide supplemental foods and nutrition education through payment of cash grants to State agencies which administer the Program through local agencies at no cost to eligible persons. The Program shall serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems and to improve the health status of these persons.

§ 246.2 Definitions.

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

"Administrative and program services costs" means those direct and indirect costs, exclusive of food costs, as defined in § 246.14(c), which State and local agencies determine to be necessary to support Program operations. Administrative and program services costs include, but are not limited to, the costs of Program administration, start-up, monitoring, auditing, the development of and accountability for food delivery systems, nutrition education, outreach, certification, and developing and printing food instruments.

"Affirmative Action Plan" means that portion of the State Plan which describes how the Program will be initiated and expanded within the State's jurisdiction in accordance with § 246.4(a).

"A-90" means Office of Management and Budget Circular A-90, which provides guidance for the coordinated development and operation of information systems.

"Breastfeeding women" means women up to one year postpartum who are breastfeeding their infants.

"Categorical eligibility" means persons who meet the definitions of pregnant women, breastfeeding women, postpartum women, or infants or children.

"Certification" means the implementation of criteria and procedures to assess and document each applicant's eligibility for the Program.

"Children" means persons who have had their first birthday but have not yet attained their fifth birthday.

"Clinic" means a facility where applicants are certified.

"Competent professional authority" means an individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods. The following persons are the only persons the State agency may authorize to serve as a competent professional authority: Physicians, nutritionists (bachelor's or master's degree in Nutritional Sciences, Community Nutrition, Clinical Nutrition, Dietetics, Public Health Nutrition or Home Economics with emphasis in Nutrition), dietitians, registered nurses, physician's assistants (certified by the National Committee on Certification of Physician's Assistants or certified by the State medical certifying authority), or State or local medically trained health officials. This definition also applies to an individual who is not on the staff of the local agency but who is qualified to provide data upon which nutritional risk determinations are made by a competent professional authority on the staff of the local agency.

"CSFP" means the Commodity Supplemental Food Program administered by the Department, authorized by Section 5 of the Agriculture and Consumer Protection

Act of 1973, as amended, and governed by Part 247 of this title.

"Days" means calendar days.

"Department" means the U.S. Department of Agriculture.

"Disqualification" means the act of ending the Program participation of a participant, authorized food vendor, or authorized State or local agency, whether as a punitive sanction or for administrative reasons.

"Dual participation" means simultaneous participation in the Program in one or more than one WIC clinic, or participation in the Program and in the CSFP during the same period of time.

"Family" means a group of related or nonrelated individuals who are not residents of an institution but who are living together as one economic unit.

"Fiscal year" means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

"FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

"Food costs" means the costs of supplemental foods, determined in accordance with § 246.14(b).

"Food delivery system" means the method used by State and local agencies to provide supplemental foods to participants.

"Food instrument" means a voucher, check, coupon or other document which is used by a participant to obtain supplemental foods.

"Health services" means ongoing, routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

"IHS" means the Indian Health Service of the U.S. Department of Health and Human Services.

"Infants" means persons under one year of age.

"Local agency" means: (a) A public or private, nonprofit health or human service agency which provides health services, either directly or through contract, in accordance with § 246.5; (b) an IHS service unit; (c) an Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an IHS service unit; or (d) an intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an IHS service unit.

"Members of populations" means persons with a common special need who do not necessarily reside in a specific geographic area, such as off-reservation Indians or migrant farmworkers and their families.

"Migrant farmworker" means an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last 24 months, and who establishes, for the purposes of such employment, a temporary abode.

"Nonprofit agency" means a private agency which is exempt from income tax under the Internal Revenue Code of 1954, as amended.

"Nutrition education" means individual or group education sessions and the provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

"Nutritional risk" means: (a) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements; (b) other documented nutritionally related medical conditions; (c) dietary deficiencies that impair or endanger health; or (d) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

"OIG" means the Department's Office of the Inspector General.

"Participants" means pregnant women, breastfeeding women, postpartum women, infants and children who are receiving supplemental foods or food instruments under the Program.

"Participation" means the number of persons who have received supplemental foods or food instruments during the reporting period.

"Postpartum women" means women up to six months after termination of pregnancy.

"Poverty income guidelines" means the poverty income guidelines prescribed by the Department of Health and Human Services. These guidelines are adjusted annually by the Department of Health and Human Services, with each annual adjustment effective July 1 of each year. The poverty income guidelines prescribed by the Department of Health and Human Services shall be used for all States, as defined in this section, except for Alaska and Hawaii. Separate poverty income guidelines are prescribed for Alaska and Hawaii.

"Pregnant women" means women determined to have one or more embryos or fetuses in utero.

"Program" means the Special Supplemental Food Program for Women, Infants and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966, as amended.

"Secretary" means the Secretary of Agriculture.

"SFPD" means the Supplemental Food Program Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

"7 CFR Part 3015" means the Department's Uniform Federal Assistance Regulations. Part 3015 implements the policies established by the Office of Management and Budget (OMB) in Circulars A-21, A-87, A-102, A-110, and A-122, as well as OMB Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977.

"State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and the Trust Territory of the Pacific Islands.

"State agency" means the health department or comparable agency of each State; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the IHS.

"State Plan" means a plan of Program operation and administration that describes the manner in which the State agency intends to implement and operate all aspects of Program administration within its jurisdiction in accordance with § 246.4.

"Supplemental foods" means those foods containing nutrients determined to be beneficial for pregnant, breastfeeding, and postpartum women, infants and children, as prescribed by the Secretary in § 246.10.

§ 246.3 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, SFPD and the Regional Offices are responsible for Program administration. FNS shall provide assistance to State and local agencies and evaluate all levels of Program operations to ensure that the goals of the Program are achieved in the most effective and efficient manner possible.

(b) *Delegation to State agency.* The State agency is responsible for the

effective and efficient administration of the Program in accordance with the requirements of this part, the Department's regulations governing nondiscrimination (7 CFR Parts 15, 15a and 15b), the Department's regulations governing the administration of grants (7 CFR Part 3015), Office of Management and Budget Circular A-90, FNS guidelines, and instructions issued under the FNS Directives Management System. The State agency shall provide guidance to local agencies on all aspects of Program operations.

(c) *Agreement and State Plan.* Each State agency desiring to administer the Program shall annually submit a State Plan and enter into written agreement with the Department for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(d) *State staffing standards.* Each State agency shall ensure that sufficient staff is available to administer an efficient and effective Program including, but not limited to, the functions of nutrition education, certification, food delivery, fiscal reporting, monitoring, and training. Based on the June participation of the previous fiscal year, each State agency, as a minimum, shall employ the following staff:

(1) A full-time or equivalent administrator when the monthly participation level exceeds 1,500, or a half-time or equivalent administrator when the monthly participation exceeds 500.

(2) At least one full-time or equivalent Program specialist for each 10,000 participants above 1,500, but the State agency need not employ more than eight Program specialists unless the State agency considers it necessary. Program specialists should be utilized for providing fiscal management and technical assistance, monitoring vendors, reviewing local agencies, training, and nutritional services, or other Program duties as assigned by the State agency.

(3) For nutrition-related services, one full-time or equivalent nutritionist when the monthly participation is above 1,500, or a half-time or equivalent nutritionist when the monthly participation exceeds 500. The nutritionist shall be named State WIC Nutrition Coordinator and shall meet State personnel standards and qualifications in paragraphs (d)(3)(i), (ii), (iii), (iv), or (v) of this section and have the qualifications in paragraph (d)(3)(vi) of this section. Upon request, an exception to these qualifications may be granted by FNS. The State WIC Nutrition Coordinator shall—

(i) Hold a Master's degree with emphasis in food and nutrition, community nutrition, public health nutrition, nutrition education, human nutrition, nutrition science or equivalent and have at least two years responsible experience as a nutritionist in education, social service, maternal and child health, public health, nutrition, or dietetics; or

(ii) Be registered or eligible for registration with the American Dietetic Association and have at least two years experience; or

(iii) Have at least a Bachelor or Science or Bachelor of Arts degree, from an accredited four-year institution, with emphasis in food and nutrition, community nutrition, public health nutrition, nutrition education, human nutrition, nutrition science or equivalent and have at least three years of responsible experience as a nutritionist in education, social service, maternal and child health, public health nutrition, or dietetics; or

(iv) Be qualified as a Senior Public Health Nutritionist under the Department of Health and Human Services guidelines; or

(v) Meet the IHS standards for a Public Health Nutritionist; and

(vi) Have at least one of the following: Program development skills, education background and experience in the development of educational and training resource materials, community action experience, counseling skills or experience in participant advocacy.

(4) The State agency shall enforce hiring practices which comply with the nondiscrimination criteria set forth in § 246.8. The hiring of minority staff is encouraged.

(e) *Delegation to local agency.* The local agency shall provide Program benefits to participants in the most effective and efficient manner, and shall comply with this part, the Department's regulations governing nondiscrimination (7 CFR Parts 15, 15a, 15b), the Department's regulations governing the administration of grants (7 CFR Part 3015), Office of Management and Budget Circular A-90, and State agency and FNS guidelines and instructions.

Subpart B—State and Local Agency Eligibility

§ 246.4 State Plan.

(a) *Requirements.* By August 15 of each year, each State agency shall submit to FNS for approval a State Plan for the following fiscal year as a prerequisite to receiving funds under this section. The State agency may submit the State Plan in the format provided by FNS guidance. Alternatively, the State agency may submit the Plan in combination with other federally required planning documents or develop its own format, provided that the information required below is included. FNS requests advance notification that a State agency intends to use an alternative format. The State Plan shall be signed by the State designated official responsible for ensuring that the Program is operated in accordance with the State Plan. FNS will provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. Within 15 days after FNS receives an incomplete Plan, FNS will notify the State agency that additional information is needed to complete the Plan. Any disapproval will be accompanied by a statement of the reasons for the disapproval. Portions of the State Plan which do not change annually need not be resubmitted. However, the State agency shall provide the title of the sections that remain unchanged, as well as the year of the last Plan in which the sections were submitted. The Plan shall include:

(1) An outline of the State agency's goals and objectives for improving Program operations.

(2) A budget for administrative funds, and an estimate of food expenditures.

(3) An estimate of Statewide participation for the coming fiscal year by category of women, infants and children.

(4) The State agency staffing pattern.

(5) An Affirmative Action Plan which includes—

(i) A list of all areas and special populations, in priority order based on relative need, within the jurisdiction of the State agency, the State agency's plans to initiate or expand operations under the Program in areas most in need of supplemental foods, including plans to inform nonparticipating local agencies of the availability and benefits of the Program and the availability of technical assistance in implementing the Program, and a description of how the State agency will take all reasonable actions to identify potential local agencies and encourage agencies to implement or expand operations under the Program within the following year in the neediest one-third of all areas unserved or partially served;

(ii) An estimate of the number of potentially eligible persons in each area and a list of the areas in the Affirmative Action Plan which are currently operating the Program and their current participation, which participant priority levels as specified in § 246.7 are being reached in each of these areas, and which areas in the Affirmative Action

Plan are currently operating CSFP and their current participation; and

(iii) A list of the names and addresses of all local agencies.

(6) Plans to provide Program benefits to eligible migrant farmworkers and their families, and to Indians.

(7) The State agency's plans, to be conducted in cooperation with local agencies, for informing eligible persons of the availability of Program benefits, including the eligibility criteria for participation and the location of local agencies operating in the Program. Such information shall be publicly announced by the State agency and by local agencies at least annually. Such information shall also be distributed to offices and organizations that deal with significant numbers of potentially eligible persons, including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas.

(8) A description of how the State agency plans to coordinate Program operations with special counseling services and other programs, including, but not limited to, the Expanded Food and Nutrition Education Program (7 U.S.C. 343(d) and 3175), the Food Stamp Program (7 U.S.C. 2011 et seq.), Early and Periodic Screening, Diagnosis and Treatment Program (Title XIX of the Social Security Act), family planning, immunization, prenatal care, well-child care, alcohol and drug abuse counseling, and child abuse counseling.

(9) The State agency's nutrition education goals and action plans, including a description of the methods that will be used to meet the special nutrition education needs of migrant farmworkers and their families and Indians.

(10) For Indian State or local agencies that wish to apply for the alternate income determination procedure in accordance with § 246.7(c)(2)(vi), documentation that the majority of Indian household members have incomes below eligibility criteria.

(11) A copy of the procedure manual developed by the State agency for guidance to local agencies in operating the Program. The manual shall include—

(i) Certification procedures, including a list of the specific nutritional risk criteria by priority level which cites conditions and indices to be used to determine a person's nutritional risk, the State agency's income guidelines for Program eligibility, and any adjustments to the participant priority system made pursuant to § 246.7(d)(4) to accommodate high-risk postpartum women or the addition of Priority VII;

(ii) Methods for providing nutrition education to participants;

(iii) Instructions concerning all food delivery operations performed at the local level; and

(iv) Instructions for providing all records and reports which the State agency requires local agencies to maintain and submit.

(12) A description of the State agency's financial management system.

(13) A description of how the State agency will distribute administrative funds, including start-up funds, to local agencies operating under the Program.

(14) A description of the food delivery system as it operates at the State agency level, including—

(i) All food delivery systems in use within the State agency's jurisdiction;

(ii) Vendor selection criteria;

(iii) A sample form for the written agreement between the food vendor and the State or local agency;

(iv) The system for monitoring food vendors to ensure compliance and prevent fraud, waste and abuse, and the State agency's plans for improvement in the coming year;

(v) Where food instruments are used, a facsimile of the food instrument, and the system for control and reconciliation of the food instruments;

(vi) The procedures used to pay food vendors; and

(vii) The names of companies, excluding authorized food vendors, with whom the State agency has contracted to participate in the operation of the food delivery system.

(15) Plans to prevent and detect dual participation. In States where the Program and the CSFP operate in the same area, or where an Indian State agency operates a Program in the same area as a geographic State agency, a copy of the written agreement between the State agencies for the detection and prevention of dual participation shall be submitted.

(16) A description of the procedures the State will use to comply with the civil rights requirements described in § 246.8, including the processing of discrimination complaints.

(17) A copy of the State agency's fair hearing procedures for participants and the administrative appeal procedures for local agencies and food vendors.

(b) *Hearings.* At least one month prior to submission of the State Plan to the designated State Plan clearance official, or submission to FNS in the case of an Indian State agency, the State agency shall conduct hearings to enable the general public to participate in the development of the State Plan.

(c) *Amendments.* At any time after approval, the State agency may amend the State Plan to reflect changes. The State agency shall submit the amendments to FNS for approval. The amendments shall be signed by the State designated official responsible for ensuring that the Program is operated in accordance with the State Plan.

(d) *Retention of copy.* A copy of the approved State Plan or the WIC portion of the State's composite plan of operations shall be kept on file at the State agency for public inspection.

§ 246.5 Selection of local agencies.

(a) *General.* This section sets forth the procedures the State agency shall perform in the selection of local agencies and the expansion, reduction, and disqualification of local agencies already in operation. In making decisions to intitiate, continue, and discontinue the participation of local agencies, the State agency shall give consideration to the need for Program benefits as delineated in the Affirmative Action Plan.

(b) *Application of local agencies.* The State agency shall require each agency, including subdivisions of the State agency, which desires approval as a local agency, to submit a written local agency application. Within 15 days after receipt of an imcomplete application, the State provide written notification to the applicant agency of the additional information needed. Within 30 days after receipt of a complete application, the State agency shall notify the applicant agency in writing of the approval or disapproval of its application. When an application is disapproved, the State agency shall advise the applicant agency of the reasons for disapproval and of the right to appeal as set forth in § 246.18. When an agency submits an application and there are no funds to serve the area, the applicant agency shall be notified within 30 days of receipt of the application that there are currently no funds available for Program initiation or expansion. The applicant agency shall be notified by the State agency when funds become available.

(c) *Program initiation and expansion.* The State agency shall meet the following requirements concerning Program initiation and expansion:

(1) The State agency shall fund local agencies serving those areas or special populations most in need first, in accordance with their order of priority as listed in the Affirmative Action Plan described in § 246.4(a)(5). The selection criteria cited in paragraph (d)(1) of this section shall be applied to each area or

special population before eliminating that area from consideration and serving the next area of special population. The State agency shall consider the number of participants in each priority level being served by existing local agencies in determining when it is appropriate to move into additional areas in the Affirmative Action Plan or to expand existing operations in an area. Additionally, the State agency shall consider the total number of people potentially eligible in each area compared to the number being served. Expansion of existing operations shall be in accordance with the Affirmative Action Plan and may be based on the percentage of need being met in each participant priority level.

(2) The State agency shall provide a written justification to FNS for not funding an agency to serve the highest priority area or special population. Such justification may include its inability to administer the Program, lack of interest expressed for operating the Program, or for those areas or special populations which are under consideration for expansion of an existing operation, a determination by the State agency that there is a greater need for funding an agency serving an area or special population not operating the Program. The State agency shall use the participant priority system in § 246.7 as a measurement of greater need in such determination.

(3) The State agency may fund more than one local agency to serve the same area or special population as long as more than one local agency is necessary to serve the full extent of need in that area or special population.

(d) *Local agency priority system.* The State agency shall establish standards for the selection of new local agencies. Such standards shall include the following considerations:

(1) The State agency shall consider the following priority system, which is based on the relative availability of health and administrative services, in the selection of local agencies:

(i) First consideration shall be given to a public or a private nonprofit health agency that will provide ongoing, routine pediatric and obstetric care and administrative services.

(ii) Second consideration shall be given to a public or a private nonprofit health or human service agency that will enter into a written agreement with another agency for either ongoing, routine pediatric and obstetric care or administrative services.

(iii) Third consideration shall be given to a public or private nonprofit health agency that will enter into a written agreement with private physicians, licensed by the State, in order to provide ongoing, routine pediatric and obstetric care to a specific category of participants (women, infants or children).

(iv) Fourth consideration shall be given to a public or private nonprofit human service agency that will enter into a written agreement with private physicians, licensed by the State, to provide ongoing, routine pediatric and obstetric care.

(v) Fifth consideration shall be given to a public or private nonprofit health or human service agency that will provide ongoing, routine pediatric and obstetric care through referral to a health provider.

(2) When seeking new local agencies, the State agency shall publish a notice in the media of the area next in line according to the Affirmative Action Plan, unless the State agency has received an application from a public or nonprofit private health agency in that area which can provide adequate health and administrative services. The notice shall include a brief explanation of the Program, a description of the local agency priority system cited in this paragraph and a request that potential local agencies notify the State agency of their interest. In addition, the State agency shall contact all potential local agencies in the area to ensure that they are aware of the opportunity to apply for participation under the Program. If no agency submits an application within 30 days, the State agency may then proceed with the selection of a local agency in the area next in line according to the Affirmative Action Plan. If sufficient funds are available, a State agency shall give notice and consider applications in more than one area at the same time but shall fund new local agencies in conformance with the sequential ranking of the Affirmative Action Plan.

(e) *Disqualification of local agencies.* (1) The State agency may disqualify a local agency—

(i) When the State agency determines noncompliance with Program regulations;

(ii) When the State's Program funds are insufficient to support the continued operation of all its existing local agencies at their current participation level; or

(iii) When the State agency determines, following a review of local agency credentials in accordance with paragraph (f) of this section, that another local agency can operate the Program more effectively and efficiently.

(2) The State agency may establish its own criteria for disqualification of local agencies. The State agency shall notify the local agency of any State-established criteria. In addition to any State established criteria, the State agency shall consider, at a minimum—

(i) The availability of other community resources to participants and the cost efficiency and cost effectiveness of the local agency in terms of both food and administrative and program services costs;

(ii) The percentages of participants in each priority level being served by the local agency and the percentage of need being met in each participant category;

(iii) The relative position of the area or special population served by the local agency in the Affirmative Action Plan;

(iv) The local agency's place in the priority system in paragraph (d)(1) of this section; and

(v) The capability of another local agency or agencies to accept the local agency's participants.

(3) When disqualifying a local agency under the Program, the State agency shall—

(i) Make every effort to transfer affected participants to another local agency without disruption of benefits;

(ii) Provide the affected local agency with written notice not less than 60 days in advance of the pending action which includes an explanation of the reasons for disqualification, the date of disqualification, and, except in cases of the expiration of a local agency's agreement, the local agency's right to appeal as set forth in § 246.18; and

(iii) Ensure that the action is not in conflict with any existing written agreements between the State and the local agency.

(f) *Periodic review of local agency qualifications.* The State agency may conduct periodic reviews of the qualifications of authorized local agencies under its jurisdiction. Based upon the results of such reviews the State agency may make appropriate adjustments among the participating local agencies, including the disqualification of a local agency when the State agency determines that another local agency can operate the Program more effectively and efficiently. In conducting such reviews, the State agency shall consider the factors listed in paragraph (e)(2) of this section in addition to whatever criteria it may develop. The State agency shall implement the procedures established in paragraph (e)(3) of this section when disqualifying a local agency.

§ 246.6 Agreements with local agencies.

(a) *Signed written agreements.* The State agency shall enter into a signed written agreement with each local

agency, including subdivisions of the State agency, which sets forth the local agency's responsibilities for Program operations as prescribed in this part. Copies of the agreement shall be kept on file at both the State and local agencies for purposes of review and audit in accordance with §§ 246.19 and 246.20. Neither the State agency nor the local agency has an obligation to renew the agreement. The expiration of an agreement is not subject to appeal. The State agency shall provide local agencies with advance written notice of the expiration of an agreement as required under §§ 246.5(e)(3)(ii) and 246.18(b)(1).

(b) *Provisions of agreement.* The agreement between the State agency and each local agency shall ensure that the local agency—

(1) Complies with all the fiscal and operational requirements prescribed by the State agency pursuant to this part, 7 CFR Part 3015, and FNS guidelines and instructions, and provides on a timely basis to the State agency all required information regarding fiscal and Program information;

(2) Has a competent professional authority on the staff of the local agency and the capabilities necessary to perform the certification procedures;

(3) Makes available appropriate health services to participants and informs applicants of the health services which are available;

(4) Has a plan for continued efforts to make health services available to participants at the clinic or through written agreements with health care providers when health services are provided through referral;

(5) Provides nutrition education services to participants, in compliance with § 246.11 and FNS guidelines and instructions;

(6) Implements a food delivery system prescribed by the State agency pursuant to § 246.12 and approved by FNS;

(7) Maintains complete, accurate, documented and current accounting of all Program funds received and expended;

(8) Maintains on file and has available for review, audit, and evaluation all criteria used for certification, including information on the area served, income standards used, and specific criteria used to determine nutritional risk; and

(9) Does not discriminate against persons on the grounds of race, color, national origin, age, sex or handicap; and compiles data, maintains records and submits reports as required to permit effective enforcement of the nondiscrimination laws.

(c) *Indian agencies.* Each Indian State agency shall ensure that all local agencies under its jurisdiction serve primarily Indian populations.

(d) *Health and human service agencies.* When a health agency and a human service agency comprise the local agency, both agencies shall together meet all the requirements of this part and shall enter into a written agreement which outlines all Program responsibilities of each agency. The agreement shall be approved by the State agency during the application process and shall be on file at both the State and local agency. No Program funds shall be used to reimburse the health agency for the health sevices provided. However, costs of certification borne by the health agency may be reimbursed.

(e) *Health or human service agencies and private physicians.* When a health or human service agency and private physician(s) comprise the local agency, all parties shall together meet all of the requirements of this part and shall enter into a written agreement which outlines the inter-related Program responsibilities between the physician(s) and the local agency. The agreement shall be approved by the State agency during the application process and shall be on file at both agencies. The local agency shall advise the State agency on its application of the name(s) and address(es) of the private physician(s) participating and obtain State agency approval of the written agreement. A competent professional authority on the staff of the health or human service agency shall be responsible for the certification of participants. No Program funds shall be used to reimburse the private physician(s) for the health services provided. However, costs of certification data provided by the physician(s) may be reimbursed.

Subpart C—Participant Eligibility

§ 246.7 Certification of participants.

(a) *Integration with health services.* To lend administrative efficiency and participant convenience to the certification process, whenever possible, Program intake procedures shall be combined with intake procedures for other health programs or services administered by the State and local agencies. Such merging may include verification procedures, certification interviews, and income computations.

(b) *Eligibility criteria.* To be certified as eligible for the Program, infants, children, and pregnant, postpartum, and breastfeeding women shall:

(1) In all State agencies except for Indian State agencies, meet the requirement that the applicant reside within the jurisdiction of the State. Indian State agencies may establish the requirement that applicants reside within their jurisdiction. All State agencies may determine a service area for any local agency, and may require that an applicant reside within the service area. However, the State agency may not use length of residency as an eligibility requirement.

(2) Meet the income criteria specified in paragraph (c) of this section.

(3) Meet the nutritional risk criteria specified in paragraph (d) of this section.

(c) *Income criteria and income eligibility determination.* The State agency shall establish, and provide local agencies with, income guidelines, definitions, and procedures to be used in determining an applicant's income eligibility for the Program.

(1) The State agency may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming Program income guidelines to health care guidelines, the State agency shall not establish Program guidelines which exceed the guidelines for reduced-price school meals or are less than 100 percent of the revised poverty income guidelines issued annually by the Department of Health and Human Services.

(i) Different guidelines may be prescribed for different local agencies within the State provided that the guidelines are the ones used by the local agencies for determining eligibility for free or reduced-price health care.

(ii) On or before June 1 each year, FNS will announce adjustments in the income guidelines for reduced-price meals under section 9 of the National School Lunch Act, based on annual adjustments in the revised poverty income guidelines issued by the Department of Health and Human Services.

(iii) On or before July 1 each year, each State agency shall announce and transmit to each local agency the State agency's family size income guidelines unless changes in the poverty income guidelines issued by the Department of Health and Human Services do not necessitate changes in the State or local agency's income guidelines. The State agency shall ensure that conforming adjustments are made, if necessary, in local agency income guidelines. The local agency shall implement new guidelines effective July 1 of each year

for which such guidelines are issued by the State.

(2) The State agency shall ensure that local agencies determine income through the use of a clear and simple application form provided or approved by the State agency.

(i) In determining the income eligibility of an applicant, the State agency may instruct local agencies to consider the income of the family during the past 12 months and the family's current rate of income to determine which indicator more accurately reflects the family's status. However, persons from families with adult members who are unemployed shall be eligible based on income during the period of unemployment if the loss of income causes the current rate of income to be less than the State or local agency's income guidelines for Program eligibility.

(ii) If the State agency uses the National School Lunch reduced-priced meal income guidelines, as specified in paragraph (c)(1) of this section, it shall use the following definition of income: Income for the purposes of this part means gross cash income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc. Income includes the following—

(A) Monetary compensation for services, including wages, salary, commissions, or fees;

(B) Net income from farm and non-farm self-employment;

(C) Social Security benefits;

(D) Dividends or interest on savings or bonds, income from estates or trusts, or net rental income;

(E) Public assistance or welfare payments;

(F) Unemployment compensation;

(G) Government civilian employee or military retirement or pensions or veterans' payments;

(H) Private pensions or annuities;

(I) Alimony or child support payments;

(J) Regular contributions from persons not living in the household;

(K) Net royalties; and

(L) Other cash income. Other cash income includes, but is not limited to, cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which are readily available to the family.

(iii) If the State agency uses State or local free or reduced-price health care income guidelines, as it is authorized to do in paragraph (c)(1) of this section, it may use the State or local definition or definitions of income used for the health care eligibility determinations. The State agency shall ensure, however, that the State or local agency's definition of income does not count the value of in-kind housing and other in-kind benefits and payments or benefits listed in paragraph (c)(2)(iv) of this section as income for Program purposes and that families with gross income, as defined in paragraph (c)(2)(ii) of this section, in excess of 185 percent of the Federal guidelines specified under paragraph (c)(1) of this section are not rendered eligible for Program benefits.

(iv) In determining income eligibility, payments or benefits provided under certain Federal programs or acts are excluded from consideration as income by legislative prohibition. These programs include, but are not limited to—

(A) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, Sec. 216, 42 U.S.C. 4636);

(B) Any payment to volunteers under Title I (VISTA and others) and Title II (RSVP, foster grandparents, and others) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93–113, Sec. 404(g), 42 U.S.C. 5044(g)) to the extent excluded by that Act;

(C) Payment to volunteers under section 8(b)(1)(B) of the Small Business Act (SCORE and ACE) (Pub. L. 95–510, Sec. 101, 15 U.S.C. 637(b)(1)(D));

(D) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94–114, Sec. 6, 25 U.S.C. 459e);

(E) Payments received under the Job Training Partnership Act (Pub. L. 97–300, Sec. 142(b), 29 U.S.C. 1552(b));

(F) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540, Sec. 6);

(G) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 94–204, Sec. 4(a), 43 U.S.C. 1626);

(H) The value of assistance to children or their families under the National School Lunch Act (42 U.S.C. 1760(e)), the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), and the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(I) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95–433, Sec. 2, 25 U.S.C. 609c–1); and

(J) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, Sec. 6, 9(c), 25 U.S.C. 1725(i), 1728(c)); and

(K) Payments or allowances received pursuant to the Home Energy Assistance Act of 1980 (Pub. L. 96–223, Title III, sec. 313(c)(1)).

(v) A State or local agency may require verification of information which it determines necessary to confirm income eligibility for Program benefits. The State agency may accept, as presumptive evidence of income within Program guidelines, verification of the applicant's participation in other State-administered programs which routinely verify income, such as Medicaid, public assistance programs or the Food Stamp Program; provided those programs have income eligibility guidelines at or below the State agency's Program income guidelines.

(vi) If an Indian State agency (or a non-Indian State agency which acts on behalf of a local agency operated by an Indian organization or the Indian Health Service) submits census data or other reliable documentation demonstrating to FNS that the majority of the Indian households in a local agency's service area have incomes at or below the State agency's income eligibility guidelines, FNS may authorize the State agency to approve the use of an income certification system under which the local Indian agency shall inform each Indian applicant household of the maximum family income allowed for that applicant's family size. The local agency shall ensure that the applicant, or the applicant's parent or caretaker, signs a statement that the applicant's family income does not exceed the maximum. The local agency may verify the income eligibility of any Indian applicant.

(vii) Instream migrant farmworkers and their family members with expired Verification of Certification cards shall be declared to satisfy the State agency's income standard; provided, however, that the income of that instream migrant farmworker family is determined at least once every 12 months. Any determination that members of an instream migrant farmworker family have met the income standard, either in the migrant's home base area before the migrant has entered the stream for a particular agricultural season, or in an instream area during the agricultural season, shall satisfy the income criteria in any State for any subsequent certification while the migrant is instream during the 12-month period following the determination.

(d) *Nutritional Risk.* To be certified as eligible for the Program, applicants who meet the Program's eligibility standards specified in paragraph (b) of this section must be determined to be at nutritional

risk. A competent professional authority on the staff of the local agency shall determine if a person is a nutritional risk through a medical and/or nutritional assessment. This determination may be based on referral data submitted by a competent professional authority not on the staff of the local agency.

(1) *Determination of nutritional risk.* At a minimum, height or length and weight shall be measured, and a hematological test for anemia such as a hemoglobin, hematocrit, or free erythrocyte protoporphyrin test shall be performed. However, such hematological tests are not required for infants under six months of age. Height or length and weight measurements shall be obtained for all participants, including those who are at nutritional risk based solely on the established nutritional risk status of another person, as provided in paragraphs (d)(1)(i) and (d)(1)(ii) of this section. At the State or local agency's discretion, the blood test is not required for children who were determined to be within the normal range at their last certification. However, the blood test shall be performed on such children at least once every 12 months.

(i) A breastfeeding woman may be determined to be a nutritional risk if her breastfed infant has been determined to be a nutritional risk. A breastfed infant can be certified based on the mother's medical and/or nutritional assessment. A breastfeeding mother and her infant shall be placed in the highest priority level for which either is qualified.

(ii) An infant under six months of age may be determined to be at nutritional risk if the infant's mother was a Program participant during pregnancy or of medical records document that the woman was at nutritional risk during pregnancy because of detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions.

(iii) A participant who has previously been certified eligible for the Program may be considered to be at nutritional risk in the next certification period if the competent professional authority determines there is a possibility of regression in nutritional status without the supplemental foods. The State agency may limit the number of times and circumstances under which a participant may be certified due to the possibility of regression.

(2) *Nutritional risk criteria.* The following are examples of nutritional risk conditions which may be used as a basis for certification. These examples include—

(i) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, such as anemia, underweight, overweight, abnormal patterns of weight gain in a pregnant woman, low birth weight in an infant, or stunting in an infant or child;

(ii) Other documented nutritionally related medical conditions, such as clinical signs of nutritional deficiencies, metabolic disorders, pre-eclampsia in a pregnant woman, or failure to thrive in an infant;

(iii) Dietary deficiencies that impair or endanger health, such as inadequate dietary patterns assessed by a 24-hour dietary recall, dietary history, or food frequency checklist; and

(iv) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, such as chronic infections in any person, alcohol or drug abuse or mental retardation in women, lead poisoning, history of high risk pregnancies or factors associated with high risk pregnancies (such as smoking; conception before 16 months postpartum; history of low birth weight, premature births, or neonatal loss; adolescent pregnancy; or current multiple pregnancy) in pregnant women, or congenital malformations in infants or children, or infants born of women with alcholol or drug abuse histories or mental retardation.

(3) *Nutritional risk priorities.* In determining nutritional risk, the State agency shall develop and include in its State Plan, specific risk conditions by priority level with indices for identifying these conditions. The criteria shall be used statewide and in accordance with the priority system as set forth in paragraph (d)(4) of this section.

(4) *Nutritional risk priority system.* The competent professional authority shall fill vacancies which occur after a local agency has reached its maximum participation level by applying the following participant priority system to persons on the local agency's waiting list. Priorities I through VI shall be utilized in all States. The State agency may, at its discretion, expand the priority system to include Priority VII. The State agency may set income or other sub-priority levels within any of these seven priority levels. The State agency may expand Priority III, IV, or V to include high-risk postpartum women.

(i) *Priority I.* Pregnant women, breastfeeding women and infants at nutritional risk as demonstrated by hematological or anthropometric measurements, or other documented nutritionally related medical conditions which demonstrate the need for supplemental foods.

(ii) *Priority II.* Except those infants who qualify for Priority I, infant up to six months of age of Program participants who participated during pregnancy, and infants up to six months of age born of women who were not Program participants during pregnancy but whose medical records document that they were at nutritional risk during pregnancy due to nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions which demonstrated the person's need for supplemental foods.

(iii) *Priority III.* Children at nutritional risk as demonstrated by hematological or anthropometric measurements or other documented medical conditions which demonstrate the child's need for supplemental foods.

(iv) *Priority IV.* Pregnant women, breastfeeding women, and infants at nutritional risk because of an inadequate dietary pattern.

(v) *Priority V.* Children at nutritional risk because of an inadequate dietary pattern.

(vi) *Priority VI.* Postpartum women at nutritional risk.

(vii) *Priority VII (State agency option).* In accordance with the provisions of paragraph (d)(1)(iii) of this section, previously certified participants who might regress in nutritional status without continued provision of supplemental foods.

(e) *Processing standards.* The local agencies shall process applicants within the following timeframes:

(1) *Waiting lists.* When the local agency is serving its maximum caseload, the local agency shall maintain a waiting list of individuals who visit the local agency to express interest in receiving Program benefits and who are likely to be served. However, in no case shall an applicant who requests placement on the waiting list be denied inclusion. State agencies may establish a policy which permits or requires local agencies to accept telephone requests for placement on the waiting list. The waiting list shall include the person's name, address or phone number, status (e.g., pregnant, breastfeeding, age of applicant), and the date he or she was placed on the waiting list. Individuals shall be notified of their placement on a waiting list within 20 days after they visit the local agency during clinic office hours to request Program benefits. For those State agencies establishing procedures to accept telephone requests for placement on a waiting list, individuals shall be notified of their placement on a waiting list within 20

days after contacting the local agency by phone. The competent professional authority shall apply the participant priority system as specified in paragraph (d)(4) of this section to the waiting list to ensure that the highest priority persons become Program participants first when caseload slots become available.

(2) *Timeframes for processing applicants.* (i) When the local agency is not serving its maximum caseload, the local agency shall accept applications, make eligibility determinations, notify the applicants of the decisions made and, if the applicants are to be enrolled, issue food or food instruments. All of these actions shall be accomplished within the timeframes set forth below.

(ii) The processing timeframes shall begin when the individual visits the local agency during clinic office hours to make an oral or written request for Program benefits. To ensure that accurate records are kept of the date of such requests, the local agency shall, at the time of each request, record the applicant's name, address and the date. The remainder of the information necessary to determine eligibility shall be obtained by the time of certification. Medical data taken prior to certification may be used as provided in paragraph (f)(4) of this section.

(iii) The local agency shall act on applications within the following timeframes:

(A) Special nutritional risk applicants shall be notified of their eligibility or ineligibility within 10 days of the date of the first request for Program benefits; except that State agencies may provide an extension of the notification period to a maximum of 15 days for those local agencies which make written request, including a justification of the need for an extension. The State agency shall establish criteria for identifying categories of persons at special nutritional risk who require expedited services. At a minimum, however, these categories shall include pregnant women eligible as Priority I participants, and migrant farmworkers and their family members who soon plan to leave the jurisdiction of the local agency.

(B) All other applicants shall be notified of their eligibility or ineligibility within 20 days of the date of the first request for Program benefits.

(iv) Each local agency using a retail purchase system shall issue a food instrument(s) to the participant at the same time as notification of certification. Such food instrument(s) shall provide benefits for the current month or the remaining portion thereof and shall be redeemable immediately upon receipt by the participant. Local agencies may mail the initial food instrument(s) with the notification of certification to those participants who meet the criteria for the receipt of food instruments through the mail, as provided in § 246.12(s)(8) (i) and (ii).

(v) Each local agency with a direct distribution or home delivery system shall issue the supplemental foods to the participant within 10 days of issuing the notification of certification.

(f) *Certification periods.* (1) Program benefits shall be based upon certifications established in accordance with the following timeframes:

(i) Pregnant women shall be certified for the duration of their pregnancy and for up to six weeks postpartum.

(ii) Postpartum women shall be certified for up to six months postpartum.

(iii) Breastfeeding women shall be certified at intervals of approximately six months and ending with the breastfed infant's first birthday.

(iv) Infants shall be certified at intervals of approximately six months, except that the State agency may permit local agencies under its jurisdiction to certify infants under six months of age for a period extending up to the first birthday provided the quality and accessibility of health care services are not diminished.

(v) Children shall be certified at intervals of approximately six months and ending with the end of the month in which a child reaches the fifth birthday.

(2) The State agency may authorize local agencies under its jurisdiction to establish shorter certification periods than outlined in paragraph (f)(1) of this section on a case-by-case basis. If the State agency exercises this option, it shall issue guidance for use by local agencies in establishing the shorter periods.

(3) In cases where there is difficulty in appointment scheduling for persons referenced in paragraphs (f)(1) (iii), (iv) and (v) of this section, the certification period may be shortened or extended by a period not to exceed 30 days.

(4) If the nutritional risk determination is based on data taken before the time of entrance into the Program, the certification intervals for participants other than pregnant women shall be based on the date when the data were taken rather than the date of admittance to the Program. All data used to determine nutritional risk shall be reflective of the applicant's categorical status at the time of certification.

(g) *Actions affecting participation in mid-certification.* (1) The State agency shall ensure that local agencies disqualify an individual in the middle of a certification period if, on the basis of a reassessment of Program eligibility status, the individual is determined ineligible. The State agency may authorize local agencies to disqualify an individual in the middle of a certification period for the following reasons—

(i) Participant abuse, including, but not limited to the infractions listed in § 246.12(k)(2); or

(ii) Failure to pick up his or her food instruments or supplemental foods for a number of consecutive months, as specified by the State agency.

(2) If a State agency experiences funding shortages, it may be necessary to discontinue Program benefits to a number of certified participants. Such action may be taken only after the State agency has explored alternative actions. If taken, the action should affect the least possible number of participants and should affect participants whose nutritional and health status would be least impaired by withdrawal of Program benefits. The State may discontinue benefits by—

(i) Disqualifying a group of participants; and/or

(ii) Withholding benefits of a group with the expectation of providing benefits again when funds are available.

(3) When a State agency elects to discontinue benefits to a number of certified participants due to insufficient funds for a period of time, it shall not enroll new participants during that period.

(h) *Certification forms.* All certification data for each person certified shall be recorded on a form (or forms) which are provided by the State agency. The information on the forms shall include—

(1) Name and address;

(2) Date of initial visit to apply for participation;

(3) Information regarding income eligibility for the Program as specified in paragraph (c) of this section;

(4) The date of certification and the date nutritional risk data were taken if different from the date of certification;

(5) Height or length, weight, and hematological test results;

(6) The specific nutritional risk conditions which established eligibility for the supplemental foods. Documentation should include health history when appropriate to the nutritional risk condition, with the applicant's or applicant's parent's or caretaker's consent;

(7) The signature and title of the competent professional authority making the nutritional risk determination, and, if different, the signature and title of the administrative person responsible for determining

income eligibility under the Program; and

(8) The following statement with a space for the signature of the applicant, parent, or caretaker to sign after reading or being read the following statement:

I have been advised of my rights and obligations under the Program. I certify that the information I have provided for my eligibility determination is correct, to the best of my knowledge. This certification form is being made in connection with the receipt of Federal assistance. Program officials may verify information on this form. I understand that deliberate misrepresentation may subject me to civil or criminal prosecution under State and Federal law.

(i) *Notification of participant rights and responsibilities.* In order to inform applicants and participants or their parents or caretakers of Program rights and responsibilities, the following information shall be provided. Where a significant number or proportion of the population eligible to be served needs the information in a language other than English, reasonable steps shall be taken to provide the information in appropriate languages to such persons, considering the scope of the Program and the size and concentration of such population.

(1) During the certification procedure, every Program applicant, parent or caretaker shall be informed of the illegality of dual participation.

(2) At the time of certification, each Program participant, parent or caretaker shall read, or have read to him or her, the statement provided in paragraph (h)(8) of this section and the following sentences:

(i) "Standards for eligibility and participation in the WIC Program are the same for everyone, regardless of race, color, national origin, age, handicap, or sex."

(ii) "You may appeal any decision made by the local agency regarding your eligibility for the Program."

(iii) "The local agency will make health services and nutrition education available to you, and you are encouraged to participate in these services."

(3) If the State agency implements the policy of disqualifying a participant for not picking up supplemental foods or food instruments in accordance with paragraph (g)(1)(ii) of this section, it shall provide notice of this policy and of the importance of regularly picking up food instruments or supplemental foods to each participant, parent or caretaker at the time of each certification.

(4) At least during the initial certification visit, each participant, parent or caretaker shall receive an explanation of how the local food delivery system operates and shall be advised of the types of health services available, where they are located, how they may be obtained and why they may be useful.

(5) Persons found ineligible for the Program during a certification visit shall be advised in writing of the ineligibility, of the reasons for the ineligibility, and of the right to a fair hearing. The reasons for ineligibility shall be properly documented and shall be retained on file at the local agency.

(6) A person who is about to be disqualified from Program participation at any time during the certification period shall be advised in writing not less than 15 days before the disqualification, of the reasons for this action, and of the right to a fair hearing. Such notification need not be provided to persons who will be disqualified for not picking up supplemental foods or food instruments in accordance with paragraph (g)(1)(ii) of this section.

(7) Each participant, parent or caretaker shall be notified not less than 15 days before the expiration of each certification period that certification for the Program is about to expire.

(j) *Transfer of certification.* (1) Each State agency shall ensure issuance of a Verification of Certification card to every participant who is a member of a family in which there is a migrant farmworker or any other participant who is likely to be relocating during the certification period. Certifying local agencies shall ensure that Verification of Certification cards are fully completed.

(2) The State agency shall require the receiving local agency to accept Verification of Certification cards from participants, including participants who are migrant farmworkers or members of their families, who have been participating in the Program in another local agency within or outside of the jurisdiction of the State agency. A person with a valid Verification of Certification card shall not be denied participation in the receiving State because the person does not meet that State's particular eligibility criteria.

(3) The Verification of Certification card is valid until the certification period expires, and shall be accepted as proof of eligibility for Program benefits. If the receiving local agency has waiting lists for participation, the transferring participant shall be placed on the list ahead of all waiting applicants.

(4) The Verification of Certification card shall include the name of the participant, the date the certification was performed, the date income eligibility was last determined, the nutritional risk condition of the participant, the date the certification period expires, the signature and printed or typed name of the certifying local agency official, the name and address of the certifying local agency and an identification number or some other means of accountability. The Verification of Certification card shall be uniform throughout the jurisdiction of the State agency.

(k) *Dual participation.* (1) The State agency shall be responsible for the following:

(i) In conjunction with the local agency, the prevention and detection of dual participation within each local agency and between local agencies.

(ii) In areas where local agency serves the same population as an Indian State agency or a CSFP agency, entering into an agreement with the CSFP or Indian State agency for the detection and prevention of dual participation. The agreement must be made prior to operation within the same area and must be in writing.

(iii) Immediate disqualification from one of the programs or clinics for participants found in violation due to dual participation. Where deliberate misrepresentation is involved, the participant may be disqualifed from participation in both programs or clinics as specified in § 246.12(k)(2).

(2) At certification, and when issuing food or food instruments, the local agency shall check the identification of each participant. For an infant or child participant, an immunization record, birth certificate, or other records that local agency personnel consider adequate to establish identity, shall be acceptable.

(l) *Certification without charge.* The certification procedure shall be performed at no cost to the applicant.

§ 246.8 Nondiscrimination.

(a) *Civil rights requirements.* The State agency shall comply with the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 CFR Parts 15, 15a and 15b), and FNS instructions to ensure that no person shall, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the Program. Compliance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act

of 1975, and regulations and instructions issued thereunder shall include, but not be limited to:

(1) Notification to the public of the nondiscrimination policy and complaint rights of participants and potentially eligible persons;

(2) Review and monitoring activity to ensure Program compliance with the nondiscrimination laws and regulations;

(3) Collection and reporting of racial and ethnic participation data as required by Title VI of the Civil Rights Act of 1964, which prohibits discrimination in federally assisted programs on the basis of race, color, or national origin; and

(4) Establishment of grievance procedures for handling complaints based on sex and handicap.

(b) *Complaints.* Persons seeking to file discrimination complaints may file them either with the Secretary of Agriculture, or the Director, Office of Equal Opportunity, USDA, Washington, D.C. 20250 or with the Office established by the State agency to handle discrimination grievances or complaints. All complaints received by State or local agencies which allege discrimination based on race, color, national origin, or age shall be referred to the Secretary of Agriculture or Director, Office of Equal Opportunity. A State or local agency may process complaints which allege discrimination based on sex or handicap if grievance procedures are in place.

(c) *Non-English materials.* Where a significant number or proportion of the population eligible to be served needs service or information in a language other than English in order effectively to be informed of or to participate in the Program, the State agency shall take reasonable steps considering the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to required Program information except certification forms which are used only by local agency staff. The State agency shall also ensure that all rights and responsibilities listed on the certification form are read to these applicants in the appropriate language.

§ 246.9 Fair hearing procedures for participants.

(a) *Availability of hearings.* The State agency shall provide a hearing procedure through which any individual may appeal a State or local agency action which results in the individual's denial of participation or disqualification from the Program.

(b) *Hearing system.* The State agency shall provide for either a hearing at the State level or a hearing at the local level which permits the individual to appeal a local agency decision to the State agency. The State agency may adopt local level hearings in some areas, such as those with large caseloads, and maintain only State level hearings in other areas.

(c) *Notification of appeal rights.* At the time of participation denial or of disqualification from the Program, the State or local agency shall inform each individual in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period.

(d) *Request for hearing.* A request for a hearing is defined as any clear expression by the individual, the individual's parent, caretaker, or other representative, that he or she desires an opportunity to present his or her case to a higher authority. The State or local agency shall not limit or interfere with the individual's freedom to request a hearing.

(e) *Time limit for request.* The State or local agency shall provide individuals a reasonable period of time to request fair hearings; provided that, such time limit is not less than 60 days from the date the agency mails or gives the applicant or participant the notice of adverse action.

(f) *Denial or dismissal of request.* The State and local agencies shall not deny or dismiss a request for a hearing unless—

(1) The request is not received within the time limit set by the State agency in accordance with paragraph (e) of this section;

(2) The request is withdrawn in writing by the appellant or a representative of the appellant;

(3) The appellant or representative fails, without good cause, to appear at the scheduled hearing; or

(4) The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing.

(g) *Continuation of benefits.* Except for participants whose certification period has expired, participants who appeal the termination of benefits within the 15 days advance adverse notice period provided by § 246.7(i)(6) shall continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. Applicants who are denied benefits at initial certification or because of the expiration of their certification may appeal the denial, but shall not receive benefits while awaiting the hearing.

(h) *Rules of procedure.* State and local agencies shall process each request for a hearing under uniform rules of procedure and shall makes these rules of procedure available for public inspection and copying. At a minimum, such rules shall include: The time limits for requesting and conducting a hearing; all advance notice requirements; the rules of conduct at the hearing; and the rights and responsibilities of the appellant. The procedures shall not be unduly complex or legalistic.

(i) *Hearing official.* Hearings shall be conducted by an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The hearing official shall—

(1) Administer oaths or affirmations if required by the State;

(2) Ensure that all relevant issues are considered;

(3) Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised;

(4) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;

(5) Order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the State agency; and

(6) Render a hearing decision which will resolve the dispute.

(j) *Conduct of the hearing.* The State or lcoal agency shall ensure that the hearing is accessible to the appellant and is held within three weeks from the date the State or local agency received the request for a hearing. The State or local agency shall provide the appellant with a minimum of 10 days advance written notice of the time and place of the hearing and shall enclose an explanation of the hearing procedure with the notice. The State or local agency shall also provide the appellant or representative an opportunity to—

(1) Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

(2) Be assisted or represented by an attorney or other persons;

(3) Bring witnesses;

(4) Advance arguments without undue interference;

(5) Question or refute any testimony or evidence, including an opportunity to

confront and cross-examine adverse witnesses; and

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

(k) *Fair hearing decisions.* (1) Decisions of the hearing official shall be based upon the application of appropriate Federal law, regulations and policy as related to the facts of the case as established in the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, constitute the exclusive record for a final decision by hearing official. The State or local agency shall retain the hearing record in accordance with § 246.25 and make these records available, for copying and inspection, to the appellant or representative at any reasonable time.

(2) The decision by the hearing official shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record.

(3) Within 45 days of the receipt of the request for the hearing, the State or local agency shall notify the appellant or representative in writing of the decision and the reasons for the decision in accordance with paragraph (k)(2) of this section. If the decision is in favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately. If the decision is in favor of the agency, as soon as administratively feasible, the local agency shall terminate any continued benefits, as decided by the hearing official. The appellant may appeal a local hearing decision to the State agency, provided that the request for appeal is made within 15 days of the mailing date of the hearing decision notice. The appellant shall not continue to receive benefits while an appeal to the State agency of a decision rendered on appeal at the local level is pending. The decision of a hearing official at the local level is binding on the local agency and the State agency unless it is appealed to the State level and overturned by the State hearing official.

(4) The State and local agency shall make all hearing records and decisions available for public inspection and copying; however, the names and addresses of participants and other members of the public shall be kept confidential.

(l) *Judicial review.* If a State level decision upholds the agency action and the appellant expresses an interest in pursuing a higher review of the decision, the State agency shall explain any further State level review of the decision and any State level rehearing process. If these are either unavailable or have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

Subpart D—Participant Benefits

§ 246.10 Supplemental foods.

(a) *General.* This section prescribes the requirements for providing supplemental foods to participants.

(b) *State agency responsibilities.* State agencies shall—

(1) Identify foods which are acceptable for use under the Program in accordance with the requirements of this section and provide to local agencies a list of acceptable foods and their maximum monthly quantities as specified in paragraph (c) of this section; and

(2) Ensure that local agencies—

(i) Make available at least one food from each group in each food package listed in paragraph (c) of this section. However, this does not mean that the local agency must provide each participant with a food from each food group;

(ii) Make available to participants the supplemental foods, as authorized in paragraph (c) of this section; and

(iii) Designate a competent professional authority to prescribe types of supplemental foods in quantities appropriate for each participant, taking into consideration the participant's age and dietary needs. The amounts of supplemental foods shall not exceed the maximum quantities specified in this section.

(c) *Food packages.* There are six food packages available under the Program which may be provided to participants. The authorized supplemental foods shall be prescribed from food packages according to the category and nutritional need of the participant. The food packages are as follows:

Note.—The metric units given are mathematical conversions. If packaging practices change, the authorized food quantities will be revised accordingly.

(1) *Food Package I—Infants 0 Through 3 Months.* (i) Iron-fortified infant formula, which is a complete formula not requiring the addition of any ingredients other than water prior to being served in a liquid state, and which contains at least 10 milligrams of iron per liter of formula at standard dilution which supplies 67 kilocalories per milliliters; i.e., approximately 20 kilocalories per fluid ounce of formula at standard dilution. Formulas which do not meet these requirements are authorized when a physician determines that the infant has a medical condition which contraindicates the use of infant formula as described above including, but not limited to, medical conditions which contraindicate the use of iron-fortified formula, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndromes, and allergies. Low-calorie formulas are not authorized solely for the purpose of managing body weight of infants. Documentation of the physician's determination of the need for a formula which does not meet the requirements described above the specific formula prescribed shall be included in the participant's certification file. Concentrated liquid or powdered formula shall be provided, except that, ready-to-feed formula may be authorized when the competent professional authority determines and documents that there is an unsanitary or restricted water supply, that there is poor refrigeration or that the person who is caring for an infant may have difficulty in correctly diluting concentrated liquid or powdered formula.

(ii) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Formula:	
Concentrated liquid formula.	403 fluid oz. (11.9 L).
or	
Powdered formula	May be substituted at the rate of 1 lb. (3.6 kg) per 403 fluid oz. (11.9 L) of concentrated liquid formula.
or	
Ready-to-feed formula.	May be substituted at the rate of 26 fluid oz. (.1 L) per 13 fluid oz. (.4 L) of concentrated liquid formula.

(2) *Food Package II—Infants 4 through 12 Months.* (i) Formula as specified in paragraph (c)(1)(i) of this section.

(ii) Infant cereal which contains a minimum of 45 milligrams of iron per 100 grams of dry cereal.

(iii) Single strength fruit juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice; or infant juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters. Issuance prior to the time when the infant can drink from a cup is discouraged. The competent professional authority shall instruct the

participant's parent or guardian to feed the juice to the participant form a cup to prevent "bottle caries."

(iv) The quanitites and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Formula:	
Concentrated liquid formula.	403 fluid oz. (11.9 L).
or	
Powdered formula	May be substituted at the rate of 8 lb. (3.6 kg) per 403 fluid oz. (11.9 L) of concentrated liquid formula.
or	
Ready-to-feed formula.	May be substituted at the rate of 26 fluid oz. (.8 L) per 13 fluid oz. (.4 L) of concentrated liquid formula.
Infant cereal	24 oz. dry (.7 kg).
Juice: [1]	
Single strength adult juice.	92 fluid oz. (2.7 L).
or	
Frozen concentrated juice.	96 fluid oz. reconstituted (2.8 L).
or	
Infant juice	May be substituted at the rate of 63 fluid oz. (1.9 L) of infant juice per 92 fluid oz. (2.7 L) of single strength adult juice.

[1] Combinations of single strength or frozen concentrated juice may be issued as long as the total volume of juice does not exceed the amount specified for single strength juice.

(3) *Food Package III-Children/Women with Special Dietary Needs.* Children and women with special dietary needs may receive the following supplemental foods if the physician determines that the participant has a medical condition which precludes or restricts the use of conventional foods and necessitates the use of a formula including, but not limited to, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndrome and allergies. The supplemental foods described below are not authorized solely for the purpose of enhancing nutrient intake or managing body weight of children and women participants. Documentation of the physician's determination of the need for a formula and the specific formula prescribed shall be included in the participant's certification file.

(i) Formula intended for use as an oral feeding and prescribed by a physican.

(ii) Cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitiamin C per 100 milliliters of reconstituted juice.

(iv) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and special dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Formula:	
Concentrated liquid formula.	403 fluid oz. (11.9 L).
Addition [1]	52 fluid oz. (1.5 L).
or	
Powdered formula	May be substituted at a rate of 8 lb. (3.6 kg) per 403 fluid oz. (11.9 L) of concentrated liquid formula.
Addition [1]	1 lb. (.4 kg).
or	
Ready-to-feed formula.	May be substituted at the rate of 26 fluid oz. (.8 L) per 13 fluid oz. (.4 L) of concentrated liquid formula.
Addition [1]	104 fluid oz. (3.1 L).
Cereal (hot or cold)	36 oz. dry (1 kg).
Juice: [2]	
Single strength juice.	138 fluid oz. (4.1 L).
or	
Frozen concentrated juice.	144 fluid oz. reconstituted (4.3 L).

[1] Additional formula may be issued on an individual basis provided the need is demonstrated and documented in the individual's certification file by the competent professional authority.

[2] Combinations of single strength and frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

(4) *Food Package IV—Children 1 to 5 Years.* (i) Pasteurized fluid whole milk which is unflavored and which contains 400 International Units of vitamin D per quart (.9 liter); or pasteurized fluid skim or lowfat milk which is unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) Eggs or dried egg mix.

(v) Peanut butter or mature dry beans or peas, including but not limited to, lentils, black, navy, kidney, garbanzo, soy, pinto, and mung beans, crowder, cow, split and black-eyed peas.

(vi) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Milk:	
Fluid whole milk	24 qt. (22.7 L).
or	
Fluid skim or low fat milk.	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Cultured buttermilk	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Evaporated whole milk.	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Evaporated skimmed milk.	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Dry whole milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk.
or	
Nonfat or lowfat dry milk.	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk.
or	
Cheese	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted. [1]
Eggs:	
Eggs	2 doz. or 2½ doz.
or	
Dried egg mix	May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs or 2 lb. (.9 kg) egg mix per 2½ doz. fresh eggs.
Cereals (hot or cold)	36 oz. dry (1 kg).
Juice: [2]	
Single strength juice.	276 fluid oz. (8.2 L).
or	
Frozen concentrated juice.	288 fluid oz. reconstituted (8.5 L).
Legumes:	
Dry beans or peas	1 lb. (.4 kg).
or	
Peanut butter	18 oz. (.5 kg).

[1] Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is docu-

mented in the participant's file by the competent professional authority.

[2] Combinations of single strength and frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

(5) *Food Package V-Pregnant and Breastfeeding Women.* (i) Pasteurized fluid whole milk which is unflavored and which contains 400 International Units of vitamin D per quart (.9 liter) or pasteurized fluid skim or lowfat milk which is unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Adult cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) Eggs or dried egg mix.

(v) Peanut butter or mature dry beans or peas, including but not limited to lentils, black, navy, kidney, garbanzo, soy, pinto and mung beans, crowder, cow, split and black-eyed peas.

(vi) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Milk:	
Fluid whole milk	28 qt. (26.5 L).
or	
Fluid skim or lowfat milk	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Cultured buttermilk	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Evaporated whole milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Evaporated skimmed milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Dry whole milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk.
or	
Nonfat or lowfat dry milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk.
or	
Cheese	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted.[1]
Eggs:	
Eggs	2 doz. or 2½ doz.
or	
Dried egg mix	May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs, or 2 lb. (.9 kg) egg mix per 2½ doz. fresh eggs.
Cereals (hot or cold)	36 oz. dry (1 kg).
Juice:[2]	
Single strength juice	276 fluid oz. (8.2 L).
or	
Frozen, concentrated juice	288 fluid oz. reconstituted (8.5 L).
Legumes:	
Dry beans or peas	1 lb. (.4 kg).
or	
Peanut butter	18 oz. (.5 kg).

[1] Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority.

[2] Combinations of single strength or frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

(6) *Food Package VI-Non-breastfeeding Postpartum Women.* (i) Pasteurized fluid whole milk which is unflavored and which contains 400 International Units of vitamin D per quart (.9 liter); or pasteurized fluid skim or lowfat milk which is unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units or vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.1 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per 1 ounce).

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) Eggs or dried egg mix.

(v) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Milk:	
Fluid whole milk	24 qt. (22.7 L).
or	
Fluid skim or lowfat milk	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Cultured buttermilk	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Evaporated whole milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Evaporated skimmed milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Dry whole milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk.
or	
Nonfat or lowfat dry milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk.
or	
Cheese	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted.[1]
Eggs:	
Eggs	2 doz. or 2½ doz.
or	
Dried egg mix	May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs of 2 lb. (.9 kg) egg mix per 2½ doz. fresh eggs.
Cereal (hot or cold)	36 oz. dry (1 kg).
Juice:[2]	
Single strength juice	184 fluid oz. (5.4 L).
or	
Frozen concentrated juice	192 fluid oz. reconstituted (5.7 L).

[1] Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority.

[5]Combinations of single strength or frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

(d) *Use of commodity foods.* (1) At the request of a State agency, the Department will purchase commodity foods for the State agency using funds allocated to the State agency. The commodity foods purchased and made available to the State agency shall be equivalent to the foods specified in paragraph (c) of this section.

(2) The State agency shall—

(i) Distribute the commodity foods to the local agency or participant;

(ii) Ensure satisfactory storage conditions for the commodity foods, including documentation of proper insurance; and

(iii) Ensure that there are proper storage facilities for commodity foods.

(e) *Substitute foods.* (1) The State agency may submit to FNS a plan for substitution of foods acceptable for use in the Program to allow for different cultural eating patterns. The plan shall include the State agency's justification for the proposed substitution, including a specific explanation of the cultural eating patterns which require the proposed substitution and other information necessary for FNS to evaluate the plan as specified in paragraph (e)(2) of this section.

(2) FNS will evaluate a State agency's plan for substitution of foods for different cultural eating patterns based on the three following criteria:

(i) Any proposed substitute food must be *nutritionally equivalent* or superior to the food it is intended to replace.

(ii) The proposed substitute must be widely *available* to participants in the areas where the substitute is intended to be used.

(iii) The *cost* of the substitute must be equivalent to or less than the cost of the food it is intended to replace.

(3) FNS will make a determination on the plan for substitution of foods for different cultural eating patterns based on the evaluation criteria specified in paragraph (e)(2) of this section and the State agency's justification for the substitution. The State agency shall use substitute foods only after receiving the written approval of FNS.

§ 246.11 Nutrition education.

(a) *General.* (1) Nutrition education shall be considered a benefit of the Program, and shall be made available at no cost to the participant. Nutrition education shall be designed to be easily understood by participants, and it shall bear a practical relationship to participant nutritional needs, household situations, and cultural preferences including information on how to select food for themselves and their families. Nutrition education shall be thoroughly integrated into participant health care plans, the delivery of supplemental foods, and other Program operations.

(2) The State agency shall ensure that nutrition education is made available to all participants. Nutrition education may be provided through the local agencies directly, or through arrangements made with other agencies. At the time of certification, the local agency shall stress the positive, long-term benefits of nutrition education and encourage the participant to attend and participate in nutrition education activities. However, individual participants shall not be denied supplemental foods for failure to attend or participate in nutrition education activities.

(b) *Goals.* Nutrition education shall be designed to achieve the following two broad goals:

(1) Stress the relationship between proper nutrition and good health with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants and children under five years of age.

(2) Assist the individual who is at nutritional risk in achieving a positive change in food habits, resulting in improved nutritional status and in the prevention of nutrition-related problems through optimal use of the supplemental foods and other nutritious foods. This is to be taught in the context of the ethnic, cultural and geographic preferences of the participants and with consideration for educational and environmental limitations experienced by the participants.

(c) *State agency responsibilities.* The State agency shall perform the following activities in carrying out nutrition education responsibilities:

(1) Develop and coordinate the nutrition education component of Program operations with consideration of local agency plans, needs and available nutrition education resources.

(2) Provide in-service training and technical assistance for professional and para-professional personnel involved in providing nutrition education to participants at local agencies.

(3) Identify or develop resources and educational materials for use in local agencies, taking reasonable steps to include materials in languages other than English in areas where a significant number or proportion of the population needs the information in a language other than English, considering the size and concentration of such population.

(4) Develop and implement procedures to ensure that nutrition education is offered to all adult participants and to parents and guardians of infant or child participants, as well as child participants, whenever possible.

(5) Annually perform and document evaluations of nutrition education activities. The evaluations shall include an assesment of participants' views concerning the effectiveness of the nutrition education which they received.

(6) Monitor local agency activities to ensure compliance with provisions set forth in paragraphs (d) and (e) of this section.

(7) Establish standards for participant contacts that ensure adequate nutrition education in accordance with paragraph (e) of this section.

(d) *Local agency responsibilities.* Local agencies shall perform the following activities in carrying out their nutrition education responsibilities:

(1) Make nutrition education available or enter into an agreement with another agency to make nutrition education available to all adult participants, and to parents or caretakers of infant and child participants, and whenever possible, to child participants. Nutrition education may be provided through the use of individual or group sessions. Educational materials designed for Program participants may be utilized to provide education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the program.

(2) Develop an annual local agency nutrition education plan consistent with the State's nutrition education component of Program operations and in accordance with this part and FNS guidelines. The local agency shall submit its nutrition education plan to the State agency by a date specified by the State agency.

(e) *Participant contacts.* (1) The nutrition education contacts shall be made available through indivudual or group sessions which are appropriate to the individual participant's nutritional needs. All pregnant participants shall be encouraged to breastfeed unless contraindicated for health reasons.

(2) During each six-month certification period, at least two nutrition contracts shall be made available to all adult participants and the parents or caretakers of infant and child participants, and wherever possible, the child participants themselves.

(3) Nutrition education contacts shall be made available at a quarterly rate, but not necessarily taking place within each quarter, to parents or caretakers of infant participants certified for a period in excess of six months.

(4) The local agency shall document in each participants's certification file the nutrition education given the participant in accordance with the State agency standards. Should a participant refuse or be unable to attend or participate in nutrition education, the local agency shall document this fact in the participant's file for purposes of further education efforts and for monitoring purposes.

(5) An individual care plan shall be provided for a participant based on the need for such plan as determined by the competent professional authority, except that any participant, parent, or caretaker shall receive such plan upon request.

(6) Contacts shall be designed to meet different cultural and language needs of Program participants.

Subpart E—State Agency Provisions

§ 246.12 Food delivery systems.

(a) *General.* This section sets forth design and operational requirements for State and local agency food delivery systems.

(1) The State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction.

(2) The State agency shall design all food delivey systems to be used by local agencies under its jurisdiction.

(3) FNS may, for a stated cause and by written notice, require revision of a proposed or operating food delivery system and will allow a reasonable time for the State agency to effect such a revision.

(4) All contracts or agreements entered into by the State or local agency for the management or operation of food delivery systems shall be in conformance with the requirements of 7 CFR Part 3015.

(b) *Uniform food delivery systems.* The State agency may operate up to three types of food delivery systems—retail purchase, home delivery or direct distribution. Each system shall be procedurally uniform within the jurisdiction of the State agency. When used, food instruments shall be uniform within each type of system.

(c) *Free of charge.* Participants shall receive the Program's supplemental foods free of charge.

(d) *Compatibility of food delivery system.* The State agency shall ensure that the food delivery system is compatible with delivery of health and nutrition education services to the participants.

(e) *Authorization of food vendors.* Only food vendors authorized by the State agency may redeem food intruments or otherwise provide supplemental foods to participants.

(1) There shall be a documented on-site visit prior to, or at the time of, initial authorization of a new vendor. However, vendors authorized prior to the date of State implementation of the amendment to Program regulations published at 47 FR 23626 need not have a documented visit.

(2) The State agency shall authorize an appropriate number and distribution of food vendors in order to assure adequate participant convenience and access and to assure that State or local officials can effectively manage review of authorized food vendors in their jurisdiction. The State agency may establish criteria to limit the number of authorized food vendors in its jurisdiction.

(3) The State agency is encouraged to consider the impact of authorization decisions on small businesses.

(f) *Food vendor agreements.* The State agency shall ensure that all participating food vendors enter into written contracts or agreements with the State or local agency. The food vendor contract or agreement shall be signed by a representative who has legal authority to obligate the food vendor. When the food vendor is obligating more than one outlet, all outlets shall be specified in the contract or agreement. When more than one outlet is specified in the contract or agreement, an individual outlet may be added or deleted without affecting the remainder of outlets. Neither the State or local agency nor the vendor has an obligation to renew the vendor contract or agreement. The State or local agency shall provide vendors with not less than 15 days advance written notice of the expiration of a contract or agreement.

(1) In the retail purchase system, a standard vendor contract or agreement shall be used statewide, though exceptions may be made with the approval of the State agency.

(2) The food vendor contract or agreement shall contain the following specifications, although the State agency may determine the exact wording to be used:

(i) In providing supplemental foods to the participants, the food vendor shall only provide the supplemental foods specified on the food instrument.

(ii) The food vendor shall provide supplemental foods at the current price or at less than the current price charged to other customers.

(iii) When food instruments are used, the food vendor shall submit those food instruments for payment within the allowed time period and accept food instruments from a participant only within the allowed time period.

(iv) The State agency has the right to demand refunds for charges of more than the actual purchase price for supplemental foods.

(v) The State agency may deny payment to the food vendor for improper food instruments or may demand refunds for payments already made on improper food instruments.

(vi) The food vendor shall not seek restitution from participants for food instruments not paid by the State or local agency.

(vii) The manager of the store or an authorized representative such as the head cashier shall agree to accept training on Program procedures.

(viii) The food vendor shall inform and train cashiers or other staff on Program requirements.

(ix) The food vendor shall be accountable for actions of employees in the utilization of food instruments or provision of supplemental foods.

(x) The food vendor shall offer Program participants the same courtesies as offered to other customers.

(xi) The food vendor may be monitored for compliance with Program rules.

(xii) During a monitoring visit of a retail vendor, the food vendor shall provide access to food instruments negotiated the day of the review at the request of the reviewer.

(xiii) Retail vendors shall provide access to shelf price records, if available.

(xiv) A vendor who commits fraud or abuse of the Program is liable to prosecution under applicable Federal, State or local laws. Under § 246.23 of the regulations, those who have willfully misapplied, stolen or fraudulently obtained program funds shall be subject to a fine of not more than $10,000 or imprisonment for not more than five years or both, if the value of the funds is $100 or more. If the value is less than $100, the penalties are a fine of not more than $1,000 or imprisonment for not more than one year or both.

(xv) The food vendor shall comply with the nondiscrimination provisions of Departmental regulations (7 CFR Parts 15, 15a and 15b).

(xvi) Neither the State agency nor the food vendor has an obligation to renew the vendor contract or agreement.

(xvii) Either the State agency or the vendor may terminate the contract or agreement for cause after providing advance written notice, of a period of not less than 15 days to be specified by the State agency.

(xviii) The State agency may disqualify a food vendor for reasons of Program abuse. The vendor has the right to appeal a State agency decision pertaining to denial of application to participate, vendor disqualification or any other adverse action which affects participation during the contract or agreement performance period. Expiration of a contract or agreement with a food vendor is not subject to appeal.

(xix) The food vendor shall notify the State agency when the vendor ceases operations or ownership changes. The contract or agreement is null and void if the ownership changes.

(3) Other provisions shall be added to the contracts or agreements to implement State agency options in paragraphs (k)(1)(iii) and (s)(5)(iv) of this section.

(g) *Periodic review of food vendor qualifications.* The State agency shall conduct a periodic review of the qualifications of all authorized food vendors under its jurisdiction, at least once every two years. The State agency shall establish criteria used to assess the adequacy of all food vendor qualifications. Based upon the results of such reviews the State agency shall make appropriate adjustments among the participating food vendors, such as termination of agreements.

(h) *Food vendor training and guidelines.* The State agency shall ensure that training is provided by the State or local agency for participating food vendors. The training shall be designed to prevent Program errors or abuse and to improve Program service.

(1) When vendor training is delegated to the local agency, the State agency shall provide training to local agency staff on effective vendor training methods.

(2) Food vendors shall be provided with pertinent Program information and guidance concerning the authorized supplemental foods, including a list of acceptable brand name products.

(i) *Monitoring of food vendors.* The State agency shall be responsible for the monitoring of food vendors within its jurisdiction. If the State agency chooses to delegate all or part of this responsibility to local agencies, the State agency shall provide training to local agency staff in effective methods of vendor monitoring.

(1) The State agency shall design and implement a system to identify high risk vendors and ensure on-site monitoring, further investigation, and sanctioning of such vendors as appropriate. Criteria for identifying high risk vendors may include such considerations as level and/or severity of suspected overcharges in redeemed food instruments, errors in redeemed food instruments, or participant complaints.

(2) The State agency shall design and implement a system to conduct on-site monitoring visits to at least 10 percent of authorized food vendors per year, selected on a representative basis, in order to survey the types and levels of abuse and errors among participating food vendors and to take corrective action, as appropriate. The State agency may submit an alternate representative vendor monitoring plan, based on statistical sampling methods, for FNS approval.

(3) A summary of the results of the monitoring of high risk and representative food vendors and of the review of food instruments shall be submitted annually to FNS and within four months after the end of each fiscal year. Plans for improvement in the coming year shall be included in the State Plan, in accordance with § 246.4.

(4) The following shall be documented for all on-site vendor monitoring visits, at a minimum: Names of both vendor and reviewer; date of review; nature of problem(s) detected or the observation that the vendor appears to be in compliance with Program requirements; how the vendor plans to correct deficiencies detected; and the signature of the reviewer. Methods of on-site monitoring visits may include, but are not limited to: compliance purchases, review of cashier check-out procedures, review of inventory records, and review of the availability and prices of Program supplemental foods.

(5) The State agency shall have the capability to conduct compliance purchases to collect evidence of improper vendor practices, or shall arrange for this responsibility to be assumed by the proper State or local authorities.

(j) *Participant and vendor complaints.* The State agency shall have procedures which document the handling of complaints by participants and vendors. Complaints of civil rights discrimination shall be handled in accordance with § 246.8(b).

(k) *Participant and vendor sanctions.* (1) The State agency shall establish policies which determine the type and level of sanctions to be applied against food vendors, based upon the severity and nature of the Program violations observed, and such other factors as the State agency determines appropriate, such as whether the violation represented repeated offenses over a period of time, whether the offenses represented vendor policy or whether they represented the actions of an individual employee who did not understand Program rules, and whether prior warning and an opportunity for correction was provided to the vendor. Vendor offenses which are subject to sanctions shall include at least the following: Providing cash, unauthorized foods or other items to participants in lieu of authorized supplemental foods; charging the State or local agency for foods not received by the participant; and charging the State or local agency more for supplemental foods than other customers are charged for the same food item. The State agency shall provide adequate procedures for vendors to appeal a disqualification from participation under the Program as specified in § 246.18.

(i) Food vendors may be subject to sanctions in addition to, or in lieu of, disqualification, such as claims for improper or overcharged food instruments and the penalties outlined in § 246.23, in case of deliberate fraud.

(ii) The period of disqualification from Program participation shall be a reasonable period of time, not to exceed three years. The maximum period of disqualification shall be imposed only for serious or repeated Program abuse.

(iii) The State agency may disqualify a food vendor from the Program who is currently disqualified from another FNS program. If a State agency chooses to use this option, it shall include a provision to this effect in its vendor agreement, in accordance with paragraph (f) of this section.

(iv) Prior to disqualifying a food vendor, the State agency shall consider whether the disqualification would create undue hardships for participants.

(2) The State agency shall establish procedures designed to control participant abuse of the Program. Participant abuse includes, but is not limited to, knowing and deliberate misrepresentation of circumstances to obtain benefits; sale of supplemental foods or food instruments to, or exchange with, other individuals or entities; receipt from food vendors of cash or credit toward purchase of unauthorized food or other items of value in lieu of authorized supplemental foods; and physical abuse, or threat of physical abuse, of clinic or vendor staff. The State agency shall establish sanctions for participant abuse. Such sanctions may, at the discretion of the State agency, include disqualification from the Program for a period up to three months. Warnings may be given prior to the imposition of sanctions. Before a participant is disqualified from the Program for alleged abuse, that participant shall be given full

opportunity to appeal a disqualification as set forth in § 246.9.

(3) The State agency shall refer food vendors and participants who abuse the Program to Federal, State or local authorities for prosecution under applicable statutes, where appropriate.

(l) *Control of food instruments.* The State agency shall control and provide accountability for the receipt and issuance of supplemental foods and food instruments. The State agency shall ensure that there is secure transportation and storage of unissued food instruments.

(m) *Payment to food vendors.* The State agency shall ensure that food vendors are promptly paid for food costs. Payments for valid food instruments shall be made within 60 days after receipt of the food instruments. Actual payment to food vendors may be made by local agencies.

(n) *Reconciliation of food instruments.* The State agency shall identify disposition of all food instruments as: validly redeemed, lost or stolen, expired, duplicate, voided or not matching issuance records. Reconciliation of food instruments shall entail reconciliation of each food instrument issued with food instruments redeemed and adjustment of previously reported financial obligations to account for actual redemptions and other changes in the status of food instruments.

(1) Reconciliation of food instruments shall be performed within 150 days of the first valid date for participant use and shall be in accordance with the financial management requirements of § 246.13.

(2) The State agency shall be able to demonstrate to FNS its capability to reconcile a given redeemed food instrument to valid certification records.

(o) *Not for use in institutions.* The State agency shall ensure that supplemental foods are not issued for use in institutions which serve meals.

(p) *Recipients of food instruments.* The State agency shall ensure that each participate or representative signs a receipt for supplemental foods or food instruments. This requirement shall not pertain to systems which deliver food instruments by alternate means pursuant to paragraph (s)(8) of this section, such as by mailing. The State agency shall establish uniform procedures which allow proxies designated by participants to act on their behalf. In determining whether an individual participant should be allowed to designate a proxy or proxies, there shall be consideration of whether there are adequate measures for the provision of nutrition education and health services to that participant.

(q) *Instructions to recipients.* The State agency shall ensure that participants and their proxies receive instructions on the proper use of food instruments, or on the procedures for receiving supplemental foods. Participants and their proxies shall also be notified that they have the right to complain about improper vendor practices with regard to Program responsibilities.

(r) *Conflict of interest.* The State agency shall ensure that no conflict of interest exists between any local agency and the food vendor or vendors within the local agency's jurisdiction.

(s) *Retail purchase systems.* Retail purchase food delivery systems are systems in which participants obtain supplemental foods by submitting a food instrument to local retail outlets. All retail purchase food delivery systems shall meet the following requirements:

(1) The State agency shall use uniform food instruments within its jurisdiction. The State agency is responsible for the design and printing of the uniform food instruments, and their serialization.

(2) Each food instrument shall clearly bear on its face the following information:

(i) The first date on which the food instrument may be used by the participant to obtain supplemental foods.

(ii) The last date by which the participant may use the food instrument to obtain supplemental foods. This date shall be a minimum of 30 days from the date specified in paragraph (s)(2)(i) of this section or, for the participant's first month of issuance, it may be the end of the month or cycle for which the food instrument is valid. Rather than entering a specific expiration date on each instrument, all instruments may be printed with a notice that the participant must transact them within a specified number of days after the first date on which the instrument may be used.

(iii) An expiration date by which the food vendor is required to submit the food instrument for payment. This date shall be no more than 90 days from the date specified in paragraph (s)(2)(i) of this section. If the date is less than 90 days, then the State agency shall ensure that the food vendor is able to submit food instruments for redemption within the required time limit without undue burden. This date may otherwise be printed as being no more than 90 days after the date in paragraph (s)(2)(i) of this section.

(iv) A unique and sequential serial number.

(v) At the discretion of the State agency, a maximum purchase price which is higher than the price of the food for which it will be used, but low enough to be a reasonable protection against potential losses of funds. When the maximum value is shown, the space for the actual value of the supplemental foods purchased shall be clearly distinguishable. For example, the words "actual amount of sale" could be printed larger and in a different area of the food instrument than the maximum value.

(3) The State agency shall implement requirements to ensure that the actual purchase price of the supplemental foods is recorded at the time of purchase. For example, the State agency may require that the food vendor write the purchase price on the food instrument prior to the signature of the participant.

(4) The State agency shall implement procedures to ensure that every redeemed food instrument can be identified to the food vendor which redeemed the food instrument. If the vendor utilizes outlets, all outlets participating in the Program shall be identified. For example, the State agency may require that all authorized food vendors stamp their names on all redeemed food instruments prior to submission.

(5) The State agency shall establish procedures to ensure the propriety of redeemed food instruments.

(i) The State agency shall design and implement a system of review of food instrument to detect suspected overcharges and to identify food vendors with high levels of suspected overcharges.

(ii) The State agency shall design and implement a system of review of food instruments to detect errors, including, at least, purchase price missing, participant signature missing, vendor identification missing, redemption by vendor outside of the valid date and, as appropriate, altered prices. The State agency shall implement procedures to reduce the number of errors, where possible.

(iii) When payment for a food instrument is denied or delayed, or a claim for reimbursement is assessed, the affected food vendor shall have an opportunity to correct or justify the overcharge or error. For example, if the actual price is missing, the vendor may demonstrate what price should have been included. If the State agency is satisfied with the correction or justification, then it shall provide payment, or adjust the payment or claim to the vendor accordingly.

(iv) If a claim is assessed against a food vendor after the problem food instrument has been paid, the State

agency may offset future payments to the food vendor for the amount of the claim. If a State agency chooses to utilize this option, it shall include a provision to this effect in its vendor agreement, in accordance with paragraph (f) of this section.

(6) With justification and documentation, State agencies may reimburse food vendors for food instruments submitted after the expiration date. If the total value of the food instruments submitted at one time exceeds $200.00, reimbursement may not be made without the approval of the FNS Regional Office.

(7) The State agency shall ensure that no more than a three-month supply of food instruments is issued to any participant at one time and that nutrition education and health services are frequently made available to the participant.

(8) To ensure that nutrition education and health services are frequently available to participants, FNS recommends that, wherever feasible, participants personally obtain their food instruments from the local agency. However, the State agency shall develop guidelines for the delivery of food instruments to participants through means other than direct pick-up of food instruments, such as through the mailing of food instruments.

(i) Food instruments may be mailed or otherwise delivered to participants on a local agency-wide basis only if approved by the State agency, on the basis of hardships which may be encountered by the target population of the local agency such as seasonally inclement weather.

(ii) A local agency may mail, or otherwise deliver, food instruments to an individual on the basis of difficulties of the participant and his or her designated proxy in obtaining the food instruments, for reasons such as illness, imminent childbirth, or difficulty of access to the local agency. If the initial hardship is resolved, the mailing or other delivery of the food instruments shall be discontinued.

(t) *Home food delivery systems.* Home food delivery systems are systems in which food is delivered to the participant's home. Systems for home delivery of food shall provide for—

(1) Uniform food instruments, where applicable, which comply with the appropriate requirements set forth in paragraph (s) of this section;

(2) Procurement of supplemental foods in accordance with § 246.24, which may entail measures such as the purchase of food in bulk lots by the State agency and the use of discounts that are available to States. The selection of home delivery vendors that are given exclusive contracts to an area shall conform to requirements of 7 CFR Part 3015; and

(3) The accountable delivery of supplemental foods to participants. The State agency shall ensure that—

(i) Home delivery vendors are paid only after the delivery of supplemental foods to the participants;

(ii) There exists a routine procedure to verify the actual delivery of supplemental foods to participants. At a minimum, such verification must occur at least once a month; and

(iii) There is retention of records of delivery of supplemental foods and bills sent or payments received for such supplemental foods for at least three years and access of State, local and/or Federal authorities to such records.

(u) *Direct distribution systems.* Direct distribution food delivery systems are systems in which participants pick up food from storage facilities operated by the State or local agency. Systems for direct distribution of food shall provide for—

(1) Uniform food instruments, where applicable, which comply with the appropriate requirements set forth under paragraph (s) of this section;

(2) Adequate storage and insurance coverage that minimizes the danger of loss due to theft, infestation, fire, spoilage, or other causes;

(3) Adequate inventory control of food received, in stock, and issued;

(4) Procurement of supplemental foods in accordance with § 246.24, which may entail measures such as purchase of food in bulk lots by the State agency and the use of discounts that are available to States;

(5) The availability of Program benefits to participants and potential participants who live at great distance from storage facilities; and

(6) The accountable delivery of supplemental foods to participants.

§ 246.13 Financial management system.

(a) *Disclosure of expenditures.* The State agency shall maintain a financial management system which provides accurate, current and complete disclosure of the financial status of the Program. This shall include an accounting for property and other assets and all Program funds received and expended each fiscal year.

(b) *Internal control.* The State agency shall maintain effective control over and accountability for all Program grants and funds. The State agency must have effective internal controls to ensure that expenditures financed with Program funds are authorized and properly chargeable to the Program.

(c) *Record of expenditures.* The State agency shall maintain records which adequately identify the source and use of funds expended for Program activities. These records shall contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays, and income.

(d) *Payment of costs.* The State shall implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocability of costs in accordance with the cost principles and standard provisions of this part, 7 CFR Part 3015, and FNS guidelines and instructions.

(e) *Identification of obligated funds.* The State agency shall implement procedures which accurately identify obligated Program funds at the time the obligations are made.

(f) *Resolution of audit findings.* The State agency shall implement procedures which ensure timely and appropriate resolution of claims and other matters resulting from audit findings and recommendations.

(g) *Use of minority and women-owned banks.* Consistent with the national goals of expanding opportunities for minority business enterprises, State and local agencies are encouraged to use minority and women-owned banks.

(h) *Reconciliation of food instruments.* The State agency shall reconcile food instruments in accordance with § 246.12(n).

(i) *Transfer of cash.* The State agency shall have controls to minimize the time elapsing between receipt of Federal funds from the U.S. Department of Treasury and the disbursements of these funds for Program costs. In the Letter of Credit system, the State agency shall make drawdowns from the U.S. Department of Treasury's Regional Disbursing Office as close as possible to the actual date that disbursement of funds is made. Advances made by the State agency to local agencies shall also conform to these same standards.

(j) *Local agency financial management.* The State agency shall ensure that all local agencies develop and implement a financial management system consistent with requirements prescribed by FNS and the State agency pursuant to the requirements of this section.

§ 246.14 Program costs.

(a) *General.* (1) The two kinds of allowable costs under the Program are "food costs" and "administrative and program services costs." In general, costs necessary to the fulfillment of

Program objectives are to be considered allowable costs. The two types of administrative and program services costs are:

(i) Direct costs. Those direct costs that are allowable under 7 CFR Part 3015.

(ii) Indirect costs. Those indirect costs that are allowable under 7 CFR Part 3015. When computing indirect costs, food costs may not be used in the base to which the indirect cost rate is applied. In accordance with the provisions of 7 CFR Part 3015, a claim for indirect costs shall be supported by an approved allocation plan for the determination of allowable indirect costs.

(2) Except as provided in paragraph (e) of this section, funds allocated by FNS for food purchases may not be used to pay administrative and program services costs. However, administrative and program services funds may be used to pay for food costs.

(b) *Specified allowable food costs.* Food costs are the acquisition cost of the supplemental foods provided to State or local agencies or to participants, whichever receives foods first. The State agency shall ensure that food costs do not exceed the food vendor's customary sale price. For example, in retail purchase systems, food costs may not exceed the shelf price of the food provided.

(c) *Specified allowable administrative and program services costs.* Allowable administrative and program services costs include the following:

(1) The cost of nutrition education which meets the requirements of § 246.11. During each fiscal year, the State agency shall use an amount equal to at least one-sixth of either the State agency's administrative and program services expenditures or its administrative and program services grant for nutrition education, whichever is less. The State agency shall document the full amount of total administrative and program services expenditures attributable to nutrition education, including grant funds and other funds or values in its final closeout report for each fiscal year. The amount to be spent on nutrition education shall be computed by taking one-sixth of the total fiscal year administrative and program services expenditures or administrative and program services grant level, whichever is less. If the State agency's reported nutrition education expenditures are less than the amount required to be spent, FNS will issue a claim for the difference and accordingly reduce the State agency's Letter of Credit and grant level for that fiscal year. The State agency may request prior written permission from FNS to spend less than one-sixth of its administrative and program services expenditures on nutrition education if the State agency can document that a total of funds from other sources and Program funds will be expended at an amount equal to one-sixth of administrative and program services expenditures. Nutrition education costs are limited to activities which are distinct and separate efforts to help participants understand the importance of nutrition to health. The cost of dietary assessments for the purpose of certification and the cost of prescribing and issuing supplemental foods shall not be applied to the one-sixth minimum amount required to be spent on nutrition education. Costs to be applied to the one-sixth minimum amount required to be spent on nutrition education may include, but need not be limited to—

(i) Salary and other costs for time spent on nutrition education consultations whether with an individual or group;

(ii) The cost of procuring and producing nutrition education materials including handouts, flip charts, filmstrips, projectors, food models or other teaching aids and mailing nutrition education materials to participants;

(iii) The cost of training nutrition educators, including costs related to conducting training sessions and purchasing and producing training materials;

(iv) The cost of conducting evaluations of nutrition education, including contractor involvement;

(v) Salary and other costs incurred in developing the nutrition education portion of the State Plan and local agency nutrition eduction plans; and

(vi) The cost of monitoring nutrition education.

(2) The cost of Program certification procedures, including the following—

(i) Laboratory fees incurred for tests conducted to determine whether persons are at nutritional risk;

(ii) Expendable medical supplies necessary to determine whether persons are at nutritional risk;

(iii) In connection with nutritional risk determinations, medical equipment used for taking anthropometric measurements, such as scales, measuring boards, and skin fold calipers; and for blood analysis to detect anemia, such as spectrophotometers, hematofluorometers and centrifuges; and

(iv) Salary and other costs for time spent on certification.

(3) The cost of outreach services.

(4) The cost of administering the food delivery system, including the cost of transporting food.

(5) The cost of translators for materials and interpreters.

(6) The cost of fair hearings, including the cost of an independent medical assessment of the appellant, if necessary.

(7) The cost of transporting rural participants to clinics when prior approval for using Program funds to provide transportation has been granted by the State agency and documentation that such service is considered essential to assure Program access has been filed at the State agency. Direct reimbursement to participants for transportation cost is not an allowable cost.

(8) The cost of monitoring and reviewing Program operations.

(d) *Costs allowable with approval.* The following costs are allowable only with the prior approval of FNS:

(1) Automated information systems which are required by a State or local agency except for those used in general management and payroll, including acquisition of automatic data processing hardware or software whether by outright purchase, rental-purchase agreement or other method of acquisition. Approval shall be granted by FNS if the proposed system meets the requirements of this part, A-90, and 7 CFR Part 3015. At the time the State agency decides to seek computerization, except for use in general management or payroll, it shall inform FNS and seek approval, if required.

(2) Capital expenditures over $2,500.00, such as the cost of facilities, equipment, including medical equipment, other capital assets and any repairs that materially increase the value of useful life of capital assets.

(3) Management studies performed by agencies or departments other than the State or local agency or those performed by outside consultants under contract with the State or local agency.

(e) *Recovery of vendor claims.* The State agency shall retain funds collected by the recovery of claims assessed against food vendors or funds not paid to food vendors as a result of reviews of food instruments prior to payment. The State agency may use up to 50 percent of these funds for administrative and program services purposes, provided that the base amount from which the percentage may be taken is not established until after the vendor has had full opportunity to correct or justify the error or apparent overcharge in accordance with § 246.12(s)(5)(iii). The State agency shall not transfer any such funds from its food account to its administrative and program services account until after the vendor has

exercised this right, if the vendor chooses to do so. After such funds have been transferred, the remainder shall be used to pay food costs. When these funds are used for administrative and program services purposes, the State agency shall report such expenditures to FNS through routine reporting procedures. The State agency shall maintain documentation to support the level of funds retained under this paragraph by the State agency for administrative and program services purposes.

§ 246.15 Program income other than grants.

(a) *Interest earned on advances.* State and local agencies and clinics may retain interest earned on advances of Program funds in accordance with the provisions of 7 CFR Part 3015.

(b) *Other Program income.* The State agency may use current Program income for costs incurred in the current fiscal year and, with the approval of FNS, for costs incurred in previous or subsequent fiscal years. With the approval of FNS, Program income may be used for costs which are in addition to the allowable costs of the Program but which nevertheless further the objectives of the law authorizing the Program. Provided that the costs supported by the income further the broad objectives of the Program, they need not be a kind that would be permissible as charges to Federal funds.

§ 246.16 Distribution of funds.

(a) *General.* This section prescribes the procedures for the distribution of available funds by FNS to participating State agencies and by State agencies to local agencies. The State agency shall ensure that all Program funds are used only for Program purposes. As a prerequisite to the receipt of funds, the State agency shall have executed an agreement with the Department and shall have received approval of its State Plan. To accomplish the distribution of funds, State agencies shall furnish FNS with any necessary financial and Program data.

(b) *Distribution of funds to State agencies.* Funds made available to the Department for the Program in any fiscal year will be distributed by FNS on the basis of funding formulas which allocate funds to all State agencies for food costs and administrative and program services costs. However, up to one-half of one percent of the sums appropriated for each fiscal year, not to exceed $3,000,000, shall be available to the Secretary for the purpose of evaluating Program performance, evaluating health benefits, and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations. Each State agency's funds will be provided by means of a Letter of Credit unless another funding method is specified by FNS. State agencies shall use funds to cover those allowable and documented Program costs, as defined in § 246.14, which are incurred by the State agency and participating local agencies within their jurisdictions.

(c) *Distribution of funds to local agencies.* The State agency shall provide to local agencies all funds made available by FNS, except those funds necessary for allowable State agency administration and program services costs and food costs paid directly by the State agency. The State agency shall distribute the funds based on claims submitted at least monthly by the local agency. Where the State agency advances funds to local agencies, the State agency shall ensure that each local agency has funds to cover immediate disbursement needs, and the State agency shall offset the advances made against incoming claims each month to ensure that funding levels reflect the actual expenditures reported by the local agency. Upon receipt of Program funds from the Department, the State agency shall take the following actions:

(1) Distribute funds to cover expected food cost expenditures.

(2) Allocate funds to cover expected local agency administrative and program services costs in a manner which takes into consideration each local agency's needs. For the allocation of administrative and program services funds, the State agency shall take the following actions:

(i) Develop an administrative and program services funding procedure, in cooperation with several representative local agencies, which takes into account the varying needs of the local agencies. The State agency shall consider the views of local agencies, but the final decision as to the funding procedure remains with the State agency. The State agency shall take into account factors it deems appropriate to further proper, efficient and effective administration of the Program, such as local agency staffing needs, density of population, number of persons served, and availability of administrative support from other sources.

(ii) Forward in advance to local agencies those administrative and program services funds necessary for the successful commencement of Program operations during the first three months of operation or until the local agency reaches its projected caseload level, whichever comes first.

(d) *Recovery of funds.* Funds may be recovered from a State agency at any time FNS determines, based on State agency reports of expenditures and operations, that the State agency is not expending funds at a rate commensurate with the amount of funds distributed or provided for expenditures under the Program.

(e) *Reallocation of funds.* Any funds recovered under paragraph (d) of this section will be reallocated by FNS as deemed appropriate.

§ 246.17 Closeout procedures.

(a) *General.* State agencies shall submit preliminary and final closeout reports for each fiscal year. All obligations shall be liquidated before closure of a fiscal year grant. Obligations shall be reported for the fiscal year in which they occur.

(b) *Fiscal year closeout reports.* State agencies—

(1) Shall submit to FNS, within 30 days after the end of the fiscal year, preliminary financial reports which show cumulative actual expenditures and obligations for the fiscal year, or part thereof, for which Program funds were made available;

(2) Shall submit to FNS, within 150 days after the end of the fiscal year, final fiscal year closeout reports;

(3) May submit revised closeout reports. FNS will reimburse State agencies for additional costs claimed in a revised closeout report up to the State's original grant level, if costs are properly justified and if funds are available for the fiscal year pertaining to the request. FNS will not be responsible for reimbursing State agencies for unreported expenditures later than one year after the end of the fiscal year in which they were incurred.

(c) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be performed in accordance with 7 CFR Part 3015.

(1) FNS may disqualify a State agency's participation under the Program, in whole or in part, or take such remedies as may be legal and appropriate, whenever FNS determines that the State agency failed to comply with the conditions prescribed in this part, in its Federal-State Agreement, or in FNS guidelines and instructions. FNS will promptly notify the State agency in writing of the disqualification together with the effective date. A State agency shall disqualify a local agency by written notice whenever it is determined by FNS or the State agency that the local agency has failed to comply with the requirements of the Program.

(2) FNS or the State agency may disqualify the State agency or restrict its participation in the Program when both parties agree that continuation under the Program would not produce beneficial results commensurate with the further expenditure of funds. The State agency or the local agency may disqualify the local agency or restrict its participation in the Program under the same conditions. The two parties shall agree upon the conditions of disqualification, including the effective date thereof, and, in the case of partial disqualification, the portion to be disqualified.

(3) Upon termination of a grant, the affected agency shall not incur new obligations for the disqualified portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS will allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to disqualification, and the State agency shall do the same for the local agency.

(4) A grant closeout shall not affect the retention period for, or Federal rights of access to, grant records as specified in § 246.25. The closeout of a grant does not affect the State or local agency's responsibilities regarding property or with respect to any Program income for which the State or local agency is still accountable.

(5) A final audit is not a required part of the grant closeout and should not be needed unless there are problems with the grant that require attention. If FNS considers a final audit to be necessary, it shall so inform OIG. OIG will be resonsible for ensuring that necessary final audits are performed and for any necessary coordination with other Federal cognizant audit agencies or the State or local auditors. Audits performed in accordance with § 246.20 may serve as final audits providing such audits meet the needs of requesting agencies. If the grant is closed out without the audit, FNS reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

§ 246.18 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby a food vendor or local agency adversely affected by a State or local agency action may appeal the action.

(1) The right of appeal shall be granted when a local agency's or a food vendor's application to participate is denied or, during the course of the contract or agreement, when a local agency or vendor is disqualified or any other adverse action which affects participation is taken. Expiration of a contract or agreement with a food vendor or local agency shall not be subject to appeal.

(2) The adverse action affecting a participating local agency shall be postponed until a hearing decision is reached.

(3) The State agency may take adverse action against a vendor after the 15-day advance notification period mandated by paragraph (b)(1) of this section has elapsed. In deciding whether or not to postpone adverse action until a hearing decision is rendered, the State agency shall consider whether participants would be unduly inconvenienced and may consider other relevant criteria, determined by the State agency.

(b) *Procedure.* The State agency hearing procedure shall at a minimum provide the local agency or vendor with the following:

(1) Written notification of the adverse action, the cause(s) for and the effective date of the action. Such notification shall be provided to participating food vendors not less than 15 days in advance of the effective date of the action. In the case of the disqualification of local agencies, the State agency shall provide not less than 60 days advance notice of pending action.

(2) The opportunity to appeal the adverse action within a time period specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.

(4) The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request. The State agency may set standards on how many hearing dates can be scheduled, provided that a minimum of two hearing dates is allowed.

(5) The opportunity to confront and cross-examine adverse witnesses.

(6) The opportunity to be represented by counsel, if desired.

(7) The opportunity to review the case record prior to the hearing.

(8) An impartial decision maker, whose decision as to the validity of the State or local agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the Program. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.

(9) Written notification of the decision concerning the appeal, within 60 days from the date of receipt of the request for a hearing by the State agency.

(c) *Continuing responsibilities.* Appealing an action does not relieve a local agency, or a food vendor permitted to continue in the Program while its appeal is in process, from the responsibility of continued compliance with the terms of any written agreement or contract with the State or local agency.

(d) *Judicial review.* If a State level decision is rendered against the local agency or food vendor and the appellant expresses an interest in pursuing a higher review of the decision, the State agency shall explain any further State level review of the decision and any available State level rehearing process. If neither is available or both have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

Subpart F—Monitoring and Review

§ 246.19 Management evaluation and reviews.

(a) *Management evaluations and reviews.* (1) FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of Program objectives as provided under this part, FNS guidelines, instructions, and the Federal-State agreement with the Department. FNS will provide assistance to States in discharging this responsibility, establish standards and procedure to determine how well the objectives of this part are being accomplished, and implement sanction procedures as warranted by State Program performance.

(2) If FNS determines through a management evaluation or other means that the State agency has failed, without good cause, to demonstrate efficient and effective administration of its Program or has failed to comply with the requirements contained in this part or the State Plan, FNS may withhold an amount up to 100 percent of the State agency's administrative and program services funds.

(3) Sanctions imposed upon a State agency by FNS in accordance with this section (but not claims for repayment assessed against a State agency) may be appealed in accordance with the procedures established in § 246.22. Before carrying out any sanction against a State agency, the following procedures will be followed:

(i) FNS will notify the Chief State Health Officer or equivalent in writing of the deficiencies found and of FNS'

intention to withhold administrative and program services funds unless an acceptable corrective action plan is submitted by the State agency to FNS within 60 days after mailing of notification.

(ii) The State agency shall develop a corrective action plan with a schedule according to which the State agency shall accomplish various actions to correct the deficiencies and prevent their future recurrence.

(iii) If the corrective action plan is acceptable, FNS will notify the Chief State Health Officer or equivalent in writing within 30 days of receipt of the plan. The letter approving the corrective action plan will describe the technical assistance that is available to the State agency to correct the deficiencies. The letter will also advise the Chief State Health Officer or equivalent of the sanctions to be imposed if the corrective action plan is not implemented according to the schedule set forth in the approved plan.

(iv) Upon notification from the State agency that corrective action as been taken, FNS will assess such action, and, if necessary, will perform a follow-up review to determine if the noted deficiencies have been corrected. FNS will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed.

(v) If an acceptable corrective action plan is not submitted within 60 days, or if corrective action is not completed according to the schedule established in the corrective action plan, FNS may withhold administrative and program services funds through a reduction of the State agency Letter of Credit or by assessing a claim against the State agency. FNS will notify the Chief State Health Officer or equivalent of this action.

(vi) If compliance is achieved before the end of the fiscal year in which the administrative and program services funds are withheld, the funds withheld shall be restored to the State agency's Letter of Credit. FNS is not required to restore funds withheld if compliance is not achieved until the subsequent fiscal year. If the 60-day warning period ends in the fourth quarter of a fiscal year, FNS may elect not to withhold funds until the next fiscal year.

(b) *State agency responsibilities.* (1) The State agency shall establish an on-going management evaluation system which includes at least the monitoring of local agency operations, the review of local agency financial and participation reports, the development of corrective action plans to resolve Program deficiencies, the monitoring of the implementation of corrective action plans, and on-site visits. The results of such actions shall be documented.

(2) Monitoring of local agencies shall encompass, but not be limited to, evaluation of management, certification, nutrition education, civil rights compliance, accountability, financial management systems, and food delivery systems. In accordance with § 246.12(i), the State agency shall ensure that State or local agency personnel conduct the necessary on-site monitoring of high risk and representative vendors. If the State agency delegates vendor monitoring to local agencies, it shall evaluate the effectiveness of these monitoring visits.

(3) The State agency shall conduct annual monitoring reviews of each local agency, including on-site reviews of a minimum of 20 percent of the clinics in each local agency or one clinic, whichever is greater. the State agency may conduct such additional on-site reviews as it finds necessary.

(4) The State agency shall develop a corrective action process which includes: prompt notification of deficiencies to the local agency, timely development of corrective action plans, and monitoring of local agency implementation of such plans.

(5) When required by FNS, the State agency shall provide special reports on Program activities and act to correct deficiences in Program operations.

(6) The State agency shall require local agencies to establish management evaluation systems to review their operations and those of associated clinics or contractors.

§ 246.20 Audits.

(a) *Federal audit responsibilities.* (1) OIG reserves the right to perform audits of State and local agencies and other organizations involved in the Program as determined by OIG to be necessary. In performing such audits, OIG will rely to the extent feasible on audit work performed by other Federal and non-Federal auditors.

(2) The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or a proposed corrective action plan regarding the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific timeframes for its implementation and for completion of correction of deficiencies and their causes.

(3) FNS will determine whether Program deficiencies have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(b) *State audit responsibilities.* (1) State agencies shall comply with the provisions of 7 CFR Part 3015 regarding independent organization-wide audits of financial operations. In conformance with 7 CFR Part 3015, State agencies shall arrange for independent audits of financial operations, including compliance with appropriate provisions of Federal laws and regulations, and shall ensure that audits are made on an organization-wide basis rather than on a program basis. When organization-wide audits are done the State agency shall cause procedures to be established which ensure that FNS programs are included in the universe of Federal awards from which a sample is drawn.

(2) Such organization-wide audits shall be used to determine whether—

(i) Financial operations are conducted properly;

(ii) Financial statements are presented fairly;

(iii) State and local agencies are complying with the laws, regulations and administrative requirements that affect the expenditure of Federal funds;

(iv) State and local agencies have established internal procedures to meet the financial management objectives of federally assisted programs; and

(v) State and local agencies are providing accurate and reliable information to the Federal government. If such agencies fail to arrange for the required audits at the appropriate frequency or fail to ensure that an acceptable audit is performed at the appropriate frequency, the respective cognizant audit agencies may arrange for the performance of the required audits. If the cognizant audit agencies arrange for the required audits because of these circumstances, the State agencies shall reimburse the respective cognizant audit agencies for the pro rata cost of their organization-wide audits.

(3) Each State agency shall make all State or local agency sponsored audit reports of Program operations under its jurisdiction available for the Department's review upon request. The cost of these audits shall be considered a part of administrative and program services costs and may be funded from the State or local agency administrative and program services funds, as appropriate. For purposes of determining the Program's pro rata share of indirect costs associated with organization-wide audits, the cost of food shall not be considered in the total dollar amount of the Program.

§ 246.21 Investigations.

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State or local agency, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the State or local agency has failed to comply with the requirements of this part.

(b) *Confidentiality.* No State or local agency, participant, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this part because that person has made a complaint or formal allegation, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conducting of any investigation, hearing, or judicial proceeding.

Subpart G—Miscellaneous Provisions

§ 246.22 Administrative appeal of FNS decisions.

(a) *Right to appeal.* When FNS asserts a sanction against a State agency under the provisions of § 246.19, the State agency may appeal and must be afforded a hearing or review by an FNS Administrative Review Officer. The right of appeal shall not apply to claims for repayment assessed by FNS against the State agency under § 246.23(a). A State agency shall have the option of requesting a hearing to present its position or a review of pertinent documents and records including any additional written submission prepared by the State agency.

(1) FNS will send a written notice by Certified Mail-Return Receipt Requested to the state agency or otherwise ensure receipt of such notice by the agency when asserting a sanction against a State agency as specified in § 246.19(a).

(2) A State agency aggrieved by a sanction asserted against it may file a written request with the Director, Administrative Review Division, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Va. 22302, for a hearing or a review of the record. Such request shall be sent by Certified Mail-Return Receipt Requested and postmarked within 30 days of the date of receipt of the sanction notice. The envelope containing the request shall be prominently marked "REQUEST FOR REVIEW OR HEARING." The request shall clearly identify the specific FNS sanction(s) being appealed and shall include a photocopy of the FNS notice of sanction. If the State agency does not request a review of hearing within 30 days of receipt of the notice, the administrative decision on the sanctions will be considered final.

(b) *Acknowledgment of request.* Within 15 days of receipt by the Director of the Administrative Review Division of a request for review or hearing, the Director will provide the State agency with a written acknowledgment of the request.

(1) The acknowledgment will include the name and address of the FNS Administrative Review Officer to review the sanction;

(2) The acknowledgment will also notify the State agency that within 30 days of the receipt of the acknowledgment, the State agency shall submit three sets of the following information to the Administrative Review Officer—

(i) A clear, concise identification of the issue(s) in dispute;

(ii) The State agency's position with respect to the issue(s) in dispute;

(iii) The pertinent facts and reasons in support of the State agency's position with respect to the issue(s) in dispute and a copy of the specific sanction notice provided by FNS;

(iv) All pertinent documents, correspondence and records which the State agency believes are relevant and helpful toward a more thorough understanding of the issue(s) in dispute;

(v) The relief sought by the State agency;

(vi) The identify of the person(s) presenting the State agency's position when a hearing is involved; and

(vii) A list of prospective State agency witnesses when a hearing is involved.

(c) *FNS action.* (1) When a hearing is requested pursuant to this section, the Administrative Review Officer will, within 60 days after receipt of the State agency's information, schedule and conduct the hearing. The State agency will be advised of the time, date and location of the hearing at least 10 days in advance.

(2) When a hearing is requested, the FNS Administrative Review Officer will make a final determination within 30 days after the hearing, and the final determination will take effect upon delivery of the written notice of this final decision to the State agency.

(3) When a review is requested, the FNS Administrative Review Officer will review information presented by a State agency and will make a final determination within 30 days after receipt of that information. The final determination will take effect upon delivery of the written notice of this final decision to the State agency.

§ 246.23 Claims and penalties.

(a) *Claims.* (1) If FNS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any Program funds provided to a State agency for supplemental foods or administrative and program services purposes were, through State or local agency negligence or fraud, misused or otherwise diverted from Program purposes, a formal claim will be assessed by FNS against the State agency. The State agency shall pay promptly to FNS a sum equal to the amount of the administrative and program services funds or the value of supplemental foods or food instruments so misused or diverted.

(2) If FNS determines that any part of the Program funds received by a State agency; or supplemental foods, either purchased or donated commodities; or food instruments, were lost as a result of thefts, embezzlements, or unexplained causes, the State agency shall, on demand by FNS, pay to FNS a sum equal to the amount of the money or the value of the supplemental foods or food instruments so lost.

(3) The State agency shall have full opportunity to submit evidence, explanation or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

(4) FNS is authorized to establish claims against a State agency for unreconciled food instruments. When a State agency can demonstrate that all reasonable management efforts have been devoted to reconciliation and 99 percent or more of the food instruments issued have been accounted for by the reconciliation process, FNS may determine that the reconciliation process has been completed to satisfaction.

(b) *Interest Charge.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit within 30 days from the date of the first demand letter from FNS, FNS will assess an interest (late) charge against the State agency. Interest accrual shall begin on the 31st day after the date of the first demand letter, bill or claim, and shall be computed monthly on any unpaid balance as long as the debt exists. From a source other than the

Program, the State agency shall provide the funds necessary to maintain Program operations at the grant level authorized by FNS.

(c) *Penalties.* In accordance with section 12(g) of the National School Lunch Act, whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under Section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly from USDA, or whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such funds, assets or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

§ 246.24 Procurement and property management.

(a) *Requirements.* State and local agencies shall comply with the requirements of A-90 and 7 CFR Part 3015 concerning the procurement and allowability of food in bulk lots, supplies, equipment and other services with Program funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in A-90 and 7 CFR Part 3015 do not relieve the State or local agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State or local agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with Program funds adhere to the standards set forth in A-90 and 7 CFR Part 3015.

(d) *Property acquired with Program funds.* State and local agencies shall observe the standards prescribed in 7 CFR Part 3015 in their utilization and disposition of real property and equipment, including automated data processing equipment, acquired in whole or in part with Program funds.

§ 246.25 Records and reports.

(a) *Recordkeeping requirements.* Each State and local agency shall maintain full and complete records concerning Program operations. Such records shall comply with 7 CFR Part 3015 and the following requirements:

(1) Records shall include, but not be limited to, information pertaining to financial operations, food delivery systems, food instrument issuance and redemption, equipment purchases and inventory, certification, nutrition education, civil rights and fair hearing procedures.

(2) All records shall be retained for a minimum of three years following the date of submission of the final expenditure report for the period to which the report pertains. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the three-year period, the records shall be kept until all issues are resolved, or until the end of the regular three-year period, whichever is later. If FNS deems any of the Program records to be of historical interest, it may require the State or local agency to forward such records to FNS whenever either agency is disposing of them.

(3) Records for nonexpendable property acquired in whole or in part with Program funds shall be retained for three years after its final disposition.

(4) All records, except medical case records of individual participants (unless they are the only source of certification data), shall be available during normal business hours for representatives of the Department of the Comptroller General of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial and participation reports.* State agencies shall submit financial and Program performance data on a monthly basis as specified by FNS. Such information may include but shall not be limited to, actual and projected participation, the number of persons on waiting lists, and itemized administrative and Program services funds expenditures. Semiannually, on dates specified by FNS, State agencies shall report the number of persons enrolled in the Program by category (i.e., pregnant, breastfeeding, and postpartum women, infants, and children) within each priority level as established in §246.7(d)(4). State agencies shall require local agencies to report financial and participation information as is necessary for the efficient management of food and administrative and Program services funds. When considered necessary and feasible by FNS, State agencies may be required to—

(1) Show in the "Remarks" Section of the Financial and Participation Report the amount of cash advances exceeding three days need being held by their local agencies or contractors; and

(2) Provide short narrative explanations of actions taken by the State agency to reduce such excess balances.

(c) *Civil rights.* The State agency shall ensure that each local agency participating under the Program submits a report of racial and ethnic participation data to the State agency, at a frequency prescribed by FNS.

(d) *Source documentation.* To be acceptable for audit purposes, all financial and Program performance reports shall be traceable to source documentation.

(e) *Certification of reports.* Financial and Program reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(f) *Use of reports.* FNS will use State agency reports to measure progress in achieving objectives set forth in the State Plan, and this part, or other State agency performance plans. If it is determined, through review of State agency reports, Program or financial analysis, or an audit, that a State agency is not meeting the objectives set forth in its State Plan, FNS may request additional information including, but not limited to, reasons for failure to achieve its objectives.

(g) *Extension of reporting deadline.* FNS may extend the due date for any financial and Participation Report upon receiving a justified request from the State agency. The State agency should not wait until the due date if an extension is to be requested, but should submit the request as soon as the need is known. Failure by a State agency to submit a report by its due date may result in appropriate enforcement actions by FNS in accordance with § 246.19(a)(2), including withholding of further grant payments, suspension or termination of the grant.

§ 246.26 Other provisions.

(a) *No aid reduction.* The value of benefits or assistance available under the Program shall not be considered as income or resources of participants or their families for any purpose under

Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs.

(b) *Statistical information.* FNS reserves the right to use information obtained under the Program in a summary, statistical or other form which does not identify particular individuals.

(c) *Medical information.* FNS may require the State or local agencies to supply medical data and other information collected under the Program in a form that does not identify particular individuals, to enable the Secretary or the State agencies to evaluate the effect of food intervention upon low-income individuals determined to be at nutritional risk.

(d) *Confidentiality.* Each State agency shall restrict the use or disclosure of information obtained from Program applicants or participants to persons directly connected with the administration or enforcement of the Program or the Comptroller General of the United States for audit and examination authorized by law.

§ 246.27 Program information.

Any person who wishes information, assistance, records or other public material shall request such information from the State agency, or from the FNS Regional Office serving the appropriate State as listed below:

(a) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 33 North Avenue, Burlington, Massachusetts 01803.

(b) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, CN-021150 Trenton, New Jersey 08650.

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 1100 Spring Street, NW., Atlanta, Georgia 30367.

(d) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 50 E. Washington Street, Chicago, Illinois 60602.

(e) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242.

(f) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FNS, Mountain Plains Region, 2420 West 26th Avenue, Room 430–D, Denver, Colorado 80211.

(g) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington: U.S. Department of Agriculture, FNS, Western Region, 550 Kearny Street, Room 400, San Francisco, California.

§ 246.28 OMB control numbers.

The following control numbers have been assigned to the information collection requirements in 7 CFR Part 246 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

7 CFR Part 246 section where requirements are described	Current OMB control No.
.4	0584-0043
.5	0584-0043
.6	0584-0043
.7(e), (h), (j)	0584-0043
.11(d)	0584-0043
.12(f), (i), (i)(3), (j)	0584-0043
.14(d)(1)	0584-0043
.16(c)	0584-0043
.17(c)(1)	0584-0043
.19	0584-0043
.20(a)	0584-0043
.25(a), (b)	0584-0043

(Catalog of Federal Domestic Assistance Program No. 10.577, National Archives Reference Service)

Dated: February 7, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

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