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Tuesday
March 19, 1985

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Environmental Protection Agency

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Banks, Banking
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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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Presidential Documents

Title 3—

The President

Proclamation 5308 of March 14, 1985

To Amend Proclamation 5133 Implementing the Caribbean Basin Economic Recovery Act

By the President of the United States of America

A Proclamation

1. Section 212 of the Caribbean Basin Economic Recovery Act (the Act) (19 U.S.C. 2702) authorizes the President to designate certain countries and territories or successor political entities as "beneficiary countries" under the Act. In Proclamation 5133 of November 30, 1983, and Proclamation 5142 of December 29, 1983, I have designated 20 countries and territories as "beneficiary countries." I am now adding the Bahamas to the list of "beneficiary countries." I have notified the House of Representatives and the Senate of my intention to designate this country and given the considerations entering into my decision.

2. In order to add this country to the list of beneficiary countries, I am amending the Annex to Proclamation 5133.

3. Section 213(a)(2) of the Act directs the Secretary of the Treasury to prescribe regulations implementing the provisions of the Act relating to articles eligible for duty-free treatment. Section 213(a)(2) also sets out certain specific provisions that Congress sought to have included in the eventual amendments to the Tariff Schedules of the United States. Proclamation 5133 is to be amended in order to bring the language of its Annex into direct conformity with the express intent of the Congress and to eliminate language no longer applicable to the duty-free entry of eligible articles by virtue of recent amendments to the implementing regulations.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to Section 212 of the Act, do proclaim that:

(1) The list of countries in the Annex to Proclamation 5133 of November 30, 1983, is hereby amended by adding the Bahamas.

(2) The Annex to Proclamation 5133 is further amended to strike the phrase "manufacturer or exporter of the article accompanied by an endorsement thereof by the importer or consignee" in Paragraph A of the Annex amending language in general headnote 3(g)(ii)(B) of the Tariff Schedules of the United States and to replace it with the phrase "appropriate party."

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of March, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-6647
Filed 3-15-85; 3:59 pm]
Billing code 3195-01-M

Editorial note: For the text of the President's letters to the Speaker of the House of Representatives and the President of the Senate, dated Mar. 14, 1985, on his intention to sign Proclamation 5308, see the *Weekly Compilation of Presidential Documents* (vol. 21, p. 302).

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

Cotton Classification Under Cotton Futures Legislation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking amends the regulation designating spot cotton markets for futures contract settlement purposes. The present regulation names the New Orleans Commodity Exchange as a contract market for the trading of cotton futures. This exchange now conducts trading in Chicago, Illinois under the name of the Chicago Rice & Cotton Exchange. The amendment revises the regulations of the Agricultural Marketing Service to reflect these changes.

EFFECTIVE DATE: April 18, 1985.

FOR FURTHER INFORMATION CONTACT: Loyd R. Frazier, Chief, Marketing Services Branch, Cotton Division, Agricultural Marketing Services, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2147.

SUPPLEMENTARY INFORMATION: This rule has been revised in accordance with Executive Order 12291 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order. No new costs or additions requirements are being imposed on the affected industry or others.

William T. Manley, Deputy Administrator, AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because no substantive changes are being made to the present regulations since this proposal merely acknowledges that a designated cotton exchange is operating at a different location under a different name.

Proposed rulemaking was published in the November 13, 1984 **Federal Register** at 49 FR 44902 and invited comments for 30 days ending December 13, 1984. No comments were received. This final rule does not differ from the proposed rule.

Background

The U.S. Cotton Futures Act (90 Stat. 1841–46; 7 U.S.C. 15b) requires the Secretary of Agriculture to designate spot cotton markets for use in establishing settlement differences for cotton delivered under futures contracts whenever the grade delivered from the base grade set out in the contract. There are eight such bona fide spot cotton markets designated by the Secretary at the present time (7 CFR 27.93).

The Cotton Futures Act further requires that the settlement differences for each "basis grade" futures contract shall be determined by the actual commercial differences established by the sale of spot cotton in the spot markets of not less than five places designated by the Secretary (from among the forementioned list of bona fide spot markets (7 U.S.C. 15b(f)).

On June 30, 1981, the New Orleans Commodity Exchange (NOCE) was designated by the Commodity Futures Trading Commission (CFTC) as a contract market for the trading of futures contracts in short staple cotton. The Secretary subsequently designated five spot cotton markets for settlement differences for cotton delivered under any contract of the NOCE. Such designation is required by the Cotton Futures Act and was acknowledged by amending paragraph (a) of 7 CFR 27.94 (46 FR 35105).

Amendment

In September of 1983, the NOCE relocated its operations to Chicago, Illinois and reopened for trading as the Chicago Rice & Cotton Exchange (CRCE). The CFTC concurred with these changes. The CRCE is operating as an approved contract market under the CFTC's Order of Designation issued June 30, 1981 when the exchange was functioning as the NOCE. Trading of futures contracts in short staple cotton was resumed by the exchange as the CRCE on January 29, 1985.

The Department is conforming its regulations with the action of the CFTC and acknowledging that the NOCE is now doing business as the CRCE. Paragraph (a) of 7 CFR 27.94 is amended by substituting "Chicago Rice & Cotton Exchange" for "New Orleans Commodity Exchange." This amendment does not affect the earlier designation of cotton markets for determining settlement differences under contracts traded on the exchange. The changes have not caused the designation to lapse and this rule merely restates § 27.94 to include the current name of the exchange.

List of Subjects in 7 CFR Part 27

Classification, Cotton, Micronaire, Samples, Spot markets.

Accordingly, § 27.94(a) of Title 7 of the Code of Federal Regulations governing cotton classification under cotton futures legislation is amended as shown.

PART 27—[AMENDED]

1. The authority citation for Part 27 reads as follows:

Authority: 90 Stat. 1841–1846; 7 U.S.C. 15b.

2. Section 27.94 is amended by revising paragraph (a) to read as follows:

§ 27.94 Spot markets for contract settlement purposes.

* * * * *

(a) For cotton delivered in settlement of any No. 1 contract of the New York Cotton Exchange or any contract of the Chicago Rice & Cotton Exchange:

Dallas, Tex., Greenville, S.C., Lubbock, Tex., Memphis, Tenn., Montgomery, Ala.

* * * * *

Dated: March 13, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-6536 Filed 3-18-85; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1205

Cotton Research and Promotion; Regulatory Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; regulation review.

SUMMARY: The Agricultural Marketing Service (AMS) in compliance with the requirements for the periodic review of existing regulations, has reviewed the regulations regarding the cotton research and promotion program. As a result of the review, certain changes in the regulations are being made. One change eliminates the requirement that the Cotton Board return to the producer the collecting handler's receipt submitted with the producer's refund application indicating payment of the assessment for research and promotion. Other changes update terms and definitions and delete one obsolete section regarding the fiscal period.

EFFECTIVE DATE: April 18, 1985.

FOR FURTHER INFORMATION CONTACT: Naomi Hacker, Chief, Research and Promotion Staff, Cotton Division, AMS, USDA, Washington, D.C. 20250, 202/447-2259.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (i) No new costs or additional requirements will be imposed on the affected industry or others; (ii) costs of compliance will not be increased; (iii) recordkeeping burdens will not be increased; (iv) the changes in the regulations will not affect the competitive position or market access of small entities in the cotton industry.

Collection of Information 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 that Act, the information collection and recordkeeping requirements contained in this final rule have been approved by OMB.

Background

The Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101 *et seq.*) and the implementing Order subsequently approved in a referendum of cotton producers provide the basic procedures for carrying out the producer financed cotton research and promotion program designed to maintain and expand markets for U.S. cotton. The Act and Order (7 CFR 1205.301 through 1205.342) provide for establishment of a Cotton Board to administer the program. The 20-member Board is appointed by the Secretary from nominations made by producer associations in each State of the Cotton Belt. The Board annually reviews the proposed research and promotion projects and related budgets developed by a contracting organization set up to carry out such projects. Following this annual review, the Board submits recommendations to the Secretary. Other major functions of the Board as set forth in the Cotton Board Rules and Regulations (7 CFR 1205.500 through 1205.540) are: To collect assessments from producers; to make refunds of assessments upon request; and to safeguard and invest the funds in accordance with governmental regulations.

Sections 1205.1 through 1205.19 established the procedures for formulating Orders under the Cotton Research and Promotion Act. These sections were superseded on October 6, 1982, by 7 CFR Part 1200, Rules of Practice and Procedure Governing Proceedings to Formulate and Amend An Order (47 FR 44684) and will be subsequently deleted by a separate rulemaking document.

Other subparts of Part 1205 set forth rules to be followed in modifying Orders under the Cotton Research and Promotion Act and in conducting referenda in connection with such orders (7 CFR 1205.50 through 1205.210).

Regulation Review

The Cotton Division of AMS has undertaken a general review of the existing regulations under the Cotton Research and Promotion Act. These regulations were listed as scheduled for review in the Department's Semi-Annual Regulatory Agenda published in the **Federal Register** on October 28, 1982 (47 FR 48307). Sections 1205.301 through 1205.342 are governed by the provisions of 5 U.S.C. 556 and 557 and are exempted from the necessary requirements of Executive Order 12291. Those sections therefore, are not affected by the following proposed changes.

The regulations of Part 1205 have been examined for their need, currentness and effectiveness. Since these regulations were first promulgated in 1966, the procedures have proven to be useful and efficient in administering the Act and Order. The requirements for collecting and handling the per bale assessment are not burdensome on producers or purchasers of cotton.

Proposed rulemaking was published in the January 17, 1985 **Federal Register** at 50 FR 2575 and invited comments for 30 days ending February 19, 1985. No comments were received. This final rule does not differ from the proposed rule, except for correction of miscellaneous typographical errors in §§ 1205.202 and 1205.203.

Amendments

The changes in Part 1205 will not affect the administration of the Cotton Research and Promotion Order. Specifically, AMS is amending §§ 1205.51, 1205.201, 1205.202, 1205.203, 1205.204, 1205.205, 1205.403, 1205.500, 1205.510, 1205.511, 1205.512, 1205.513, 1205.514, and 1205.520 by eliminating masculine references in favor of gender neutral language.

The table in paragraph (a) of § 1205.402 is deleted. The table was used to determine whether a cotton-producing state is entitled to be represented by more than one member on the Cotton Board by averaging cotton production for certain designated marketing years. Due to the passage of time, the table is now outdated. Additional membership on the Cotton Board will be determined by the average annual upland cotton production for the five most recent marketing years. The language of paragraphs (a), (b), and (c) of § 1205.402 is revised to reflect this deletion.

Paragraph (c) of § 1205.520 is amended to remove the requirement that the Cotton Board return the assessment receipt with the refund to the refund applicant. This implements a recommendation by the Office of the Inspector General that the Cotton Board retain these receipts or copies of them in its files. As a result of this change, producers applying for a refund of their assessment are responsible for making their own copies of receipts from collecting handlers.

Section 1205.600, Establishment of new fiscal period, is deleted from the regulations. This section is pursuant to § 1205.305 which established the fiscal period as the calendar year, but allowed a variance from the calendar year to some other 12-month budgetary period with approval from the Secretary. Section 1205.600 established the fiscal period as beginning on July 1. This budgetary period was selected to comport with the Federal fiscal period which, prior to 1976, began July 1. Section 1205.600 became obsolete when the Cotton Board, upon approval by the Secretary, elected to revert to the calendar year as the 12-month fiscal

period for administrative convenience on January 1, 1977.

List of Subjects in 7 CFR Part 1205

Cotton, Administrative Practice and Procedure, Research and Promotion, Cotton board, Producer assessments, Producer refunds.

PART 1205—[AMENDED]

Accordingly, Part 1205 of Chapter XI, title 7 of the Code of Federal Regulations is amended as shown. The Table of Contents is amended accordingly.

1. The authority citation for Part 1205 reads as follows:

Authority: Sec. 15, 80 Stat. 285; 7 U.S.C. 2114, Sec. 7, 80 Stat. 281, 7 U.S.C. 2106.

2. Section 1205.51 is amended by revising paragraphs (c) and (e) to read as follows:

§ 1205.51 Definitions.

* * * * *

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead;

* * * * *

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in the Administrator's stead;

* * * * *

3. Section 1205.201 is amended by revising paragraphs (b) and (e) to read as follows:

§ 1205.201 Definitions.

* * * * *

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead and "Department" means the U.S. Department of Agriculture.

* * * * *

(e) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has heretofore been delegated or may hereafter be delegated to act in the Administrator's stead.

* * * * *

4. Section 1205.202 is amended by revising paragraphs (a)(2) and (a)(4) (ii) and (iii) to read as follows:

§ 1205.202 Agencies through which a referendum shall be conducted.

(a) * * *

(2) Give reasonable advance notice of the referendum (i) by utilizing without advertising expense available media of public information (including, but not being limited to, press and radio facilities) serving the upland cotton producing areas, announcing the dates, places, or methods of voting, and other pertinent information, and (ii) by such other means as the Administrator may deem advisable.

* * * * *

(4) * * *

(ii) On farms in which more than one eligible voter is engaged in production, the vote cast by each voter shall represent only the amount of upland cotton that is the voter's share of the crop, or proceeds thereof.

(iii) If an eligible voter is engaged in production of upland cotton on more than one farm, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount of upland cotton that is that voter's share of the crop, or proceeds thereof, on all such farms: *Provided*, That only farms for which records are maintained by the ASCS county office designated as the voter's polling place shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of such county office the voter's share of the crop, or proceeds thereof, on any additional farm or farms.

* * * * *

5. Section 1205.203 is amended by revising paragraph (b) (1) and (2) to read as follows:

§ 1205.203 Voting eligibility.

* * * * *

(b) *General eligibility requirements.* (1) a person may qualify as an eligible voter by meeting the eligibility requirements, but no such person shall be entitled to more than one vote regardless of the number of upland cotton farms in which the person is interested or the number of communities, counties, or States in which are located farms in which such person is interested: *Provided, however*, That the individual members of a qualified partnership shall each have one vote, but the partnership as such shall not have a vote and an individual who qualifies as an eligible voter by reason of that individual's separate farming operations will be entitled to one vote even though that person is interested in an organization such as (but not limited to) a corporation which is also eligible as a voter and entitled to one vote. A person who, as a guardian, administrator, executor, or trustee engages in the production of upland cotton will be eligible to vote in such fiduciary capacity if, in such capacity, that person qualifies as an eligible voter.

In such cases the person for whom he or she is acting in a fiduciary capacity will not be eligible to vote. An individual may, if otherwise eligible, cast a ballot in his or her individual capacity although that person may also cast a ballot as a guardian, administrator, executor, or trustee. An individual who holds more than one fiduciary position may vote as a fiduciary in each case in which that person is otherwise eligible, as for example, if an individual is administrator of estate X, he or she may cast a ballot as administrator of estate X, and if the same individual is also administrator of estate Y, he or she may cast another ballot as administrator of estate Y.

(2) Where a group of several persons, such as husband, wife, and children, or unrelated individuals, are engaged in the production of upland cotton under the same lease or cropping agreement, only the person or persons who signed or entered into the lease or cropping agreement shall be eligible to vote. In the event two or more persons are engaged in the production of upland cotton as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise qualified. For example, a husband or a wife is eligible to vote if he or she shares with his or her spouse in the proceeds of the required crop as an owner, cash tenant, share tenant, sharecopper or landlord of a fixed rent, standing rent or share tenant. Thus, if a husband and wife are tenants or sharecropper on a farm, jointly responsible under the rental or sharcropping agreement, both are eligible to vote. This is true whether the rental or sharercopping agreement is written, signed by both parties, or oral, provided both husband and wife made the oral agreement. A minor is not disqualified from voting solely because of minority if otherwise eligible and the minor is not less than 18 years of age.

* * * * *

6. Section 1205.204 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1205.204 Voting.

* * * * *

(c) *Mailing of ballot to eligible voters.* The county committee shall furnish each eligible voter a ballot suitable for

mailing back to the office of the county committee. If an eligible voter does not receive a ballot, one may be obtained during the referendum period from the office of the county committee for the county in which the voter is eligible.

(d) *Returning ballot to office of the county committee.* Each person to whom a ballot is issued by mail or in person may vote in the referendum by completing and signing the ballot, placing it in an envelope, and delivering or mailing it to the office of the county committee for the county in which the voter is eligible to vote. In order to be eligible for tabulation by the county committee, voted ballots must be received by the county committee of the county in which the voter is eligible to vote during the period established for holding the referendum. A ballot shall be considered to have been received during the referendum period if (1) in the case of the ballot delivered to the county committee, it was received in the office prior to the close of the work day on the final day of the referendum period, or (2) in the case of a mailed ballot, it was postmarked not later than midnight of the final day of the referendum period and was received in the county office prior to the start of canvassing the ballots.

* * * * *

7. Section 1205.205 is amended by revising paragraph (b) to read as follows:

§ 1205.205 Canvass of ballots.

* * * * *

(b) *Spoiled ballots.* A ballot shall be considered as a spoiled ballot if (1) it is mutilated or marked in such a way that it is not possible to determine with certainty how the ballot was intended to be counted, or (2) it does not contain the signature of the voter, or the voter's properly witnessed mark.

* * * * *

8. Section 1205.402 is revised to read as follows:

§ 1205.402 Determination of Cotton Board membership.

(a) In determining whether any cotton-producing State is entitled to be represented by more than one member of the Cotton Board pursuant to § 1205.318, average annual production of upland cotton in terms of 480-pound net weight bales for the five most recent marketing years shall be used as the criteria for determination of such additional members.

(b) All members appointed from a State shall be entitled to serve a full 3-year term even though it is determined in a subsequent year that a State should have fewer additional members by using the average production of the five most recent marketing years as specified in paragraph (a) of this section.

(c) Each year the Director shall, based on the average annual production of upland cotton in terms of 480-pound net weight bales for the five most recent marketing years, notify all certified cotton-producer organizations in each cotton-producing State of the number of vacancies to be filled on the Cotton Board.

9. Section 1205.403 is amended by revising paragraph (a) to read as follows:

§ 1205.403 Nomination procedure.

(a) The Director shall notify all certified producer organizations within each cotton-producing State of the location, date, and time of the caucus of such organizations pursuant to § 1205.320 for the purposes of making nomination for members and alternate members of the Cotton Board. The Director will designate a representative from the Cotton Division to attend the caucus meeting in each State. Each eligible cotton-producer organization within each cotton-producing State shall be entitled to only one representative at the caucus for the purpose of nominating two qualified persons for each member and for each alternate member to be selected. Such representative shall be (1) a cotton producer and resident of such State, (2) an officer or member of the Board of Directors of such association, and (3) duly and unqualifiedly authorized in writing by such association to make nominations on its behalf. The representative of the Director designated to attend the caucus meeting in each State shall ascertain the qualifications and eligibility of each representative of a cotton-producer organization to participate in said meeting and to make nominations.

* * * * *

10. Section 1205.500 is amended by revising paragraph (m) to read as follows:

§ 1205.500 Terms defined.

* * * * *

(m) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

* * * * *

11. Section 1205.510 is amended by revising paragraph (c) to read as follows:

§ 1205.510 Levy of assessment.

* * * * *

(c) Each marketing year the collecting handler must select one of the two options of collecting the supplemental assessment as provided in paragraph (b) of this section. The handler shall notify the Cotton Board as to the method selected at the time the handler files the first handler report each marketing year.

12. Section 1205.511 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1205.511 Payment and collection.

* * * * *

(c) If more than one producer shares in the proceeds received from a bale, each such producer is obligated to pay that portion of the assessments which are equivalent to their proportionate share of the proceeds.

(d) Failure of the handler to collect the assessments on each bale shall not relieve the handler of the handler's obligation to remit the assessments to the Cotton Board as required in §§ 1205.512, 1205.513 and 1205.514.

13. Section 1205.512 is amended by revising paragraphs (f) and (g) to read as follows:

§ 1205.512 Collecting handlers and time of collection of $1 per bale assessment.

* * * * *

(f) Any person who consumes domestically or exports cotton of that person's own production shall be the collecting handler for such cotton. Such handler shall pay the assessment to the Cotton Board at the time the cotton is consumed or exported.

(g) Any person who obtains ownership of a bale of cotton from the producer of the cotton by transfer of any kind or by any means, under conditions other than those described in paragraph (a), (b), (c), (d) or (e) of this section shall be the collecting handler for such cotton. Such handler shall collect the assessment at the time such handler takes ownership of the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

* * * * *

14. Section 1205.513 is amended by revising paragraphs (g), (h), (i) and (j) to read as follows:

§ 1205.513 Collecting handlers and time of collection of the supplemental assessment.

* * * * *

(g) Any person who consumes domestically cotton of that person's own production shall be the collecting handler for such cotton. The handler shall pay the supplemental assessment

at the time of consumption on the basis of a market value determined in consultation with the Cotton Board.

(h) Any person who exports cotton of that person's own production shall be the collecting handler for such cotton. Such handler shall pay the supplemental assessment on the basis of the current value of cotton as reflected on the export settlement document.

(i) Any person who obtains ownership of a bale of cotton from the producer of the cotton by transfer of any kind or by any means, under conditions other than those described in paragraph (a), (b), (c), (d), (e), or (f) of this section shall be the collecting handler for such cotton. Such handler shall collect the supplemental assessment at the time the handler takes ownership of the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(j) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of the producer, or the producer's estate, or the person acting on behalf of creditors, shall be considered the producer of the cotton for the purposes of this section and § 1205.520.

15. Section 1205.514 is amended by revising paragraph (b) introductory text to read as follows:

§ 1205.514 Remittance to Cotton Board.

* * * * *

(b) *Reports.* Each collecting handler shall make reports on forms made available or approved by the Cotton Board. Each collecting handler shall prepare a separate report, each reporting period, for each gin from which such handler handles cotton on which the handler is required to collect the assessments during the reporting period. Each report shall be mailed in duplicate to the Cotton Board within 10 days after the close of the reporting period and shall contain the following information:

* * * * *

16. Section 1205.520 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1205.520 Procedure for obtaining refund.

* * * * *

(a) *Application form.* A producer shall obtain a refund application form from the Cotton Board. Such form may be obtained by written request to the Cotton Board and the request shall bear the producer's signature or the producer's properly-witnessed mark.

* * * * *

(c) *Proof of payment of assessment.* The receipt given to the producer by the collecting handler, or a copy thereof, or such other evidence satisfactory to the Cotton Board, shall accompany the producer's refund application. Within 60 days from the date the properly-executed application for refund is received by the Cotton Board, the Cotton Board shall make remittance to the producer. For joint applications, the remittance shall be made payable jointly to all eligible producers signing the refund application form. Receipts submitted with refund applications shall not be returned to the producer.

§ 1205.600 [Removed]

17. Part 1205 is amended by removing § 1205.600.

Dated: March 13, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-6539 Filed 3-18-85; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220 and 221

[Docket No. R-0543]

Securities Credit Transactions; Amendment to Margin Regulations Excluding Face-Amount Certificates From the Definition of Margin Security and Permitting Broker-Dealers To Sell Them Without Violating the Arranging Prohibition of Regulation T

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending: (1) The definition of "margin stock" in Regulations G and U so as to make it clear that the definition does not include face-amount certificates as defined in 15 U.S.C. 80a-2(a)(15) and, (2) the "arranging" provision of Regulation T to reflect that a broker-dealer selling these instruments would not be considered to be violating that provision. Although the changes are being made effective April 19, 1985, comments will be received until that date and appropriate modifications, if any, will be made in response to comments.

EFFECTIVE DATE: April 19, 1985.

ADDRESS: Comments, which should refer to Docket No. R-0543, may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. weekdays. Comments received may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Douglas Blass, Attorney, Division of Banking Supervision and Regulation, (202) 452-2781.

SUPPLEMENTARY INFORMATION: When the Board recently amended and revised the margin regulations, the definition of "margin stock" in Regulation G (12 CFR 207.2(i)) and Regulation U (12 CFR 221.2(h)) were not revised to exclude face-amount certificates as defined in 15 U.S.C. 80a-2(a)(18), although the revised definition of "margin security" in Regulation T (12 CFR 220.2(o)) did not cover such instruments. Noting these differences, some concern arose in the investment community as to whether companies issuing these certificates were required to register as G-lenders since these certificates have built in credit features covered by the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64). Further concern was raised since broker-dealers selling these certificates could be deemed to be in technical violation of the "arranging" provision of Regulation T (12 CFR 220.13). The Board is adopting the proposed amendments to alleviate these concerns.

The Board is taking this action to relieve an unintended restriction and it is believed that it will have no adverse impact upon any member of the public. Because this is a rule change which relieves a restriction, the requirements of the Administrative Procedure Act (5 U.S.C. 553) with respect to notice and public participation were not followed before adoption. The public is, however, invited to submit comments relating to the adoption of the amendments.

Final Regulatory Flexibility Analysis

The Board's action in adopting these amendments is not expected to have any adverse impact on a substantial number of small business.

List of Subjects

12 CFR Part 207

Banks, banking, Credit, Federal reserve system, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, banking, Brokers, Credit, Federal reserve system, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, banking, Credit, Federal reserve system, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

Accordingly, pursuant to Sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sections 78g and 78w), the Board amends Regulations G, T and U by excluding face-amount certificates from the definition of "margin security" in Regulation G and U and excluding loans on face-amount certificates from prohibited credit arrangements in Regulation T. The amended Regulations G, T and U will read as follows:

1. Section 207.2 (i) is revised to read:

§ 207.2 Definitions.

* * * * *

(i) "Margin stock" means:

(1) Any equity security registered or having unlisted trading privileges on a national securities exchange;

(2) Any OTC margin stock;

(3) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS Security);

(4) Any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;

(5) Any warrant or right to subscribe to or purchase a margin stock; or

(6) Any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), other than:

(i) A company licensed under the Small Business Investment Company Act of 1958, as amended (15 U.S.C. 661); or

(ii) A company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 U.S.C. 78c(a)(12)); or

(iii) A company which issues face-amount certificates as defined in 15 U.S.C. 80a-2(a)(15), but only with respect of such securities.

PART 220—CREDIT BY BROKERS AND DEALERS

2. Section 220.13 is revised to read:

§ 220.13 Arranging for loans by others.

A creditor may not arrange for the extension or maintenance of credit to or for any customer by any person upon terms and conditions other than those upon which the creditor may itself extend or maintain credit under the provisions of this part, except that this limitation shall not apply to credit arranged for a customer which does not violate parts 207 and 221 of this chapter and results solely from:

(a) Investment banking services, provided by the creditor to the customer, including, but not limited to, underwritings, private placements, and advice and other services in connection with exchange offers, mergers, or acquisitions, except for underwritings that involve the public distribution of an equity security with installment or other deferred payment provisions; or

(b) The sales of nonmargin securities (including securities with installment or other deferred payment provisions) if the sale is exempted from the registration requirements of the Securities Act of 1933 under section 4(2) of section 4(6) of the act; or

(c) A subsequent loan or advance on a face-amount certificate as permitted under 15 U.S.C. 80a-28(d).

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

3. Section 221.2 (h) is revised to read:

§ 221.2 Definitions.

* * * * *

(h) "Margin stock" means: (1) Any equity security registered or having unlisted trading privileges on a national securities exchange;

(2) any OTC margin stock;

(3) any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);

(4) any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;

(5) any warrant or right to subscribe to or purchase a margin stock; or

(6) any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), other than:

(i) A company licensed under the Small Business Investment Company Act of 1958, as amended (15 U.S.C. 661); or

(ii) a company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 U.S.C. 78c(a)(12)); or

(iii) a company which issues face-amount certificates as defined in 15 U.S.C. 80a-2(a)(15), but only with respect of such securities.

By order of the Board of Governors of the Federal Reserve System, March 13, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-6541 Filed 3-18-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-20-AD; Amdt. 39 5015]

Airworthiness Directives; BFGoodrich Main Landing Gear Wheel Assemblies, Used on Lockheed Model L-1011 Airplanes and Boeing Model 727 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the inspection and removal of certain tie bolt nuts that may be installed on BFGoodrich main landing gear wheels used on Lockheed L-1101 and Boeing Model 727 airplanes. This AD is prompted by reported cases of cracked tie bolt nuts. Cracked nuts have been discovered at wheel buildup, in line station spare assemblies, and on in-service aircraft. The inspection for and removal of these tie bolt nuts is necessary to preclude main wheel assembly damage or failure.

EFFECTIVE DATE: March 19, 1985. Compliance as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from BFGoodrich Company, Attn: Mr. C.F. Wintrow, P.O. Box 340, Troy, Ohio 45373; telephone (513) 339-3811. A copy of the service bulletin is contained in the Rules Docket, Office of the Regional Counsel, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Michael Dahl, Aerospace Engineer, Systems Equipment Branch, ACE-130C, FAA, Central Region, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7379.

SUPPLEMENTARY INFORMATION: Eighteen cracked tie bolt nuts have been recently reported. Two airlines have found 5 cracked nuts and a repair station has found 10 cracked nuts. The failed nuts, P/N 63-347B RX3, were all noted to be installed in BFGoodrich main landing

gear wheels. These tie bolt nuts were manufactured by Standard Pressed Steel (SPS) during a period from August 1984 to November 1984. An analysis of the failed nuts by SPS has revealed longitudinal cracking through the nut barrel initiated by manufacturing flaws on the washer face. A total of 4379 nuts identified with Code RX3 were shipped by BFGoodrich and have been installed on new wheel assemblies, replacement wheel assemblies, and as spare replacement parts of Lockheed L-1011 airplanes and Boeing Model 727 airplanes. BFGoodrich issued a telex on January 18, 1985, to the 22 affected operators. The telex described the problem and recommended inspection of applicable spares and wheels installed on airplanes at tire change for tie bolt nuts identified by Code RX3. A total of 1132 tie bolt nuts, P/N 63-347 Code RX3, have been located; this leaves 3247 unaccounted for. BFGoodrich has issued Service Bulletin 439 for Lockheed L-1011 airplanes and Service Bulletin 440 for Boeing 727 airplanes.

Since this condition may exist on other airplanes of the same type design, an airworthiness directive is being issued to prevent failure of the affected wheel assemblies by requiring the inspection of spares, daily inspection of in-service wheels for cracked nuts, and removal of these tie bolt nuts from service. Although the affected wheels require multiple tie bolt nut failure for the occurrence of wheel separation, the large number of discrepant nuts distributed throughout widely-based fleets of airplanes requires this action.

Since a situation exists which requires immediate adoption of this amendment, it is found that notice and public procedure hereon are impracticable and good cause exists for making this AD effective in less than 30 days.

For the reasons discussed above, the FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft equipment. It has been further determined that this document involves an emergency regulaton under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the individual identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

BFGoodrich: Applies to BFGoodrich Main Landing Gear Wheel Assemblies, P/N's 3-1311-3, 3-1365, 3-1365-1, 3-1365-2, 3-1375-1, 3-1375-2, and 3-1375-3 installed on Lockheed L-1011 airplanes; and P/N 3-1287, 3-1306, 3-1306-1, and 3-1414 installed on Boeing Model 727 airplanes.

Compliance is required as indicated, unless already accomplished. To prevent failure of certain BFGoodrich wheel assemblies, due to tie bolt nut cracks, accomplish the following:

A. As of the the effective date of this AD, no P/N 63-347B RX3 tie bolt nuts shall be used in wheel build up.

Note.—It is recommended that tie bolt nuts marked as above must be destroyed or returned to BFGoodrich. Refer to procedures outlined in Paragraph 2A, BFGoodrich Service Bulletin 439 (for L-1011 airplanes) or Service Bulletin 440 (for Boeing Model 727 airplanes), both issued February 5, 1985.

B. Within 50 flight hours after the effective date of this AD, inspect the applicable main wheel asssemblies for cracked tie bolt nuts. Adhere to the procedures outlined in Paragraphs 2D and 2E of BFGoodrich Service Bulletin 439 of Service Bulletin 440, as applicable. Any tie bolt nuts found to be cracked must be replaced before further flight.

C. Within 60 days following the effective date of this AD, remove all RX3 tie bolt nuts from service and replace with serviceable parts.

D. Alternate means of compliance with this AD which provide an acceptable level of safety may be used when approved by the Manager, Chicago Aircraft Certification Office, FAA, Central Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to BFGoodrich Company, Attn: Mr. C.F. Wintrow, P.O. Box 340, Troy, Ohio 45373; telephone (513) 339-3811. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

This amendment becomes effective March 19, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-6461 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-CE-28-AD; Amdt. 39-5003]

Airworthiness Directives; Gulfstream Aerospace Models 112, 112b, 112TC, 112TCA, 114 and 114A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 85-03-04, Amendment 39-5003 (50 FR 7165), applicable to Gulfstream Aerospace Corporation Models 112 and 114 airplanes. This correction is necessary because an error was made in the serial number effectivity statement of the AD when the AD was published in the **Federal Register.**

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Tom Dragset, Airplane Certification Branch, ASW-150, FAA, Southwest Region, Post Office Box 1689, Fort Worth, Texas 76101; Telephone (817) 877-207.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 85-03-04, Amendment 39-5003 (50 FR 7165), applicable to Gulfstream Aerospace Models 112 and 114 airplanes, the FAA found that an error had been made in the serial number effectivity statement of the AD when the AD was published in the **Federal Register.** Therefore, action is taken herein to make this correction. Since this action is required to ensure all affected airplanes are correctly referenced and included in the AD, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

In FR Doc. 85-4266 (50 FR 7165), appearing in the **Federal Register** of February 21, 1985, make the following correction:

Correct the applicability statement to read as follows:

PART 39—[CORRECTED]

Gulfstream Aerospace (Rockwell): Applies to Models 112 and 112B (S/Ns 3 through 544 and 13000); Models 112TC and 112 TCA (S/Ns 13001 through 13309); and Models 114 and 114A (S/Ns 14000 through 14540) airplanes certificated in any category.

(Sec. 313(a) 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Issued in Kansas City, Missouri, on March 5, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-6454 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-22-AD; Amdt. 39-5014]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires visual/borescope inspection (NDI) of the aft pressure bulkhead on certain McDonnell Douglas DC-9 (Military) series airplanes. This AD is prompted by reports of cracks in the free standing leg of the tee cap. This condition, if not corrected, could result in rapid depressurization and cause severe structural damage of the airplane.

EFFECTIVE DATES: March 19, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: Two operators have reported three occurrences of cracking in the aft pressure bulkhead tee cap. The first occurrence was reported on March 23, 1984 in the ventral aft pressure bulkhead tee, P/N 5910130-54 (RH). The affected airplane had accumulated 52,894 landings. The crack was 5.9 inches long and had penetrated the cross-section of the upstanding (inboard) leg of the tee, in a circumferential direction centered about former installation, P/N 9915558-513 (Z=34.00), and longeron 14 attach areas. Subsequent visual examination of the removed tee by the manufacturer revealed that the crack trace on the forward surface had occurred entirely within a relatively large extrusion die line located approximately 1.9 inches from the aft (inboard) edge of the upstanding leg. The crack trace on the aft surface had occurred along the inboard line tangency for the .188-inch tee fillet radius.

The second occurrence was reported on January 14, 1985, in the non-ventral aft pressure bulkhead tee, P/N 5910163-91 (LH). The affected airplane had accumulated 40,832 landings. The crack was approximately 7.5 inches long and had also penetrated the tee in a circumferential direction. The crack was located between longerons 7 and 8 (loft lines radial number 4 and radial number 6), and approximately .13 inch inboard of the inboard line of tangency for the .188-inch tee fillet radius. Subsequent examination of the tee cap by the manufacturer revealed that the crack had also occurred entirely within an extrusion die line as the result of fatigue. Detailed inspections of this tee are presently in progress.

The third occurrence was reported on February 4, 1985, in the non-ventral aft pressure bulkhead tee, P/N 5910163-91 (LH). The affected airplane had accumulated 39,172 landings. The crack was approximately 10 inches long and had penetrated the tee in a circumferential direction between longerons 16 and 17. Six inches of the total crack length were visible from the aft side. This tee has been forwarded to the manufacturer for further examination.

Analysis of the failed parts by the manufacturer has determined that the cracks started on the forward face of the upstanding leg of the tee and are slow growing. The crack growth rate has been verified by an evaluation of the striation spacing on parts from the first two airplanes and stress levels measured during flight tests.

A crack which is not detected could lead to rapid depressurization and result in severe structural damage to the airplane. Inspecting the bulkhead using visual/borescope/endoscope non-destructive inspection (NDI) techniques will determine the condition of the bulkhead. Accomplishment of the inspections and crack repair/replacement as outlined in McDonnell Douglas DC-9 Service Sketch 3660, dated February 15, 1985, and Service Rework Drawing J060305, dated February 15, 1985, will assure the structural integrity of the bulkhead and minimize the potential of extensive structural damage.

Since the stresses in the bulkhead, which cause fatigue cracking, are the result of pressurization cycles, analysis dictates that inspections be accomplished on airplanes with the highest number of flights (cycles), with emphasis on airplanes with 60,000 or more landings. For these reasons, this AD action is directed towards airplanes which have accumulated a total of 60,000 or more landings. Airplanes with less than 60,000 landings, and repetitive inspections for all airplanes, will be the subject of subsequent rulemaking actions.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD is being issued to require repetitive optically aided visual inspections of the bulkhead tee cap around the entire periphery of the fuselage for fatigue cracks.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to be by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) series airplanes, certificated in all categories.

To prevent crack propagation which could result in structural failure of the fuselage aft pressure bulkhead, accomplish the following within 300 landings after the accumulation of 60,000 landings, or within 300 landings after the effective date of this AD, whichever occurs later, unless already accomplished within the last 3,500 landings:

A. Inspect from aft side (above floor) and aft or forward side (below floor) of bulkhead tee cap around the entire periphery of fuselage in accordance with McDonnell Douglas Service Sketch 3660, dated February 15, 1985.

Note.—The specific areas of concern include the forward and/or aft face of the upstanding leg of the tee, starting at the outboard edge of the bulkhead web. The area extends outboard to approximately the inboard point of tangency for the .188-inch tee fillet radius on the upstanding leg.

B. If no cracks are found, continue normal operation.

C. If cracking is found, before further flight accomplish one of the following:

1. Repair by replacing cracked tee cap with new part, as specified in McDonnell Douglas Service Rework Drawing J060305, dated February 15, 1985.

2. Repair by splicing in a section of tee cap, in accordance with McDonnell Douglas Service Rework Drawing J060305, dated February 15, 1985.

3. In the event an operator desires not to repair or replace the tee cap, contact the McDonnell Douglas Corporation or the Federal Aviation Administration for further information and/or instructions.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplanes unpressurized to a base to comply with requirements of this AD.

F. For the purposes of complying with this AD, subject to acceptance by the assigned FAA Principal Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average from takeoff to landing for the DC-9 airplane.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective March 19, 1985.

Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on February 25, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-6462 Filed 3-18-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ASO-3]

Alteration of Certain Control Zones and Transition Areas in Puerto Rico, Tennessee, and the Virgin Islands

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment updates the names of various airports which have been changed but which have not yet been included in the individual airport control zone and/or transition area descriptions. No change in airspace designation is intended by this action.

EFFECTIVE DATE: 0901 GMT, June 6, 1985. Comments must be received on or before April 26, 1985.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves editorial corrections to certain control zones and transition areas, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to correctly list the names of airports specified in certain airspace designations. Various political bodies have officially changed the names of certain airports and it is necessary to alter the control zone and transition area descriptions to reflect these name changes. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in FAA Order 7400.6A dated January 2, 1985.

Under the circumstances presented, the FAA concludes that there is a need to alter the various control zones and transition area descriptions to reflect recent airport name changes. The changes are so minor and nonsubstantive I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when

promulgated, will not have a significant economic impact on a substantial number of small entites under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) are further amended, as follows:

PART 71—[AMENDED]

§ 71.171 [Amended]

San Juan, PR—[Amended]

By amending § 71.171 in the description of the San Juan, Puerto Rico, control zone by removing the words "Puerto Rico International Airport" and replacing them with the words "Luis Munoz Marin International Airport."

§ 71.181 [Amended]

San Juan, PR—[Amended]

By amending § 71.181 in the description of the San Juan, Puerto Rico, transition area by removing the words "Puerto Rico International Airport" wherever they appear and replacing them with the words "Luis Munoz Marin International Airport" and by removing the words "Harry S. Truman Airport" and replacing them with the words "Cyril E. King Airport."

Nashville, TN—[Amended]

By amending § 71.181 in the description of Nashville, Tennessee, transition area by removing the words "Gallatin Municipal Airport" and replacing them with the words "Sumner County Regional Airport" and by removing the words "Cockrill Bend Airport" and replacing them with the words "John C. Tune Airport."

§ 71.171 [Amended]

Tri-City, TN—[Amended]

By amending § 71.171 in the description of the Tri-City, Tennessee, control zone by removing the words "Tri-City Airport" and replacing them with the words "Tri-City Regional Airport."

§ 71.181 [Amended]

Tri-City, TN—[Amended]

By amending § 71.181 in the description of the Tri-City, Tennessee, transition area by removing the words "Tri-City Airport" and replacing them with the words "Tri-City Regional Airport."

Charlotte Amalie, Harry S. Truman Airport, St. Thomas, VI—[Amended]

By amending § 71.181 in the description of the Charlotte Amalie, Harry S. Truman Airport, St. Thomas, Virgin Islands, transition area by removing the words "Harry S. Truman Airport" from the title and text and replacing them in the text only with the words "Cyril E. King Airport."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1345(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)

Issued in East Point, Georgia, on March 5, 1985.

Thomas H. Protiva,

Acting Director, Southern Region.

[FR Doc. 85-6452 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-4]

Transition Areas; Cheyenne, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the 700 foot transition area at Cheyenne, Wyoming. This action is necessary to ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions. The area will be shown on aeronautical charts enabling pilots to circumnavigate the area or otherwise comply with instrument flight rules. A recent evaluation of Cheyenne Airport instrument approach procedures disclosed that an existing DME arc is not entirely contained within controlled airspace.

EFFECTIVE DATE: April 18, 1985.

FOR FURTHER INFORMATION: Ted Melland, ANM-533, 17900 Pacific Highway South, C-68966, Seattle, WA 98168. The telephone number is (206) 431-2533.

SUPPLEMENTARY INFORMATION:

History

On January 31, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions (50 FR 4523).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the 700 foot transition area at Cheyenne, Wyoming, to completely encompass established instrument approach procedures within controlled airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Transition areas/Aviation safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), is amended, as follows:

Cheyenne, Wyoming (Amended)

"That airspace extending upward from 700 feet above the surface within a 14-mile radius of the Cheyenne Municipal Airport (lat. 41° 09' 20" N., long. 104° 48' 30" W.), and within 6 miles southeast and 8 miles northwest of the Cheyenne VORTAC 029° radial, extending from the 14-mile radius area to 14 miles northeast of the VORTAC, and within a 19-mile radius of the Cheyenne VORTAC (lat. 41° 08' 48" N., long. 104° 40' 42" W.) from the 268° radial clockwise to the 343° radial; that airspace extending upward from 1,200 feet above the surface bounded on the NE by V-6, on the SE by V-207, on the SW by V-4N and on the NW by V-524, and that airspace NW of Cheyenne within 7 miles NE and 10 miles SW of the Cheyenne VORTAC 305° radial, extending from the VORTAC to 47 miles NW of the VORTAC, excluding the portions within the Laramie, Wyoming, transition area."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Seattle, Washington, on February 26, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-6449 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ASW-53]

Designation of Transition Area; Dumas, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at Dumas, AR. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Billy Free Municipal Airport. This action is necessary since there is a VOR/DME SIAP to the Billy Free Municipal Airport using the Monticello Vortac. Coincident with this action, the airport is changed from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 GMT, June 6, 1985.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-534), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2625.

SUPPLEMENTARY INFORMATION:

History

On December 24, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Dumas, AR, transition area (49 FR 49852).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a transition area for the protection of aircraft arriving and departing Billy Free Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Excutive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), is amended in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, as follows:

PART 71—[AMENDED]

§ 71.181 [Amended]

Dumas, AR New

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Billy Free Municipal Airport (latitude 33°53'00" N., longitude 91°32'04" W.) and within 4.5 miles each side of the 026-degree radial of the Monticello Vortac extending from the 6.5-mile radius to 16 miles south of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1345(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Fort Worth, TX, on February 28, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85-6453 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 24551; Amdt. No. 1290]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5

U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Aviation safety, approaches, standard instrument.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective May 9, 1985*

Imperial, CA—Imperial County, VOR–A, Amdt. 3
Beloit, KS—Beloit Muni, VOR/DME RWY 17, Amdt. 1
Deming, NM—Deming Muni, VOR RWY 26, Amdt. 8

** * * Effective April 25, 1985*

Gulf Shores, AL—Jack Edwards, VOR–A, Orig.
West Palm Beach, FL—Palm Beach Intl, VOR RWY 27R, Orig.
Effingham, IL—Effingham County Memorial, VOR RWY 1, Amdt. 6
Chariton, IA—Chariton Muni, VOR RWY 17, Orig.
Hampton, IA—Hampton Muni, VOR/DME RWY 35, Orig.
Caro, MI—Caro Muni, VOR/DME–A, Amdt. 1
Detroit, MI—Willow Run, VOR RWY 23L, Amdt. 7
Marshall, MI—Brooks Field, VOR RWY 28, Amdt. 10
Brookhaven, MS—Brookhaven-Lincoln County, VOR/DME–A, Amdt. 6
Greensboro, NC—Greensboro-High Point-Winston Salem Regnl, VOR RWY 5, Amdt. 9
Greensboro, NC—Greensboro-High Point-Winston Salem Regnl, VOR/DME RWY 23, Amdt. 6
Winston Salem, NC—Smith Reynolds, VOR/DME–A, Amdt. 2
Providence, RI—Theodore Francis Green State, VOR/DME RWY 34, Amdt. 2
Providence, RI—Theodore Francis Green State, VOR RWY 34, Amdt. 3
Pierre, SD—Pierre Muni, VOR/DME or TACAN RWY 7, Amdt. 3
Pierre, SD—Pierre Muni, VOR/DME or TACAN RWY 25, Amdt. 15
Winner, SD—Bob Wiley Field, VOR–A, Amdt. 4
Abingdon, VA—Virginia Highlands, VOR/DME–B Amdt. 4

** * * Effective April 11, 1985*

Paso Robes, CA—Paso Robles Muni, VOR/DME RWY 19, Orig.
Wilmington, DE—Greater Wilmington-New Castle County, VOR RWY 9, Amdt. 3
Battle Creek, MI—W. K. Kellogg Regional, VOR RWY 5 (TAC), Amdt. 17
Battle Creek, MI—W. K. Kellogg Regional, VOR RWY 23 (TAC), Amdt. 15
Battle Creek, MI—W. K. Kellogg Regional, VOR RWY 31 (TAC), Amdt. 12

** * * Effective March 1, 1985*

Jackson, TN—McKellar Field, VOR RWY 2, Amdt. 12

** * * Effective February 27, 1985*

Glasgow, MT—Glasgow Intl, VOR RWY 12, Amdt. 3
Glasgow, MT—Glasgow Intl, VOR RWY 30, Amdt. 3

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective May 9, 1985*

San Jose, CA—San Jose International, LOC/DME RWY 30L, Amdt. 6

** * * Effective April 25, 1985*

Greenville, SC—Donaldson Center, LOC RWY 4, Amdt. 1, Cancelled

** * * Effective April 11, 1985*

Battle Creek, MI—W. K. Kellogg Regional, LOC BC RWY 5, Amdt. 14

** * * Effective March 1, 1985*

Jackson, TN—McKellar Field, LOC BC RWY 20, Amdt. 5

** * * Effective February 28, 1985*

Sitka, AK—Sitka, LDA/DME RWY 11, Amdt. 9
Gainesville, GA—Lee Gilmer Memorial, LOC RWY 4, Amdt. 3

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective May 9, 1985*

Sidney, MT—Sidney-Richland Muni, NDB/DME RWY 1, Orig., Cancelled
Seattle, WA—Seattle-Tacoma Intl, NDB RWY 34R, Amdt. 5

** * * Effective April 25, 1985*

Pensacola, FL—Pensacola Regional, NDB RWY 16, Orig.
Albany, GA—Albany-Dougherty County, NDB RWY 4, Amdt. 9
Carrollton, GA—West Georgia Regional, NDB RWY 34, Amdt. 2
Chariton, IA—Chariton Muni, NDB RWY 17, Amdt. 2
Hampton, IA—Hampton Muni, NDB RWY 17, Amdt. 3
Independence, IA—Independence Muni, NDB RWY 17, Amdt. 1
Spirit Lake, IA—Spirit Lake Muni, NDB RWY 16, Amdt. 6
Spirit Lake, IA—Spirit Lake Muni, NDB RWY 34, Amdt. 2
Sturgis, KY—Sturgis Muni, NDB RWY 36, Amdt. 5
Augusta, ME—Augusta State, NDB–B, Amdt. 7
Brookhaven, MS—Brookhaven-Lincoln County, NDB RWY 22, Amdt. 1
Hebron, NE—Hebron Muni, NDB RWY 12, Amdt. 1
Greensboro, NC—Greensboro-High Point-Winston Salem Regnl, NDB RWY 14, Amdt. 13
Oxford, NC—Henderson-Oxford, NDB RWY 6, Amdt. 1
Williamston, NC—Martin County, NDB RWY 21, Amdt. 2
Lawrenceburg, TN—Lawrenceburg Muni, NDB–A, Amdt. 5, Cancelled

Lawrenceburg, TN—Lawrenceburg Muni, NDB RWY 16, Orig.
Abingdon, VA—Virginia Highlands, NDB RWY 24, Amdt. 1
Shell Lake, WI—Shell Lake Muni, NDB RWY 31, Amdt. 1

* * * *Effective April 11, 1985*

Battle Creek, MI—W. K. Kellogg Regional, NDB RWY 23, Amdt. 15

* * * *Effective March 1, 1985*

Jackson, TN—McKellar Field, NDB RWY 2, Amdt. 6

* * * *Effective February 28, 1985*

Gainesville, GA—Lee Gilmer Memorial, NDB RWY 4, Amdt. 3
Gastonia, NC—Gastonia Muni, NDB RWY 3, Amdt. 3

* * * *Effective February 27, 1985*

Glasgow, MT—Glasgow Intl, NDB RWY 30, Amdt. 1

* * * *Effective February 26, 1985*

Soldotna, AK—Soldotna, NDB RWY 25, Amdt. 1

4. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

* * * *Effective May 9, 1985*

Seattle, WA—Seattle-Tacoma Intl, ILS RWY 34R, Amdt. 9

* * * *Effective April 25, 1985*

Albany, GA—Albany-Dougherty County, ILS RWY 4, Amdt. 8
Atlanta, GA—The William B Hartsfield Atlanta Intl, ILS RWY 26R, Amdt. 1
Chicago, IL—Chicago-O'Hare Intl, ILS RWY 9L, Amdt. 5
Detroit, MI—Willow Run, ILS RWY 23L, Amdt. 2
Greensboro, NC—Greensboro-High Point-Winston Salem Regnl, ILS RWY 5, Amdt. 2
Greensboro, NC—Greensboro-High Point-Winston Salem Regnl, ILS RWY 14, Amdt. 16
Greensboro, NC—Greensboro-High Point-Winston Salem Regnl, ILS RWY 23, Amdt. 4
Providence, RI—Theodore Francis Green State, ILS/DME RWY 34, Amdt. 4
Greenville, SC—Donaldson Center, ILS RWY 4, Orig.
Pierre, SD—Pierre Muni, ILS RWY 31, Amdt. 8

* * * *Effective April 11, 1985*

Bridgeport, CT—Igor I. Sikorsky Memorial, ILS RWY 6, Amdt. 5
Wilmington, DE—Greater Wilmington-New Castle County, ILS RWY 1, Amdt. 18
Battle Creek, MI—W. K. Kellogg Regional, ILS RWY 23, Amdt. 15

* * * *Effective March 1, 1985*

Jackson, TN—McKellar Field, ILS RWY 2, Amdt. 7

5. By amending § 97.31 RADAR SIAPS identified as follows:

* * * *Effective April 25, 1985*

Detroit, MI—Willow Run, RADAR-1, Amdt. 5
Greensboro, NC—Greensboro-High Point-Winston Salem Regnl, RADAR-1, Amdt. 6

* * * *Effective April 11, 1985*

Reno, NV—Reno Cannon Intl, RADAR-1, Orig.

6. By amending § 97.33 RNAV SIAPS identified as follows:

* * * *Effective May 9, 1985*

Half Moon Bay, CA—Half Moon Bay, RNAV-A, Amdt. 1
St. Louis, MO—Lambert-St. Louis Intl, RNAV RWY 12R, Amdt. 1
St. Louis, MO—Lambert-St. Louis Intl, RNAV RWY 30L, Amdt. 11

* * * *Effective April 25, 1985*

Hampton, IA—Hampton Muni, RNAV RWY 17, Amdt. 1
Greensboro, NC—Greensboro-High Point-Winston Salem Regnl, RNAV RWY 23, Amdt. 3, Cancelled

* * * *Effective April 11, 1985*

Wilmington, DE—Greater Wilmington-New Castle County, RNAV RWY 9, Amdt. 3

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3).)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C. on March 8, 1985.

John S. Kern,

Acting Director of Flight Operations.

[FR Doc. 85-6447 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

General Biological Products Standards; OMB Approval of Requirements

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) announces that the Office of Management and Budget (OMB) has approved the collection of information requirements in the biologics regulation on official release of samples and protocols (21 CFR 610.2). The agency is amending that regulation to reflect OMB's approval under OMB control number 0910-0206.

EFFECTIVE DATE: March 19, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Hooton, Center for Drugs and Biologics (HFN-368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1306.

SUPPLEMENTARY INFORMATION: Because this amendment merely reflects OMB's approval of a collection of information requirement, notice and public procedure and delayed effective date are unnecessary (5 U.S.C. 553(b)(B) and (d)).

List of Subjects in 21 CFR Part 610

Biologics, Labeling.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

§ 610.2 [Amended]

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 610 is amended in § 610.2 *Requests for samples and protocols; official release* by adding at the end of the section the parenthetical statement "(Information collection requirements approved by the Office of Management and Budget under control number 0910-0206.)".

Dated: March 13, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-6463 Filed 3-14-85; 10:31 am]

BILLING CODE 4160-01-M

21 CFR Part 610

[Docket No. 81N-0417]

Additional Standards for Anti-Human Globulin; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration is correcting the final rule that amended the biologics regulation to establish additional standards for Anti-Human Globulin (50

FR 5574; February 11, 1985). Tests precluded or not required were incorrectly listed. This document corrects that error.

EFFECTIVE DATE: May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN-368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1306.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-3305, appearing on page 5574 in the **Federal Register** of Monday, February 11, 1985, the following correction is made:

§ 610.12 [Corrected]

On page 5579, in the first column under § 610.12 *Sterility*, paragraph (g)(4)(i) is corrected to read "(4) *Test precluded or not required.* (i) The tests prescribed in this section need not be performed for Whole Blood, Cryoprecipitated AHF, Platelets, Red Blood Cells, Plasma, Source Plasma, Smallpox Vaccine, Reagent Red Blood Cells, or Anti-Human Globulin."

Dated: March 13, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-6464 Filed 3-14-85; 10:31 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 1710 and 1720

[Docket No. R-85-1230; FR-2080]

Interstate Land Sales Registration and Exemption Guidelines (Interpretative Rule); Technical Amendments and Corrections

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

ACTION: Final rule; technical amendments and corrections.

SUMMARY: This rule amends and corrects the Department's regulations and Final Guidelines that implement the Interstate Land Sales Full Disclosure Act.

EFFECTIVE DATE: April 29, 1985.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Interstate Land Sales Registration Division, Department of Housing and Urban Development, Room 6278, 451 7th Street, SW., Washington, DC 20410 (202) 755-0502. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rule makes technical amendments to Title 24 of the Code of Federal Regulations and corrects a final rule and final guidelines published in the **Federal Register** on August 6, 1984 (49 FR 31366, 31372) relating to the Department's Interstate Land Sales Registration Program.

The Department has determined that this document need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), since this rulemaking merely makes technical amendments to existing HUD regulations.

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321-4347) is unnecessary, since these technical amendments are categorically excluded under HUD regulations at 24 CFR 50.20(k).

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of this rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it merely makes technical amendments to the Department's regulations.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684).

List of Subjects

24 CFR Part 1710

Consumer protection; Land sales; Reporting and recordkeeping requirements.

24 CFR Part 1720

Administrative practice and procedure.

Accordingly, the Department amends 24 CFR Chapter X as follows:

PART 1710—LAND REGISTRATION

§ 1710.1 [Amended]

1. In § 1710.1, the term "Blanked encumbrance" appearing alphabetically in the list of definitions is removed and the term "Blanket encumbrance" is added in its place.

2. In § 1710.20, the section heading and paragraph (c) are revised to read as follows:

§ 1710.20 Requirements for registering a subdivision—Statement of Record—filing and form.

* * * * *

(c) *State filings.* A Statement of Record submitted under the provisions of 24 CFR Part 1710, Subpart C—Certification of Substantially Equivalent State Law, shall consist of the materials designated by the Certification Agreement between the Secretary and the certified State in which the subdivision is located.

§ 1710.114 [Amended]

3. Section 1710.114(a) is amended by removing the reference to number one, "(1)" which appears after the paragraph heading and before the word "Unless".

4. In § 1710.212, paragraph (d)(3) is revised to read as follows:

§ 1710.212 Financial information.

* * * * *

(d) * * *

(3) If the developer no longer has an active sales program on the date this report is due, the information set forth in § 1710.310(c)(7)(iii) may be furnished in lieu of this report.

* * * * *

PART 1720—FORMAL PROCEDURES AND RULES OF PRACTICE

§ 1720.505 [Amended]

5. Section 1720.505 currently consists of two undesignated paragraphs. The two paragraphs are designated paragraph (a) and paragraph (b), respectively. In addition, new paragraph (a) contains references to designated paragraphs (a) and (b) which are removed and references to paragraphs (1) and (2) are added respectively in their place.

§ 1710.21 [Amended]

6. In FR Doc. 84-20695, appearing on page 31366 in the August 6, 1984 issue of the **Federal Register**, in the amendatory language for amendment number 25, appearing in the first column on page 31370, the reference to "Section 1710.12" is corrected to read "Section 1710.21".

7. In FR Doc. 84–20696, appearing on page 31372 in the August 6, 1984 issue of the **Federal Register**, in column one, page 31378, paragraph (b)(1), the term "commerical" is corrected to read "commercial".

8. In FR Doc. 84–20696, appearing on page 31372 in the August 6, 1984 issue of the **Federal Register**, in column three, page 31380, first paragraph, the ninth line in the column, the second time it appears, the term "offering" is corrected to read "offered".

9. In FR Doc. 84–20696, appearing on page 31372 in the August 6, 1984 issue of the **Federal Register**, in column one, page 31381, the first sentence of paragraph (3)(ii) is corrected to read as follows:

(ii) Each lot sold under the exemption must be either zoned for single-family residence or, in the absence of a zoning ordinance, limited exclusively by enforceable covenants or restrictions to single-family residences.

10. In FR Doc. 84–20696, appearing on page 31372 in the August 6, 1984 issue of the **Federal Register**, in column one of page 31386 there are several typographical errors in the second and third full paragraphs of paragraph (2). These paragraphs are set out correctly below:

Substantial compliance with this provision would be considered in those cases where one or more of these utilities is not available but the developer has a contract with a publicly regulated utility to install the facilities within 180-days following closing or upon demand of the purchaser.

Furthermore, substantial compliance would be considered if the utility trunk lines are "reasonably close" to the lots instead of at each lot line.

Authority: Sec. 1419, Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1718; Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 13, 1985.

Shirley McVay Wiseman,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85–6509 Filed 3–18–85; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 724

Navy Discharge Review Board; Procedures and Standards

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule is being revised to incorporate changes in procedures and standards for the review of discharges and dismissals from the Navy and Marine Corps. These changes were necessitated by revision of Department of Defense Directive 1332.28, August 11, 1982 (32 CFR Part 70, 47 FR 37770, August 26, 1982), which this rule implements. The intended effect is to provide current information on Navy policy and procedures to former Navy and Marine Corps members desiring amendment to their military records.

EFFECTIVE DATE: August 22, 1984.

FOR FURTHER INFORMATION CONTACT: R.A. Ways, Captain, USN, Executive Secretary, Naval Discharge Review Board, 801 North Randolph Street, Ballston Tower #2, Suite 905, Arlington, Virginia 22203–1989, Telephone: 202–696–4881.

SUPPLEMENTARY INFORMATION: Because this Part implements a previously issued higher directive, it was not published as proposed for public comment. It is published as a final rule for information purposes. The Department of the Navy has determined that this regulation is not a major rule as defined by Executive Order 12291; is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–511). Part 724 is derived from SECNAVINST 5420.174C, Navy Discharge Review Board. This revision incorporates uniform procedures and standards for the submission and presentation of and responses to issues pertaining to the review of discharges; establishes an effective date for use of these procedures and revised forms; outlines expanded requirements for the preparation of decisional documents, includes review of standards; reinstates the 15 year statute of limitations; and redefines terms and types of discharge reviews.

List of Subjects in 32 CFR Part 724

Administrative practice and procedure, Military personnel, Records, Military discharges, Administrative discharges, Discharge review, Officer/Enlisted separations.

Accordingly, 32 CFR Part 724 is revised to read as follows:

PART 724—NAVAL DISCHARGE REVIEW BOARD

Subpart A—Definitions

Sec.

724.101 Naval Service.
724.102 Naval Discharge Review Board.
724.103 NDRB Panel.
724.104 NDRB Traveling Panel.
724.105 President of the NDRB.
724.106 Presiding Officer, NDRB Panel.
724.107 Discharge.
724.108 Administrative Discharge.
724.109 Types of Administrative Discharges.
724.110 Reason/Basis for Administrative Discharge.
724.111 Punitive Discharge.
724.112 Clemency Discharge.
724.113 Application.
724.114 Applicant.
724.115 Next of Kin.
724.116 Council/Representative.
724.117 Discharge Review.
724.118 Documentary Discharge Review.
724.119 Personal Appearance Discharge Review.
724.120 National Capital Region.
724.121 Decisional Document.
724.122 Recorder, NDRB Panel.
724.123 Complainant.

Subpart B—Authority/Policy for Departmental Discharge Review

724.201 Authority.
724.202 Statutory/Directive Authority.
724.203 Broad Objectives of Naval Discharge Review.
724.204 Eligibility for Naval Discharge Review.
724.205 Authority for Review of Naval Discharges; Jurisdictional Limitations.
724.206 Jurisdictional Determinations.
724.207 Disposition of Applications for Discharge Review.
724.208 Implementation of NDRB Decisions.
724.209 Evidence Supporting Applications
724.210 Review Action in Instances of Unavailable Records.
724.211 Regularity of Government Affairs.
724.212 Availability of Records.
724.213 Attendance of Witnesses.
724.214 Applicant's Expenses.
724.215 Military Representation.
724.216 Failure to Appear at a Hearing or Respond to a Scheduling Notice.
724.217 Limitation—Reconsideration.
724.218 Limitation—Continuance and Postponements.
724.219 Withdrawal of Application.
724.220 Review on Motion of the NDRB.
724.221 Scheduling of Discharge Reviews.
724.222 Personal Appearance Discharge Hearing Sites.
724.223 NDRB Support and Augmentation by Regular and Reserve Activities.
724.224 Court-Martial Specifications; Presumptions Concerning.

Subpart C—Director, Naval Council of Personnel Boards and President Naval Discharge Review Board; Responsibilities in Support of the Naval Discharge Review Board

724.301 Mission.
724.302 Functions: Director, Naval Council of Personnel Boards.
724.303 Functions: President, Naval Discharge Review Board.
724.304 Responsibility for Department of the Navy Suppport of the Naval Discharge Review Board.
724.305 Functions of the CMC and CNO.
724.306 Functions of the Commander, Naval Medical Command.

724.307 Functions of the Commander, Naval Reserve Force.

Subpart D—Principal Elements of the Navy Department Discharge Review System

724.401 Applicants.
724.402 Naval Discharge Review Board.
724.403 President, Naval Discharge Review Board.
724.404 Director, Naval Council of Personnel Boards.
724.405 Commandant of the Marine Corps or the Commander, Naval Military Personnel Command.
724.406 Commander, Naval Medical Command.
724.407 Commander, Naval Reserve Force.
724.408 Secretary of the Navy.

Subpart E—Procedural Rights of the Applicant and Administrative Actions Preliminary to Discharge Review

724.501 Procedural Rights of the Appicant.
724.502 Actions to be Taken by the Applicant Preliminary to Discharge Review.
724.503 NDRB Response to Application for Discharge Review.
724.504 NDRB Actions Preliminary to Discharge Review.

Subpart F—Naval Discharge Review Board Mission and Functions

724.601 General.
724.602 Mission.
724.603 Functions.

Subpart G—Organization of the Naval Discharge Review Board

724.701 Composition.
724.702 Executive Management.
724.703 Legal Counsel.

Subpart H—Procedures of the Naval Discharge Review Board

724.801 Matters to be Considered in Discharge Review.
724.802 Applicant's Responsibilities.
724.803 The Decisional Document.
724.804 Decision Process.
724.805 Response to Items Submitted as Issues by the Applicant.
724.806 Decisional Issues.
724.807 Record of NDRB proceedings.
724.808 Issuance of Decision Following Discharge Review.
724.809 Final Disposition of the Record of Proceedings.
724.810 Availability of Naval Discharge Review Board Documents for Public Inspection and Copying.
724.811 Privacy Act Information.
724.812 Responsibility of the Reading Room.
724.813 The Recommendation of the NDRB President.
724.814 Secretarial Review Authority (SRA).
724.815 Complaints.

Subpart I—Standards for Discharge Review

724.901 Objective of Discharge Review.
724.902 Propriety of the Discharge.
724.903 Equity of the Discharge.

Appendix A—Policy Statement by the Secretary of Defense—Addressing Certain Categories of Discharges
Appendix B—Oath or Affirmation to be Administered to Discharge Review Board Members
Appendix C—Samples of Formats Employed by the Naval Discharge Review Board
Appendix D—Veterans' Benefits

Authority: 5 U.S.C. 301; 10 U.S.C. 1553.

Subpart A—Definitions

§ 724.101 Naval Service.

The Naval Service is comprised of the uniformed members of the United States Navy and the United States Marine Corps, including active and inactive reserve components.

§ 724.102 Naval Discharge Review Board.

An administrative board, referred to as the "NDRB" established by the Secretary of the Navy pursuant to Title 10, United States Code, section 1553, for the review of discharges of former members of the Naval Service.

§ 724.103 NDRB Panel.

An element of the NDRB, consisting of five members, authorized to review discharges. In plenary review session, an NDRB panel acts with the authority delegated by the Secretary of the Navy to the Naval Discharge Review Board.

§ 724.104 NDRB Traveling Panel.

An NDRB Panel that travels for the purpose of conducting personal appearances discharge review hearings at locations outside of the National Capital Region (NCR).

§ 724.105 President of the NDRB.

A senior officer of the Naval Service designated by the Secretary of the Navy who is responsible for the direct supervision of the discharge review function within the Naval Service. (See Subpart E).

§ 724.106 Presiding Officer, NDRB Panel.

The senior member of an NDRB Panel shall normally be the Presiding Officer. He/she shall convene, recess and adjourn the NDRB Panel as appropriate.

§ 724.107 Discharge.

In the context of the review function prescribed by 10 U.S.C. 1553, a discharge or dismissal is a complete separation from the Naval Service, other than one pursuant to the sentence of a general court-martial. By reason of usage, the term "discharge" is predominantly applicable to the separation of enlisted personnel for any reason, and the term "dismissal" to the separation of officers as a result of Secretarial or general court-martial action. In the context of the mission of the NDRB, the term "discharge" used here shall, for purpose of ease of expression, include any complete separation from the naval service other than that pursuant to the sentence of general court-martial. The term "discharge" also includes the type of discharge and the reason/basis for that discharge, e.g., Other Than Honorable/Misconduct (Civil Conviction).

§ 724.108 Administrative Discharge.

A discharge upon expiration of enlistment or required period of service, or prior thereto, in a manner prescribed by the Commandant of the Marine Corps or the Commander, Naval Military Personnel Command, but specifically excluding separation by sentence of a court-martial.

§ 724.109 Types of Administrative Discharges.

(a) A determination reflecting a member's military behavior and performance of duty during a specific period of service. The three characterizations are:

(1) *Honorable.* A separation from the naval service with honor. The issuance of an Honorable Discharge is contingent upon proper military behavior and performance of duty.

(2) Under Honorable Conditions (also termed General Discharge). A separation from the naval service under honorable conditions. The issuance of a discharge under honorable conditions is contingent upon military behavior and performance of duty which is not sufficiently meritorious to warrant an Honorable Discharge.

(3) *Under Other Than Honorable Conditions (formerly termed Undesirable Discharge).* A separation from the naval service under conditions other than honorable. It is issued to terminate the service of a member of the naval service for one or more of the reasons/basis listed in the Naval Military Personnel Manual, Marine Corps Separation and Retirement Manual and their predecessor publications.

(4) *Entry Level Separation.* A separation from the naval service, normally uncharacterized, issued to certain members whose separation processing was initiated while they were in an Entry Level Status. It is used to terminate the service of a member when it is determined that the member is unqualified for further naval service by reason of unsatisfactory performance or conduct (or both) while in an Entry Level Status.

§ 724.110 Reason/Basis for Administrative Discharge.

The terms "reason for discharge" and "basis for discharge" have the same meaning. The first is a Navy term and

the second is a Marine Corps term. These terms identify why an administrative discharge was issued, e.g., Convenience of the Government, Misconduct. Reasons/basis for discharge are found in the Naval Military Personnel Manual and Marine Corps Separation and Retirement Manual as well as predecessor publications.

§ 724.111 Punitive Discharge.

A discharge awarded by sentence of a court-martial. There are two types of punitive discharges:

(a) *Bad Conduct.* A separation from the naval service under conditions other than honorable. It may be effected only as a result of the approved sentence of a general or special court-martial.

(b) *Dishonorable.* A separation from the naval service under dishonorable conditions. It may be effected only as a result of the approved sentence of a general court-martial.

§ 724.112 Clemency Discharge.

(a) The clemency discharge was created by the President on September 16, 1974, in his Proclamation 4313, "Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters." Upon issuance to individuals who have an undesirable discharge or a punitive discharge, a clemency discharge serves as a written testimonial to the fact that the individual has satisfied the requirements of the President's program, and has fully earned his/her return to the mainstream of American society in accordance with that program.

(b) The clemency discharge is a neutral discharge, neither honorable nor less than honorable. It does not effect a change in the characterization of the individual's military service as havng been under other than honorable condition, nor does it serves to change, seal, erase or in any way modify the individual's past military record. Therefore, if the underlying discharge was issued as a result of a general court-martial, the issuance of a Clemency Discharge does not subject the underlying characterization to review under 10 U.S.C. 1553. Clemency discharges are issued by the Commander, Naval Military Personnel Command or the Commandant of the Marine Corps when an individual has met the requirements of the Presidential Proclamation.

§ 724.113 Application.

In the context of this Manual, a written application to the NDRB for the review of a discharge submitted by a former member of the naval service or, where a former member is deceased or incompetent, by spouse, next of kin or legal representative. Department of Defense Form 293 must be used for the application.

§ 724.114 Applicant.

A former member of the naval service who has been discharged administratively in accordance with the directives of the naval service or by sentence of a special court-martial under Title 10, U.S.C. 801 *et seq.* (Uniform Code of Military Justice) and, in accordance with statutory and regulatory provisions:

(a) Whose case is considered by the NDRB at the request of the former member, of, if authorized under § 724.113, the surviving spouse, next-of-kin or legal representative, or

(b) Whose case is considered on the NDRB's own motion.

§ 724.115 Next of Kin.

The person or persons in the highest category of priority as determined by the following list (categories appear in descending order of priority): Surviving legal spouse; children (whether by current or prior marriage) age 18 years or older in descending precedence by age; father or mother, unless by court order custody has been vested in another (adoptive parent takes precedence over natural parent); siblings (whole or half) age 18 years or older in descending precedence by age; grandfather or grandmother; any other relative (precedence to be determined in accordance with the civil law of descent of the deceased former member's state of domicile at time of death).

§ 724.116 Counsel/Representative.

An individual or agency designated by the applicant who agrees to represent the applicant in a case before the NDRB. It includes, but is not limited to: a lawyer who is a member of the bar of a Federal Court or of the highest court of a State; an accredited representative designated by an organization recognized by the Administrator of Veterans Affairs; a representative from a State agency concerned with veterans affairs; or a representative from private organizations or local Government agencies.

§ 724.117 Discharge Review.

A nonadversary administrative reappraisal at the level of the Navy Department of discharges from the naval service. The object of the reappraisal is to determine whether the discharge should be changed, and if so, the nature of the change. This reappraisal includes the type and reason/basis for separation, the procedures followed in accomplishing separation, and the characterization of service. This term includes determinations made under the provisions of 38 U.S.C. § 3103(2).

§ 724.118 Documentary Discharge Review.

A formal session of the NDRB convened for the purpose of reviewing, on the basis of documentary data, an applicant's discharge. The Documentary data shall include the application together with all information accompanying that application, available service and medical records, and any other information considered relevant by the NDRB.

§ 724.119 Personal Appearance Discharge Hearing.

A formal session of the NDRB convened for the purpose of reviewing an applicant's discharge on the basis of a personal appearance, as well as documentary data. The personal appearance may be by the applicant or by a representative of the applicant, or both.

§ 724.120 National Capital Region (NCR).

The District of Columbia; Prince Georges and Montgomery Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities and towns included within the outer boundaries of the foregoing counties.

§ 724.121 Decisional Document.

The written recordation of the applicant's summary of service, the issue or issues presented together with any evidence offered in support of the application, the NDRB's response to the issue or issues, the votes of the members of the panel, and any recommendations or responses by the President of the NDRB or the Secretarial Reviewing Authority (SRA). The decisional document is promulgated by the "en bloc letter".

§ 724.122 Recorder, NDRB Panel.

A panel member responsible for briefing an applicant's case from the documentary evidence available prior to a discharge review, presenting the brief to the panel considering the application, performing other designated functions during personal appearance discharge hearings, and drafting the decisional document subsequent to the hearing.

§ 724.123 Complainant.

A former member of the Armed Forces (or the former member's counsel) who submits a complaint under 32 CFR Part 70 with respect to the decisional document issued in the former member's

own case; or a former member of the Armed Forces (or the former member's counsel) who submits a complaint under reference (b) stating that correction of the decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

Subpart B—Authority/Policy for Departmental Discharge Review

§ 724.201 Authority.

The Naval Discharge Review Board, established pursuant to 10 U.S.C. § 1553, is a component of the Naval Council of Personnel Boards. By SECNAVINST 5430.7L, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) is authorized and directed to act for the Secretary of the Navy within his assigned area of responsibility and exercises oversight over the Naval Council of Personnel Boards. SECNAVINST 5420.135C of July 15, 1983 states the organization, mission, duties and responsibilities of the Naval Council of Personnel Boards to include the Naval Discharge Review Board. The Chief of Naval Operations established the Office of Naval Disability Evaluation and Navy Council of Personnel Boards on 1 October 1976 (OPNAVNOTE 5450 Ser 09B26/535376 of 9 Sep 1976 (Canc frp: Apr 77)). The Chief of Naval Operations approved the change in name of the Office of Naval Disability Evaluation and Navy Council of Personnel Boards to Naval Council of Personnel Boards on 1 February 1977 (OPNAVNOTE 5450 Ser 09B26/32648 of 24 Jan 1977 (Canc frp: Jul 77)) with the following mission statement:

To administer and supervise assigned boards and councils.

§ 724.202 Statutory/Directive Authority.

The NDRB, in its conduct of discharge review, shall be guided by the applicable statutes, regulations, and manuals and directives of the Department of the Navy, and other written public expressions of policy by competent authority:

(a) 10 U.S.C. 1553, Review of discharge or dismissal:

(1) "The Secretary concerned shall, after consulting the Administrator of Veterans' Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal."

(2) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(3) A review by the board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative or an organization recognized by the Administrator of Veterans' Affairs under Title 38 U.S.C. 3401 *et seq.*".

(b) Public Law 95–126. See Appendix D.

(c) *32 CFR Part 70.* This provides for uniform standards and procedures for review of discharges from the military services of the Department of Defense. The provisions of 32 CFR Part 70 are incorporated in this Manual.

(d) The Secretary of Defense memoranda dated August 13, 1971 and April 28, 1972 (NOTAL). These directed a review for recharacterization of (1) administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use, and (2) punitive discharges and dismissals issued solely for conviction of personal use of drugs and possession for the purpose of such use for those discharges executed as a result of a case completed or in process on or before July 7, 1971. (See Appendix B).

(e) *32 CFR Part 41.* This prescribes policy, standards and procedures which govern the administrative separation of enlisted persons from the Armed Forces.

§ 724.203 Broad Objectives of Naval Discharge Review.

Naval discharge review shall have as its broad objectives:

(a) The furtherance of good order and discipline.

(b) The correction of injustice or inequity in the discharge issued.

(c) The correction of administrative or clerical errors.

§ 724.204 Eligibility for Naval Discharge Review

Any former member of the Naval Service, eligible for review under reference (a) or surviving spouse, next of kin or legal representative, shall upon submission of an application be afforded a review of the member's discharge from the Naval Service as provided in § 724.205 and § 724.206. Discharge review may also be initiated on the motion of the NDRB (See § 724.220).

§ 724.205 Authority for Review of Naval Discharges; Jurisdictional Limitations.

(a) The Board shall have no authority to:

(1) Review a discharge or dismissal resulting from a general court-martial;

(2) Alter the judgment of a court-martial, except the discharge or dismissal awarded may be changed for purposes of clemency;

(3) Revoke any discharge or dismissal;

(4) Reinstate a person in the naval service;

(5) Recall a former member to active duty;

(6) Change a reenlistment code;

(7) Make recommendations for reenlistment to permit entry in the naval service or any other branch of the Armed Forces;

(8) Cancel or void enlistment contracts; or

(9) Change the reason for discharge from or to a physical disability

(b) Review of naval discharges shall not be undertaken in instances where the elapsed time between the date of discharge and the date of receipt of application for review exceeds fifteen years.

§ 724.206 Jurisdictional Determinations.

The determination as to whether the NDRB has jurisdiction in any case shall be predicated on the policy stated in § 742.205. Decisions shall be made by administrative action without referral to the NDRB. Normally, they shall be made by the Executive Secretary of the NDRB, or they may be referred to the President, NDRB.

§ 724.207 Disposition of Applications for Discharge Review.

One of three dispositions will be made of an application for review of a discharge:

(a) The application may be rejected for reason of:

(1) Absence of jurisdiction;

(2) Previous review on the same evidence; or

(b) The application may be withdrawn by the applicant; or

(c) The application may be accepted and the discharge reviewed by the NDRB, resulting in

(1) Change to the discharge, or

(2) No change.

§ 724.208 Implementation of NDRB Decisions.

The Commandant of the Marine Corps and the Chief of Naval Operations are responsible for implementing Naval Discharge Review Board decisions within their respective services. The Commandant of the Marine Corps shall be notified of decisions in each discharge review case and shall implement the decisions within the Marine Corps. The Commander, Naval Military Personnel Command, acting for the Chief of Naval Operations and Chief of Naval Personnel, shall be notified of decisions in each discharge review case and shall implement the decisions within the Navy.

§ 724.209 Evidence Supporting Applications.

In the absence of law, evidence or policy to the contrary, naval discharges shall be considered just, equitable and proper as issued. When hearings are scheduled, applicants must be prepared to present their case at the scheduled time. In the absence of any other evidence, naval discharge review shall be undertaken by examination of available service and health records of the applicant. Normally, the responsibility for presenting evidence from outside available service and health records shall rest with the applicant. Applications in which elements of relevant information are obviously omitted will be returned for completion and resubmission.

§ 724.210 Review Action in Instances of Unavailable Records.

(a) In the event that Department of the Navy personnel or health records associated with a requested review of discharge are not located at the custodial activity, the following action shall be taken by the NDRB prior to consideration of the request for discharge review.

(1) A certification that the records are unavailable shall be obtained from the custodial activity.

(2) The applicant shall be notified of the situation and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of not less than 30 days shall be allowed for such documents to be submitted. At the expiration of this time period, the review may be conducted with information available to the NDRB.

(3) The presumption of regularity in the conduct of government affairs may be applicable in instances of unavailable records depending on the circumstances of the case. (See § 724.211)

§ 724.211 Regularity of Government Affairs.

There is a presumption of regularity in the conduct of governmental affairs. This presumption can be applied in any review unless there is substantial credible evidence to rebut the presumption.

§ 724.212 Availability of Records.

(a) Before applying for discharge review, potential applicants or their designated representatives may obtain copies of their military personnel records by submitting a General Services Administration Standard Form 180, "Request Pertaining to Military Records," to the National Personnel Records Center (NPRC), 9700 Page Boulevard, St. Louis, MO 63132. Once the application for discharge review (DD Form 293) is submitted, an applicant's military records are forwarded to the NDRB where they cannot be reproduced. Submission of a request for an applicant's military records, including a request under the Freedom of Information Act (5 U.S.C. § 552) or Privacy Act (5 U.S.C. § 552a) after the DD Form 293 has been submitted, shall result automatically in the temporary suspension of processing of the application for discharge review until the requested records are sent to an appropriate location for copying, are copied, and are returned to the headquarters of the NDRB. Processing of the application shall then be resumed at whatever stage of the discharge review process is practicable. Applicants are encouraged to submit any request for their military records before applying for discharge review rather than after submitting DD Form 293 to avoid delays in processing of applications and scheduling of reviews. Applicants and their counsel may also examine their military personnel records at the site of their scheduled review before the hearing. The NDRB shall notify applicants of the dates the records are available for examination in their standard scheduling information.

(b) If the NDRB is not authorized to provide copies of documents that are under the cognizance of another government department, office, or activity, applications for such information must be made by the applicant to the cognizant authority. The NDRB shall advise the applicant of the mailing address of the government department, office, or activity to which the request should be submitted.

(c) If the official records relevant to the discharge review are not available at the agency having custody of the records, the applicant shall be so notified and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of not less than 60 days shall be allowed for such documents to be submitted. At the expiration of this period, the review may be conducted with information available to the NDRB.

(d) The NDRB may take steps to obtain additional evidence that is relevant to the discharge under consideration beyond that found in the official military records or submitted by the applicant, if a review of available evidence suggests that it would be incomplete without the additional information, or when the applicant presents testimony or documents that require additional information to evaluate properly. Such information shall be made available to the applicant, upon request, with appropriate modifications regarding classified material.

(1) In any case heard on request of an applicant, the NDRB shall provide the applicant and counsel or representative, if any, at a reasonable time before initiating the decision process, a notice of the availability of all regulations and documents to be considered in the discharge review, except for documents in the official personnel or medical records and any documents submitted by the applicant. The NDRB shall also notify the applicant or counsel or representative: (a) of the right to examine such documents or to be provided with copies of the documents upon request; (b) of the date by which such requests must be received; and (c) of the opportunity to respond within a reasonable period of time to be set by the NDRB.

(2) When necessary to acquaint the applicant with the substance of a classified document, the classifying authority, on the request of the NDRB, shall prepare a summary of or an extract from the document, deleting all references to sources of information and other matters, the disclosure of which, in the opinion of the classifying authority, would be detrimental to the national security interests of the United States. Should preparation of such summary be deemed impracticable by the classifying authority, information from the classified source shall not be considered by the NDRB in its review of the case.

(e) Regulations of a military department may be obtained at many installations under the jurisdiction of the Military Department concerned or by writing to the following address: DA Military Review Boards Agency, Attention: SFBA (Reading Room), Room

1E520, The Pentagon, Washington, D.C. 20310.

§ 724.213 Attendance of Witnesses.

Arrangement for attendance of witnesses testifying in behalf of the applicant at discharge review hearings is the responsibility of the applicant. The NDRB is not authorized to subpoena or otherwise require their presence.

§ 724.214 Applicant's Expenses.

Unless otherwise specified by law or regulation, expenses incurred by the applicant, witnesses, or counsel/representative will not be paid by the Department of Defense. The NDRB is not authorized to issue orders or other process to enable the applicant to appear in person.

§ 724.215 Military Representation.

Military officers, except those acting pursuant to specific detailing by appropriate authorities desiring to act for or on behalf of an applicant in the presentation of a case before an NDRB Panel are advised to consult legal counsel before undertaking such representation. Such representation may be prohibited by 18 U.S.C. § 205.

§ 724.216 Failure to Appear at a Hearing or Respond to a Scheduling Notice.

(a) Except as otherwise authorized by the Secretary concerned, further opportunity for a hearing shall not be made available in the following circumstances to an applicant who has requested a hearing:

(1) When the applicant has been sent a letter containing the month and location of a proposed hearing and fails to make a timely response; or

(2) When the applicant, after being notified by letter of the time and place of the hearing, fails to appear at the appointed time, either in person or by representative, without having made a prior, timely request for a continuation, postponement, or withdrawal.

(b) In such cases, the applicant shall be deemed to have waived the right to a hearing, and the NDRB shall complete its review of the discharge. Further request for a hearing shall not be granted unless the applicant can demonstrate that the failure to appear or respond was due to circumstances beyond the applicant's control.

§ 724.217 Reconsideration.

A discharge review shall not be subject to reconsideration except:

(a) When the only previous consideration of the case was on the motion of the NDRB;

(b) When the original discharge review did not involve a personal hearing and a hearing is now desired, and the provisions of § 724.216 do not apply;

(c) When changes in discharge policy are announced after an earlier review of an applicant's discharge, and the new policy is made expressly retroactive;

(d) When the NDRB determines that policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that such changes in policies or procedures represent a substantial enhancement of the rights afforded an applicant in such proceedings;

(e) When an individual is to be represented by counsel or representative, and was not so represented in any previous consideration of the case by the NDRB;

(f) When the case was not previously considered under uniform standards published pursuant to Public Law 95–126 and such application is made within 15 years after the date of discharge; or

(g) On the basis of presentation of new, substantial, relevant evidence not available to the applicant at the time of the original review. The decision whether evidence offered by an applicant in support of a request for reconsideration is in fact new, substantial, relevant, and was not available to the applicant at the time of the original review will be based on a comparison of such evidence with the evidence considered in the previous discharge review. If this comparison shows that the evidence submitted would have had a probable effect on matters concerning the propriety or equity of the discharge, the request for reconsideration shall be granted.

§ 724.218 Continuance and Postponements.

(a) A continuance of a discharge review hearing may be authorized by the President of the NDRB or presiding officer of the panel concerned, provided that such continuance is of reasonable duration and is essential to achieving a full and fair hearing. When a proposal for continuance is indefinite, the pending application shall be returned to the applicant with the option to resubmit when the case is fully ready for review.

(b) Postponements of scheduled reviews normally shall not be permitted other than for demonstrated good and sufficient reason set forth by the applicant in a timely manner or for the convenience of the government.

§ 724.219 Withdrawal of Application.

An applicant shall be permitted to withdraw an application without prejudice at any time before the scheduled review, except that failure to appear for a scheduled hearing shall not be construed or accepted as a withdrawal.

§ 724.220 Review on Motion of the NDRB.

Reviews of Naval discharges may be initiated by the NDRB on its own motion (10 U.S.C. § 1553) which includes reviews requested by the Veterans Administration under 38 U.S.C. § 101, 3103 as amended by Public Law 95–126 of October 8, 1977 (See Public Law 98–209).

§ 724.221 Scheduling of Discharge Reviews.

(a) If an applicant requests a personal appearance discharge review, or to be represented in absentia, the NDRB shall provide a hearing in the NCR or at another site within the forty-eight contiguous states.

(b) The NDRB shall subsequently notify the applicant and representative (if any) in writing of the proposed personal appearance hearing time and place. This notice shall normally be mailed thirty to sixty days prior to the date of the hearing. If the applicant elects, this time limit may be waived and an earlier date set.

(c) When an applicant requests a documentary review, the NDRB shall undertake the review as soon as practicable. Normally, documentary reviews shall be conducted in the order in which they are received.

§ 724.222 Personal Appearance Discharge Hearing Sites.

(a) The NDRB shall be permanently located, together with its administrative staff, in the NCR. The NDRB shall routinely conduct personal appearance discharge reviews and documentary reviews at this, its permanent office.

(b) In addition, as permitted by available resources, NDRB Panels shall travel to other selected sites within the contiguous 48 states for the purpose of conducting reviews. The selection of sites and frequency of visits shall be predicated on the number of requests pending within a region and the availability of resources.

§ 724.223 NDRB Support and Augmentation by Regular and Reserve Activities.

(a) When an NDRB Panel travels for the purpose of conducting hearings, it shall normally select Navy or Marine Corps installations in the area visited as review sites.

(b) The NDRB Traveling Board shall normally consist of members from the NCPB and augmentees from regular and

reserve Navy and Marine Corps sources, as required.

(c) Navy and Marine Corps activities in the geographical vicinity of selected review sites shall provide administrative support and augmentation to an NDRB Panel during its visit where such assistance can be undertaken without interference with mission accomplishment. The NDRB shall coordinate requests for augmentees and administrative support through Commandant of the Marine Corps or the Chief of Naval Reserve, as appropriate.

(d) The administrative staff of the NCPB shall undertake all arrangements for NDRB Traveling Panel visits and shall process associated review documents.

§ 724.224 Court-Martial Specifications, Presumption Concerning.

(a) Relevant and material facts stated in a court-martial specification, shall be presumed by the NDRB Panel as established facts. With respect to a discharge or dismissal adjudged by a court-martial case tried under the Uniform Code of Military Justice, the action may extend only to change in the discharge or dismissal for purposes of clemency. This policy only applies to cases filed with the discharge review board after December 6, 1983.

(b) Relevant and material facts stated in a court-martial specification, in the face of which the applicant requested a discharge for the good of the service to avoid trial by court-martial, shall be considered in accordance with the following:

(1) If the applicant/accused was required to admit the facts contained in the charge sheet, or if the discharge authority was required to find that the stated facts were true, then the NDRB can presume the truth of such facts, unless there is a substantial credible evidence to rebut this presumption; or

(2) If the discharge in lieu of court-martial only required a valid preferral, the NDRB may presume that the signer either had personal knowledge of, or had investigated the matters set forth, and that the charges were true in fact to the best of the signer's knowledge and belief.[1] The weight to be given this presumption in determining whether the facts stated in the charge sheet are true is a matter to be determined by the NDRB. To the extent that the discharge proceeding reflects an official determination that the facts stated in the charge sheet are true; that the applicant/accused admitted the facts stated in the charge sheet; or that the applicant/accused admitted guilt of the offense(s), then the presumption is strengthened. In accordance with paragraph B12f of enclosure (3) to 32 CFR Part 70 the presumption may be rebutted by "substantial credible evidence."

[1] Charges may be preferred by any person subject to the Uniform Code of Military Justice. The charges must be signed and sworn to before a commissioned officer authorized to administer oaths, and shall state that the signer has pesonal knowledge of, or has investigated the matters set forth therein; and that the charges are true in fact to the best of the signer's knowledge and belief. 10 U.S.C. § 830 (1976) [Art. 30 Uniform Code of Military Justice].

Subpart C—Director, Naval Council of Personnel Boards; President of the Naval Discharge Review Board; and Responsibilities in Support of the Naval Discharge Review Board

§ 724.301 Mission.

To administer and supervise assigned boards and councils within the Department of the Navy.

§ 724.302 Functions: Director, Naval Council of Personnel Boards.

(a) Make recommendations to the Secretary of the Navy regarding organization, tasking and resources of the NDRB and its associated administrative support.

(b) Submit recommendations to the Secretary of the Navy regarding policy and procedures for discharge review.

(c) Provide administrative and clerical support for NDRB.

(d) Inform the Secretary of the Navy of matters of interest to him.

(e) Maintain a system of records, including as a minimum:

(1) Records specified for the NDRB as stipulated in the procedures prescribed in Subpart H of this Manual.

(2) Records required for the administration of military and civilian personnel.

(3) Files of correspondence received and issued.

(f) Establish billet/position assignment criteria for the NDRB.

(g) Propose to the Secretary of the Navy, changes to this instruction.

(h) Issue requisite precepts and remove or add members to the NDRB from personnel detailed to serve on the Naval Council of Personnel Boards, or from personnel otherwise made available.

§ 724.303 Functions: President, Naval Discharge Review Board.

(a) Exercise primary cognizance within the Department of the Navy for matters relating to discharge review.

(b) Supervise and direct the activities of the NDRB.

(c) Maintain appropriate liaison with discharge review activities in other services (use Army Discharge Review Board as focal point for service coordination).

(d) Maintain coordination with the Commandant of the Marine Corps (Code M) and the Commander, Naval Military Personnel Command in matters associated with discharge review.

(e) In conformance with SECNAVINST 5211.5C, protect the privacy of individuals in connection with discharge review.

(f) Assure that NDRB functions are administered in accordance with the appropriate Secretary of the Navy instructions dealing with privacy and access to information.

(g) Convene the NDRB as authorized by the Secretary of the Navy.

(h) Direct the movement of the NDRB Traveling Panel(s) on the basis of regional hearing requests.

(i) Monitor the performance of the naval discharge review system. Make recommendations for changes and improvements. Take action to avoid delays in processing of individual discharge review actions.

(j) Provide NDRB inputs for the maintenance of a public reading file and maintain associated NDRB indexes updated quarterly.

§ 724.304 Responsibility for Department of the Navy support of the Naval Discharge Review Board.

The Commandant of the Marine Corps; Commander, Naval Military Personnel Command; Commander, Naval Reserve Force; Commander, Naval Medical Command; and chiefs of other bureaus and offices of the Department of the Navy shall provide support, as requested, to the Naval discharge review process.

§ 724.305 Functions of the CMC and CNO.

In the case of Navy, CNMPC, under the CNP, shall discharge responsibilities of the CNO.

(a) Provide and facilitate access by the NDRB to service/health records and other data associated with performance of duty of applicants.

(b) Advise the NDRB of developments in personnel management which may have a bearing on discharge review judgments.

(c) Implement the discharge review decisions of the NDRB and those of higher authority within respective areas of cognizance.

(d) Include the record of NDRB proceedings as a permanent part of the service record of the applicant in each case.

(e) Where appropriate, recommend cases for the NDRB to review on its own motion.

(f) Provide qualified personnel as NDRB members, recorders and administrative staff.

(g) Establish administrative procedures to ensure that if a member is separated from the Navy or the Marine Corps under other than fully honorable conditions, the member is advised of:

(1) the right to a review of his or her discharge under provisions of 10 U.S.C. § 1553, and

(2) the procedures for applying for such a review.

(h) Provide Navy and Marine Corps units and activities with information on the mission of the Naval Discharge Review Board through entries in appropriate personnel administration directives.

§ 724.306 Functions of the Commander, Naval Medical Command.

Under the CNO the COMNAVMEDCOM shall facilitate, as required, access by the NDRB to health records of applicants.

§ 724.307 Functions of the Commander, Naval Reserve Force.

In the case of Navy, the COMNAVRESFOR shall discharge the responsibilities of the CNO—

(a) Upon request and within available resources, provide qualified inactive duty reservists to serve as members of the NDRB.

(b) Upon request, provide appropriate accommodations to the NDRB Traveling Panels for purposes of conducting reviews at Naval and Marine Corps Reserve Centers and aviation facilities.

Subpart D—Principal Elements of the Navy Department Discharge Review System

§ 724.401 Applicants.

As defined in § 724.114.

§ 724.402. Naval Discharge Review Board.

As defined in § 724.102.

§ 724.403 President, Naval Discharge Review Board.

Supervises the Naval Discharge Review Board. (See Subpart C).

§ 724.404 Director, Naval Council of Personnel Boards.

Exercises adminstrative control and oversight of the Naval discharge review process. (See Subpart C).

§ 724.405 Commandant of the Marine Corps or the Commander, Naval Military Personnel Command.

Personnel managers of the Marine Corps and the Navy; responsible for providing limited support to the Naval Discharge Review Board and for implementation of departmental discharge review decisions. (See Subpart C).

§ 724.406 Commander, Naval Medical Command.

Custodian of Navy and Marine Corps health records. (See Subpart C).

§ 724.407 Commander, Naval Reserve Force.

Manages Naval Reserve resources. Responsible for providing limited support to the Naval Discharge Review Board. (See Subpart C).

§ 724.408 Secretary of the Navy.

The final authority within the Department of the Navy in discharge review.

Subpart E—Procedural Rights of the Applicant and Administrative Actions Preliminary to Discharge Review

§ 724.501 Procedural Rights of the Applicant.

Each applicant has the following procedural rights:

(a) Within 15 years after the date of discharge, to make a written request for review of the applicant's discharge if the discharge was other than the result of a general court-martial. The request may include such other statements, affidavits, or documentation as desired.

(b) To have that review conducted by the NDRB either in the NCR or other designated location, when a personal appearance discharge review is desired.

(c) To appear before the NDRB in person, with or without counsel/representative; with counsel/representative concurrence, to have counsel/representative present the applicant's case in the absence of the applicant; or to have the review conducted based on records and any additional documentation submitted by the applicant or counsel/representative.

(d) To request copies of any documents or other evidence to be considered by the NDRB in the review of the applicant's discharge or dismissal other than the documents or evidence contained in the official record or submitted by the applicant prior to the conduct of the formal review and to be afforded an opportunity to examine such other documents or evidence or to be provided with copies of them.

(e) To withdrawn the request for discharge review without prejudice at any time prior to the scheduled review, except that failure to appear for a scheduled hearing shall not be construed or accepted as a withdrawal.

(f) To request a continuance of the review when the continuance is of a reasonable duration and essential to achieving a full and fair hearing. The request must indicate the reason why the continuance is required.

(g) To request postponement of the discharge review for good and sufficient reason set forth in a timely manner.

(h) To request reconsideration of the discharge review under the conditions set forth in § 724.217.

(i) To have access to the information to be considered by the NDRB prior to the actual review of the applicant's case.

(j) To have the applicant's right to privacy protected in any review conducted by the NDRB.

(k) When appearing personally before the NDRB:

(1) To introduce witnesses, documents, and sworn or unsworn testimony.

(2) To present oral or written arguments personally or through counsel/representative.

(l) To submit documents, affidavits, briefs or arguments in writing. When the counsel/representative appears in person before the NDRB, arguments may be presented orally.

(m) To state clearly and specifically the issue or issues which the applicant desires the NDRB to answer in writing. These must be presented in writing on DD Form 293 by the applicant or counsel/representative.

(n) To have the applicant's discharge reviewed under the standards of equity and propriety outlined in Subpart I.

(o) To be provided with a written decision on the applicant's review.

(p) If the case is to be forwarded for Secretarial review, to present a timely statement rebutting any findings, conclusions, or reasons of the NDRB or the President, NDRB, which are alleged to be erroneous on the facts, against the substantial weight of the evidence, or contrary to law or governing regulation, prior to that Secretarial review.

§ 724.502 Actions to be Taken by the Applicant Preliminary to Discharge Review.

(a) *Application for Review of Discharge or Dismissal From the Armed Forces of the United States*, DD Form 293 must be used in requesting a discharge review. DD Form 293 is available at most military installations and regional offices of the Veterans Administration. This form is to be signed personally by the applicant. In the event the discharged individual is deceased or incompetent, the form must be signed by an authorized individual as discussed in § 724.113 of this Manual.

(b) The application is to be accompanied by:

(1) A copy of the certificate of discharge, if available;

(2) A copy of the Armed Forces of the United States Report of Transfer or Discharge (DD-214), if available;

(3) Certification of death, incompetency and evidence of relationship in applicable cases (§ 724.113);

(4) Other statements, affidavits, depositions, documents and information desired by the applicant to be considered by the NDRB.

(c) Correspondence relating to review of naval discharges should be addressed to:

Naval Discharge Review Board, Suite 905—801 North Randolph Street, Arlington, VA 22203

(d) NDRB telephone number is (202) 696-4881.

§ 724.503 NDRB Response to Application for Discharge Review.

(a) The NDRB shall acknowledge receipt of the application.

(b) In the event a documentary review is requested, the applicant shall normally receive no further communication from the NDRB until notified of the decision in the case.

(c) In the event a personal appearance discharge review is requested, the applicant shall be notified of the proposed time and place of this review and shall be advised of the availability of the official documents to be considered by the NDRB.

(d) A copy of NDRB correspondence to an applicant shall be sent to the representative of record, if any.

§ 724.504 NDRB Actions Preliminary to Discharge Review.

(a) When each application for discharge review is received by the NDRB, the service record and health record of the applicant will be requested from the appropriate record custodian.

(b) Upon receipt, each record of service will be reviewed to determine whether or not the applicant appears to have been discharged under circumstances which might act as a bar to Veterans' Administration benefits under 38 U.S.C. § 3103. These circumstances of discharge are:

(1) Discharge or dismissal by reason of the sentence of a general court-martial.

(2) Discharge as a conscientious objector who refused to perform military duty, to wear the uniform or otherwise to comply with lawful orders of competent military authority.

(3) Discharge as a deserter.

(4) Discharge on the basis, or as part of the basis, of an absence without authority from active duty for a continuous period of at least 180 days, if such discharge was under conditions other than honorable. Additionally, such absence is computed without regard to the applicant's normal or adjusted expiration of term of service.

(5) Discharge or dismissal of an officer based on acceptance of the officer's resignation for the good of the service.

(6) Discharge, on his/her own application, during a period of hostilities, as an alien.

(c) If it appears that the applicant was discharged under one or more of the circumstances outlined in § 724.504b, a written notification will be sent which informs the applicant that:

(1) An initial service record review reveals that the discharge may have been awarded under circumstances which make the applicant ineligible for receipt of VA benefits regardless of any action taken by the NDRB.

(2) Separate action by the Board for Correction of Naval Records (BCNR) and/or the VA, in case of 180 days consecutive UA disqualification, may confer eligibility for VA benefits. Instructions for making application to the BCNR and for contacting the VA are provided.

Subpart F—Naval Discharge Review Board Mission and Functions

§ 724.601 General.

The NDRB is a component of the Naval Council of Personnel Boards and has its offices located in the NCR. The NDRB conducts documentary reviews and personal appearance reviews in the NCR and, on a traveling basis, at selected sites within the 48 contiguous states. Regional site selection is predicated on the number of pending applications accumulated from a given geographical area and the resources available to support distant personal appearance reviews. The NDRB does not maintain facilities other than at its NCR offices. The primary sites of NCR are: Chicago, IL; Dallas, TX; and San Francisco, CA.

§ 724.602 Mission.

To decide, in accordance with standards of naval law and discipline and the standards for discharge review set forth in Subpart I, whether a discharge or dismissal from the naval service is proper and equitable, or whether it should be changed.

§ 724.603 Functions.

(a) Meet as frequently as necessary to provide expeditious review of naval discharges.

(b) Meet at locations within the 48 contiguous states as determined appropriate on the basis of the number of discharge review applications received from various geographical areas and of available resources and facilities.

(c) Review applications for review of discharges.

(d) In consonance with directives of higher authority and the policies set forth in this Manual, grant or deny change of discharges.

(e) Promulgate decisions in a timely manner.

(f) Maintain a system of records.

(g) Maintain liaison in discharge review matters with:

(1) General Counsel of the Navy

(2) Commandant of the Marine Corps

(3) Chief of Naval Operations

(i) Commander, Naval Reserve Force

(ii) Commander, Naval Medical Command

(iii) Commander, Naval Military Personnel Command, under the Chief of Naval Personnel

(4) Judge Advocate General of the Navy.

(5) Veterans' service organizations.

(6) Discharge review boards of the other services, using the Army Discharge Review Board as the focal point for service coordination.

(h) Protect the privacy of individuals whose records are reviewed.

(i) Maintain for public access a reading file and associated index of records of NDRB proceedings in all reviews undertaken subsequent to July 1, 1975.

Subpart G—Organization of the Naval Discharge Review Board

§ 724.701 Composition.

The NDRB acting in plenary review session shall be composed of five members. Normally the members shall be career military officers, assigned to the Naval Council of Personnel Boards or otherwise made available; inactive duty officers of the Navy and Marine Corps Reserve may serve as members when designated to do so by the President, NDRB.

(a) Presiding officers of the NDRB shall normally be Navy or Marine Corps officers in the grade of Captain/Colonel or above.

(b) The remaining NDRB membership shall normally be not less than the grade of Lieutenant Commander/Major with preference being given to senior grades.

(c) At least three of the five members of the NDRB shall belong to the service from which the applicant whose case is under review was discharged.

(d) Individual membership in the NDRB may vary within the limitations of the prescribed composition.

(e) Any member of a panel of the NDRB other than the presiding officer may act as recorder for cases assigned. The recorder will participate as a voting member of the panel.

§ 724.702 Executive Management.

The administrative affairs of the NDRB shall be managed by the Executive Secretary. This responsibility shall include schedules, records, correspondence and issuance of NDRB decisions.

§ 724.703 Legal Counsel.

Normally, the NDRB shall function without the immediate attendance of legal counsel. In the event that a legal advisory opinion is deemed appropriate by the NDRB, such opinion shall be obtained routinely by reference to the senior Judge Advocate assigned to the Office of the Director, Naval Council of Personnel Boards. In addition, the NDRB may request advisory opinions from staff offices of the Department of the Navy, including, but not limited to the General Counsel and the Judge Advocate General.

Subpart H—Procedures of Naval Discharge Review Board

§ 724.801 Matters to be Considered in Discharge Review.

In the process of its review of discharges, the NDRB shall examine available records and pertinent regulations of the Department of the Navy, together with such information as may be presented by the applicant and/or representative, which will normally include:

(a) The application for discharge review;

(b) Statements, affidavits or documentation, if any, accompanying the application or presented during hearings;

(c) Testimony, if any, presented during hearings;

(d) Service and health records;

(e) A brief of pertinent facts extracted from the service and health records, prepared by the NDRB recorder.

§ 724.802 Applicant's Responsibilities.

(a) *Request for change of discharge.* An applicant may request a change in the character of or reason for discharge (or both).

(1) *Character of discharge.* Block 7 of DD Form 293 provides an applicant an opportunity to request a specific change in character of discharge (for example, General Discharge to Honorable Discharge; Other than Honorable Discharge to General or Honorable Discharge). A person separated on or after 1 October 1982 while in an entry level status may request a change from Other Than Honorable Discharge to Entry Level Separation. A request for review from an applicant who does not have an Honorable Discharge will be treated as a request for a change to an Honorable Discharge unless the applicant requests a specific change to another character of discharge.

(2) *Reason for discharge.* Block 7 of DD Form 293 provides an applicant an opportunity to request a specific change in the reason for discharge. If an applicant does not request a specific change in the reason for discharge, the NDRB will presume that the request for review does not involve a request for change in the reason for discharge. Under its responsibility to examine the propriety and equity of an applicant's discharge, the NDRB will change the reason for discharge if such a change is warranted.

(3) The applicant must ensure that issues submitted to the NDRB are consistent with the request for change in discharge set forth in block 7 of the DD Form 293. If an ambiguity is created by a difference between and applicant's issue and the request in block 7, the NDRB will respond to the issue in the context of the action requested in block 7. In the case of a personal appearance hearing, the NDRB will attempt to resolve the ambiguity under § 724.802c.

(b) Request for consideration of specific issues. An applicant may request the Board to consider specific issues which, in the opinion of the applicant, form a basis for changing the character of or reason for discharge, or both. In addition to the guidance set forth in this section, applicants should consult the other sections in this manual before submitting issues for consideration by the Board.

(1) *Submission of issues on DD Form 293.* Issues must be provided to the NDRB on DD Form 293 (82 Nov) before the NDRB closes the review process for deliberation.

(i) *Issues must be clear and specific.* An issue must be stated clearly and specifically in order to enable the NDRB to understand the nature of the issue and its relationship to the applicant's discharge.

(ii) *Separate listing of issues.* Each issue submitted by an applicant should be listed separately. Submission of a separate statement for each issue provides the best means of ensuring that the full import of the issue is conveyed to the NDRB.

(iii) *Use of DD Form 293.* DD Form 293 provides applicants with a standard format for submitting issues to the NDRB, and its use:

(A) Provides a means for an applicant to set forth clearly and specifically those matters that, in the option of the applicant, provide a basis for changing the discharge;

(B) Assists the NDRB in focusing on those matters considered to be important by an applicant;

(C) Assists the NDRB in distinguishing between a matter submitted by an applicant in the expectation that it will be treated as a decisional issue, and those matters submitted simply as background or supporting materials;

(D) Provides the applicant with greater rights in the event that the applicant later submits a complaint concerning the decisional document;

(E) Reduces the potential for disagreement as to the content of an applicant's issue.

(iv) *Incorporation by reference.* If the applicant makes an additional written submission, such as a brief, in support of the application, the applicant may incorporate by reference specific issues set forth in the written submission in accordance with the guidance on DD Form 293. The reference shall be specific enough for the NDRB to identify clearly the matter being submitted as an issue. At a minimum, it shall identify the page, paragraph, and sentence incorporated. Because it is to the applicant's benefit to bring such issues to the NDRB's attention as early as possible in the review, applicants who submit a brief are strongly urged to set forth all such issues as a separate item at the beginning of the brief. If it reasonably appears that the applicant inadvertently failed expressly to incorporate an issue which the applicant clearly identifies as an issue to be addressed by the NDRB, the NDRB shall respond to such an issue. (See § 724.805 and § 724.806.)

(v) *Effective date of the new Form DD 293.* With respect to applications pending (before November 1982, the effective date of the new DD Form 293), the NDRB shall consider issues clearly and specifically stated in accordance with the rules in effect at the time of submission. With respect to applications received after November 1982, if the applicant submits an obsolete DD Form 293, the NDRB shall accept the application, but shall provide the applicant with a copy of the new form and advise the applicant that it will only respond to issues submitted on the new form in accordance with this instruction.

(2) *Relationship of issues to character of or reason for discharge.* If the application applies to both character of and reason for discharge, the applicant

is encouraged, but not required, to identify the issue as applying to either the character of or the reason for discharge (or both). Unless the issue is directed at the reason for discharge expressly or by necessary implication, the NDRB will presume that it applies solely to the character of discharge.

(3) *Relationship of issues to the standards for discharge review.* The NDRB reviews discharges on the basis of issues of propriety and equity. The standards used by the NDRB are set forth in § 724.804. The applicant is encouraged to review those standards before submitting any issue upon which the applicant believes a change in discharge should be based.

(i) *Issues concerning the equity of the discharge.* An issue of equity is a matter that involves a determination whether a discharge should be changed under the equity standards of this part. This includes any issue, submitted by the applicant in accordance with § 724.802b(1), that is addressed to the discretionary authority of the NDRB.

(ii) *Issues concerning the propriety of a discharge.* An issue of propriety is a matter that involves a determination whether a discharge should be changed under the propriety standards of this part. This includes an applicant's issue, submitted in accordance with § 724.802b(1), in which the applicant's position is that the discharge must be changed because of an error in the discharge pertaining to a regulation, statute, constitutional provision, or other source of law (including a matter that requires a determination whether, under the circumstances of the case, action by military authorities was arbitrary, capricious, or an abuse of discretion). Although a numerical reference to the regulation or other sources of law alleged to have been violated is not necessarily required, the context of the regulation or a description of the procedures alleged to have been violated normally must be set forth in order to inform the NDRB adequately of the basis for the applicant's position.

(iii) *The applicant's identification of an issue.* The applicant is encouraged, but not required, to specify that each issue pertains to the propriety or the equity of the discharge. This will assist the NDRB in assessing the relationship of the issue to propriety or equity.

(4) *Citation of matter from decisions.* The primary function of the NDRB involves the exercise of discretion on a case-by-case basis. Applicants are not required to cite prior decisions as the basis for a change in discharge. If the applicant wishes to bring the NDRB's attention to a prior decision as background or illustrative material, the citation should be placed in a brief or other supporting documents. If, however, it is the applicant's intention to submit an issue that sets forth specific principles and facts from a specific cited decision, the following requirements with respect to applications received on or after November 27, 1982 apply:

(i) The issue must be set forth or expressly incorporated in the "Applicant's Issue" portion of DD Form 293.

(ii) If an applicant's issue cites a prior decision (of the NDRB, another Board, an agency, or a court), the applicant shall describe the specific principles and facts that are contained in the prior decision and explain the relevance of cited matter to the applicant's case.

(iii) To ensure timely consideration of principles cited from unpublished opinions (including decisions maintained by the Armed Forces Discharge Review Board/Corrective Board Reading Room), applicants must provide the NDRB with copies of such decisions or of the relevant portion of the treatise, manual or similar source in which the principles were discussed. At the applicant's request, such materials will be returned.

(iv) If the applicant fails to comply with requirements in § 724.802b(4), the decisional document shall note the defect, and shall respond to the issue without regard to the citation.

(c) *Identification by the NDRB of issues submitted by an applicant.* The applicant's issues shall be identified in accordance with this section after a review of the materials noted under § 924.803, is made.

(1) *Issues on DD Form 293.* The NDRB shall consider all items submitted as issues by an applicant on DD Form 293 (or incorported therein).

(2) *Amendment of issues.* The NDRB shall not request or instruct an applicant to amend or withdraw any matter submitted by the applicant. Any amendment or withdrawal of an issue by an applicant shall be confirmed in writing by the applicant. Nothing in this provision:

(i) Limits the NDRB's authority to question an applicant as to the meaning of such matter;

(ii) Precludes the NDRB from developing decisional issues based upon such questions;

(iii) Prevents the applicant from amending or withdrawing such matter any time before the NDRB closes the review process for deliberation; or

(iv) Prevents the NDRB from presenting an applicant with a list of proposed decisional issues and written information concerning the right of the applicant to add to, amend, or withdraw the applicant's submission. The written information will state that the applicant's decision to take such action (or decline to do so) will not be used against the applicant in the consideration of the case.

(3) *Additional issues identified during a hearing.* The following additional procedure shall be used during a hearing in order to promote the NDRB's understanding of an applicant's presentation. If, before closing the case for deliberation, the NDRB believes that an applicant has presented an issue not listed on DD Form 293, the NDRB may so inform the applicant, and the applicant may submit the issue in writing or add additional written issues at that time. This does not preclude the NDRB from developing its own decisional issues.

§ 724.803 The Decisional Document.

A decisional document shall be prepared for each review. At a minimum, this document shall contain:

(a) The circumstances and character of the applicant's service as extracted from available service records, including health records, and information provided by other government authorities or the applicant, such as, but not limited to:

(1) Information concerning the discharge under review, including:

(i) Date (YYMMDD) of discharge;

(ii) Character of discharge;

(iii) Reason for discharge;

(iv) The specific regulatory authority under which the discharge was issued;

(v) Date (YYMMDD) of enlistment;

(vi) Period of enlistment;

(vii) Age at enlistment;

(viii) Length of service;

(ix) Periods of unauthorized absence;

(x) Conduct and efficiency ratings (numerical or narrative);

(xi) Highest rank achieved;

(xii) Awards and decorations;

(xiii) Educational level;

(xiv) Aptitude test scores;

(xv) Incidents of punishment pursuant to Article 15, Uniform Code of Military Justice (including nature and date (YYMMDD) of offense or punishment);

(xvi) Convictions by court-martial;

(xvii) Prior military service and type of discharge received.

(2) Any other matters in the applicant's record which pertains to the discharge or the issues, or provide a clearer picture of the overall quality of the applicant's service.

(b) A list of the type of documents submitted by or on behalf of the applicant (including written briefs, letters of recommendation, affidavits concerning the circumstances of the

discharge, or other documentary evidence), if any.

(c) A statement whether the applicant testified, and a list of the type of witnesses, if any , who testified on behalf of the applicant.

(d) A notation whether the application pertained to the character of discharge, the reason for discharge, or both.

(e) A list of the items submitted as issues on DD Form 293 or expressly incorporated therein and such other items submitted as issues by the applicant that are identified as inadvertently omitted. If the issues are listed verbatim on DD Form 293, a copy of the relevant portion of the form may be attached. Issues that have been withdrawn or modified with the written consent of the applicant need not be listed.

(f) The response to the items submitted as issues by the applicant.

(g) A list of decisional issues and a discussion of such issues.

(h) NDRB's conclusions on the following:

(1) Whether the character of or reason for discharge should be changed.

(2) The specific changes to be made, if any.

(i) A record of the voting, including:

(1) The number of votes for the NDRB's decision and the number of votes in the minority, if any.

(2) The NDRB members' names and votes. The copy provided to the applicant may substitute a statement that the names and votes will be made available to the applicant at the applicant's request.

(j) Advisory opinions, including those containing factual information, when such opinions have been relied upon for final decision or have been accepted as a basis for rejecting any of the applicant's issues. Such advisory opinions or relevant portions that are not fully set forth in the discussion of decisional issues or otherwise in response to items submitted as issues by the applicant shall be incorporated by reference. A copy of opinions incorporated by reference shall be appended to the decision and included in the record of proceedings.

(k) The recommendation of the NDRB president when required.

(l) The addendum of the SRA when required.

(m) Index entries for each decisional issue under appropriate categories listed in the index of decisions.

(n) An authentication of the document by an appropriate official.

§ 724.804 Decision Process.

(a) The NDRB or the NDRB panel, as appropriate, shall meet in plenary session to review discharges and exercise its discretion on a case-by-case basis in applying the standard set forth in Subpart I.

(b) The presiding officer is responsible for the conduct of the discharge review. The presiding officer shall convene, recess, and adjourn the NDRB panel as appropriate and shall maintain an atmosphere of dignity and decorum at all times.

(c) Each NDRB member shall act under oath or affirmation requiring careful, objective consideration of the application. NDRB members are responsible for eliciting all facts necessary for a full and fair review. They shall consider all information presented to them by the applicant. In addition, they shall consider available military service and health records, together with other records that may be in the files of the military department concerned and relevant to the issues before the NDRB, and any other evidence obtained in accordance with this Manual.

(d) The NDRB shall identify and address issues after a review of the following material obtained and presented in accordance with this Manual and any implementing instructions of the NDRB: available official records, documentary evidence submitted by or on behalf of an applicant, presentation of a hearing examination, testimony by or on behalf of an applicant, oral or written arguments presented by or on behalf of an applicant, and any other relevant evidence.

(e) If an applicant who has requested a hearing does not respond to a notification letter or does not appear for a scheduled hearing, the NDRB may complete the review on the basis of material previously submitted and available service records.

(f) *Application of standards.* (1) When the NDRB determines that an applicant's discharge was improper, the NDRB will determine which reason for discharge should have been assigned based upon the facts and circumstances before the discharge authority, including the service regulations governing reasons for discharge at the time the applicant was discharged. Unless it is also determined that the discharge was inequitable, the provisions as to the characterization in the regulation under which the applicant should have been discharged will be considered in determining whether further relief is warranted.

(2) When the NDRB determines that an applicant's discharge was inequitable, any change will be based on the evaluation of the applicant's overall record of service and relevant regulations of the service of which the applicant was a member.

(g) Voting shall be conducted in closed session, a majority of the votes of the five members constituting the NDRB decision.

(h) Details of closed session deliberations of the NDRB are priviledged information and shall not be divulged.

(i) There is no requirement for a statement of minority views in the event of a split vote.

(j) The NDRB may request advisory opinions from appropriate staff officers of the naval service. These opinions are advisory in nature and are not binding on the NDRB in its decision-making process.

(k) The preliminary determinations required by 38 U.S.C. § 3103(e) shall be made upon majority vote of the NDRB concerned on an expedited basis. Such determination shall be based upon the standards set forth in this Manual.

§ 724.805 Response to Items Submitted as Issues by the Applicant.

(a) *General guidance.* (1) If any issue submitted by an applicant contains two or more clearly separate issues, the NDRB should respond to each issue under the guidance of this paragraph as if it had been set forth separately by the applicant.

(2) If an applicant uses a "building block" approach (that is, setting forth a series of conclusions on issues that lead to a single conclusion purportedly warranting a change in the applicant's discharge), normally there should be a separate response to each issue.

(3) Nothing in this paragraph precludes the NDRB from making a single response to multiple issues when such action would enhance the clarity of the decisional document, but such response must reflect an adequate response to each separate issue.

(b) *Decisional issues.* An item submitted as an issue by an applicant in accordance with this Manual shall be addressed as a decisional issue in the following circumstances:

(1) When the NDRB decides that a change in discharge should be granted, and the NDRB bases its decision in whole or in part on the applicant's issue; or

(2) When the NDRB does not provide the applicant with the full change in discharge requested, and the decision is based in whole or in part on the NDRB's disagreement on the merits with an issue submitted by the applicant.

(c) *Response to items not addressed as decisional issues.* (1) If the applicant

receives the full change in discharge requested (or a more favorable change), that fact shall be noted and the basis shall be addressed as a decisional issue. No further response is required to other issues submitted by the applicant.

(2) If the applicant does not receive the full change in discharge requested with respect to either the character of or reason for discharge (or both), the NDRB shall address the items submitted by the applicant under § 724.806, (Decisional Issues) unless one of the following responses is applicable:

(i) *Duplicate issues.* The NDRB may state that there is a full response to the issue submitted by the applicant under a specified decisional issue. This response may be used only when one issue clearly duplicates another or the issue clearly requires discussion in conjunction with another issue.

(ii) *Citations without principles and facts.* The NDRB may state that the applicant's issue, which consists of a citation to a decision without setting forth any principles and facts from the decision that the applicant states are relevant to the applicant's case, does not comply with the requirements of § 724.802b(4).

(iii) *Unclear issues.* The NDRB may state that it cannot respond to an item submitted by the applicant as an issue because the meaning of the item is unclear. An issue is unclear if it cannot be understood by a reasonable person familiar with the discharge review process after a review of the materials considered.

(iv) *Nonspecific issues.* The NDRB may state that it cannot respond to an item submitted by the applicant as an issue because it is not specific. A submission is considered not specific if a reasonable person familiar with the discharge review process after a review of the materials considered cannot determine the relationship between the applicant's submission and the particular circumstances of the case. This response may be used only if the submission is expressed in such general terms that no other response is applicable. For example, if the NDRB disagrees with the applicant as to the relevance of matters set forth in the submission, the NDRB normally will set forth the nature of the disagreement with respect to decisional issues, or it will reject the applicant's position. If the applicant's submission is so general that none of those provisions is applicable, then the NDRB may state that it cannot respond because the item is not specific.

§ 724.806 Decisional Issues.

(a) *General.* Under the guidance in this section, the decisional document shall discuss the issues that provide a basis for the decision whether there should be a change in the character of or reason for discharge. In order to enhance clarity, the NDRB should not address matters other than issues relied upon in the decision or raised by the applicant.

(1) *Partial change.* When the decision changes a discharge, but does not provide the applicant with the full change in discharge requested, the decisional document shall address both the issues upon which change is granted and the issues upon which the NDRB denies the full change requested.

(2) *Relationship of issue of character of or reason for discharge.* Generally, the decisional document should specify whether a decisional issue applies to the character of or reason for discharge (or both), but it is not required to do so.

(3) *Relationship of an issue to propriety or equity.* (i) If an applicant identifies an issue as pertaining to both propriety and equity, the NDRB will consider it under both standards.

(ii) If an applicant identifies an issue as pertaining to the propriety of the discharge (for example, by citing a propriety standard or otherwise claiming that a change in discharge is required as a matter of law), the NDRB shall consider the issue solely as a matter of propriety. Except as provided in § 724.806a(3)(d), the NDRB is not required to consider such an issue under the equity standards.

(iii) If the applicant's issue contends that the NDRB is required as a matter of law to follow a prior decision by setting forth an issue of propriety from the prior decision and describing its relationship to the applicant's case, the issue shall be considered under the propriety standards and addressed under § 724.806 a or b.

(iv) If the applicant's issue sets forth principles of equity contained in a prior NDRB decision, describes the relationship to the applicant's case, and contends that the NDRB is required as a matter of law to follow the prior case, the decisional document shall note that the NDRB is not bound by its discretionary decisions in prior cases. However, the principles cited by the applicant, and the description of the relationship of the principles to the applicant's case, shall be considered and addressed under the equity standards.

(v) If the applicant's issue cannot be identified as a matter of propriety or equity, the NDRB shall address it as an issue of equity.

(b) *Change of discharge: issues of propriety.* If a change in the discharge is warranted under the propriety standards, the decisional document shall state that conclusion and list the errors of expressly retroactive changes in policy or violations of regulations that provide a basis for the conclusion. The decisional document shall cite the facts in the record that demonstrate the relevance of the error or change in policy to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not granting the full change shall be set forth.

(c) *Denial of the full change requested: issues of propriety.* (1) If the decision rejects the applicant's position on an issue of propriety, of if it is otherwise decided on the basis of an issue of propriety that the full change in discharge requested by the applicant is not warranted, the decisional document shall note that conclusion.

(2) The decisional document shall list reasons for its conclusion on each issue of propriety under the following guidance:

(i) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the NDRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the particular circumstances in the case.

(ii) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstances, including a factor required by applicable service regulations to be considered for determination of the character of and reason for the applicant's discharge, the NDRB shall make a finding of fact for each such event or circumstance.

(A) For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

(B) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the NDRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the

presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the NDRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(iii) If the NDRB disagrees with the position of the applicant on an issue of propriety, the following guidance applies in addition to the guidance in § 724.806c(2) (a) and (b):

(A) The NDRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with § 724.802b(4).

(B) The NDRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with § 724.802b(4)) are not relevant to the applicant's case.

(C) The NDRB may reject an applicant's position by stating that the applicant's issue of propriety is not a matter upon which the NDRB grants a change in discharge, and by providing an explanation for this position. When the applicant indicates that the issue is to be considered in conjunction with one or more other specified issues, the explanation will address all such specified issues.

(D) The NDRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the NDRB agreed with the applicant's position.

(E) If the applicant take the position that the discharge must be changed because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the NDRB may respond that it will presume the validity of the record in the absence of such corrective action. If the organization empowered to correct the record is within the Department of Defense, the NDRB should provide the applicant with a brief description of the procedures for requesting correction of the record. If the NDRB on its own motion cites this issue as a decisional issue on the basis of equity, it shall address the issue.

(F) When an applicant's issue contains a general allegation that a certain course of action violated his or her constitutional rights, the NDRB may respond in appropriate cases by noting that the action was consistent with statutory or regulatory authority, and by citing the presumption of constitutionality that attaches to statutes and regulations. If, on the other hand, the applicant makes a specific challenge to the constitutionality of the action by challenging the application of a statute or regulation in a particular set of circumstances, it is not sufficient to respond solely by citing the presumption of constitutionality of the statute or regulation when the applicant is not challenging the constitutionality of the statute or regulation. Instead, the response must address the specific circumstances of the case.

(d) *Denial of the full change in discharge requested when propriety is not at issue.* If the applicant has not submitted an issue of propriety and the NDRB has not otherwise relied upon an issue of propriety to change the discharge, the decisional document shall contain a statement to that effect. The NDRB is not required to provide any further discussion as to the propriety of the discharge.

(e) *Change of discharge: issues of equity.* If the NDRB concludes that a change in the discharge is warranted under the equity standards, the decisional document shall list each issue of equity upon which this conclusion is based. The NDRB shall cite the facts in the record that demonstrate the relevance of the issue to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not giving the full change requested shall be discussed.

(f) *Denial of the full change in discharge requested: issues of equity.* (1) If the NDRB rejects the applicant's position on an issue of equity, or if the decision otherwise provides less than the full change in discharge requested by the applicant, the decisional document shall note that conclusion.

(2) The NDRB shall list reasons for its conclusion on each issue of equity under the following guidance:

(i) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the NDRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the exercise of discretion on the issue of equity in the applicant's case.

(ii) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable service regulations to be considered for determination of the character of and reason for the applicant's discharge, the NDRB shall make a finding of fact for each such event or circumstance.

(A) For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

(B) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise indentified by members of the NDRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the NDRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(iii) If the NDRB disagrees with the postion of the applicant on an issue of equity, the following guidance applies in addition to the guidance in paragraphs above:

(A) The NDRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant).

(B) The NDRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant) are not relevant to the applicant's case.

(C) The NDRB may reject an applicant's position by explaining why the applicant's issue is not a matter upon which the NDRB grants a change in discharge as a matter of equity. When the applicant indicates that the issue is to be considered in conjunction with other specified issues, the explanation will address all such specified issues.

(D) The NDRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of

whether the NDRB agrees with the applicant's position.

(E) If the applicant takes the position that the discharge should be changed as a matter of equity because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the NDRB may respond that it will presume the validity of the record in the absence of such corrective action. However, the NDRB will consider whether it should exercise its equitable powers to change the discharge on the basis of the alleged error. If it declines to do so, it shall explain why the applicant's position did not provide a sufficient basis for the change in the discharge requested by the applicant.

(iv) When NDRB concludes that aggravating factors outweigh mitigating factors, the NDRB must set forth reasons such as the seriousness of the offense, specific circumstances surrounding the offense, number of offenses, lack of mitigating circumstances, or similar factors. The NDRB is not required however, to explain why it relied on any such factors unless the applicability or weight of such a factor is expressly raised as an issue by the applicant.

(v) If the applicant has not submitted any issues and the NDRB has not otherwise relied upon an issue of equity for a change in discharge, the decisional document shall contain a statement to that effect, and shall note that the major factors upon which the discharge was based are set forth in the service record portion of the decisional document.

§ 724.807 Record of NDRB Proceedings.

(a) When the proceedings in any review have been concluded, a record thereof will be prepared. Records may include written records, electromagnetic records, audio and/or videotape recordings, or a combination.

(b) At a minimum, the record will include the following:

(1) The application for review;

(2) A record of the testimony in either verbatim, summarized, or recorded form at the option of the NDRB;

(3) Documentary evidence or copies, other than the military service record considered by the NDRB;

(4) Briefs and arguments submitted by or on behalf of the applicant;

(5) Advisory opinions considered by the NDRB, if any;

(6) The findings, conclusions, and reasons developed by the NDRB;

(7) Notification of the NDRB's decision to the cognizant custodian of the applicant's records, or reference to the notification document;

(8) A copy of the decisional document.

§ 724.808 Issuance of Decisions Following Discharge Review.

The applicant and counsel or representative, if any, shall be provided with a copy of the decisional document and of any further action in review. Final notification of decisions shall be issued to the applicant with a copy to the counsel or representative, if any, and to the service manager concerned.

(a) Notification to applicants, with copies to counsel or representatives, shall normally be made through the U.S. Postal Service. Such notification shall consist of a notification of decision, together with a copy of the decisional document.

(b) Notification to the service manager shall be for the purpose of appropriate action and inclusion of review matter in personnel records. Such notification shall bear appropriate certification of completeness and accuracy.

(c) Actions on review by superior authority, when occurring, shall be provided to the applicant and counsel or representative in the same manner as to the notification of the review decision.

§ 724.809 Final Disposition of the Record of Proceedings.

The original decisional document and all appendices thereto, shall in all cases be incorporated in the military service record of the applicant and the service record shall be returned to the custody of the appropriate record holding facility. If a portion of the original record of proceedings cannot be stored with the service record, the service record shall contain a notation as to the place where the record is stored. Other copies including any electromagnetic records, audio and/or videotape recordings or any combination thereof shall be filed in the NDRB case folder and disposed of in accordance with appropriate naval regulations.

§ 724.810 Availability of Naval Discharge Review Board Documents for Public Inspection and Copying.

(a) A copy of the decisional document prepared in accordance with Subpart H of this enclosure shall be made available for public inspection and copying promptly after a notice of final decision is sent to the applicant.

(b) To prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from documents made available for public inspection and copying.

(1) Names, addresses, social security numbers, and military service numbers must be deleted. Written justification shall be made for all other deletions and shall be available for public inspection.

(2) The NDRB shall ensure that there is a means for relating a decisional document number to the name of the applicant to permit retrieval of the applicant's records when required in processing a complaint.

(c) Any other privileged or classified material contained in or appended to any documents required by this Manual to be furnished the applicant and counsel or representative or made available for public inspection and copying may be deleted only if a written statement on the basis for the deletions is provided the applicant and counsel or representative and made available for public inspection. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

(d) NDRB documents made available for public inspection and copying shall be located in the Armed Forces Discharge Review/Correction Board Reading Room. The documents shall be indexed in a usable and concise form so as to enable the public, and those who represent applicants before the NDRB, to isolate from all these decisions that are indexed, those cases that may be similar to an applicant's case and that indicate the circumstances under or reasons for (or both) which the NDRB or the Secretary concerned granted or denied relief.

(1) The reading file index shall include, in addition to any other item determined by the NDRB, the case number, the date, character of, reason and authority for the discharge. It shall also include the decisions of the NDRB and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions, and reasons.

(2) The index shall be maintained at selected permanent locations throughout the United States. This ensures reasonable availability to applicants at least 30 days before a traveling panel review. A list of these locations shall be published in the **Federal Register** by the Department of the Army. The index shall also be made available at sites selected for traveling panels or hearing examinations for such periods as the NDRB is present and in operation. An applicant who has requested a traveling panel review shall be advised, in the notice of such review, of the permanent index locations.

(3) The Armed Forces Discharge Review/Corrections Board Reading Room shall publish indexes quarterly for all DRBs. The NDRB shall be responsible for timely submission to the Reading Room of individual case information required for update of the indexes. In addition, the NDRB shall be responsible for submission of new index

categories based upon published changes in policy, procedures, or standards. These indexes shall be available for public inspection or purchase (or both) at the Reading Room. When the NDRB has accepted an application, information concerning the availability of the index shall be provided in the NDRB's response to the application.

§ 724.811 Privacy Act information.

Information protected under the Privacy Act is involved in the discharge review functions. The provisions of SECNAVINST 5211.5C shall be observed throughout the processing of a request for review of discharge or dismissal.

§ 724.812 Responsibilities of the Reading Room.

(a) Copies of decisional documents will be provided to individuals or organizations outside the NCR in response to written requests for such documents. Although the Reading Room shall try to make timely responses to such requests, certain factors such as the length of a request, the volume of other pending requests, and the impact of other responsibilities of the staff assigned to such duties may cause some delays. A fee may be charged for such documents under appropriate DOD and Department of the Army directives and regulations. The manual that accompanies the index of decisions shall notify the public that if an applicant indicates that a review is scheduled for a specific date, an effort will be made to provide requested decisional documents before that date. The individual or organization will be advised if that cannot be accomplished.

(b) Correspondence relating to matters under the cognizance of the Reading Room (including requests for purchase of indexes) shall be addressed to:

DA Military Review Board Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington, D.C. 20310.

§ 724.813 The Recommendation of the NDRB President.

(a) *General.* The president of the NDRB may forward cases for consideration by the Secretarial Review Authority (SRA). There is no requirement that the president submit a recommendation when a case is forwarded to the SRA. If the president makes a recommendation with respect to the character of or reason for discharge, however, the recommendation shall be prepared under the guidance in § 724.813b.

(b) *Format for recommendation.* If a recommendation is provided, it shall contain the president's view whether there should be a change in the character of or reason for discharge (or both). If the president recommends such a change, the particular change to be made shall be specified. The recommendation shall set forth the president's position on decisional issues and issues submitted by the applicant under the following guidance:

(1) *Adoption of the NDRB's decisional document.* The recommendation may state that the president has adopted the decisional document prepared by the majority. The president shall ensure that the decisional document meets the requirements of this enclosure.

(2) *Adoption of the specific statements from the majority.* If the President adopts the views of the majority only in part, the recommendation shall cite the specific matter adopted from the majority. If the president modifies a statement submitted by the majority, the recommendation shall set forth the modification.

(3) *Response to issues not included in matter adopted from the majority.* The recommendation shall set forth the following if not adopted in whole or in part from the majority:

(i) The issues on which the president's recommendation is based. Each such decisional issue shall be addressed by the president.

(ii) The president's response to items submitted as issues by the applicant.

(iii) Reasons for rejecting the conclusion of the majority with respect to the decisional document which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the president's recommendation. Such issues shall be addressed under the principles in § 724.806.

§ 724.814 Secretarial Review Authority (SRA).

(a) *Review by the SRA.* The Secretarial Review Authority (SRA) is the Secretary concerned or the official to whom Secretary's discharge review authority has been delegated.

(1) The SRA may review the following types of cases before issuance of the final notification of a decision:

(i) Any specific case in which the SRA has an interest.

(ii) Any specific case that the president of the NDRB believes is of significant interest to the SRA.

(2) Cases reviewed by the SRA shall be considered under the standards set forth in this part.

(b) *Processing the decisional document.* (1) The decisional document shall be transmitted by the NDRB president under § 724.813.

(2) The following guidance applies to cases that have been forwarded to the SRA except for cases reviewed on the NDRB's own motion, without the participation of the applicant or the applicant's counsel:

(i) The applicant and counsel or representative, if any, shall be provided with a copy of the proposed decisional document, including the NDRB president's recommendation to the SRA, if any. Classified information shall be summarized.

(ii) The applicant shall be provided with a reasonable period of time, but not less than 25 days, to submit a rebuttal to the SRA. Any issue in rebuttal consists of a clear and specific statement by the applicant in support of or in opposition to the statements of the NDRB or NDRB president on decisional issues and other clear and specific issues that were submitted by the applicant. The rebuttal shall be based solely on matters in the record before the NDRB closed the case for deliberation or in the president's recommendation.

(c) *Review of the decisional document.* If corrections in the decisional document are required, the decisional document shall be returned to the NDRB for corrective action. The corrected decisional document shall be sent to the applicant (and counsel, if any), but a further opportunity for rebuttal is not required unless the correction produces a different result or includes a substantial change in the decision by the NDRB (or NDRB president) of the issues raised by the majority or the applicant.

(d) *The addendum of the SRA.* The decision of the SRA shall be in writing and shall be appended as an addendum to the decisional document under the guidance in this subsection.

(1) *The SRA's decision.* The addendum shall set forth the SRA's decision whether there will be a change in the character of or reason for discharge (or both); if the SRA concludes that a change is warranted, the particular change to be made shall be specified. If the SRA adopts the decision recommended by the NDRB or the NDRB president, the decisional document shall contain a reference to the matter adopted.

(2) *Discussion of issues.* In support of the SRA's decision, the addendum shall set forth the SRA's position on decisional issues, items submitted as issues by an applicant and issues raised by the NDRB and the NDRB president in accordance with the following guidance:

(i) *Adoption of the NDRB president's recommendation.* The addendum may state that the SRA has adopted the NDRB president's recommendation.

(ii) *Adoption of the NDRB's proposed decisional document.* The addendum may state that the SRA has adopted the proposed decisional document prepared by the NDRB.

(iii) *Adoption of specific statements from the majority or the NDRB president.* If the SRA adopts the views of the NDRB or the NDRB president only in part, the addendum shall cite the specific statements adopted. If the SRA modifies a statement submitted by the NDRB or the NDRB president, the addendum shall set forth the modification.

(iv) *Response to issues not included in matter adopted from the NDRB or the NDRB president.* The addendum shall set forth the following if not adopted in whole or in part from the NDRB or the NDRB president:

(A) A list of the issues on which the SRA's decision is based. Each such decisional document issue shall be addressed by the SRA. This includes reasons for rejecting the conclusion of the NDRB or the NDRB president with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in a change to the discharge more favorable to the applicant than that afforded by the SRA's decision. Such issues shall be addressed under the principles in § 724.806F.

(B) The SRA's response to items submitted as issues by the applicant.

(3) *Response to the rebuttal.* (i) If the SRA grants the full change in discharge requested by the applicant (or a more favorable change), that fact shall be noted, the decisional issues shall be addressed and no further response to the rebuttal is required.

(ii) If the SRA does not grant the full change in discharge requested by the applicant (or a more favorable change), the addendum shall list each issue in rebuttal submitted by an applicant in accordance with this section, and shall set forth the response of the SRA under the following guidance:

(A) If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principals in § 724.806.

(B) If the matter adopted by the SRA provides a basis for the SRA's rejection of the rebuttal material, the SRA may note that fact and cite the specific matter adopted that responds to the issue in rebuttal.

(C) If the matter submitted by the applicant does not meet the requirements for rebuttal material, that fact shall be noted.

(4) *Index entries.* Appropriate index entries shall be prepared for the SRA's actions for matters that are not adopted from the NDRB's proposed decisional document.

§ 724.815 Complaints.

A complaint is any correspondence in which it is alleged that a decisional document issued by the NDRB or the SRA contains a specifically indentified violation of 32 CFR Part 70 or any references thereto. Complaints will be reviewed pursuant to 32 CFR Part 70.

Subpart I—Standards for Discharge Review

§ 724.901 Objective of Discharge Review.

The objective of a discharge review is ot examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of the review and the underlying factors which aid in determining whether the standards are met shall be consistent with historical criteria for determining honorable service. No factors shall be established that require automatic change or denial of a change in a discharge. Neither the NDRB nor the Secretary of the Navy shall be bound by any methodology of weighting of the factors in reaching a determination. In each case, the NDRB shall give full, fair, and impartial consideration to all applicable factors before reaching a decision. An applicant may not receive a less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

§ 724.902 Propriety of the Discharge.

(a) A discharge shall be deemed to be proper unless, in the course of discharge review, it is determined that:

(1) There exists an error of fact, law, procedure, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error if there is substantial doubt that the discharge would have remained the same if the error had not been made); or

(2) A change in policy by the military service of which the applicant was a member, made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

(b) When a record associated with the discharge at the time of issuance involves a matter in which the primary responsibility for corrective action rests with another organization (for example, another Board, agency, or court) the NDRB will recognize an error only to the extent that the error has been corrected by the organization with primary responsibility for correcting the record.

(c) The primary function of the NDRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions in which the NDRB exercised its discretion to change a discharge based on issues of equity (including the factors cited in such decisions or the weight given to factors in such decisions) do not bind the NDRB in its review of subsequent cases because no two cases present the same issues of equity.

(d) The following applies to applicants who received less than fully honorable administrative discharges because of their civilian misconduct while in an inactive duty status in a reserve component and who were discharged or had their discharge reviewed on or after April 20, 1971: the NDRB shall either recharacterize the discharge to Honorable without any additional proceedings or additional proceedings shall be conducted in accordance with the Court's Order of December 3, 1981, in *Wood* v. *Secretary of Defense* to determine whether proper grounds exist for the issuance of a less than honorable discharge, taking into account that:

(1) An other than honorable (formerly undesirable) discharge for an inactive duty reservist can only be based upon civilian misconduct found to have affected directly the performance of military duties;

(2) A general discharge for an inactive duty reservist can only be based upon civilian misconduct found to have had an adverse impact on the overall effectiveness of the military, including military morale and efficiency.

§ 724.903 Equity of the Discharge.

A discharge shall be deemed to be equitable unless:

(a) In the course of a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that:

(1) Current policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; and

(2) There is substantial doubt that the applicant would have received the same discharge, if relevant current policies and procedures had been available to the applicant at the time of the

discharge proceedings under consideration.

(b) At the time of issuance, the discharge was inconsistent with standards of discipline in the military service of which the applicant was a member.

(c) In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the NDRB viewed in conjunction with the factors listed in this paragraph and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

(1) Quality of service, as evidenced by factors such as:

(i) Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct and proficiency ratings (numerical and narrative);

(ii) Awards and decorations;

(iii) Letters of commendation or reprimand;

(iv) Combat service;

(v) Wounds received in action;

(vi) Records of promotions and demotions;

(vii) Level of responsibility at which the applicant served;

(viii) Other acts of merit that may not have resulted in formal recognition through an award or commendation;

(ix) Length of service during the service period which is the subject of the discharge review;

(x) Prior military service and type of discharge received or outstanding post service conduct to the extent that such matters provide a basis for a more thorough understanding of the performance of the applicant during the period of service which is the subject of the discharge review;

(xi) Convictions by court-martial;

(xii) Records of nonjudicial punishment;

(xiii) Convictions by civil authorities while a member of the service, reflected in the discharge proceedings or otherwise noted in the service records;

(xiv) Records of periods of unauthorized absence;

(xv) records relating to a discharge in lieu of court-martial.

(2) Capability to serve, as evidenced by factors such as:

(i) *Total capabilities.* This includes an evaluation of matters such as age, educational level, and aptitude scores. Consideration may also be given as to whether the individual met normal military standards of acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to military service.

(ii) *Family and personal problems.* This includes matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily.

(iii) *Arbitrary or capricious actions.* This includes actions by individuals in authority which constiute a clear abuse of such authority and that, although not amounting to prejudicial error, may have contributed to the decision to discharge the individual or unduly influence the characterization of service.

(iv) *Discrimination.* This includes unauthorized acts as documented by records or other evidence.

Appendix A—Policy Statement by the Secretary of Defense—Addressing Certain Categories of Discharges

Secretary of Defense memorandum of August 13, 1971, to the Secretaries of the Military Departments, The Chairman, Joint Chiefs of Staff; Subject: Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users:

"Consistent with Department of Defense Directive 1300.11, October 23, 1970, and my memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization.

"Accordingly, each Secretary of a Military Department, acting through his Discharge Review Board, will consider applications for such review from former service members. Each Secretary is authorized to issue a discharge under honorable conditions upon establishment of facts consistent with this policy. Former service members will be notified of the results of the review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized.

"The statute of limitations for review of discharges within the scope of this policy will be in accordance with 10 United States Code 1553.

"This policy shall apply to those service members whose cases are finalized or in process on or before July 7, 1971".

Secretary of Defense memorandum of April 28, 1972, to Secretaries of the Military Departments, Chairman, Joint Chiefs of Staff; Subject: Review of Punitive Discharges Issued to Drug Users:

"Reference is made to Secretary Packard's memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, and my memorandum of August 13, 1971, subject: 'Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users.'

"My August 13, 1971 memorandum established the current Departmental policy that administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization to under honorable conditions.

"It is my desire that this policy be expanded to include punitive discharges and dismissals resulting from approved sentences of courts-martial issed solely for conviction of personal use of drugs or possession of drugs for the purpose of such use.

"Review and recharacterization are to be effected, upon the application of former service members, utilizing the procedures and authority set forth in Title 10, United States Code, sections 874(b), 1552 and 1553.

"This policy is applicable only to discharges which have been executed on or before July 7, 1971, or issued as a result of a case in process on or before July 7, 1971.

"Former service members requesting a review will be notified of the results of the review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized."

Appendix B—Oath or Affirmation To Be Administered to Discharge Review Board Members

Prior to undertaking duties as a Board member, each person assigned to such duties in the precept of the Board shall execute the following oath or affirmation which shall continue in effect throughout service with the Board.

Oath/Affirmation

I, ————————, do swear or affirm that I will faithfully and impartially perform all the duties incumbent upon me as a member of the Naval Discharge Review Board; that I will fully and objectively inquire into and examine all cases coming before me; that I will, without regard to the status of the individual in any case, render my individual judgment according to the facts, my conscience and the law and regulations applicable to review of naval discharges, so help me God.

Appendix C—Samples of Formats Employed by the Naval Discharge Review Board

Attachment	Form	Title
1	Letter	En Block Notification of Decision to Commander, Naval Military Personnel Command (No Change).
2	do	En Block Notification of Decision to Commander, Naval Military Personnel Command (Change).
3	do	En Block Notification of Decision to Commandant, Marine Corps (No Change).
4	do	En Block Notification of Decision to Commandant, Marine Corps (Change).

Note.—The Forms appearing in Appendix C are not carried in the Code of Federal Regulations.

Appendix D—Veterans' Benefits

91 Stat. 1106
Pub. L. 95-126, Oct. 8, 1977
95th Congress

An Act

To deny entitlement to veterans' benefits to certain persons who would otherwise become so entitled solely by virtue of the administrative upgrading under temporarily revised standards of other than honorable discharges from service during the Vietnam era; to require case-by-case review under uniform, historically consistent, generally applicable standards and procedures prior to the award of veterans' benefits to persons administratively discharged under other than honorable conditions from active military, naval, or air service; and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That (a) section 3103 of Title 38, United States Code, is amended by—

(1) Inserting "or on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Administrator that there are compelling circumstances to warrant such prolonged unauthorized absence." after "deserter." in subsection (a), and by inserting a coma and "notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553 of title 10" before the period at the end of such subsection; and

(2) Adding at the end of such section the following new subsection:

"(e)(1) Notwithstanding any other provision of law, (A) no benefits under laws administered by the Veterans' Administration shall be provided, as a result of a change in or new issuance of a discharge under section 1553 of title 10, except upon a case-by-case review by the board of review concerned, subject to review by the Secretary concerned, under such section, of all the evidence and factors in each case under published uniform standard (which shall be historically consistent with criteria for determining honorable service and shall not include any criterion for automatically granting or denying such change or issuance) and procedures generally applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditons: and (B) any such person shall be afforded an opportunity to apply for such review under such section 1553 for a period of time terminating not less than one year after the date on which such uniform standards and procedures are promulgated and published.

"(2) Notwithstanding any other provision of law—

"(A) No person discharged or released from active military, naval, or air service under other than honorable conditions who has been awarded a general or honorable discharge under revised standards for the review of discharges, (i) as implemented by the President's directive of January 19, 1977, initiating further action with respect to the President's Proclamation 4313 of September 16, 1974, (ii) as implemented on or after April 5, 1977, under the Department of Defense's special discharge review program, or (iii) as implemented subsequent to April 5, 1977, and not made applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions, shall be entitled to benefits under laws administered by the Veterans' Administration except upon a determination, based on a case-by-case review, under standards (meeting the requirements of paragraph (1) of this subsection) applied by the board of review concerned under section 1553 of title 10, subject to review by the Secretary concerned, that such person would be awarded an upgraded discharged under such standards;

"(B) Such determination shall be made by such board, (i) on an expedited basis after notification by the Veterans' Administration to the Secretary concerned that such person has received, is in receipt of, or has applied for such benefits or after a written request is made by such person or such determination, (ii) on its own initiative within one year after the date of enactment of this paragraph in any case where a general or honorable discharge has been awarded on or prior to the date of enactment of this paragraph under revised standards referred to in clause (A) (i), (ii), or (iii) of this paragraph, or (iii) on its own initiative at the time a general or honorable discharge is so awarded in any case where a general or honorable discharge is awarded after such enactment date.

"If such board makes a preliminary determination that such person would not have been awarded an upgraded discharge under standards meeting the requirements of paragraph (1) of this subsection, such personal shall be entitled to an appearance before the board, as provided for in section 1553(c) of title 10, prior to a final determination on such question and shall be given written notice by the board of such preliminary determination and of his or her right to such appearance. The Administrator shall, as soon as administratively feasible, notify the appropriate board of review of the receipt of benefits under laws administered by the Veterans' Administration, or the application for such benefits, by any person awarded an upgraded discharge under revised standards referred to in clause (A) (i), (ii), or (iii) of this paragraph with respect to whom a favorable determination has not been made under this paragraph.".

(b) (1) The Secretary of Defense shall fully inform each person awarded a general or honorable discharge under revised standards for the review of discharges referred to in section 3103(e)(2)(A) (i), (ii), or (iii) of title 38, United States Code, as added by subsection (a)(2) of this section of his or her right to obtain an expedited determination under section 3103(e)(2)(B)(i) of such title and of the implications of the provisions of this Act for each such person.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall inform each person who applies to a board of review under section 1553 of title 10, United States Code, and who appears to have been discharged under circumstances which might constitute a bar to benefits under section 3103(a), of title 38, United States Code, (A) that such person might possibly be administratively found to be entitled to benefits under laws administered by the Veterans' Administration only through the action of a board for the correction of military records under section 1552 of such title 10 or the action of the Administrator of Veterans' Affairs under section 3103 of such title 38, and (B) of the procedures for making application to such section 1552 board for such purpose and to the Administrator of Veterans' Affairs for such purpose (including the right to proceed concurrently under such sections 3103, 1552 and 1553).

Section 2. Notwithstanding any other provision of law, the Administrator of Veterans' Affairs shall provide the type of health care and related benefits authorized to be provided under chapter 17 of title 38, United States Code, for any disability incurred or aggravated during active military, naval, or air service in line of duty by a person other than a person barred from receiving benefits by section 3103(a) of such title.

but shall not provide such health care and related benefits pursuant to this section for any disability incurred or aggravated during a period of service from which such person was discharged by reason of a bad conduct discharge.

Section 3. Paragraph (18) of section 101 of Title 38, United States Code, is amended to read as follows:

"(18) The term 'discharge or release' includes, (A) retirement from the active military, naval, or air service, and (B) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable."

Section 4. In promulgating, or making any revisions of or amendments to, regulations governing the standards and procedures by which the Veterans' Administration determines whether a person was discharged or released from active military, naval, or air service under conditions other than dishonorable, the Administrator of Veterans' Affairs shall, in keeping with the spirit and intent of this Act, not promulgate any such regulations or revise or amend any such regulations for the purpose of, or having the effect of, (1) providing any unique or special advantage to veterans awarded general or honorable discharges under revised standards for the review of discharges described in section 3103(e)(2)(A) (i), (ii), or (iii) of title 38, United States Code, as added by section 1(a)(2) of this Act, or (2) otherwise making any special distinction between such veterans and other veterans.

Section 5. This Act shall become effective on the date of its enactment, except that—

(1) Section 2 shall become effective on October 1, 1977, or on such enactment date, whichever is later; and

(2) The amendments made by section 1(a) shall apply retroactively to deny benefits under laws administered by the Veterans' Administration, except that, notwithstanding any other provision of law,

(A) With respect to any person who, on such enactment date is receiving benefits under laws administered by the Veterans' Administration, (i) such benefits shall not be terminated under paragraph (2) of section 3103(e) of title 38, United States Code, as added by section 1(a)(2) of this Act, until, (I) the day on which a final determination not favorable to the person concerned is made on an expedited basis under paragraph (2) of such section 3103(e), (II) the day following the expiration of ninety days after a preliminary determination not favorable to such person is made under such paragraph, or (III) the day following the expiration of one hundred and eighty days after such enactment date, whichever day is the earliest, and (ii) the United States shall not make any claim to recover the value of any benefits provided to such person prior to such earliest day;

(B) With respect to any person awarded a general or honorable discharge under revised standards for the review of discharges referred to in clause (A) (i), (ii), or (iii) of such paragraph who has been provided any such benefits prior to such enactment date, the United States shall not make any claim to recover the value of any benefits so provided; and

(C) The amendments made by clause (1) of section 1(a) shall apply, (i) retroactively only to persons awarded general or honorable discharges under such revised standards and to persons who, prior to the date of enactment of this Act, had not attained general eligibility to such benefits by virtue of (I) a change in or new issuance of a discharge under section 1553 of title 10, United States Code, or (II) any other provision of law, and (ii) prospectively (on and after such enactment date) to all other persons.

Dated: March 6, 1985.

William S. Roos, Jr.,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85-5844 Filed 3-18-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Assessment, Mitigation or Remission of Penalties

AGENCY: Saint Lawrence Seaway Development Corporation.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation revises its rules on assessment, mitigation or remission of penalties to reflect changes necessitated by the reorganization of the Corporation and to make certain grammatical modifications.

EFFECTIVE DATE: March 19, 1985.

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush, Chief Counsel, Saint Lawrence Seaway Development Corporation, P.O. Box 44090, Washington, D.C. 20026 (202) 426-3325.

SUPPLEMENTARY INFORMATION: As a result of the reorganization of the Corporation on April 12, 1984, the position of Resident Manager was eliminated and the offices which the Resident Manager had supervisory authority and responsibility were relocated under other Corporation officials, the majority of which were placed under the supervision of the Chief Engineer. Because the Resident Manager had been authorized by the Administrator of the Corporation to administer the procedures set forth in Subpart C of Part 401, 33 CFR, the elimination of the Resident Manager's position necessitated the designation of another Corporation official. The Corporation's Chief Engineer has been so designated and accordingly Subpart C is revised by changing "Resident Manager" to "Chief Engineer." Furthermore, also as a result of the Corporation's reorganization the title "General Counsel" was changed to "Chief Counsel" and Subpart C is revised to reflect this change. Finally, the Corporation is making a number of grammatical revisions to Subpart C, the most important of which is to eliminate gender-specific references.

This rule is not a major rule under Executive Order 12291 or a significant rule under the Department of Transportation's Regulatory Policies and Procedures. The Corporation certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is a technical change that will have no economic impact. Consequently, no Regulatory Impact Analysis, Regulatory Evaluation, or Regulatory Flexibility Analysis has been prepared in connection with this rule.

Because this rule merely changes the Corporation's procedures and practice, notice and an opportunity for comment are not required. The Corporation also finds good cause to make this rule effective upon publication in the Federal Register; The amendments merely change a delegation of authority and make minor editorial corrections.

List of Subjects in 33 CFR 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and record keeping requirements, Vessels, Waterways.

PART 401—[AMENDED]

For the reasons stated above, Subpart C—Assessment, Mitigation or Remission of Penalties of 33 CFR 401, Seaway Regulations, is amended as follows:

1. Section 401.201 is revised by substituting "the Secretary" for "him" and "Chief Engineer" for "Resident Manager" to read as follows:

§ 401.201 Delegation of authority.

(a) The Secretary of Transportation, by 49 CFR 1.52 (a) has delegated to the Administrator of the Saint Lawrence Seaway Development Corporation the authority vested in the Secretary under sections 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of the Port and Tanker Safety Act of 1978, Pub. L. 95–474 (92 Stat. 1471), as it pertains to the operation of the Saint Lawrence Seaway.

(b) The Administrator hereby authorizes the Corporation's Chief Engineer to administer this statute in accordance with the procedures set forth in this subpart.

2. Section 401.203 is revised by substituting "Chief Engineer" for "Resident Manager" and "Chief Counsel" for "General Counsel" and by other grammatical changes so that it reads as follows:

§ 401.203 Reports of violations of Seaway Regulations and instituting and conducting civil penalty proceedings.

(a) Violations of Seaway Regulations, Subpart A of this part, will be brought to the attention of the alleged violator at the time of detection whenever possible. When appropriate, there will be a written notification of the fact of the violation. This notification will set forth the time and nature of the violation and advise the alleged violator relative to the administrative procedure employed in processing civil penalty cases. The alleged violator will be advised that he or she has 15 days in which to appear before the Chief Engineer or submit a written statement for consideration. The Chief Engineer shall, upon expiration of the 15-day period, determine whether there has been a violation of the Seaway Regulations.

(b) If the Chief Engineer decides that a violation of Seaway Regulations has occurred, a determination will be made as to whether to invoke no penalty at all and close the case or whether to invoke a part or full statutory penalty. In either event, a written notice of the decision shall be given to advise the violator. If a penalty is assessed, such notice will advise the violator of the right to petition for relief within 15 days or such longer period as the Chief Engineer, in his or her discretion, may allow. The Chief Engineer may mitigate the penalty or remit it in full, except as the latter action is limited to paragraph (f) of this section. The violator may appear in person before the Chief Engineer. If the violator does not apply for relief but instead maintains that he or she has not committed the violation(s) charged, and the Chief Engineer, upon review, concludes that invocation of the penalty was proper, no remission or mitigation action will be taken. On the other hand, should the violator petition the Chief Engineer for relief without contesting the determination that a violation did, in fact, occur, relief may be granted as the circumstances may warrant.

(c) When the penalty is mitigated, such mitigation will be made conditional upon payment of the balance within 15 days of notice or within such other longer period of time as the Chief Engineer, in his or her discretion, may allow.

(d) The violator may appeal to the Administrator from the action of the Chief Engineer. Any such appeal shall be submitted to the Administrator through the Chief Engineer within 15 days of the date of notification by the Chief Engineer, or such longer period of time as the Chief Engineer, in his or her discretion, may allow.

(e) Should the alleged violator require additional time to present matters favorable to the case at any stage of these penalty proceedings, a request for additional time shall be addressed to the Chief Engineer who will grant a reasonable extension of time where sufficient justification is shown.

(f) Under the following circumstances, the Corporation's Chief Counsel shall forward cases involving violations of the Seaway Regulations to the United States Attorney with the recommendation that action be taken to collect the assessed statutory penalty:

(1) When, within the prescribed time, the violator does not explain the violation, appeal for mitigation or remission, or otherwise respond to written notices from the Chief Engineer; or

(2) When, having responded to such inquiries, the violator fails or refuses to pay the assessed or mitigated penalty, or to appeal to the Administrator, within the time prescribed; or

(3) When the violator denies that the violation(s) was committed by him or her, the Chief Engineer, upon review, disagrees and the violator thereafter fails to respond to the demand, appeal to the Administrator, or to remit payment of the assessed penalty within the time prescribed (see § 401.203(b)); or

(4) When the violator fails to pay within the prescribed time the penalty as determined by the Administrator after consideration of the violator's appeal from the action of the Chief Engineer.

(g) If a report of boarding or an investigation report submitted by a Corporation employee or investigative body discloses evidence of violation of a Federal criminal statute, the Corporation's Chief Counsel, in accordance with § 401.204, shall refer the findings to the United States Attorney for appropriate action.

3. In § 401.204, paragraphs (a), (b) and (c) are revised by substituting "Chief Counsel" for "General Counsel" and by making other grammatical corrections so that it reads as follows:

§ 401.204 Criminal penalties.

(a) Prosecution in the Federal courts for violations of Seaway Regulations enforced by the Corporation that provide, upon conviction, for punishment by fine or imprisonment is a matter finally determined the the Department of Justice. This final determination consists of deciding whether and under what conditions to prosecute or to abandon prosecution.

(b) The Corporation's Chief Counsel is hereby authorized to determine whether or not a violation of the Seaway Regulations carrying a criminal penalty is one that would justify referral of the case to the United States Attorney.

(c) The Corporation's Chief Counsel will identify the regulations that were violated and make specific recommendations concerning the proceedings to be instituted by the United States Attorney in every case.

(d) Referral of a case to the United States Attorney for prosecution terminates the Corporation's authority with respect to the criminal aspects of a violation.

4. Section 401.205 is revised by substituting "Chief Counsel" for "General Counsel" and "Chief Engineer" for "Resident Manager" so that it reads as follows:

§ 401.205 Civil and criminal penalties.

(a) If the violation of the Seaway Regulations carries a criminal penalty, the Corporation's Chief Counsel is hereby authorized to determine whether to refer the case to the United States Attorney for prosecution in accordance with § 401.204, which outlines the appropriate procedure for handling criminal cases.

(b) The decision of the United States Attorney as to whether to institute criminal proceedings shall not bar the

initiation of civil penalty proceedings by the Chief Engineer.

5. Section 401.206 is revised by substituting "Chief Engineer" for "Resident Manager" and by making other grammatical corrections so that it reads as follows:

§ 401.206 Procedure for payment of civil penalty for violation of the Seaway Regulations.

(a) The payment must be by money order or certified check payable to the order of the Saint Lawrence Seaway Development Corporation and mailed to the Comptroller. If the payment is made in person at the offices of the Saint Lawrence Seaway Development Corporation, the payment may be in cash or by postal money order or check payable to the order of the Saint Lawrence Seaway Development Corporation.

(b) The payment of any penalty will be acknowledged by written receipt.

(c) If the penalty paid is determined by the Chief Engineer to have been improperly or excessively imposed, the payor will be notified and requested to submit an application for a refund which should be mailed to the Saint Lawrence Seaway Development Corporation, attention of the Chief Engineer. Such application must be made by the payor within one year of the date of notification provided for in this section.

(d) In the event the alleged violator is about to leave the jurisdiction of the United States, he or she will be required, before being allowed to depart, to post a bond in the amount and manner suitable to the Chief Engineer, from which bond any subseqent assessed or mitigated penalty may be satisfied.

(68 Stat. 93–96, 33 U.S.C. 981–990, as amended Sec. 104, Pub. L. 92–340 86 Stat. 424 and Secs. 12 and 13 of Sec. 2 of Pub. L. 95–474, 92 Stat. 1471, and 49 CFR 1.52)

Issued at Washington, D.C. on March 8, 1985.

Saint Lawrence Seaway Development Corporation.

James L. Emery,

Administrator.

[FR Doc. 85–6360 Filed 3–18–85; 8:45 am]

BILLING CODE 4910–61–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–2791–7]

Approval and Promulgation of Implementation Plans; Ohio

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

ACTION: Final rulemaking.

SUMMARY: USEPA is disapproving a revision to the Ohio State Implementation Plan (SIP) for Volatile Organic Compounds (VOC). This revision is an alternative emission reduction plan (bubble) for the miscellaneous metal products coating lines at Senco Products, Inc., which is located in Cincinnati, Ohio. As a result of this disapproval, the existing VOC rules applicable to Senco Products and contained in the Ohio SIP remain in effect [Ohio Administrative Code Rules 3745–21–09(U) and 3745–21–04(C)(28)].

EFFECTIVE DATE: This final rulemaking becomes effective on April 18, 1985.

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Debra Marcantonio, at (312) 886–6088, before visiting the Region V Office.)

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

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088

SUPPLEMENTARY INFORMATION: Senco Products, Inc., proposed a VOC SIP revision which was submitted by the Ohio Environmental Protection Agency (OEPA). This revision request consists of a bubble with monthly averaging for the source's miscellaneous metal products coating lines. On January 20, 1984, USEPA revised its SIP revision policy for "Averaging Times for Compliance with VOC Emission Limits." This policy memorandum contains a discussion of certain air quality considerations that were not previously included in USEPA's April 15, 1983, policy memorandum on long-term averaging. (Long-term averaging refers to determining compliance by averaging emissions over more than a 24-hour period). One aspect of the revised policy states that sources in areas lacking approved SIPs or in areas with approved SIPs but showing measured violations, cannot be considered for longer averaging periods until the SIP has been revised to provide for attainment and maintenance of the national ambient air quality standard for ozone. This is because a change from daily to long-term VOC averaging can result in an increase in daily VOC emissions, which can lead to increased concentrations of ozone. If the SIP is inadequate even before the change to long-term averaging, EPA plainly cannot conclude, as required by section 110(a)(2)(B) of the Clean Air Act, that the SIP with long-term averaging will assure attainment and maintenance of the ozone standard. (These guidance memoranda are available in the rulemaking docket on this notice.) In addition, the State must demonstrate that reasonable further progress (RFP) is being maintained with respect to the maximum daily emissions from the source with long-term averaging.

USEPA cannot approve Senco's monthly proposal because there have been measured violations of the ozone National Ambient Air Quality Standards in Cincinnati, and this area lacks an approved 1982 ozone SIP. In a separate **Federal Register** notice, USEPA proposed to disapprove the Ohio 1982 ozone SIP for the Cincinnati area based on the 1983 air quality data (July 25, 1984, 49 FR 29973). Until an adequate attainment demonstration for Cincinnati is approved, USEPA cannot approve a site-specific SIP revision for a source in that area if it might lead to increased daily VOC emissions.

In addition, USEPA might be unable to approve this bubble even if it used 24-hour compliance averaging, because of concerns the Agency has with the level of baseline emissions used in the bubble. The baseline determination identifies the level of emissions beyond which reductions must occur for a source to receive "bubble" credit. In this case, the pre-trade baseline used is actual emissions, rather than the emissions associated with reasonable available control technology (RACT). On August 31, 1983, USEPA published a **Federal Register** notice soliciting comment on emissions trading in nonattainment areas without approved attainment demonstrations. This notice indicates that expiration of the July 1982 deadline for submitting ozone extension area SIPs, prevents the continued use of actual emissions as the trading baseline in ozone extension areas such as Cincinnati where extension SIPs have not received USEPA approval (48 FR 39584, column, 3, last paragraph through 39585, column 1, second paragraph). USEPA policy requires use of a RACT trading baseline for all sources in these areas. Thus, where the existing SIP does not already specify USEPA approved RACT for sources in these areas, the State must establish a RACT trading baseline for the sources. If the State of Ohio were to specify RACT for the

lubricant, which is providing credit in this bubble, and RACT-level emissions were lower than the actual emissions now used in this trade, only a portion of the reduction resulting from the switch from the original lubricant to the lubricant with exempt solvent would be creditable. This smaller amount of credit might be insufficient to offset the emissions increases that the bubble currently would allow.

Public Comments

On June 29, 1984 (49 FR 26761), USEPA proposed to disapprove the alternative emission reduction plan (bubble) for Senco Products, Inc. USEPA provided 30 days for interested parties to submit comments. During the public comment period, two sets of comments were received. An environmental group commented in favor of the proposed disapproval "both on the principal ground given (increases in daily VOC emissions are not permitted) and because the actual emissions baseline used does not represent reasonably available control technology". The second series of comments were from the Senco Products plant. Each of the Senco comments and USEPA's responses are provided below.

Comment: The company felt it has made a good faith effort to comply with all of the rules of the Ohio EPA (OEPA) and the USEPA's guidelines in effect at the time Senco made its submission to both the OEPA and the USEPA. At the time Senco's plan was resubmitted to the USEPA in mid-1983, it was in a form which very likely would have been approved by Region V under the Policy Memorandum guidelines for longer term averaging then in effect. The Senco bubble plan was an approvable plan several months prior to the Policy Memorandum guidelines dated January 20, 1984.

USEPA Response: USEPA recognizes the company did make an effort to comply with State and USEPA requirements. However, USEPA is generally unable to waive policy requirements which become effective while a pending SIP revision is under review if, as in the case of the January 20, 1984 memorandum, compliance with those requirements is needed to insure compliance with the Clean Air Act. Additionally, after the SIP submittal occurred, several violations of the ozone National Ambient Air Quality Standards (NAAQS) were measured in Cincinnati, which indicate that the existing SIP may not protect the NAAQS.

Comment: If the USEPA is going to evaluate Senco under the guidelines which are now in effect due to the change in circumstances in Ohio and due to the revised USEPA policy with respect to longer term averaging, Senco requests that the USEPA not take action on Senco's plan, as proposed in the **Federal Register** notice, but rather that the USEPA withhold action on Senco's bubble plan until further information is received from the OEPA.

USEPA Response: OEPA stated in a June 27, 1984, letter to USEPA that OEPA does not intend to withdraw the SIP revision. OEPA also requested that USEPA continue to consider the revision as a pending request. In order to consider this revision pending, USEPA must proceed with final action.

Comment: Senco maintains that their previously used lubricant, which had a VOC content of 6.72 pounds per gallon, represents RACT. Therefore, Senco is of the opinion that they should be able to use the difference in emissions between their old and new lubricant (the new lubricant is 1.26 pounds per gallon) as offsets.

USEPA Response: OEPA would need to submit an adequate demonstration in support of Senco's position that their previously used lubricant (at 6.72 lbs VOC/Gallon) constitutes RACT. No such demonstration has been made.

For reasons discussed above, USEPA is disapproving the revision to the Ohio ozone SIP for Senco Products, Inc., in Cincinnati, Ohio. As a result of the disapproval, the existing VOC rules applicable to Senco Products and contained in the Ohio SIP remain in effect. [Ohio Administrative Code Rules 3745-21-09(U) and 3745-21-04(C)(28)].

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by Reference, Ozone, Hydrocarbons.

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

Dated March 6, 1985.

Dee M. Thomas,

Administrator.

Subpart KK—Ohio

Section 52.1885 is amended by reserving paragraphs (e) and (f) and by adding paragraph (g) as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(g) *Disapproval.* On June 28, 1983, the Ohio Environmental Protection Agency submitted a revision to the Ozone State Implementation Plan (SIP) for Volatile Organic Compounds (VOC). This revision is an alternative emission reduction plan (bubble) for the miscellaneous metal products coating lines at Senco Products, Inc., which is located in Cincinnati, Ohio. Supplemental information was submitted on October 18, 1983. As a result of USEPA's disapproval of this revision, the existing VOC rules applicable to Senco Products and contained in the Ohio SIP remain in effect (Ohio Administrative Code Rules 3745-21-09(U) and 3745-21-04(c)(28)).

* * * * *

[FR Doc. 85-6297 Filed 3-18-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6591

[N-35951]

Nevada; Withdrawal of Land for Air Force Communication Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 600.32 acres of public land for use by the Air Force as a communication site and support facilities. This action will close the land to surface entry and mining for 20 years. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: April 12, 1985.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, P.O. 12000, Reno, Nevada 89520, 702-784-5481.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from appropriation under the public land laws, including the

mining laws but not the mineral leasing laws, and reserved for use by the Air Force:

Mount Diablo Meridian

Parcel "A"

T. 5 N., R. 50 E.,
Sec. 12, S½NE¼SE¼NE¼NE¼, E½SW¼SE¼NE¼NE¼,SE¼S E¼NE¼NE¼, NE¼SE¼NE¼.
From the northwest corner of section 6, T. 5 N., R. 51 E.,
Proceed northeast 5,198.6 feet on a bearing of 54°01'31" to starting point;
Thence southeast 549.4 feet on a bearing of 119°53'52";
Thence southwest 8,850.12 feet on a bearing of 209°12'23";
Thence southeast 274.5 feet on a bearing of 119°21'15";
Thence southwest 599.2 feet on a bearing of 209°12'48";
Thence northwest 274.5 feet on a bearing of 299°12'41";
Thence southwest 2,553.3 feet on a bearing of 209°14'46";
Thence northwest 549.4 feet on a bearing 299°53'52;
Thence northeast 12,003.3 feet on a bearing of 29°12'27" to point of beginning, excepting Tybo Road.
T. 5 N., R. 51 E.,
Sec. 6, E½SW¼SW¼, SE¼SW¼, W½SW¼SE¼ (that portion west of Hwy 6);
Sec. 7, lots 1, 2, E½NW¼ (that portion west of Hwy 6), excepting Tybo Road.

Parcel "B"

Commencing at the northeast corner of section 36, T. 8 N., R. 51 E.,
Thence east 8,580 feet;
Thence south 2,640 feet to the point of beginning;
Thence west 660 feet;
Thence south 660 feet;
Thence west 660 feet;
Thence south 2,640 feet;
Thence west 660 feet;
Thence south 3,300 feet;
Thence east 1,980 feet;
Thence north 6,600 feet to the point of beginning.

From a point beginning 1.5 miles from junction with Highway 6, 5,254 lineal feet of northerly access road to include 100 foot width on both sides of centerline of said road which extends to the south boundary of Parcel B. (Passes through T. 7 N., R. 52 E., Sections 5, 8, and 17.)

The areas described above aggregate approximately 600.32 acres in Nye County.

2. This withdrawal will not be utilized for storage or use of radioactive material or waste storage.

3. The portion of the county road to Tybo which passes through Parcel A shall remain open to public use without restrictions.

4. Grazing will be allowed except for those areas which are fenced or barricaded.

5. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date, pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Robert N. Broadbent,

Assistant Secretary of the Interior.

March 7, 1985.

[FR Doc. 85-6479 Filed 3-18-85; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6592

[NM 52372 and NM 54358]

New Mexico; Withdrawal of Public Lands for Preservation of Chacoan Prehistoric Communities

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 188.55 acres of public land to protect and preserve significant Chacoan Prehistoric cultural resources known as Casamero Community and Guadalupe Ruin. This action will close the public land to surface entry and mining, but not mineral leasing, for 20 years.

EFFECTIVE DATE: April 12, 1985.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501, 505-988-6326.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, for protection of significant Chacoan Prehistoric Cultural Communities.

New Mexico Principal Meridian

T. 15 N., R. 3 W.,
Sec. 14, lots 3 and 4;
T. 14 N., R. 12 W.,
Sec. 24, SE¼NE¼, E½SW¼.

The areas described aggregates 188.55 acres in McKinley and Sandoval Counties.

2. The withdrawal made by this order does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Robert N. Broadbent,

Assistant Secretary of the Interior.

March 7, 1985.

[FR Doc. 85-6481 Filed 3-18-85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550 and 580

[Docket No. 84-35]

Electronic Filing of Tariffs by Common Carriers in the Foreign and Domestic Offshore Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: The Commission amends its domestic offshore and foreign commerce tariff filing rules by permitting the electronic receipt of filings outside of the Commission's offices subject to certain stated conditions.

EFFECTIVE DATE: April 18, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5796.

John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5866

SUPPLEMENTARY INFORMATION: On October 18, 1984, the Federal Maritime Commission (Commission) issued a notice of proposed rulemaking in Docket No. 84-35—*Electronic Filing of Tariffs By Common Carriers in the Foreign and Domestic Offshore Commerce of the United States*, to amend certain domestic offshore and foreign commerce tariff filing rules (46 CFR Parts 550 and 580) in order to allow electronic tariff filings to be received on terminals located in the same building as the Commission's offices subject to certain stated conditions (49 FR 40940, Oct. 18,

1984). Interested parties were invited to file comments by November 19, 1984.

Comments on the proposed rule were received from the Inter-American Freight Conference, the Journal of Commerce, Sumner Tariff Service, Inc., Transax Data Corporation and Distribution-Publications, Inc.

The Inter-American Freight Conference (IAFC)[1] asserts that under section 8(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1707(a)(1), ("the Act"), a tariff is not on "file" with the Commission when it is electronically transmitted to an off-premises terminal because filing must be physically delivered to the Commission or deposited with a proper Commission employee. The Commission does not agree. Strictly ministerial functions may be validly delegated to private parties without express authorization in the Commission's enabling statute. *Tabor* v. *Joint Bd. for Enrollment of Actuaries*, 566 F. 2d 705 (D.C. Cir. 1977). Nothing in section 8 of the Act prohibits such a delegation. Accordingly, the Commission is modifying its proposed rule to clarify that it is delegating authority to receive tariffs to the operators of data processing terminals specially designated for this function pursuant to the provision of the rule. Moreover, the rule is further amended to require prompt physical transmission of filed tariff pages to the Commission. These provisions will both clarify the Commission's authority on this matter and protect the legitimate concerns of all affected interests.

Sumner Tariff Service, Inc. (Sumner), commented that the proposed rule did not address the question of the physical receipt of electronic filings by the Commission's staff and suggests that a "deadline" for such physical receipt should be established in the Final Rule. Distribution-Publications, Inc. also believes that the Commission should establish a specific cut-off time for actual receipt of the printed pages. Transax Data Corporation (Transax) recommends that the Commission allow electronic filing services to physically deliver tariff pages to the Commission before noon of the next business day following receipt on the terminals.

The proposed rule is revised to specify a deadline for the physical receipt by the Commission of pages from electronic filing services. Although Transax's concerns for a noon deadline have been considered, we have set the cutoff time at 9:00 a.m. on the next business day following the receipt of electronic tariff filings on the receiving machine. This deadline is imposed so that the public can access the previous days filings as soon as possible. Any extended delay, including only a few additional hours could result in interested parties being deprived of necessary tariff information for an additional day. Further, the 9:00 a.m. deadline will provide administrative processing of electronic filings in the same manner as tariff filings received from tariff filers which use the Commission's around-the-clock tariff mail drop located in the lobby of the Commission's Washington, D.C. offices.

Transax also suggests that the Commission recognize the date that pages are received on "disk," rather than by the printing device, as the official filing date. The Commission's present policy is to accept for official filing purposes the time and date that pages are received on "disk". This policy will be continued in the final rule with the further prohibition that no alteration of material filed on the disk shall be allowed. Once material is filed on the disk it must be printed without alteration.

Finally, Transax urges that the commercial entity operating the receiving terminals be identified by a registration number, an alpha-numeric code identifying the commercial entity receiving the tariff filing and the specific work station. It further recommends that this number should be unique to the commercial entity and the location of the work station rather than a number unique to a specific piece of hardware.

It is neither beneficial nor necessary for the registration number of each electronic tariff filing to identify the commercial entity by an alpha-numeric code. The unique machine registration number should be sufficient to identify the commercial entity receiving the filing.

The unique machine registration number would appear to be the best method of controlling the integrity of the electronic tariff filing system. Moreover, this method will provide surveillance over the actual hardware that will be used to receive the filings. We perceive no undue burden either to the Commission or to the commercial entities to register hardware changes, additions or replacements as they may occur.

Sumner suggests that the time, date and terminal identification be permitted to be published at the top or bottom of the tariff page. Sumner claims that some of the filings currently accepted by the Commission have this information printed at the top of the page and to change the machines to print this information on the bottom would require expensive reprogramming. This comment has merit and, accordingly, the final rule allows the terminal identification number to be printed at the top *or* bottom of the tariff page.

The final rule also contains various organization changes for the purpose of clarity. The rule moves the formerly applicable electronic filing provisions from the definition §§ 550.2(i) and 580.2(w) to 550.3(e) and 580.3(a)(2), respectively.

This rule contains no substantial information requirements or requests different than those already present in Part 580 for which O.M.B. approval has been obtained.

The Commission has determined that this final rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

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

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

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

The Chairman of the Federal Maritime Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects in 46 CFR Parts 550 and 580

Maritime carriers, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; secs. 8, 9 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707, 1708, and 1716); secs. 18(a) and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a) and 841(a); and sec. 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844) the Federal Maritime Commission amends Parts 550 and 580 of Title 46 of the Code of Federal Regulations as follows:

PART 550—[AMENDED]

1. The authority citation for Part 550 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817(a), 820 833a, 841a and 843–847.

[1] By letter December 27, 1984, Delta Streamship Lines, Inc., a member of IAFC advised that it disassociated itself from the IAFC comments.

2. Revise paragraph (i) of § 550.2 to read as follows:

§ 550.2 Definitions.

* * * * *

(i) *"File, Filing (of Tariff Matter)"* means the actual receipt by the Federal Maritime Commission at its offices in Washington, D.C., including those received by electronic transmission. Electronic filings are those transmitted through the use of commercial data processing terminals and conforming to all the regulations applicable to permanent tariff filings. The data processing receiving terminal(s) are located within the same building as the Commission's Washington, D.C. offices.

* * * * *

3. Revise paragraph (e) of § 550.3 to read as follows:

§ 550.3 Filing of tariffs; general.

* * * * *

(e)(1) Tariff matter will be received by the Commission at its Washington, D.C. offices on an around-the-clock, basis. Receipt of tariff filings during other than normal business hours will be time stamped at a tariff mail drop in the lobby of the Commission's Washington, D.C. offices.

(2)(i) Terminal's receiving electronic filings must imprint the date and time received on the top or botton of each page as well as imprinting a unique machine registration number.

(ii) The unique machine registration number must be registered with the Director, Bureau of Tariffs. Owner/operators of such registered machines must obtain certification from the Director as having delegated authority to receive tariff matter on behalf of the Commission.

(iii) Information received and stored on a "disk" must be filed without alteration. All electronically filed tariff pages including those received and stored on a "disk" must be delivered to the Commission's Tariff Library before 9:00 a.m. the next successive business day following receipt on the receiving machine.

* * * * *

PART 580—[AMENDED]

4. The authority citation to Part 580 is revised to read:

Authority: 5 U.S.C. 553; 1702–1705, 1707–1709, 1712, 1714–1716 and 1718.

5. Revise paragraph (w) of § 580.2 to read as follows:

§ 580.2 Definitions.

* * * * *

(w) *Tariff filing, electronic,* means the transmission of tariff filings to the Commission through the use of commercial data processing terminals. The data processing receiving terminal(s) are located within the same building as the Commission's Washington, D.C. offices.

6. Revise paragraph (a)(2) of § 580.3 and add paragraph (a)(3) to read as follows:

§ 580.3 Filing of tariffs; general.

(a) * * *

(2) The Commission will receive tariff filings on an around-the-clock basis. Receipt of tariff filings during other than normal business hours will be time-stamped at a tariff mail drop located in the lobby of the Commission's Washington, D.C. offices.

(3)(i) Electronic tariff filings transmitted to the Commission by electronic modes will be receipted by a date/time device on the receiving machine which will imprint the date and time on the top or bottom of each received tariff page. The receiving machine will also imprint a unique registration number which must be registered with the Director, Bureau of Tariffs. Owner/operators of registered receiving machines must obtain certification from the Director as having delegated authority to receive tariff matter on behalf of the Commission.

(ii) Tariff material filed electronically must conform to all the regulations of this part applicable to permanent tariff filings, except as follows:

(A) Electronically filed tariff pages received from data processing terminals may be used for filing with the Commission:

(B) Information received and stored on a "disk" must be printed and filed without alteration;

(C) All electronically filed tariff pages including those received and stored on a "disk" must be delivered to the Commission's Tariff Library before 9:00 a.m. the next successive business day following receipt on the receiving machine; and

(D) Electronically filed tariff matter shall be accompanied by an electronically filed letter of transmittal.

* * * * *

By the Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85–6508 Filed 3–18–85; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–03; Notice1]

New Pneumatic Tires—Passenger Cars; Correction of Error in Code of Federal Regulations

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendment.

SUMMARY: This agency has discovered an error in Title 49 of the Code of Federal Regulations relating to two of the tables following Standard No. 109, *New Pneumatic Tires—Passenger Cars.* This notice corrects that error. The correct version of these tables has previously appeared in the **Federal Register,** so no new obligations or requirements are imposed on any party as a result of this correction.

EFFECTIVE DATE: March 19, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–2992).

SUPPLEMENTARY INFORMATION: Standard No. 109, *New Pneumatic Tires—Passenger Cars* (49 CFR 571.109) sets forth a number of performance and labeling requirements which must be satisfied by each new tire for use on passenger cars manufactured after 1948. One of the requirements which those tires must meet is a strength test. Section S4.2.2.4 specifies that each tire shall meet the requirements for minimum breaking energy specified in Table I.

With the introduction of temporary spare tires in the mid-70's, NHTSA published a final rule adding tables specifying the minimum breaking energy for these new tires at 42 FR 12869, March 7, 1977. These tables specified that those tires with a maximum load rating of 880 pounds and above had to have a higher minimum breaking energy than tires with a maximum load rating below 880 pounds. However, the version of these tables published in the Code of Federal Regulations has the respective minimum breaking energy values transposed, so that it appears that the tires with the lower maximum load rating must have the higher breaking energy. This notice corrects that error.

Publication of the correct version of these requirements imposes no duties or obligations on any party, nor does it alter existing obligations. The agency has always used the correct version of these requirements for the purposes of its compliance testing, and the correct version of these requirements was published in the **Federal Register**. This notice simply ensures that the public will have a correct copy of the requirements of Standard No. 109. Accordingly, the NHTSA finds for good cause that notice and opportunity for comment on this correction are unnecessary, and the correction is effective as soon as notice is published.

List of Subjects in 49 CFR Part 571

Motor vehicle safety.

In consideration of the foregoing, 49 CFR 571.109 is amended as follows:

PART 571—[AMENDED]

§ 571.109 [Amended]

1. Table I–D in Appendix A of § 571.109 is revised to read as follows:

TABLE I–D.—FOR TIRES WITH 60 LB./IN ² MAXIMUM PERMISSIBLE INFLATION PRESSURE AND MAXIMUM LOAD RATING OF 880 LB. AND ABOVE

Cord material	Inch pounds
Rayon	1,650
Nylon or polyester	2,600

2. Table I–E in Appendix A of § 571.109 is revised to read as follows:

TABLE I–E.—FOR TIRES WITH 60 LB./IN ² MAXIMUM PERMISSIBLE INFLATION PRESSURE AND MAXIMUM LOAD RATING BELOW 880 LB.

Cord material	Inch pounds
Rayon	1,000
Nylon or polyester	1,950

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407), delegation of authority at 49 CFR 1.50)

Issued on March 13, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85–6424 Filed 3–18–85; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1135

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures; Extension of Response Time

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time.

SUMMARY: The National Industrial Transportation League has requested a 20-day extension of time to file replies to the petitions for reconsideration of the Commission's January 2, 1985 decision, published in the **Federal Register** on January 2, 1985, at 50 FR 87. The present due date for replies to the petitions is March 11, 1985 (extended at 50 FR 4518, January 31, 1985). The requested extension of time will not prejudice any party and will be granted.

DATES: Replies to the petitions for reconsideration filed in this proceeding are due April 1, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert C. Hasek, (202) 275–0938, or Douglas Galloway, (202) 275–7278.

Dated: March 7, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85–6500 Filed 3–18–85; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 50, No. 53
Tuesday, March 19, 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 52

United States Standards for Grades of Tomato Juice

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to revise the voluntary U.S. Standards for Grades of Canned Tomato Juice and establish U.S. Standards for Grades of Tomato Juice from Concentrate. The proposed rule was developed by the U.S. Department of Agriculture (USDA) at the request of major segments of the tomato juice industry. Its effect would be to improve the standards by: (1) Establishing standards for tomato juice from concentrate; (2) modernizing the format of the standards to include definitions of terms and easy to read tables; (3) removing the word "canned" from the canned tomato juice grade standards; and (4) redesignating the grade name, "U.S. Grace C" to "U.S. Grade B," with no quality change through this redesignation. Its effect would be to improve the standards and promote orderly and efficient marketing of tomato juice and tomato juice from concentrate.

DATE: Comments must be received on or before May 20, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Graesanto V. Berbano, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6247.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

The Food and Drug Administration (FDA) on January 28, 1983 (48 FR 3946) amended 21 CFR 156.145 to provide for the use of tomato concentrates (tomato puree, tomato paste and concentrated tomato juice) to prepare tomato juice from concentrate and to establish a minimum tomato soluble solids requirement of 5.0 percent, by weight, for tomato juice from concentrate.

Because of its relationship to the FDA standards, the product description in the current U.S. grade standards for "canned tomato juice" includes "canned tomato juice from concentrate." The proposed rule would provide separate requirements for "tomato juice from concentrate." Two tables—one for "tomato juice" and another for "tomato juice from concentrate" showing score point ranges for the various quality factors in tabular rather than narrative form—are included in the proposed rule.

Innovations in processing practices for tomato juice have brought about methods of marketing tomato juice in containers other than cans. So that the standards can be used for juice in these other types of packaging, the word "canned" would be eliminated from the canned tomato juice grade standards.

The canned tomato juice grade standards have the two quality levels designated as "U.S. Grade A" and "U.S. Grade C." Most other U.S. grade standards for juices have quality levels designated as "U.S. Grade A" and "U.S. Grade B." This proposal would change the grade designation of "U.S. Grade C" to "U.S. Grade B."

The proposed change would also provide a uniform format consistent with recent revisions of other U.S. grade standards. The proposed format has been designed to provide industry personnel and agricultural commodity graders with simpler and more comprehensive standards. Definitions of terms and easy to read tables have been incorporated to assure a better understanding and a uniform application of the standards.

List of Subjects in 7 CFR Part 52

Fruit and vegetable, Food grades, Standards.

Accordingly, it is proposed that Subpart—United States Standards for Grades of Canned Tomato Juice (7 CFR 52.3621—52.3630) be revised to read as follows:

Subpart—United States Standards for Grades of Tomato Juice

Sec.

52.3621 Product description.
52.3622 Definition of terms.
52.3623 Recommended sample unit sizes.
52.3624 Grades.
52.3625 Recommended fill container.
52.3626 Factors of quality and analysis.
52.3627 Requirements for grades.
52.3628 Sample size.
52.3629 Lot quality requirements.

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended (7 U.S.C. 1622, 1624).

Subpart—United States Standards for Grades of Tomato Juice

§ 52.3621 Product description.

(a) *"Tomato juice"* is the product as defined in the Standards of Identity for Tomato Juice (21 CFR 156.145), issued under the Federal Food, Drug, and Cosmetic Act.

(b) *"Tomato juice from concentrate"* is the product as defined in the Standards of Identity for Tomato Juice

(21 CFR 156.145), issued under the Federal Food, Drug, and Cosmetic Act.

§ 52.3622 Definitions of terms.

In these U.S. standards, unless otherwise required by the context, the following terms shall be construed, respectively, to mean:

(a) *Color*—(1) *General.* The amount of red tomato juice and tomato juice from concentrate is determined by comparing the color of the product with the Munsell color discs with specified percentages. The availability and procedure for using the Munsell color discs may be obtained from the supplier licensed by the U.S. Department of Agriculture:

Munsell Color Company
2441 North Calvert Street
Baltimore, Maryland 21218

Any method or device approved by the USDA (including electronic color meters) which gives equivalent results may be used.

(2) *"Good color"* means a color that is bright and characteristic of tomato juice, made from mature red tomatoes, which is not affected by caramelization, oxidation or other similar causes. Such color contains as much red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

65 percent of the area of Red (5R 2.6/13) (glossy finish);
21 percent of the area of Yellow (2.5 YR 5/12 (glossy finish); and
14 percent of the area of either Black (N1) (glossy finish) or Grey (N4) (mat finish); or
7 percent of the area of Black (N1) (glossy finish) and
7 percent of the area of Grey (N4) (mat finish), whichever most nearly matches the reflectance of the product.

(3) *"Reasonably good color"* means a color that is typical of red tomato juice which may be slightly affected by caramelization, oxidation or other similar causes.

(i) To score 25 points for color, the juice shall contain as much red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

59 percent of the area of Red (5R 2.6/13) (glossy finish);
24½ percent of the area of Yellow (2.5 YR 5/12) (glossy finish); and
16½ percent of the area of either Black (N1) (glossy finish) or Grey (N4) (mat finish); or
8¼ percent of the area of Black (N1) (glossy finish) and
8¼ percent of the area of Grey (N4) (mat finish), whichever most nearly matches the reflectance of the product.

(ii) To score 23 or 24 points for color, the juice shall contain as much red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

53 percent of the area of Red (5R 2.6/13) (glossy finish);
28 percent of the area of Yellow (2.5 YR 5/12) (glossy finish); and
19 percent of the area of either Black (N1) (glossy finish) or Grey (N4) (mat finish); or
9½ percent of the area of Black (N1) (glossy finish) and
9½ percent of the area of Grey (N4) (mat finish, whichever most nearly matches the reflectance of the product.

(b) *Consistency* means the viscosity of tomato juice or tomato juice from concentrate including the degree of separation of the insoluble solids.

(1) *Good Consistency* means that the juice flows readily; has a normal amount of insoluble tomato solids in suspension; and that there is little solids separation.

(2) *Reasonably good consistency* means that the juice flows readily; has a normal amount of insoluble tomato solids in suspension; and that there is not a marked degree of solids separation.

(c) *Defects* means dark specks or scale-like particles, seeds, particles of seed, tomato peel, core material, or other similar substances.

(1) *Practically free from defects* means that any defects present do not more than slightly affect the appearance or drinking quality of the product.

(2) *Reasonably free from defects* means that any defects present may be noticeable, but are not so large, so numerous, or of such contrasting color as to seriously affect the appearance or drinking quality of the product.

(d) *Flavor.* Flavor is evaluated based upon characteristics normal to tomato juice or tomato juice from concentrate.

(1) *Good flavor* means a distinct tomato juice flavor and ordor characteristic of good quality tomatoes which is not materially affected by stems, leaves, crushed seeds, cores, immature tomatoes, or the effects of improper trimming or processing.

(2) *Reasonably good flavor* means a characteristic tomato juice flavor which may be materially, but not seriously, affected by stems, leaves, crushed seeds, cores, immature tomatoes, or the effects of improper trimming or processing.

(e) *Tomato soluble solids* (TSS) means the sucrose value as determined by the method prescribed in 21 CFR 156.3.

§ 52.3623 Recommended sample unit sizes.

The requirements for all factors of quality are based on the following:

(a) The entire contents of a container;

(b) A representative portion of the contents of a container;

(c) A combination of the contents of two or more containers; or

(d) A representative portion of processed product stored or held in bulk containers.

§ 52.3624 Grades.

(a) *U.S. Grade A* is the quality of tomato juice or tomato juice from concentrate that meets the applicable requirements of Tables I or II.

(b) *U.S. Grade B* is the quality of tomato juice or tomato juice from concentrate that meets the applicable requirements of Tables I or II.

(c) *Substandard* is the quality of tomato juice or tomato juice from concentrate that fails to meet the requirements for "U.S. Grade B."

§ 52.3625 Recommended fill of container.

Fill of container is not incorporated in the grades of the finished product, since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container of tomato juice be filled as full as practicable without impairment of quality, and that the product occupies not less than 90 percent of the capacity of the container.

§ 52.3626 Factors of quality and analysis.

(a) The grade of a lot of tomato juice to tomato juice from concentrate is based on evaluation and analysis of the juice for the following quality and analytical factors:

(1) Color;

(2) Consistency;

(3) Defects;

(4) Flavor; and

(5) Tomato soluble solids (tomato juice from concentrate).

(b) The relative importance of each quality factor is expresed numerically on the scale of 100. The maximum number of points that may be given each factor is:

Factors	Points
Color	30
Consistency	15
Defects	15
Flavor	40
Total Score	100

(c) The essential variations within each factor are so described that the value may be determined for each factor and expressed numerically. The numerical range for the rating of each factor is inclusive (for example, 13 to 15 points means 13, 14, or 15 points) and the score points shall be prorated

relative to the degree of excellence for each factor.

§ 52.3627 Requirements for grades.

TABLE I.—TOMATO JUICE

Quality factors	Factor description	Grade	Score point range
Color	Good	(A)	26–30
	Reasonably good	(B)	[1]25
			[2]23–24
Consistency	Good	(A)	13–15
	Reasonably good	(B)	[3]10–12
Defects	Practically free	(A)	13–15
	Reasonably free	(B)	[4]10–12
Flavor	Good	(A)	33–40
	Reasonably good	(B)	[2]27–32
Minimum total score		(A)	85 points
		(B)	70 points

[1]Tomato juice assigned 25 points for the factor of color can be graded U.S. Grade A, provided all other requirements for U.S. Grade A are met and that the total score for the product is not less than 85 points.
[2]Tomato juice assigned 23 or 24 points for the factor of color cannot be graded above U.S. Grade B regardless of the total score for the product.
[3]Tomato juice possessing only "reasonably good consistency" (10–12 points) can be graded U.S. Grade A, provided all other requirements for U.S. Grade A are met and that the total score for the product is not less than 85 points.
[4]Cannot be graded above U.S. Grade B regardless of the total score for the product.

TABLE II.—TOMATO JUICE FROM CONCENTRATE

Tomato soluble solids (minimum)		5.0 pct by weight	
Quality factors	Factor description	Grade	Score point range
Color	Good	(A)	26–30
	Reasonably good	(B)	[1]25
			[2]23–24
Consistency	Good	(A)	13–15
	Reasonably good	(B)	[3]10–12
Defects	Practically free	(A)	13–15
	Reasonably free	(B)	[4]10–12
Flavor	Good	(A)	33–40
	Reasonably good	(B)	[2]27–32
Minimum total score		(A)	85 points
		(B)	70 points

[1]Tomato juice from concentrate assigned 25 points for the factor of color can be graded U.S. Grade A, provided all other requirements for U.S. Grade A are met and that the total score for the product is not less than 85 points.
[2]Tomato juice from concentrate assigned 23 or 24 points for the factor of color cannot be graded above U.S. Grade B regardless of the total score for the product.
[3]Tomato juice from concentrate possessing only "reasonably good consistency" (10–12 points) can be graded U.S. Grade A, provided all other requirements for U.S. Grade A are met and that the total score for the product is not less than 85 points.
[4]Cannot be graded above U.S. Grade B regardless of the total score for the product.

§ 52.3628 Sample size.

The sample size used to determine whether the requirements of these standards are met shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1—52.83) for lot grading and on-line grading, as applicable.

§ 52.3629 Lot quality requirements.

A lot of tomato juice or tomato juice from concentrate is considered as meeting the requirements for quality if:

(a) The requirements specified in Tables I or II, as applicable, are met; and

(b) The sampling plans and procedures in 7 CFR 52.1—52.83 are met.

§ 52.3630 [Reserved]

Done at Washington, DC, on: March 13, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-6430 Filed 3-18-85; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207 and 220

[Docket No. R-0529]

Regulations G and T; Securities Credit by Persons Other Than Banks, Brokers, or Dealers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend its Regulation G (12 CFR Part 207) to permit non-bank, non-broker lenders to extend credit to trusts for employee stock option plans (ESOPs) qualified under section 401 of the Internal Revenue Code without regard to the credit limitations normally applicable under Regulation G. This will permit savings and loans and other "G-lenders" to extend such credit on margin stock the same basis as banks are currently allowed to do under a special exemptive provision in Regulation U. The Board is seeking specific public comment on the question of whether Regulation T (12 CFR 220) should also be amended to provide a comparable provision for brokers and dealers who may wish to lend to ESOPs.

DATE: Comments should be received by April 19, 1985.

ADDRESS: Comments, which should refer to Docket No. R-0529, may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. weekdays. Comments received may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer or Robert Lord, Senior Attorney, Division of Banking Supervision and Regulation, (202) 452-2781.

SUPPLEMENTARY INFORMATION: The Board was recently asked by the Federal Reserve Bank of San Francisco to amend Regulation G to permit G-lenders to extend credit to trusts for ESOPs on the same basis as banks. Banks are currently permitted to extend such credit without regard to the credit limitations of Regulation U. For savings and loan associations and other lenders subject to Regulation G, however, there is no comparable exemption. Since an increasing number of savings and loans may want to make such loans, if permitted, and since there is no reason to treat them differently from banks in this area, the Board proposes to extend that lending authority to savings and loan associations as well as other lenders subject to Regulation G.

Initial Regulatory Flexibility Analysis

The Board's proposal to amend Regulation G to permit G-lenders to extend, on an exempt basis, credit to ESOPs is not expected to have any adverse impact on a substantial number of small businesses.

List of Subjects in 12 CFR Part 207

Banks, banking, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

List of Subjects in 12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, Reporting and Recordkeeping requirements, Securities.

PART 207—[AMENDED]

Accordingly, pursuant to sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), the Board amends Regulation G in the following manner:

The heading is amended and a new paragraph (c) is added to § 207.5 as follows:

§ 207.5 Employee stock option, purchase and ownership plan.

* * * * *

(c) *Credit to ESOPs.* A lender may extend and maintain purpose credit without regard to the provisions of this part, except for § 207.3(a) and (o), is such credit is extended to an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code, as amended (26 U.S.C. 401).

By order of the Board of Governors of the Federal Reserve System, March 13, 1985.

William W. Wiles,

Secretary of the Board.

FR Doc. 85-6540 Filed 3-18-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-09-AD]

Airworthiness Directives; Aerospatiale (SUD) Caravelle SE-210 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require an inspection of certain Aerospatiale (SUD) Caravelle SE-210 airplanes to detect cracks in the webs and web doubler on wing rib 44 and repair of these components, as necessary. This action is prompted by reports that the webs and doublers of this rib, which supports the main landing gear, have been found cracked. Cracks in the webs and doublers could lead to the separation of the landing gear.

DATE: Comments must be received on or before May 5, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwst Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-09-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Societe Nationale Industrielle Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France, Attention: M. Roger Adam. These documents may also be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-09-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction Generale de l'Aviation Civile (DGAC) has issued Consigne de Navigabilite 84-159-59(B) which requires inspections and repairs, as necessary, to the web and web doubler on wing rib 44 which have not been modified in accordance with Modification 1763, in accordance with SUD Service Bulletin 57-64. Rib 44 supports the main landing gear; if the structural integrity of this rib is compromised, the gear could separate from the airplane.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthness bilateral agreement.

Since this conditions is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspections, and repairs as necessary, of affected Aerospatiale (SUD) Caravelle airplanes that are operated under U.S. registry.

There are nine Caravelle airplanes on the U.S. Register, one of which is currently active. It is estimated that it would take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact per airplane of this AD is estimated to be $4,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, SUD Caravelle Model SE-210 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Aerospatiale (formerly SUD): Applied to all Caravelle SE-210 Models I, III, and VIR airplanes, certificated in all categories, which do not embody Modification 1753:

A. Prior to the accumulation of 7000 landings or before the next 100 landings after the effective date of this AD, whichever occurs later, inspect the wing rib 44 web and angle doubler in accordance with SUD Service Bulletin 57-64 dated December 12, 1978.

B. Repeat the inspections of paragraph A., above, at intervals not to exceed:

1. Rib 44 lower cap—10,000 landings.
2. Webs and doublers—3,000 landings.

C. Parts found cracked must be repaired prior to further flight.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Wash., on March 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-6459 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-14-AD]

Airworthiness Directives; British Aerospace Model BAe-146 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) applicable to certain Model BAe-146 airplanes which would require an inspection and modification, as required, of the lift spoiler arming microswitches to insure correct overtravel setting. Insufficient overtravel could cause unwanted retraction of the lift spoilers which results in an unexpected increase in the stopping distance during a rejected takeoff or landing.

DATES: Comments must be received no later than May 5, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-14-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The service bulletin specified in this AD may be obtained upon request to British Aerospace, Librarian for Service Bulletins, Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dean Klempel, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2907. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-14-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority (CAA), which the civil airworthiness authority for the United Kingdom, has classified British Aerospace BAe-146 Alert Service Bulletin 27-A24, Revision, 1, as mandatory.

This service bulletin requires testing of the lift spoiler arming microswitches to insure that the selector lever overtravel setting is correct. Insufficient overtravel could cause unwanted retraction of the lift spoilers which would unexpectedly increase the stopping distance during a rejected takeoff or landing.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require testing of the lift spoiler arming microswitches.

It is estimated that eight airplanes would be affected by this AD, that it would take approximately two manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are not required. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $640.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model BAe-146 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe-146 airplanes certificated in all categories, on which Modification HCM 00321A has not been accomplished. Compliance is required within the next 200 landings after the effective date of this AD. To prevent inadvertent retraction of the lift spoilers, accomplish the following, unless previously accomplished:

A. Measure the overtravel of the airbrake selector lever after lift spoiler deployment in accordance with paragraph 2.A of British Aerospace Alert Service Bulletin 27-A24, Revision 1, dated November 7, 1984. Modify the selector level in accordance with paragraph 2.B of the service bulletin if the overtravel is less than 0.15 inch.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.199 and 21.99 to operate airplanes to a base for the accomplishment of inspection and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Wash., on March 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-6455 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-111-AD]

Airworthiness Directives; Lockheed-California Company Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to add a new airworthiness directive (AD) that would require re-routing and clamping of a wire bundle in the cockpit on Lockheed Model L-1011 series airplanes. This action is prompted by reports of wire chafing which, if uncorrected, may lead to arcing and result in a fire hazard.

DATE: Comments must be received on or before May 5, 1985.

ADDRESSES: Send comments on the proposal in duplicate to FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket 84-NM-111-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98188. The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Wasinger, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date of comments, in the Rule Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket, Docket No. 85-NM-111-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

One L-1011-385 operator has reported an in-flight electrical harness fault that resulted in visible arcing and smoke in the cockpit ceiling above the right-hand windshield. The arcing stopped when the left and right windshield heat circuit breakers tripped. The fault was caused by mechanical damage to wire insulation which was due to continual chafing on windshield mounting screws. The resultant arcing severely damaged approximately 20 wires in the vicinity of the terminal board breakout, burned the trim panel, and discolored a section of the First Officer's windshield. These conditions, if uncorrected, could result in a fire in the cockpit with hazardous consequences.

The Lockheed-California Company has issued L-1011 Service Bulletin 093-30-056, dated April 30, 1984, which described a modification providing improved wire bundle protection.

Since this situation is likely to exist or develop on other airplanes of the same type design, an AD is proposed that would require the accomplishment of the wire bundle re-routing as described in the noted Service Bulletin.

It is estimated that 120 U.S. registered airplanes would be affected by this AD, that it would require approximately 8 manhours per airplane to re-route and clamp the wire bundles, and that the average labor costs would be $40 per manhour. Based on these figures, the total cost impact of the proposed AD to the U.S. operators is $38,400.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model L-1011 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011-385 series airplanes, certificated in all categories.

To prevent the potential for electrical arcing in the cockpit windshield heating electrical wire bundle, accomplish the following within six months after the effective date of this AD, unless already accomplished:

A. Re-route the C38 wire harness in accordance with Part 2, Accomplishment Instructions, of Lockheed-California Company L-1011 Service Bulletin 093-30-056, dated April 30, 1984, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Wash., on March 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-6457 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-10-AD]

Airworthiness Directives; Short Brothers Ltd. Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the replacement of rivets in the bottom section of fuselage frame 475 on certain Short Brothers Ltd. Model SD3-60 airplanes. This action is necessary to ensure that adequate strength capability exists to satisfy the loads imposed by ditching.

DATE: Comments must be received on or before May 5, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-10-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202, or may also be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date of comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-10-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition on certain Short Brothers Ltd. SD3-60 airplanes. A strength check of the bottom section of fuselage frame 475 revealed that the strength capability utilizing the currently installed fasteners was below the design requirements for the ditching condition. Shorts Brothers Ltd. Service Bulletin SD360-53-11 requires the replacement of certain 5/32-inch diameter fasteners with Cherrymax rivets.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of §21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the installation of the Cherrymax rivets in accordance with the service bulletin.

It is estimated that thirty-three airplanes would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor costs would be $40 per manhour. Repair parts are estimated to be nominal. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $7,292.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Short Brothers Ltd. SD3-60 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Short Brothers Ltd: Applies to Model SD3-60 airplanes as listed in Short Brothers Ltd. Service Bulletin SD360-53-11, Revision 1, dated November 1984, certificated in all categories. Compliance is required within twelve months after the effective date of this AD, unless previously accomplished. To prevent structural failure under ditching conditions, accomplish the following:

A. Install Cherrymax rivets in the bottom section of fuselage frame 475 in accordance with Short Brothers Ltd. Service Bulletin SD360-53-11, Revision 1, dated Novbember 1984.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspection and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Wash., on March 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-6456 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-19-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the modification of wiring for the aft equipment/lavatory/galley ventilation fans and the air conditioning pack flow control on certain Boeing

Model 767 airplanes. This action is necessary because, in the event of a fire in the aft cargo compartment, the airplane systems as presently configured may allow the fire extinguishing agent concentration to drop to a level which will not prevent a smoldering fire from rekindling.

DATE: Comments must be received on or before May 5, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket 85–NM–19–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98188. The applicable Service Bulletin may be obtained from Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at the FAA, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Systems and Equipment Branch, ANM–130S; telephone (206) 431–2947. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–19–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Tests performed at the Boeing Company have shown that after discharge of fire extinguishing fluid into the aft cargo compartment, the concentration of the extinguishing agent will drop to less than 3% before the second extinguisher bottle is discharged 30 minutes later. Concentrations of less than 3% have not been shown to be effective in preventing smoldering fires from rekindling.

The manufacturer has developed a modification which automatically turns off the aft lavatory/galley ventilation fans and allows the operating air conditioning pack to remain in the high flow mode, which tests have shown will result in maintaining the required concentration of fire extinguishing fluid in the aft cargo compartment.

Since this condition exists on other Model 767 airplanes, an airworthiness directive is proposed that would require revising the wiring and testing the operation of the aft equipment/lavatory/galley ventilation fans and the air conditioning pack flow controls.

It is estimated that fifty-four airplanes would be affected by this AD, that it would take approximately eight manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $17,280.

For these reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 767 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applied to Boeing Model 767 series airplanes certificated in all categories as enumerated in Boeing Service Bulletin No. 767–21–0041 dated November 23, 1984. To assure the effectiveness of the cargo compartment fire protection system, accomplish the following, unless already accomplished.

A. Within 90 days after the effective date of this AD, revise the wiring and test the operation of the aft equipment/lavatory/galley ventilation fans and the left and right air conditioning pack flow controls in accordance with Boeing Service Bulletin 767–21–0041 dated November 23, 1984, or later FAA approved revision.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the above specified service bulletins from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. They may be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Wash., on March 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–6458 Filed 3–18–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–NM–11–AD]

Airworthiness Directives; Canadair Models CL–600–1A11 (CL–600) and CL–600–2A12 (CL–601)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes an amendment to an existing airworthiness directive (AD) that would increase the repetitive inspection intervals of the outboard flap vane support structure on Canadair CL–600 and CL–601 airplanes.

This action is permissible since testing has shown that increasing the inspection interval from 100 hours time in service to 400 landings does not compromise safety.

DATE: Comments must be received no later than May 5, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–11–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Canadair Limited, 1800 Laurentien Blvd., Saint-Laurent, Quebec H4R 1K2, Canada, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM–150S; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–11–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Canadian Department of Transport (DOT) has advised the FAA that the repetitive inspection interval of the outboard flap vane support structure of 100 hours time in service, originally required by Canadian airworthiness directive CF 83–24R2 for all CL–600 CL–601 airplanes, has been increased to 400 landings in an amendment to that directive. Airworthiness Directive (AD) 84–13–03 (49 FR 26045, June 26, 1984), issued in the United States, also requires a 100 hours time in service repetitive inspection. Since the issuance of both directives, testing has shown that the inspection interval can be increased to 400 landings without compromising safety. There have been no reports of flap vane service difficulties since the issuance of AD 84–13–03.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

This amendment would increase an inspection interval and would impose no additional regulatory or economic burden on any person. This action, however, would reduce the burden since a typical airplane accumulates 600 flight hours per year and makes 420 landings per year. The current inspection cost is $120,000 for the total U.S. fleet, assuming a labor cost of $40/manhour and a fleet size of 50 airplanes. By changing the inspection interval as previously described, the total fleet maintenance cost would decrease by $100,000 per year, with no compromise in safety.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Canadair Model CL–600 or CL–601 airplanes are operated by small entities. A copy of a draft regulatory evaluation has been prepared for this action and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by revising Paragraph A. of Amendment 39–4882 (49 FR 26045; June 26, 1984), AD 84–13–03, to read as follows:

A. To detect possible fatigue cracks in the outboard flap vane support structure, accomplish the following inspections for cracks on each side of the aircraft within 200 landings after the effective date of this AD, unless already accomplished within the last 200 landings, and thereafter at intervals not to exceed 400 landings.

(Sec. 313(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on March 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–6460 Filed 3–18–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ACE–14]

Proposed Designation of Transition Area; Fredericktown, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Fredericktown, Missouri to provide controlled airspace for aircraft executing a new instrument approach procedure to the Fredericktown Municipal Airport, Fredericktown, Missouri utilizing the Farmington, Missouri, VORTAC as a navigational aid. This proposed action will change the airport status from VFR to IFR.

DATE: Comments must be received on or before April 19, 1985.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106. Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at Fredericktown, Missouri. To enhance airport usage a new instrument approach procedure is being developed for the Fredericktown, Missouri, Municipal Airport utilizing the Farmington, Missouri, VORTAC as a navigational aid. This navigational aid will provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Fredericktown, Missouri, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designated to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulation was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. If, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Sec. 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), by designating the following transition area:

Fredericktown, Missouri

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Fredericktown, Missouri, Municipal Airport (Latitude 37°36'20" N, Longitude 90°17'18" W.); excluding that airspace which overlies the Farmington, Missouri transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1345(a)); 49 U.S.C. 106(g) (Revised, Public Law 97-449, January 12, 1983); and Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65).

Issued in Kansas City, Missouri, on March 5, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-6451 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AGL-12]

Proposed Realignment of VOR Federal Airway V-12, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke V-12N between Appleton and Dayton, OH. The airway is no longer used as an arrival route between Dayton, OH, and is seldom filed by pilots. Revocation would help simplify the route structure.

DATE: Comments must be received on or before April 29, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 84-AGL-12, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particluarly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall

regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AGL-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by sbumitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of their NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke V-12N between Appleton and Dayton, OH. the airway is no longer used as an arrival route to Dayton, OH, and is seldom filed by pilots. If filed, it is necessary to reclear aircraft to conform to existing arrival/departure areas. Revocation of the infrequently filed airway would help to simplify the route structure. This action is also consistent with FAA's agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate airway designations from the National Airspace System. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V-12 [Amended]

By deleting the words "including a N alternate from Dayton to Appleton via INT Dayton 068° and Rosewood, OH, 083° radials;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on March 8, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-6450 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 115

Individual Indian Money Accounts

February 15, 1985.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is publishing a proposed rule which amends 25 CFR Part 115 by adding a new § 115.10 that will provide individual Indian money account holders due process procedures which are not now in the existing regulations; deleting the present § 115.13 as it now reads and renumbering it as § 115.14 which will clarify and streamline the appeal procedures; and renumbering the present §§ 115.10 through 115.13 as §§ 115.11 through 115.14.

DATE: Comments must be submitted on or before April 18, 1985.

ADDRESS: Send written comments to John W. Fritz, Deputy Assistant Secretary—Indian Affairs (Operations), Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Barbara C. Davis, Program Coordination Staff, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior, Washington, D.C. 20245, telephone number (202) 343-2963.

SUPPLEMENTARY INFORMATION: These amendments to 25 CFR Part 115 are being made to provide due process which, in Kennerly v. United States, 721 F.2d 1252 (9th Cir. 1983), was found to be wanting in the existing regulations with respect to the payment of claims from Individual Indian Money Accounts, as authorized by 25 CFR 115.9.

This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in 209 DM.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposed rule.

This document, when final, will provide due process procedure which was found to be wanting in the existing regulations, with respect to the payment of claims from IIM accounts, as authorized by 25 CFR 115.9.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

The Department of the Interior has determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1983.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3504 (b)(6).

The primary author of this document is Barbara C. Davis, Program Coordination Staff, Office of Trust Responsibilities, Bureau of Indian Affairs, telephone number (202) 343-2963.

List of Subjects in 25 CFR Part 115

Indians—business and finance.

PART 115—INDIVIDUAL INDIAN MONEY ACCOUNTS

For the reasons set out in the preamble, Part 115 of Chapter I Title 25 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for Part 115 reads as follows:

Authority: R.S. 441, as amended, R.S. 463, R.S. 465, 5 U.S.C. 301; 25 U.S.C. 2, 9; 43 U.S.C. 1457.

§ 115.13 [Redesignated as § 115.14]

2. Section 115.13 is redesignated as 115.14 and revised to read as follows:

§ 115.14 Appeals.

Appeals from an action taken by an official of the Bureau of Indian Affairs may be taken pursuant to 25 CFR Part 2.

§§ 115.10—115.12 [Redesignated as §§ 115.11—115.13]

3. Sections 115.10, 115.11, and 115.12 are redesignated as §§ 115.11, 115.12, and 115.13, respectively.

4. A new § 115.10 is added to read as follows:

§ 115.10 Procedures relative to restrictions.

(a) If an individual's access to funds in the individual's Indian money account is limited, or it is proposed to pay creditors pursuant to section 115.9, the individual must be notified in writing as follows:

(1) The notice must be given to the individual affected at the commencement of the restriction or at least 40 days prior to involuntary distribution of funds from the account.

(2) The notice must state the reasons giving rise to the restriction or proposed payment.

(3) The notice shall inform the individual of the right to a hearing and that a request for a hearing must be in writing, received by the Secretary, or an authorized representative, within 30 days of receiving the notice of proposed action.

(4) The notice of proposed action shall be sent by Certified Mail-Return Receipt Requested.

(5) The notice shall state that a copy of the rights listed in paragraph (c) of this section are transmitted along with the notice.

(b) If the individual fails to request a hearing, the individual is deemed to consent to the continued limitation on and/or disbursement of funds from the IIM Account in accordance with the terms of the notice.

(c) The Secretary, or an authorized representative, shall conduct a hearing, if so requested as specified above, to determine whether to continue to restrict the Individual Indian Money Account, and/or allow payment of claims from such accounts. The following are requirements for such a fair hearing:

(1) The hearing shall be held within 10 working days of the Secretary's, or an authorized representative's, receipt of the request for a hearing.

(2) The individual must be given the opportunity to be heard. This includes the right to hear the case against the individual; to present testimony, to present witnesses, and to question and rebut opposing witnesses. This includes the right to orally present arguments and evidence.

(3) If the individual desires an attorney or other representative, one may be retained at the individual's own expense.

(4) The decision to uphold or overturn the proposed action, must be made by the Secretary, or an authorized representative, and must be based on information presented or referred to at the hearing.

(5) The Secretary, or an authorized representative, shall make provisions for recording the hearing and shall preserve the record for the duration of the appeal period. Tape recording the hearing is sufficient.

(6) The Secretary, or an authorized representative, will advise all parties concerned, in writing, of a decision within 10 working days after completion of the hearing.

(d) No money shall be paid from an Individual Indian Money Account to a creditor until a final decision on the claim is rendered.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 85-6322 Filed 3-18-85; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[LR-153-81]

Penalties for Failure to Make a Return or Furnish a Statement Under Section 6039C; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to penalties for failure to make a return or furnish a statement under section 6039C that appeared in the **Federal Register** on January 6, 1983 (48 FR 647). The notice is being withdrawn because section 6039C was completely revised by the Tax Reform Act of 1984.

FOR FURTHER INFORMATION CONTACT: Robert E. Culbertson Jr. of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (LR-153-81), 202-566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking under section 6652(g) that appeared in the **Federal Register** January 6, 1983 (48 FR 647). The notice proposed regulations on penalties relating to the requirements of section 6039C of the Internal Revenue Code of 1954. Section 6039C required extensive information reporting as a means of enforcing the tax imposed on foreign investment in U.S. real property under section 897. Regulations under section 6652(g) were needed to provide the public and Internal Revenue Service with guidance concerning the applicability of penalties for failures to file information returns or furnish certain other statements required under section 6039C. Regulations are no longer necessary because the Tax Reform Act of 1984 substantially amends the reporting required under section 6039C. The reporting requirements have been limited because new Code section 1445 now provides for withholding of the tax imposed under section 897.

Drafting Information

The principal author of this document is Mary Elizabeth Dean of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document both in matters of substance and style.

Withdrawal of Proposed Amendments

The proposed amendments to 26 CFR Part 301, relating to penalties under section 6652(g) for failure to make a return or furnish a statement under section 6039C and published in the

Federal Register on January 6, 1983 (48 FR 647), are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-6571 Filed 3-18-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 32

Public Safety Officers' Death Benefits

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: Proposed regulation, with request for comment.

SUMMARY: The regulations covering public safety officers' death benefits and the appendix to those regulations are being amended to comply with statutory amendments to the Public Safety Officers' Benefits [PSOB] Act. The Bureau of Justice Assistance has been authorized to administer the PSOB program. As a nomenclature change, this Bureau has been substituted for the "Law Enforcement Assistance Administration" as the administering agency. Other proposed changes to the regulation include provision of coverage to Federal public safety officers; changes to facilitate transactions with the Department of Labor; and clarification of "gross negligence" and "intoxication" standards.

DATES: Comments must be received on or before May 20, 1985.

ADDRESS: Comments may be mailed to Charles A. Lauer, General Counsel, Office of Justice Programs, Department of Justice, 633 Indiana Avenue, NW., Room 1268, Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Charles A. Lauer, 202-724-7792, or Yvette D. Caesar, 202-724-6235.

SUPPLEMENTARY INFORMATION:

1. The Justice Assistance Act of 1984, Title II of Pub. L. 98-473, 98 Stat. 1837 (October 12, 1984) eliminated the Office of Justice Assistance, Research, and Statistics and the Law Enforcement Assistance Administration and created the Office of Justice Programs and a bureau which administers the Public Safety Officers' Benefits Program called the Bureau of Justice Assistance. Accordingly, the references to the "Administration" have been replaced by the term "Bureau of Justice Assistance" or "Bureau" to reflect the statutory change in the organization's terminology.

2. An amendment to the benefits payable section, section 1201(e), is intended to facilitate our financial transactions with the Department of Labor with respect to benefits payable under 5 U.S.C. 8191. It relieves the Department of Labor of the administrative burden of reimbursing the Department of Justice for amounts it paid to PSOB survivors who are also eligible for section 8191 benefits. The Department of Labor need no longer make actual disbursements to the Bureau of Justice Assistance, every time a claim is paid under both programs. (The 5 U.S.C. 8191 program is a benefits program for the families of State and local law enforcement officers that is administered by the Department of Labor.) As explained by the Senate Judiciary Committee Report on S. 241, at 58, "under the new language the Department of Labor need only keep internal records of payments that would have been made under the section 8191 program, but for the PSOB Act, until such time as those payments exceed the benefits awarded to the beneficiary in question under PSOB. At that time, the Department of Labor will begin to make whatever actual payments may still be due section 8191 beneficiaries. The amendment codifies a recommendation of the General Accounting Office." (S. Rept. No. 96-142 (May 14, 1979))

3. An additional circumstance has been added to the Act under which a benefit will not be paid to a public safety officer's survivors. If a public safety officer was performing his or her duties in a grossly negligent manner at the time of his or her death (section 1202(3)) no benefit shall be paid. This clarification of "line of duty" death changes the rule of law established in *Harold* v. *United States*, Ct. Cl. 424-79 (Decided Sept. 10, 1980), in which the court ordered payment to a law enforcement officer because the PSOB Act contained no provision which expressly denied benefits to survivors of an officer when his death was caused by his own negligence.

4. the definition of "intoxication" has been amended to reflect statutory amendments to section 1203(4) of the Act. Under the predecessor Act, coverage was denied if it could be shown that intoxication was the proximate cause of death. Establishing or disproving "proximate cause" was extremely difficult. As a result, some claims had to be paid where officers were intoxicated. This new amendment eliminates the causation requirement and instead replaces it with a two-tiered approach in which blood alcohol levels are determinative of intoxication.

5. The PSOB Act now covers Federal law enforcement officers and firefighters killed in the line of duty in the same manner as it covers State and local public safety officers. This death benefit to survivors of Federal public safety officers is in addition to death benefits that may be received under the Federal employee workers' compensation law (FECA), 5 U.S.C. 8191 (1980).

This order is not a rule within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. This order is not a "major rule" as defined by section 1.b. of Executive Order No. 12291, 3 CFR Part 127 (1981). The collection of information requirements contained in the proposed regulation 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 the Office Justice Programs and the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Justice.

List of Subjects in 28 CFR Part 32

Administrative practice and procedure.

For the reasons set out in the preamble, Part 32, and the Appendix to Part 32, Chapter I of Title 28, Code of Federal Regulations, are revised as set forth below.

PART 32—PUBLIC SAFETY OFFICERS' DEATH BENEFITS

Subpart A—Introduction

Sec.

32.1 Purpose.
32.2 Definitions.

Subpart B—Officers Covered

32.3 Coverage.
32.4 Reasonable doubt of coverage.
32.5 Findings of State and local agencies.
32.6 Conditions on payment.
32.7 Intentional misconduct of the officer.
32.8 Intention to bring about death.
32.9 Voluntary intoxication.

Subpart C—Beneficiaries

32.10 Order of priority.
32.11 Contributing factor to death.
32.12 Determination of relationship of spouse.
32.13 Determination of relationship of child.
32.14 Determination of parent.
32.15 Determination of dependency.

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Appendix to Part 32—PSOB Hearing and Appeal Procedures

Authority: Secs. 801(a) and 1204(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, and Pub. L. 98–473).

Subpart A—Introduction

§ 32.1 Purpose.

The purpose of this regulation is to implement the Public Safety Officers' Benefits Act of 1976 which authorizes the Office of Justice Programs, Bureau of Justice Assistance to pay a benefit of $50,000 to specified survivors of public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty. The Act is Part J of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, and Pub. L. 98–473.

§ 32.2 Definitions.

(a) "The Act" means the Public Safety Officers' Benefits Act of 1976, 42 U.S.C. 3796, et seq., Pub. L. 94–430, 90 Stat. 1346 (September 29, 1976), as amended.

(b) "Bureau" means the Bureau of Justice Assistance of the Office of Justice Programs (hereinafter referred to as the Bureau or BJA).

(c) "Line of duty" means any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated or authorized by rule, regulation, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires.

(d) "Direct and proximate" or "proximate" means that the antecedent event is a substantial factor in the result.

(e) "Personal injury" means any traumatic injury, as well as diseases which are caused by or result from such an injury, but not occupational diseases.

(f) "Traumatic injury" means a wound or the condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

(g) "Occupational disease" means a disease which routinely constitutes a special hazard in, or is commonly regarded as a concomitant of the officer's occupation.

(h) "Public safety officer" means any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or a firefighter.

(i) "Law enforcement officer" means any individual involved in crime and juvenile delinquency control or reduction, or enforcement of the law, including but not limited to police, corrections, probation, parole, and judicial officers.

(j) "Firefighter" includes any individual serving as an officially-recognized or designated member of a legally-organized volunteer fire department.

(k) "Child" means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is:

(1) Eighteen years of age or under;

(2) Over eighteen years of age and a student, as defined in section 8101 of title 5, United States Code; or

(3) Over eighteen years of age and incapable of self-support because of physical or mental disability.

(l) "Stepchild" means a child of the officer's spouse who was living with, dependent for support on, or otherwise in a parent-child relationship, as set forth in § 32.13(b) of the regulations, with the officer at the time of the officer's death. The relationship of stepchild is not terminated by the divorce, remarriage, or death of the stepchild's natural or adoptive parent.

(m) "Student" means an individual under 23 years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(1) A school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(2) A school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body;

(3) A school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited for credit on the same basis as if transferred from an institution so accredited; or

(4) An additional type of educational or training institution as defined by the Secretary of Labor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if the student shows to the satisfaction of the Bureau that the student has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which in the judgment of the Bureau the student is prevented by factors beyond the student's control from pursuing the student's education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(n) "Spouse" means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

(o) "Dependent" means any individual who was substantially reliant for support upon the income of the deceased public safety officer.

(p) "Intoxication" means a disturbance of mental or physical faculties—

(1) Resulting from the introduction of alcohol into the body as evidenced by

(i) A post-mortem blood alcohol level of .20 per centum or greater or

(ii) A post-mortem blood alcohol level of at least .10 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to the officer's death; or

(2) Resulting from drugs or other substances in the body.

(q) "Public agency" means the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any unit of local government, department, agency, or instrumentality of any of the foregoing.

(r) "Support" means food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items

for maintenance of the person supported.

Subpart B—Officers Covered

§ 32.3 Coverage.

In any case in which the Bureau determines under regulations issued pursuant to this part, that a public safety officer, as defined in § 32.2(h), has died as the direct and proximate result of a personal injury sustained in the line of duty, the Bureau shall pay a benefit of $50,000 in the order specified in § 32.10, subject to the conditions set forth in § 32.6.

§ 32.4 Reasonable doubt of coverage.

The Bureau shall resolve any reasonable doubt arising from the circumstances of the officer's death in favor of payment of the death benefit.

§ 32.5 Findings of State and local agencies.

The Bureau will give substantial weight to the evidence and findings of fact presented by State and local administrative and investigative agencies. The Bureau will request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the Bureau with a rational basis for a decision on a material element of eligibility.

§ 32.6 Conditions on payment.

(a) No benefit shall be paid—

(1) If the death was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about the officer's death;

(2) If the public safety officer was voluntarily intoxicated at the time of the officer's death;

(3) If the public safety officer was performing the officer's duties in a grossly negligent manner at the time of the officer's death;

(4) To any individual who would otherwise be entitled to a benefit under this part if such individual's actions were a substantial contributing factor to the death of the public safety officer; or

(5) To any individual employed in a capacity other than a civilian capacity.

(b) The Act applies only to deaths occurring from injuries sustained on or after September 29, 1976.

§ 32.7 Intentional misconduct of the officer.

The Bureau will consider at least the following factors in determining whether death was caused by the intentional misconduct of the officer:

(a) Whether the conduct was in violation of rules and regulations of the employer, or ordinances and laws; and

(1) Whether the officer knew the conduct was prohibited and understood its import;

(2) Whether there was a reasonable excuse for the violation; or

(3) Whether the rule violated is habitually observed and enforced;

(b) Whether the officer had previously engaged in similar misconduct;

(c) Whether the officer's intentional misconduct was a substantial factor in the officer's death; and

(d) The existence of an intervening force which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

§ 32.8 Intention to bring about death.

The Bureau will consider at least the following factors in determining whether the officer intended to bring about the officer's own death:

(a) Whether the death was caused by insanity, through an uncontrollable impulse or without conscious volition to produce death;

(b) Whether the officer had a prior history of attempted suicide;

(c) Whether the officer's intent to bring about the officer's death was a substantial factor in the officer's death; and

(d) The existence of an intervening force or action which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

§ 32.9 Voluntary intoxication.

The Bureau will apply the following evidentiary factors in cases in which voluntary intoxication is at issue in an officer's death.

(a) The primary factor in determining intoxication at the time the injury occurred, from which death resulted, is the post-mortem blood alcohol level.

(1) Benefits will be denied if the decedent had a post-mortem blood alcohol level of .20 per centum or greater; or

(2) Benefits will be denied if the decedent had a post-mortem blood alcohol level of at least .10 per centum but less than .20 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to his death.

(b) Convincing evidence includes, but is not limited to: Affidavits or investigative reports demonstrating that the decedent's speech, movement, language, emotion, and judgment were normal (for the officer) immediately prior to the injury which caused the death.

(c) In determining whether an officer's intoxication was voluntary, the Bureau will consider:

(1) Whether, and to what extent, the officer had a prior history of voluntary intoxication while in the line of duty;

(2) Whether and to what degree the officer had previously used the intoxicant in question; and

(3) Whether the intoxicant was prescribed medically and was taken within the prescribed dosage.

Subpart C—Beneficiaries

§ 32.10 Order of priority.

(a) When the Bureau has determined that a benefit may be paid according to the provisions of Subpart B and § 32.11 of Subpart C, a benefit of $50,000 shall be paid in the following order or precedence:

(1) If there is no surviving child of such officer, to the surviving spouse of such officer;

(2) If there are a surviving child or children and a surviving spouse, one-half to the surviving child or children of such officer in equal shares, and one-half to the surviving spouse;

(3) If there is no surviving spouse, to the child or children of such officers, in equal shares; or

(4) If none of the above, to the dependent parent or parents, in equal shares.

(b) If no one qualifies as provided in paragraph (a) of this section, no benefit shall be paid.

§32.11 Contributing factor to death.

(a) No benefit shall be paid to any person who would otherwise be entitled to a benefit under this part if such person's intentional actions were a substantial contributing factor to the death of the public safety officer.

(b) When a potential beneficiary is denied benefits under paragraph (a), of this section, the benefits shall be paid to the remaining eligible survivors, if any, of the officer as if the potential beneficiary denied benefits did not survive the officer.

§ 32.12 Determination of relationship of spouse.

(a) Marriage should be established by one (or more) of the following types of evidence in the following order of preference:

(1) Copy of the public record of marriage, certified or attested, or by an abstract of the public record, containing sufficient data to identify the parties, the

date and place of the marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(2) Official report from a public agency as to a marriage which occurred while the officer was employed with such agency;

(3) The affidavit of the clergyman or magistrate who officiated;

(4) The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage;

(5) The affidavits or sworn statements of two or more eyewitnesses to the ceremony;

(6) In jurisdictions where "common law" marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived; or

(7) Any other evidence which would reasonably support a belief by the Bureau that a valid marriage actually existed.

(b) BJA will not recognize a claimant as a "common law" spouse under paragraph (a)(6) of this section unless the State of domicile recognizes him or her as the spouse of the officer.

(c) If applicable, certified copies of divorce decrees of previous marriages or death certificates of the former spouses of either party must be submitted.

§ 32.13 Determination of relationship of child.

(a) *In general.* A claimant is the child of a public safety officer if the individual's birth certificate shows the officer as the individual's parent.

(b) *Alternative.* If the birth certificate does not show the public safety officer as the claimant's parent, the sufficiency of the evidence will be determined in accordance with the facts of a particular case. Proof of the relationship may consist of—

(1) An acknowledgment in writing signed by the public safety officer; or

(2) Evidence that the officer has been identified as the child's parent by a judicial decree ordering the officer to contribute to the child's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the officer was the informant and was named as the parent of the child; or

(ii) Affidavits or sworn statements of person who know that the officer accepted the child as his; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the officer's knowledge the officer was named as the parent of the child.

(c) *Adopted child.* Except as may be provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) *Stepchild.* The relationship of a stepchild to the deceased officer shall be demonstrated by—

(1) Evidence of birth to the spouse of the officer as required by paragraphs (a) and (b) of this section; or

(2) If adopted by the spouse, evidence of adoption as required by paragraph (c) of this section; or

(3) Other evidence, such as that specified in § 32.13(b), which reasonably supports the existence of a parent-child relationship between the child and the spouse;

(4) Evidence that the stepchild was either—

(i) Living with;

(ii) Dependent for support, as set forth in § 32.15; or

(iii) In a parent-child relationship, as set forth in § 32.13(b) with the officer at the time of the officer's death, and

(5) Evidence of the marriage of the officer and the spouse, as required by § 32.12.

§ 32.14 Determination of relationship of parent.

(a) *In general.* A claimant is the parent of a public safety officer if the officer's birth certificate shows the claimant as the officer's parent.

(b) *Alternative.* If the birth certificate does not show the claimant as the officer's parent, proof of the relationship may be shown by—

(1) An acknowledgement in writing signed by the claimant before the officer's death; or

(2) Evidence that the claimant has been identified as the officer's parent by judicial decree ordering the claimant to contribute to the officer's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as:

(i) A certified copy of the public record of birth or a religious record showing that the claimant was the informant and was named as the parent of the officer; or

(ii) Affidavits or sworn statements of persons who know the claimant had accepted the officer as the claimant's child; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the officer's knowledge the claimant had been named as the parent of the child.

(c) *Adoptive parent.* Except as provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the claimant as the officer's parent will suffice.

(d) *Step-parent.* The relationship of a step-parent to the deceased officer shall be demonstrated by—

(1) (i) Evidence of the officer's birth to the spouse of the step-parent as required by § 32.13 (a) and (b); or

(ii) If adopted by the spouse or the step-parent, proof of adoption as required by § 32.13(c); or

(iii) Other evidence, such as that specified in paragraph (b) of this section, which reasonably supports a parent-child relationship between the spouse and the officer; and

(2) Evidence of the marriage of the spouse and the step-parent, as required by § 32.12.

§ 32.15 Determination of dependency.

(a) To be eligible for a death benefit under the Act, a parent or a stepchild not living with the deceased officer at the time of the officer's death shall

demonstrate that he or she was substantially reliant for support upon the income of the officer.

(b) The claimant parent or stepchild shall demonstrate that he or she was dependent upon the decedent at either the time of the officer's death or of the personal injury that was a substantial factor in the officer's death.

(c) The claimant parent or stepchild shall demonstrate dependency by submitting a signed statement of dependency within a year of the officer's death. This statement shall include the following information—

(1) A list of all sources of income or support for the twelve months proceeding the officer's injury or death;

(2) The amount of income or value of support derived from each source listed; and

(3) The nature of support provided by each source.

(d) Generally, the Bureau will consider a parent or stepchild "dependent" if he or she was reliant on the income of the deceased officer for over one-third of his or her support.

Subpart D—Interim and Reduced Payments

§ 32.16 Interim payment in general.

(a) Whenever the Bureau determines upon a showing of need and prior to final action that the death of a public safety officer is one with respect to which a benefit will probably be paid, the Bureau may make an interim benefit payment not exceeding $3,000 to the individual entitled to receive a benefit under Subpart C of this part.

(b) The amount of an interim payment under this subpart shall be deducted from the amount of any final benefit paid to such individual.

§ 32.17 Repayment and waiver of repayment.

Where there is no final benefit paid, the recipient of any interim benefit paid under § 32.16 shall be liable for repayment of such amount. The Bureau may waive all or part of such repayment considering for this purpose the hardship which would result from such repayment.

§ 32.18 Reduction of payment.

(a) The benefit payable under this part shall be in addition to any other benefit that may be due from any other source, except—

(1) Payments authorized by section 12(k) of the Act of September 1, 1916, as amended (D.C. Code, section 4–622);

(2) Benefits authorized by section 8191 of Title 5, United States Code, providing compensation for law enforcement officers not employed by the United States killed in connection with the commission of a crime against the United States. Such beneficiaries shall only receive benefits under such section 8191 that are in excess of the benefits received under this part; and

(3) The amount of the interim benefit payment made to the claimant pursuant to § 32.16.

(b) No benefit paid under this part shall be subject to execution or attachment.

Subpart E—Filing and Processing of Claims

§ 32.19 Persons executing claims.

(a) The Bureau shall determine who is the proper party to execute a claim in accordance with the following rules—

(1) The claim shall be executed by the claimant or the claimant's legally designated representative if the claimant is mentally competent and physically able to execute the claim.

(2) If the claimant is mentally incompetent or physically unable to execute the claim; and

(i) Has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or other representative, or

(ii) Is in the care of an institution, the claim may be executed by the manager or principal officer of such institution.

(3) For good cause shown, such as the age or prolonged absence of the claimant, the Bureau may accept a claim executed by a person other than one described in paragraphs (a)(1) and (a)(2) of this section.

(b) Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of such person's authority to execute the claim on behalf of such claimant in accordance with the following rules—

(1) If the person executing the claim is the legally-appointed guardian, committee, or other legally-designated representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(2) If the person executing the claim is not such a legally-designated representative, the evidence shall be a statement describing such person's relationship to the claimant or the extent to which such person has the care of such claimant or such person's position as an officer of the institution of which the claimant is an inmate or patient. The Bureau may, at any time, require additional evidence to establish the authority of any such person to file or withdraw a claim.

§ 32.20 Claims

(a) Claimants are encouraged to submit their claims on BJA Form 3650/1, which can be obtained from: Public Safety Officers' Benefits Program, Bureau of Justice Assistance, Washington, D.C. 20531.

(b) Where an individual files Form 3650/1 or other written statement with the Bureau which indicates an intention to claim benefits, the filing of such written statement shall be considered to be the filing of a claim for benefits.

(c) A claim by or on behalf of a survivor of a public safety officer shall be filed within one year after the date of death unless the time for filing is extended by the Director for good cause shown.

(d) Except as otherwise provided in this part, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this part, shall be in writing and shall be signed by the claimant or the person legally designated to execute a claim under § 32.19

§ 32.21 Evidence.

(a) A claimant for any benefit or fee under the Act and the regulations shall submit such evidence of eligibility or other material facts as is specified by these regulations. The Bureau may at any time require additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

(b) Whenever a claimant for any benefit or fee under the Act and the regulations has submitted no evidence or insufficient evidence of any material issue or fact, the Bureau shall inform the claimant what evidence is necessary for a determination as to such issue or fact and shall request the claimant to submit such evidence within a reasonable specified time. The claimant's failure to submit evidence on a material issue or fact as requested by the Bureau shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit or fee or any part thereof.

(c) In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of such record, or other public official authorized to certify the copy.

§ 32.22 Representation.

(a) A claimant may be represented in any proceeding before the Bureau by an attorney or other person authorized to act on behalf of the claimant pursuant to § 32.19.

(b) No contract for a stipulated fee or for a fee on a contingent basis will be recognized. Any agreement between a representative and a claimant in violation of this paragraph is void.

(c) Any individual who desires to charge or receive a fee for services rendered for an individual in any application or proceeding before the Bureau must file a written petition therefore in accordance with paragraph (e) of this section. The amount of the fee the petitioner may charge or receive, if any, shall be determined by the Bureau on the basis of the factors described in paragraphs (e) and (g) of this section.

(d) Written notice of a fee determination made under this section shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the determination, and the fact that the Bureau assumes no responsibility for payment.

(e) To obtain approval of a fee for services performed before the Bureau, a representative, upon completion of the proceedings in which the representative rendered services, must file with the Bureau a written petition containing the following information—

(1) The dates the representative's services began and ended;

(2) An itemization of services rendered with the amount of time spent in hours, or parts thereof;

(3) The amount of the fee the representative desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered on behalf of the claimant in connection with other claims or causes of action arising from the officer's death before any State or Federal court or agency;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled the representative to render valuable services to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the claimant and that the claimant was advised of the claimant's opportunity to submit his or her comments on the petition to BJA within 20 days.

(f) No fee determination will be made by the Bureau until 20 days after the date the petition was sent to the claimant. The Bureau encourages the claimant to submit comments on the petition to the Bureau during the 20-day period.

(g) In evaluating a request for approval of a fee, the purpose of the public safety officers' benefits program—to provide a measure of economic security for the beneficiaries thereof—will be considered, together with the following factors—

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required in rendition of the services;

(4) The amount of time spent on the case;

(5) The results achieved;

(6) The level of administrative review to which the claim was carried within the Bureau and the level of such review at which the representative entered the proceedings;

(7) The amount of the fee requested for services rendered, excluding the amount of any expenses incurred, but including any amount previously authorized or requested;

(8) The customary fee for this kind of service; and

(9) Other awards in similar cases.

(h) In determining the fee, the Bureau shall consider and add thereto the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. No amount of reimbursement shall be permitted for expenses incurred in obtaining medical or documentary evidence in support of the claim which has previously been obtained by the Bureau, and no reimbursement shall be allowed for expenses incurred by the claimant in establishing or pursuing the claimant's application for approval of his fee.

Subpart F—Determination, Hearing, and Review

§ 32.23 Finding of eligibility or ineligibility.

Upon making a finding of eligibility, the Bureau shall notify each claimant of its disposition of his or her claim. In those cases where the Bureau has found the claimant to be ineligible for a death benefit, the Bureau shall specify the reasons for the finding. The finding shall set forth the findings of fact, and conclusions of law supporting the decision. A copy of the decision, together with information as to the right to a hearing and review shall be mailed to the claimant at his or her last known address.

§ 32.24 Request for a hearing.

(a) A claimant may, within thirty (30) days after notification of ineligibility by the Bureau, request the Bureau to reconsider its finding of ineligibility. The Bureau shall provide the claimant the opportunity for an oral hearing which shall be held within sixty (60) days after the request for reconsideration. The claimant may waive the oral hearing, and present written evidence to the Bureau within sixty (60) days after the request. The request for hearing shall be made to the Director, Public Safety Officers' Benefits Program, BJA, Washington, D.C. 20531.

(b) If requested, the oral hearing shall be conducted before a hearing officer authorized by the Bureau to conduct the hearing, in any location agreeable to the claimant and the hearing officer.

(c) In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by Chapter 5 of the Administrative Procedures Act, but must conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose the hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

(d) Pursuant to 42 U.S.C., the hearing officer may, whenever necessary:

(1) Issue subpoenas;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Receive evidence at any place in the United States.

(e) If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may adjourn the hearing and, at any time prior to mailing the decision, reopen the hearing for the receipt of such evidence.

(f) A claimant may withdraw his or her request for a hearing at any time prior to the mailing of the decision by written notice to the hearing officer so stating, or by orally so stating at the hearing. A claimant shall be deemed to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for the hearing, and does not, within 10 days after the time set for the hearing, show good cause for such failure to appear.

(g) The hearing officer shall, within thirty (30) days after receipt of the last piece of evidence relevant to the proceeding, make a determination of eligibility. The determination shall set forth the findings of fact and conclusions of law supporting the determination. The hearing officer's determination shall be the final agency decision, except when it is reviewed by the Director under paragraph (h) or (i).

(h) The Director may, on his or her own motion, review a determination made by a hearing officer. If the Director decides to review the determination, the Director shall:

(1) Inform the claimant of the hearing officer's determination and his or her decision to review that determination; and

(2) Give the claimant 30 days to comment on the record and offer new evidence or argument on the issues in controversy.

The Director, in accordance with the facts found on review, may affirm or reverse the hearing officer's determination. The Director's determination shall set forth the findings of fact and conclusions of law supporting the determination. The Director's determination shall be the final agency decision.

(i) A claimant determined ineligible by a hearing officer under paragraph (g) of this section may, within thirty (30) days after notification of the hearing officer's determination:

(1) Request the Director to review the record and the hearing officer's determination; and

(2) Comment on the record, and offer new evidence or argument on the issues in controversy.

The Director shall make the final agency determination of eligibility within thirty (30) days after expiration of the comment period. The notice of final determination shall set forth the findings of fact and conclusions of law supporting the determination. The Director's determination shall be the final agency decision.

(j) No payment of any portion of a death benefit, except interim benefits payable under § 32.16, shall be made until all hearings and reviews which may affect that payment have been completed.

Appendix to Part 32—PSOB Hearing and Appeal Procedures

1. *Notification to Claimant of Denial.* These appeal procedures apply to a claimant's [1] request for reconsideration of a denial made by the Public Safety Officers' Benefits (PSOB) Office (the PSOB Office). The denial letter will advise the claimant of the findings of fact and conclusions of law supporting the PSOB Office's determination, and of the appeal procedures available under § 32.24 of the PSOB regulations. A copy of every document in the case file that (A) contributed to the determination; and (B) was not provided by the claimant shall also be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The attached material might typically include medical opinions offered by the Armed Forces Institute of Pathology, Legal memoranda from the Office of General Counsel of the Office of Justice Programs, or memoranda to the file prepared by PSOB Office staff. A copy of the PSOB regulations shall also by enclosed.

2. *Receipt of Appeal.* A. When an appeal has been received, the PSOB Office will assign the case, and transmit the complete case file to a hearing officer. Assignments will be made in turn, from a standing roster, except in those cases where a case is particularly suitable to a specific hearing officer's experience.

B. The PSOB Office will inform the claimant of the name of the hearing officer, request submission of all evidence to the hearing officer, and send a copy of this appeals procedure. If an oral hearing is requested, the PSOB Officer will be responsible for scheduling the hearing and making the required travel arrangements.

C. The PSOB Office will be responsible for providing all administrative support to the hearing officer. An attorney from the Office of General Counsel (OGC) who has not participated in the consideration of the claim will provide legal advice to the hearing officer. The hearing officer is encouraged to solicit the advice of the assigned OGC attorney on all questions of law.

D. Prior to the hearing, the hearing officer shall request the claimant to provide a list of expected witnesses, and a brief summary of their anticipated testimony.

3. *Designation of Hearing Officers.* A. In an internal instruction the BJA Director designated a roster of hearing officers to hear PSOB appeals.

B. The hearing officers are specifically delegated the Director's authority to:

(1) Issue subpoenas;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Receive evidence at any place in the United States the officer may designate.

4. *Conduct of the Oral Hearing.* A. If requested, an oral hearing shall be conducted before the hearing officer in any location agreeable to the officer and the claimant.

B. The hearing officer shall call the hearing to order and advise the claimant of (i) the findings of fact and conclusions of law supporting the initial determination; (ii) the nature of the hearing officer's authority; and (iii) the manner in which the hearing will be conducted and a determination reached.

C. In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules or procedures, or by Chapter 5 of the Administrative Procedure Act, but must conduct the hearing in such a manner as to best ascertain the rights of the claimant.

D. The hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim.

E. Evidence may be presented orally or in the form of written statements and exhibits. All witnesses shall be sworn by oath or affirmation.

F. If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing may be adjourned and, at any time prior to the mailing of notice of the decision, reopened for the receipt of such evidence. The officer should, in any event, seek to conclude the hearing within 30 days from the first day of the hearing.

G. All hearings shall be attended by the claimant and his or her representative, and such other persons as the hearing officer deems necessary and proper. The wishes of the claimant should always be solicited before any other persons are admitted to the hearing.

H. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

I. The hearing will be deemed closed on the day the hearing officer receives the last piece of evidence relevant to the proceeding.

J. If the claimant waives the oral hearing, the hearing officer shall receive all relevant written evidence the claimant wishes to submit. The hearing officer may ask the claimant to clarify, or explain the evidence submitted, when appropriate. The hearing officer should seek to close the record no later than 60 days after the claimant's request for reconsideration.

5. *Determination.* A. A copy of the transcript shall be provided to the claimant, to the PSOB Office, and OGC after the conclusion of the hearing.

B. The hearing officer shall make his, or her, determination no later than the 30th day after the last piece of evidence has been received. Copies of the determination shall be made available to the PSOB Office and OGC for their review.

C. If either the PSOB Office or OGC disagrees with the hearing officer's final determination, that office may request the Director to review the record. If the Director agrees to review the record, the Director will send the hearing officer's determination, all comments received from the PSOB Office, OGC, or other sources (except where disclosure of the material would result in an unwarranted invasion of privacy), and notice of his or her intent to review the record, to the claimant. The Director will also advise the claimant of his or her opportunity to offer comments, new evidence, and argument to the Director within 30 days after the receipt of notification. The Director shall seek to advise all parties of the final agency decision within 30 days after the expiration of the comment period.

D. If the PSOB Office and OGC agree with the hearing officer's determination, or the

[1] As used in this procedure, the word "claimant" means a claimant for benefits or, where appropriate, the claimant's designated representative.

Director declines to review the record, the hearing officer's determination will be the final agency decision, and will be sent to the claimant by the PSOB Office immediately.

E. If the hearing officer's determination is a denial, all material that (i) contributed to the determination and (ii) was not provided by the claimant shall be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The claimant will be given an opportunity to request the Director to review the record and the hearing officer's decision, and to offer comments, new evidence, or argument to the Director within 30 days. The Director shall advise all parties of the final agency decision within 30 days after the expiration of the comment period.

F. The PSOB Office will provide administrative support to the hearing officer and the Director throughout the appeal process.

Lois Haight Herrington,

Assistant Attorney General, Office of Justice Programs.

March 1, 1985.

[FR Doc. 85-6564 Filed 3-18-85 8:45 am]

BILLING CODE 4410-18-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 308

[Docket No. CRT 85-2-CC]

Notice Commencing 1985 Cable Royalty Inflation Adjustment Proceeding and Setting Procedural Dates

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Act of 1976 authorizes the Copyright Royalty Tribunal to adjust cable television royalty rates for inflation and for gross receipts limitations every fifth year, commencing in 1980 and continuing in 1985, 1990 etc. Pursuant thereto and in response to a joint submission recently filed by the interested parties who had participated in the 1980 adjustment, the Tribunal announces the commencement of the inflation adjustment proceeding through informal rulemaking (notice and comment), in lieu of a formal cable royalty inflation adjustment proceeding.

The Tribunal is proposing adopting the adjustments agreed upon in the Settlement Agreement included within the said joint submission, with the exception of a minor amendment to the gross limitation cut-off for Form 1 and 2 systems, as explained below.

The Tribunal is not proposing to make any adjustment to the 3.75 percent rate applied to signals in excess of the Federal Communication Commission's former distant signal rules, or to the Tribunal's rules concerning the syndicated exclusivity surcharges, at this time. The Tribunal may address these issues in future proceedings, if so petitioned.

DATES: All interested parties shall notify the Tribunal of their intent to participate and shall file comments by April 17, 1985. These comments should include the parties' opinion as to whether good cause exists to make the final rules effective with the publishing of the final rulemaking order in the **Federal Register.** 5 U.S.C. 554(d)(3) (Administrative Procedure Act).

If any opposing comments are filed, reply comments shall be filed by May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Marianne Mele Hall, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Room 450, Washington, D.C. 20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION: Sections 801(b)(2) (A) and (D) of the Copyright Act of 1976 (Act) authorize the Copyright Royalty Tribunal (Tribunal) to adjust the cable television royalty rates and gross receipts limitations for inflation as set forth in sections 111(d)(2)(B)-(D) of the Act. The first such adjustments were made by the Tribunal after a proceeding conducted in 1980. *1980 Adjustment of the Royalty Rate for Cable Systems,* 46 FR 892 (1981), *aff'd in part, remanded in part sub nom. NCTA v. CRT,* 689 F.2d 1077 (D.C. Cir. 1982). Pursuant to section 804(a)(2)(A) of the Act, parties with a "significant interest" in the cable royalty rates may petition the Tribunal in 1985 and every fifth year thereafter to make further inflation adjustments.

On March 8, 1985, the Tribunal received a joint submission concerning the 1985 inflation adjustment from the National Cable Television Association and Community Antenna Television Association (hereinafter collectively referred to as Cable Representatives); and the Motion Picture Association of America, Major League Baseball, National Basketball Association, North American Soccer League, National Hockey League, National Collegiate Athletic Association, American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc. and National Association of Broadcasters (hereinafter collectively referred to as the Copyright Owners). The Cable Representatives and Copyright Owners were the only parties who participated in the Tribunal's 1980 cable inflation adjustment proceeding and have a significant interest in the royalty rates subject to adjustment under sections 801(b)(2)(A) and (D) of the Act.

In their joint submission, the Copyright Owners and Cable Representatives advised that they had entered into an "Agreement of Settlement Concerning 1985 Cable Royalty Inflation Adjustment" (Settlement Agreement). This Settlement Agreement would, if effectuated, resolve all issues that would be raised in the 1985 cable information adjustment proceeding by these parties. Said Settlement Agreement is included below.

Pursuant to the joint submission, the Tribunal is commencing the 1985 cable inflation adjustment proceeding and is proposing adopting the adjustment of the royalty rates in section 111(d)(2)(B) of the Act and § 308.2(a) as per the Settlement Agreement:

.893 (instead of the current .799) of 1 per centum for the first Distant Signal Equivalent (DSE);

.563 (instead of the current .503) of 1 per centum each for the second, third and fourth DSE's; and

.265 (instead of the current .237) of 1 per centum for the fifth DSE and each additional DSE thereafter.

The proposed rates would become effective with the first accounting period of 1985 (January 1-June 30).

Also, pursuant to the joint submission, the Tribunal is proposing adjusting the gross receipts limitations in sections 111(d)(2)(C)-(D) of the Act and § 308.2(b) of the Tribunal's rules as per the Settlement Agreement. The current $107,000 limitation would be raised to $146,000 and the $214,000 limitation would be raised to $292,000. The proposed limitations would also become effective with the first accounting period of 1985.

The Tribunal disagrees with the Settlement Agreement on the rounded "cut-offs" for purposes of determining a cable system's status as a Form 1, Form 2 or Form 3 system:

The Tribunal proposes the following cutoffs;

"Form 1" systems: $75,800 (instead of the present $55,500) or less in semi-annual gross receipts from the basic service of providing secondary transmissions;

"Form 2" systems: $75,800 to $292,000 (instead of the present $55,500-$214,000) in semi-annual gross receipts from the basic service of providing secondary transmissions; and

"Form 3" systems: $292,000 (instead of $214,000) or more in semi-annual gross receipts from the basic service of providing secondary transmissions.

The Tribunal's use of the more accurate $75,800 instead of the Settlement Agreement's rounded $76,000

for Form 1 and 2 cut-offs is necessary for the functioning of the Copyright Office, Licensing Division. All Form 1 cable systems would pay a flat $28 semiannual royalty fee (instead of the current fee of $20).

The Tribunal acknowledges that the Settlement Agreement makes no adjustment in the royalty rates as set forth in either § 308.2(c) of the Tribunal's rules (concerning the 3.75 percent rate for signals in excess of the Federal Communications Commission's former distant signal rules); or § 308.2(d) of the Tribunal's rules (concerning the syndicated exclusivity surcharges). These issues may be later raised by the parties upon petition pursuant to sections 801(b)(2)(B) and (C) of the Act.

The Tribunal is pleased that all the parties who participated in the 1980 inflation adjustment proceeding have been able to negotiate a settlement concerning the 1985 inflation adjustment issues. Such negotiated settlements are consistent with the spirit and intent of the Copyright Act. The Tribunal believes that the Settlement Agreement with the Tribunal's proposed amendment successfully resolves the 1985 Cable Royalty Inflation Adjustment. Neverthless, there may be parties who have not participated in the Settlement Agreement or the prior inflation adjustment proceeding who may wish to express views regarding the inflation adjustment.

Accordingly, and pursuant to section 804 of the Act, the Tribunal hereby gives notice of commencement of the 1985 Cable Inflation Adjustment Proceeding (notice and comment) contemplated by sections 801(b)(2)(A) and (D) of the Act. The Tribunal directs that all interested parties notify the Tribunal no later than April 17, 1985 of their intent to participate in this proceeding.

The Tribunal further directs that all such interested parties submit comments concerning the Tribunal's adoption of the Settlement Agreement as amended by April 17, 1985. Any opposing party must (1) set forth the basis of its opposition; (2) describe what, if any, further proceedings (including oral argument and evidentiary hearings) should be held before the Tribunal makes inflation adjustments under sections 801(b)(2)(A) and (D) of the Act; and (3) describe the nature and purpose of any evidence which it would introduce should the Tribunal hold evidentiary hearings.

The Tribunal solicits comments from those who support the proposal as to whether good cause exists to make the final rules effective with the publishing of the final rulemaking order in the Federal Register, 5 U.S.C. 554(d)(3) (Administrative Procedure Act). If one or more opposing comments are filed, reply comments must be filed no later than May 1, 1985.

The full text of the Settlement Agreement is published below at the request of and upon agreement of all the parties. This is done without precedent setting value and strictly as an accommodation to the parties.

Dated: March 13, 1985.

Marianne M. Hall,

Chairman.

Agreement of Settlement Concerning 1985 Cable Royalty Inflation Adjustment

This "Agreement of Settlement Concerning 1985 Cable Royalty Inflation Adjustment" ("Settlement Agreement") is made as of the 8th day of March, 1985, by and among the National Cable Television Association and the Community Antenna Television Association (hereinafter collectively referred to as "Cable Representatives"); and the Motion Picture Association of America, Inc., Major League Baseball, the National Basketball Association, the National Hockey League, the North American Soccer League, the National Collegiate Athletic Association, the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., Sesac, Inc., and the National Association of Broadcasters (hereinafter collectively referred to as "Copyright Owners").

Background

Sections 801(b)(2)(A) & (D) of the Copyright Act of 1976 ("Act") authorize the Copyright Royalty Tribunal ("Tribunal") to adjust for inflation the royalty rates and gross receipts limitations set forth in sections 111(d)(2)(B)–(D) of the Act. The first such adjustments were made by the Tribunal after a proceeding conducted in 1980. *See NCTA* v. *CRT*, 689 F.2d 1077 (D.C. Cir. 1982). The Copyright Owners and Cable representatives were the only parties to participate in the 1980 inflation adjustment proceeding. Pursuant to section 804(a)(2)(A) of the Act, parties with a "significant interest" in the cable royalty rates to be adjusted may petition the Tribunal in 1985 and every fifth year thereafter to make further inflation adjustments.

In order to avoid the costs, uncertainties and delays of litigation and consistent with the approach taken by the Tribunal and Court of Appeals in the 1980 inflation adjustment proceeding, the Cable Representatives and Copyright Owners have entered into a negotiated settlement agreement concerning the 1985 cable royalty inflation adjustments. The complete terms of this agreement are as follows:

Article I

The Cable Representatives and Copyright Owners will promptly request the Tribunal to commence the 1985 cable inflation adjustment proceeding.

Article II

The Cable Representatives and Copyright Owners will urge the Tribunal to adjust the rates set forth in section 111(d)(2)(B) of the Act and § 308.2(a) of the Tribunal's rules as follows, commencing with the first semiannual accounting period of 1985 and for each semiannual accounting period thereafter:

(1) .893 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (2) through (4);

(2) .893 of 1 per centum of such gross receipts for the first distant signal equivalent;

(3) .563 of 1 per centum of such gross receipts for each of the second, third and fourth distant signal equivalents; and

(4) .265 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter.

Article III

The Cable Representatives and Copyright Owners shall urge the Tribunal to adjust the gross receipts limitations established by 17 U.S.C. 111(d)(2) (C) and (D) of the Act and § 308.2(b) of the Tribunal's rules as follows, commencing with the first semiannual accounting period of 1985 and for each semiannual accounting period thereafter:

(1) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters total $146,000 or less, gross receipts of the cable system for the purpose of this subclause shall be computed by subtracting from such actual gross receipts the amount by which $146,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than $5,600. The royalty fee payable under this subclause shall be 0.5 of 1 per centum regardless of the number of distant signal equivalents, if any; and

(2) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than $146,000 but less than $292,000, the royalty fee payable under this subclause shall be (i) 0.5 of 1 per centum of any gross receipts up to $146,000 and (ii) 1 per centum of any gross receipts in excess of $146,000 but less than $292,000, regardless of the number of distant signal equivalents, if any.

Article IV

The Cable Representatives and Copyright Owners agree that the "cut-off" for purposes of determining a cable system's status as a Form 1, Form 2 or Form 3 system will be as follows, commencing with the first semiannual accounting period of 1985 and for each semiannual accoubting period thereafter:

"Form 1" systems: $76,000 or less in semiannual gross receipts from the basic service of providing secondary transmissions;

"Form 2" systems: $76,000 to $292,000 in semiannual gross receipts from the basic

service of providing secondary transmissions; and

"Form 3" systems: $292,000 or more in semiannual gross receipts from the basic service of providing secondary transmissions

The Cable Representatives and Copyright Owners further agree that the semiannual royalty fee payment for Form 1 cable systems shall be $28.00, commencing with the first semiannual accounting period of 1985 and continuing for each accounting period thereafter.

Article V

(A) Cable Representatives and Copyright Owners agree not to seek in the 1985 Inflation Adjustment Proceeding any adjustment to rates currently prescribed in § 308.2(c) of the Tribunal's rules, relating to rates for distant signals in excess of the former FCC distant signal rules, or in § 308.2(d) of the Tribunal's rules, relating to rates for elimination of syndicated exclusivity protection.

(B) This Settlement Agreement does not preclude and is without prejudice to the Cable Representatives and Copyright Owners seeking adjustments in the rates specified in paragraph (A) above in any proceeding to change rates in accordance with sections 801(b)(2) (B) and (C) and 804(b) of the Act or in any inflation adjustment proceeding other than the 1985 Inflation Adjustment Proceeding.

Article VI

(A) The Cable Representatives and Copyright Owners will use their best efforts to persuade the Tribunal and all parties participating in the 1985 Inflation Adjustment Proceeding to adopt the terms of this Settlement Agreement and to have the Tribunal amend its regulations in accordance with this Settlement Agreement.

(B) Each of the Cable Representatives and Copyright Owners states that it has the authority to enter into this Settlement Agreement as an industry representative and is presently unaware of any other person or entity which would oppose this Settlement Agreement.

Article VII

(A) This Settlement Agreement is made upon the express understanding that it constitutes a negotiated settlement of the 1985 Inflation Adjustment Proceeding. No person shall be deemed to have accepted as precedent, or approved, accepted, agreed to, or consented to any principle underlying, or which may be asserted to underlie, it nor to any principle advanced by Copyright Owners or Cable Representatives as to any of the matters at issue in said proceeding.

(B) This Settlement Agreement is without prejudice to any position, contention, or argument which Copyright Owners or Cable Representatives may take in any proceeding or litigation other than the 1985 Inflation Adjustment Proceeding.

Article VIII

The Cable Representatives and Copyright Owners agree that the various provisions of this Settlement Agreement are not severable. The parties further agree that, except as may be necessary in connection with jointly seeking approval of this Settlement Agreement before the Tribunal or before a court on judicial review of a Tribunal order approving this Settlement Agreement, it shall be privileged and not admissible in evidence or in any way described or discussed in the 1985 Inflation Adjustment Proceeding or in any other proceeding.

Article IX

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one Agreement, and a party may execute this Settlement Agreement by signing any such counterpart.

In Witness Whereof, the parties to this Settlement Agreement have caused it to be executed by their authorized representatives as of the day and year first above written.

National Cable Television Association, Inc.
By /s/ Robert St. John Roper, Robert St. John Roper, LeBoeuf, Lamb, Liby & MacRae, 1333 New Hampshire Ave., N.W., Washington, D.C. 20036

Major League Baseball
By /s/ Robert Alan Garrett, Robert Alan Garrett, Arnold & Porter, 1200 New Hampshire Ave., N.W., Washington, D.C. 20036

National Basketball Association and North American Soccer League
By /s/ Philip R. Hochberg, Philip R. Hochberg, Baraff, Koerner, Olender & Hochberg, 2033 M Street, N.W., Washington, D.C. 20036

National Collegiate Athletic Association
By /s/ Michael Scott, Michael Scott, Squire, Sanders & Dempsey, 1201 Pennsylvania Ave., N.W., Washington, D.C. 20004

Community Antenna Television Association
By /s/ Stephen R. Effros, Stephen R. Effros, Community Antenna Television Association, 3977 Chain Bridge Road, Fairfax, Virginia 22030

Motion Picture Association of America, Inc.
By /s/ Dennis Lane, Dennis Lane, Wilner & Scheiner, 1200 New Hampshire Ave., N.W., Washington, D.C. 20036

National Hockey League
By /s/ Robert W. Coll, Robert W. Coll, McKenna, Wilkinson & Kittner, 1150 Seventeenth Street, N.W., Washington, D.C. 20036

National Association of Broadcasters
By /s/ John I. Stewart, John I. Stewart, Crowell & Moring, 1100 Connecticut Ave., N.W., Washington, D.C. 20036

American Society of Composers, Authors and Publishers
By /s/ Bernard Korman, Bernard Korman, ASCAP, One Lincoln Plaza, New York, New York 10023

Sesac, Inc.
By /s/ Nicholas Arcomano, Nicholas Arcomano, Vice President and Counsel, SESAC, 10 Columbus Circle, New York, New York 10019

Broadcast Music, Inc.
By /s/ Charles T. Duncan, Charles T. Duncan, Reid & Priest, 1111—19th Street, N.W., Suite 1100, Washington, D.C. 20036

[FR Doc. 85-6444 Filed 3-18-85; 8:45 am]
BILLING CODE 1410-08-M

POSTAL SERVICE

39 CFR Part 111

Correct ZIP Codes for Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Domestic Mail Manual to require mailers of certain categories of mail and those who desire to participate in certain presort discount mailings to include the correct five-digit ZIP Code in the address of each piece. With certain exceptions, current postal regulations do not explicitly require mailers to use correct ZIP Codes. When mailers fail to use correct ZIP Codes, the Postal Service incurs additional handling expense. This nullifies the savings the Postal Service would otherwise receive when mailers presort their mail.

DATE: Comments must be received on or before April 18, 1985.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Address Information and Management Control Systems, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260–7230.

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 7427 at the above address.

FOR FURTHER INFORMATION CONTACT: William Price, (202) 245–5784.

SUPPLEMENTARY INFORMATION: Most bulk rate mailings of First-, second-, third-, and fourth-class mail are required to be presorted by mailers to specific ZIP Code and other destinations. The addresses on bulk rate mailings and certain other mail are required to contain either a ZIP+4 code or a five-digit ZIP Code. Except for mailers of bulk second-class and ZIP+4 First-Class Mail, current postal regulations do not explicitly require mailers to use correct ZIP code in addressing their mail. When incorrect ZIP Codes are used, mail must be forwarded at additional expense in order to effect delivery. In particular, this additional handling expense reduces or nullifies the cost savings that justify the rate discounts that mailers receive for presorting their mail.

This proposed rule would amend postal regulations to require all bulk rate mailers to include correct five-digit ZIP Codes on their mail. The proposed rule would also amend postal regulations to

provide that the correct ZIP Code be used when a ZIP Code is required in the address. This would eliminate the additional handlings and expense associated with the use of incorrect ZIP Codes. Mailers would satisfy the requirement by using the ZIP Codes in the version of Publication 65, *National Five-Digit ZIP Code and Post Office Directory* (issued annually in January) that is current at the time of mailing or in the version of the "ZIP-A-LIST" computer tapes (issued quarterly) that are current at the time of mailing. Mailers will be allowed until March 15 of each year to update their mailing lists with current ZIP Codes.

This proposed change does not replace, supplement, or otherwise affect the existing regulations which require that the correct ZIP+4 code appear on each piece of ZIP+4 mail.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b)(c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comment on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. In 122.6, revise 122.634 and .635 to read as follows:

122.6 ZIP Code System.

* * * * *

.63 Assignment of ZIP Codes.

* * * * *

.634 Presorting by ZIP Code. Presort rate mailings of First-, Second-, Third-, and Fourth-Class mail must be presorted by the mailer to specific ZIP Code and other destinations. The correct five-digit ZIP Code must be included in the address of each piece. See 122.635 for correct ZIP Codes. Lists for use by bulk rate mailers in sorting to optional multi-ZIP Code cities, unique three-digit ZIP Code prefix cities, sectional center facilities (SCF's), area distribution centers (ADC's), state distribution centers (SDC's), states, and bulk mail centers (BMC's) are in Exhibits 122.63 a through 1.

.635 Correct ZIP Codes. Correct five-digit ZIP Code information is contained in the most current Publication 65, *National Five-Digit ZIP Code and Post Office Directory*, or in the latest "ZIP-A-LIST" computer tapes. The directory is available for purchase at all post offices, classified stations and branches, and from the Government Printing Office. ZIP-A-LIST computer tapes are available from the Postal Service at no charge and can be obtained by submitting a completed Form 5602, *ZIP-A-LIST/DOPO Tapes Order Form*, to the address indicated on the form. Form 5602, *ZIP-A-LIST/DOPO Tapes Order Form*, can be obtained from the local postmaster. Use of each calendar year's *National Five-Digit ZIP Code and Post Office Directory* for including the current five-digit ZIP Code on each piece of a bulk rate mailing is mandatory after March 15 of each year. Use of the more current ZIP-A-LIST data is permitted and encouraged.

2. In 361, revise 361.3 to read as follows:

361 Addressing.

* * * * *

361.3 Presort First-Class Mail and Carrier Route First-Class Mail.

The address of each piece of Presort First-Class Mail and Carrier Route First-Class Mail must include either the correct ZIP+4 code or the correct five-digit ZIP Code. The address of each piece of carrier route First-Class Mail must also contain the correct carrier route code.

3. In 661, revise 661.2 to read as follows:

661 Addressing.

* * * * *

661.2 ZIP Code.

Each piece including the top copy of a firm package (see 667.121a) must bear the name and address of the addressee. The address must include either the correct ZIP+4 code or the correct five-digit code ZIP Code. *Exception:* A ZIP Code may be omitted from pieces bearing a simplified address in accordance with 122.41 and from pieces mailed at the rates in 611.11 and 611.4.

4. In 761, revise 761.11 to read as follows:

761 General Requirements.

761.1 Addressing.

.11 The address on all fourth-class matter mailed at bulk parcel post, bound printed matter, library and special fourth-class rates must contain either the correct ZIP+4 code or the correct five-digit ZIP Code.

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

(39 U.S.C. 401, 403(b))

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-6523 Filed 3-18-85; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[BERC-514-P]

Medicaid Program; Payments to Institutions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal would provide greater flexibility to States by amending the Medicaid regulations that govern post-eligibility determinations for institutionalized individuals.

The proposed rules are part of the Department's regulation reform efforts that are designed to clarify regulations, delete unnecessary or burdensome requirements, and provide maximum flexibility to States while maintaining patient health and safety.

DATE: To assure consideration comments should be submitted by May 20, 1985.

ADDRESS: Address comments in writing to: Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BERC-514-P, P.O. Box 26676, Baltimore, Maryland 21207.

In commenting, please refer to file code BERC-514-P.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to room 132 East High Rise, 6325 Security Boulevard, Baltimore, Md.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication in Room 309-G of the Department's office at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Marinos Svolos, (301) 594-9050.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicaid program (title XIX of the Social Security Act (the Act, U.S.C. 1396 et seq.)) is a Federally supported and State administered assistance program providing medical care and services to certain low income individuals and families. Eligible individuals may include certain aged, blind or disabled individuals who are institutionalized in health care facilities (i.e., hospitals, skilled nursing facilities and intermediate care facilities). Eligibility for Medicaid for persons in these institutions is determined by the monthly application of a combination of State and Federal criteria concerning income levels.

Section 1902(a)(17) of the Act (42 U.S.C. 1396a(a)(17)) gives the Secretary broad authority to set standards for the reasonable treatment of an individual's income. Current regulations (42 CFR 435.725, 435.733 and 435.832 for the various Medicaid States, District of Columbia and Northern Mariana Islands, and 42 CFR 436.832 for Guam, Puerto Rico, and the Virgin Islands) provide that, after these criteria are applied and eligibility for Medicaid is established, the State's payment to the institution must be reduced by the amount of the institutionalized individual's income less certain allowable deductions. (Such allowable deductions must include any incurred medical expenses for services which are not covered in a State's Medicaid plan.) These provisions reflect Congressional intent to have an individual with income defray the cost of institutional care to the extent possible.

States have found current regulations regarding post-eligibility treatment of income and resources of institutionalized individuals to be inflexible and administratively burdensome. States have advised us that they have experienced problems in making the individual calculations and adjusting payments to institutions because the income and expenses of an individual patient can fluctuate widely from month to month. Additionally, States point out that the regulations require them, when calculating an individual's cost of care liability, to deduct the costs of medical services which the States have decided not to cover in their State plans. Costs which the States are not required to cover in their State plans should also not be required to be deducted in calculating the individual's liability, they maintain. Instead, States have asked for greater flexibility in deciding how these post-eligibility determinations will be made.

II. Provisions of the Regulations

To allow States more flexibility in administering their programs, we are proposing to make several changes to the current regulations. First, we would revise 42 CFR 435.725, 435.733, 435.832 and 436.832 to allow States greater flexibility in administering provisions relating to making the computations and applying patient income to the cost of care in institutions. We would amend the regulations to provide that, in determining income for institutionalized individuals, each State may, at its option, either continue to use total available income in the computation, or it may project anticipated income using the average available amount of monthly income received by the individual over the prior 6 month period. By projecting the individual's available income over a 6 month period a State can make a reliable and consistent prediction of the individual's income. This would eliminate the need for monthly recalculations of eligibility to account, for example, for interest and dividend payments which can vary from month to month. However, States that project income over a 6 month period would be required to reconcile actual income against projected income for that period, and apply the difference to future post-eligibility determinations, in accordance with procedures specified by the State.

Second, we would amend the regulations to allow States greater flexibility in determining allowable medical deductions from the patient's income when establishing his or her contribution to the cost of care. When considering the individual's allowable medical expenses, there are two types which would fit the general category of "noncovered" medical expenses, i.e., medical expenses incurred by the recipient for which title XIX will not be making any payment. These are:

(1) Medical expenses for services which are recognized under State law, but not covered at all under the State plan; and

(2) Medical expenses for services which exceed State plan limitations on amount, duration or scope.

For example, assume a State's plan does not cover dentures, but will pay for up to two dental services per month. An institutionalized individual with income to be considered towards cost of care sees the dentist several times one month which results in charges for five dental services in that month. In the same month, the individual incurs a charge for dentures.

Under this proposal, States *may* deduct none, some, or all of the cost of the dentures from this individual's income. However, the State *must* deduct some amount for the three dental services which exceed its State plan limit on those services. The proposal would permit the State to set a reasonable limit on the amounts to be deducted for these additional dental services. States would not, however, be permitted to set an aggregate amount on these services. For example, the State may not set an overall fixed amount of $150 on noncovered medical expenses when setting reasonable limits but must, rather, set reasonable limits on each type of service.

We are particularly interested in receiving public comments on whether States should have the added option of projecting deductions of individuals' medical or remedial expenses, based on an average of expenses in previous months. We believe that this option would give States increased administrative flexibility by eliminating the need to do monthly budgeting for those individuals who have recurring medical expenses, such as insulin injections.

III. Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that Order. Such analysis must show, when published, that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure the regulations to be cost-effective. We have determined that the proposal to amend the Medicaid regulations that govern post-eligibility determinations for institutionalized individuals would not result in an annual economic effect of $100 million or meet the other thresholds in section 1(b) of the Order.

We estimate that this proposal would result in some Medicaid savings, but we cannot give an exact estimate because we do not know which options within the proposal the States will select. Although we have little data on which to base an estimate, we have developed a rough estimate based on the Medicaid population in the areas most likely to be affected and an approximation of the level of savings per eligible individual associated with the proposed change in the post-eligibility determination process. On that basis, we estimate that

the FY 1984 savings could range from 0–$28 million.

Also, we believe that this proposal would ease some of the States' administrative burden associated with the current regulations. We believe that it would be cost effective to give the States the right to eliminate unnecessary administrative expenses. However, we estimate that there would be only a savings to the States' Medicaid program and that the savings would be negligible.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires us to prepare and publish a regulatory flexibility analysis in regulations unless the Secretary certifies that the regulations will not have a significant impact on a substantial number of small entities. Such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure the regulations to be cost-effective.

As defined by the Regulatory Flexibility Act, the term "small entity" includes the term "small governmental jurisdiction", which means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand. No State meets this definition, and since this proposal primarily affects States and individuals, an analysis is not required for these affected States and individuals. However, with respect to the effect of the post-eligibility provision on institutions, we believe that some institutions could be affected by a reduction in State payments as a result of a State choosing to set a reasonable limit on the amount of the expenses to be deducted. Setting reasonable limits would probably reduce State payment as payment in full to institutions as required by § 447.15. However, since we do not know which States would establish reasonable limits or what amount of an institution's expenses would exceed the limit and not be reimbursed, we cannot predict the fiscal impact of this provision.

Therefore, the Secretary certifies, under Section 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), that the proposed regulations would not have a significant impact on a substantial number of small entities.

IV. Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we would consider all comments and respond to them in the preamble to that rule.

V. List of Subjects

42 CFR Part 435

Aid to families with dependent children, Aliens, Categorically needy, Contracts (agreements—State plan), Eligibility, Grant-in-aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 436

Aid to families with dependent children, Aliens, Contracts (agreements), Eligibility, Grant-in-aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental security income (SSI), Virgin Islands.

42 CFR Parts 435 and 436 would be amended as set forth below:

A. Part 435 would be amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

1. Section 435.725 is amended by revising paragraph (a), the introductory language of paragraph (c), redesignating paragraph (c)(4)(ii) as (d)(1), and revising paragraphs (c)(4) and (d) to read as follows:

§ 435.725 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

(a) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraph (c) of this section, from the individual's income or projected income that is based on the individual's average available income for the preceding 6 months. States that elect to project income must periodically reconcile projected income with actual income for the 6 month period, and apply any difference between the two amounts to future post eligibility determinations in accordance with procedures specified by the State.

* * * * *

(c) In reducing its payment to the institution, the agency must deduct the following amounts, in the following order, from the individual's total or projected income, as determined under paragraph (a) of this section. Using either method, income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges: and

(ii) Necessary medical or remedial services included in the State's Medicaid plan, even when they exceed limitations on amount, duration or scope imposed by the agency, subject to reasonable limits the agency may establish on amounts of these expenses.

(d) In determining the amount of the individual's income to be used to reduce the agency's payment to the institution, the agency may deduct the following amounts from the individual's income as determined under paragraph (a) of this section:

(1) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses; and

(2) For single individuals, an amount (in addition to the personal needs allowance) for maintenance of the individual's home if—

(i) The amount is deducted for not more than a 6-month period; and

(ii) A physician has certified that the individual is likely to return to his home within that period.

3. Section 435.733 is amended by revising paragraph (a), the introductory language of paragraph (c), redesignating paragraph (c)(4)(ii) as (d)(1), and revising paragraphs (c)(4) and (d) to read as follows:

§ 435.733 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

(a) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraph (c) of this section, from the individual's income or projected income that is based on the individual's average available income for the preceding 6 months. States that elect to project

income must periodically reconcile projected income with actual income for the 6 month period, and apply any differences between the two amounts to future post eligibility determinations in accordance with procedures specified by the State.

* * * * *

(c) The agency must deduct the following amounts, in the following order, from the individual's total or projected income, as determined under paragraph (a) of this section. Using either method, income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial services included in the State's Medicaid plan, even when they exceed limitations on amount, duration or scope imposed by the agency, subject to reasonable limits the agency may establish on amounts of these expenses.

(d) In determining the amount of the individual's income to be used to reduce the agency's payment to the institution, the agency may deduct the following amounts from the individual's income as determined under paragraph (a) of this section:

(1) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses; and

(2) For single individuals, an amount (in addition to the personal needs allowance) for maintenance of the individual's home if—

(i) The amount is deducted for not more than a 6-month period; and

(ii) A physician has certified that the individual is likely to return to his home within that period.

4. Section 435.832 is amended by revising paragraph (a), the introductory language of paragraph (c), redesignating paragraph (c)(4)(ii) as (d)(1), and revising paragraphs (c)(4) and (d) to read as follows:

§ 435.832 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

(a) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragagraph (c) of this section, from the individual's income or projected income that is based on the individual's average available income for the preceding 6 months. States that elect to project income must periodically reconcile projected income with actual income for the 6 month period, and apply any difference between the two amounts to future post eligibility determinations in accordance with procedures specified by the State.

* * * * *

(c) The agency must deduct the following amounts, in the following order, from the individual's total or projected income, as determined under paragraph (a) of this section. Using either method, income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial services included in the State's Medicaid plan, even when they exceed limitations on amount, duration or scope imposed by the agency, subject to reasonable limits the agency may establish on amounts of these expenses.

(d) In determining the amount of the individual's income to be used to reduce the agency's payment to the institution, the agency may deduct the following amounts from the individual's income as determined under paragraph (a) of this section:

(1) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses; and

(2) For single individuals, an amount (in addition to the personal needs allowance) for maintenance of the individual's home if—

(i) The amount is deducted for not more than a 6-month period; and

(ii) A physician has certified that the individual is likely to return to his home within that period.

B. Part 436 would be amended as follows:

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

The authority citation for Part 436 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

1. Section 436.832 is amended by revising paragraph (a), the introductory language of paragraph (c), redesignating paragraph (c)(4)(ii) as (d)(1), and revising paragraphs (c)(4) and (d) to read as follows:

§ 436.832 Post-eligibility treatment of income and resources of institutionalized individuals. Application of patient income to the cost of care.

(a) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraph (c) from the individual's income or a projected income that is based on the individual's average available income for the preceding 6 months. States that elect to project income must periodically reconcile projected income with actual income for the 6 month period, and apply any difference between the two amounts to future post eligibility determinations in accordance with procedures specified by the State.

* * * * *

(c) The agency must deduct the following amounts, in the following order, from the individual's total or projected income as determined under paragrpah (a) of this section. Using either method, income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial services included in the State's Medicaid plan, even when they exceed limitations on amount, duration or scope imposed by the agency, subejct to reasonable limits the agency may establish on amounts of these expenses; and

(d) In determining the amount of the individual's income to be used to reduce the agency's payment to the institution, the agency may deduct the following amounts from the individual's income as determined under paragraph (a) of this section:

(1) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses; and

(2) For single individuals, an amount (in addition to the personal needs allowance) for maintenance of the individual's home if—

(i) The amount is deducted for not more than a 6-month period; and

(ii) A physician has certified that the individual is likely to return to his home within that period.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: December 12, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: October 2, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-6532 Filed 3-18-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is proposing to revise its procedural rules at 43 CFR 4.5 and 4.27 to clarify that the Secretary does not have power to exercise jurisdiction over matters before the Interior Board of Contract Appeals (IBCA), to establish procedures relating to the exercise of the Secretary's reserved powers over OHA proceedings and to broaden and strengthen the general prohibition against *ex parte* communications in OHA proceedings. OHA is also proposing to remove duplicative provisions regarding *ex parte* communications from the procedures for particular OHA proceedings.

DATE: Written comments on the proposed amendments must be received by April 18, 1985.

ADDRESSES: Written comments are to be mailed or hand-delivered to the Director, Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: John H. Kelly, Deputy Director, OHA, (703) 235-3810; Deborah S. Ryan, Attorney-Advisor, Office of the Solicitor, (202) 343-5216.

SUPPLEMENTARY INFORMATION: OHA is the body within the Department of the Interior that has been delegated the authority of the Secretary to hear, consider, and determine matters within the jurisdiction of the Department involving hearings, appeals, and other review functions of the Secretary. OHA's general rules relating to procedures and practice are contained in 43 CFR Part 4, Subpart B. Other subparts in 43 CFR Part 4 contain procedural rules applicable to particular types of hearings, for example, land appeals.

OHA's general rules relating to procedures and practice clearly state that the Secretary has the authority to take jurisdiction at any stage of any case pending before OHA and render the final decision after holding such hearing as may be required by law, to review any OHA decision, and to direct reconsideration of any decision. 43 CFR 4.5(a). The rules also state that the Director of OHA, pursuant to his delegated authority from the Secretary, may assume jurisdiction of or review any case before an appeals board or direct reconsideration of any decision by an appeals board. 43 CFR 4.5(b). The existing rules say nothing about what procedures are to be followed once the Secretary or Director elects to assume jurisdiction of a case or review an OHA decision. The proposed subsection would provide that when the Secretary or Director becomes personally involved in the decisionmaking process by taking jurisdiction of a pending case or reviewing a decision already issued, the parties and appropriate Departmental personnel—which would include the board or administrative law judge handling the case—will be notified, the administrative record will be requested, and a written decision will be issued. We believe that these are appropriate procedural safeguards which enhance the adminstrative process. The proposed policy would not modify existing policy with repect to the finality of OHA decisions for the purpose of exhaustion of adminstrative remedies or create an opportunity for appeal to the Secretary or Director. The proposed subsection would merely clarify procedures relating to the exercise of the Secretary's reserved power and establish adminstrative records for Secretarial review of OHA proceedings.

The existing rules fail to recognize that IBCA, unlike the other OHA boards, is a creature of statute, namely the Contract Disputes Act of 1978, Pub. L. No. 95-563, 41 U.S.C. 601-613 (1982), and that its decisions are final for the Department. We propose changes to 43 CFR 4.5 which would acknowledge the distinct status of IBCA by expressly excepting it from the provisions relating to the exercise of reserved power by the Secretary or Director.

OHA's general rules relating to procedures and practice also contain a two-sentence provision on *ex parte* communications that is applicable to all OHA proceedings. The first sentence of the provision prohibits communications between any party and a member of OHA concerning the merits of a proceeding or an appeal unless the communication is furnished in writing to other parties or made orally in the presence of the other parties or their representatives. The second sentence of the provision states that an OHA appeals board is to refuse to receive, except as part of the appeal record, any information having a substantial bearing on an appeal from persons who are not representatives or parties but who have an interest in the decision to be rendered. 43 CFR 4.27(b). Other prohibitions against *ex parte* communications are contained in the procedures for the Board of Contract Appeals, 43 CFR 4.100(f), the Board of Indian Appeals, 43 CFR 4.317(b), and proceedings concerning nondiscrimination in Federally assisted programs, 43 CFR 4.832(a).

OHA is proposing revisions of the general prohibition against *ex parte* communications in 43 CFR 4.27(b) that would change the provision's scope, applicability, and enforceability. The first proposed change would broaden the scope of the prohibited *ex parte* communications from communications on the merits of a proceeding or an appeal, as currently provided, to communications concerning the merits of a case or any related action pending before OHA, including a rulemaking that would affect a pending case. The second proposed change would increase the number of people who may not have *ex parte* communications from any party and a member of OHA, as currently provided, to any party, person who has an interest in the decision to be rendered, or representative of a party or interested person and a member of OHA involved or likely to become involved in the decisionmaking process of a given proceeding. The term "interested person" is intended to be a wide, inclusive term covering any individual or other person with an interest in the proceeding. The interest need not be monetary, nor need a person be a party to, or intervenor in, the proceeding to come under this section. The term includes, but is not limited to, parties, competitors, public officials, and

nonprofit or public interest organizations and associations with a special interest in the matter. The term also includes Departmental bureaus and offices (and the employees thereof), whether or not parties to the proceeding. The term does not include a member of the public at large who makes a casual or general expression of opinion about a pending proceeding; nor is it intended to include members of the public at large who may participate in a letter writing campaign generated by an interested person. A "representative" is intended to include, but is not limited to, a member of the Department's Office of the Solicitor who is representing a bureau or office before OHA. It would also include anyone who, though not interested in the proceeding himself, communicates with OHA at the request or suggestion of a party.

In addition, OHA is proposing that a subsection be added to § 4.27(b) that conforms to the 1976 amendments to section 557 of the Administrative Procedure Act (APA), Pub. L. No. 94–409, 5 U.S.C. 557(d) (1982), regarding the placement of *ex parte* communications in the record and sanctions. Although only a small percentage of OHA proceedings are governed by the APA, we do not consider it advisable to have one standard for APA proceedings and a different standard for non-APA proceedings. The proposed subsection would require that any prohibited *ex parte* communication be made part of the record and that an opportunity for response be allowed. The subsection also would authorize an OHA appeals board or official to require an offending party to show cause why the party's claim, interest, or motion should not be dismissed, denied, or otherwise adversely affected, and to invoke appropriate sanctions against other persons who violate the prohibition.

These proposed changes would strengthen and broaden the current prohibition against *ex parte* communications and make the prohibition enforceable by OHA. If these revisions are made, OHA proposes that the second sentence of the current provision that requires an OHA appeals board to receive information from an interested person only as part of the appeals record be omitted because the sentence would be subsumed in the revisions and would not be necessary as a separate and additional restriction for appeals. OHA also proposes that certain other provisions regarding *ex parte* communications for particular OHA proceedings be deleted in order to avoid any duplication or inconsistencies in OHA procedures. The provision in 43 CFR 4.100(f) is not being deleted because it conforms to guidelines for Uniform Rules of Procedure for Boards of Contract Appeals promulgated by the Office of Federal Procurement Policy. Although less comprehensive than the proposed rule, it is not considered to be inconsistent with it.

The Department of the Interior has determined that this document is not a major rule under Exec. Order No. 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The proposed amendments are intended only to clarify the Secretary's review authority over OHA cases and to broaden and strengthen the general prohibition against *ex parte* communications. The amendments are not expected to have any discernible economic effects on OHA, other governmental units, private parties appearing before OHA, persons interested in OHA proceedings, or any other persons, including small entities.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act. This rule also does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act.

The proposed rule was drafted by Deborah Ryan, an attorney in the Division of General Law, Office of the Solicitor, and submitted by the Solicitor's Office to OHA as a proposal for its consideration. Substantial changes to the proposal were made by Paul T. Baird, Director of OHA.

Lists of Subjects in 43 CFR Part 4

Administrative practice and procedure.

Ann Dore McLaughlin,

Under Secretary.

Dated: January 10, 1985.

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Accordingly, it is proposed to amend 43 CFR Part 4, Subparts B, D, and I as follows:

1. The authority citation for Part 4 reads as follows:

Authority: R.S. 2478, *as amended*, 43 U.S.C. 1201, unless otherwise noted.

Subpart B—General Rules Relating to Procedures and Practice

2. Section 4.5 is revised to read as follows:

§ 4.5 Power of the Secretary and Director.

(a) *Secretary.* Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law. The authority reserved to the Secretary includes, but is not limited to:

(1) The authority to take jurisdiction at any stage of any case before any employee or employees of the Department, including any administrative law judge or board of the Office, except the Board of Contract Appeals, and render the final decision in the matter after holding such hearing as may be required by law; and

(2) The authority to review any decision of any employee or employees of the Department, including any administrative law judge or board of the Office, except the Board of Contract Appeals, or to direct any such employee or employees to reconsider a decision.

(b) *The Director.* Pursuant to his delegated authority from the Secretary, the Director may assume jurisdiction of or review any case before any board of the Office or direct reconsideration of any decision by any board of the Office except the Board of Contract Appeals.

(c) *Exercise of Reserved Power.* If the Secretary or Director assumes jurisdiction of a case or reviews a decision, the parties and the appropriate Departmental personnel will be advised in writing of such action, the administrative record will be requested, and, after the review process is completed, a written decision will be issued.

3. Section 4.27(b) is revised to read as follows:

§ 4.27 Standards of conduct.

* * * * *

(b) *Ex parte communication*—(1) *Prohibition.* There shall be no communications concerning the merits of a proceeding between any party to the proceeding or any person interested in the proceeding or any representative of a party or interested person and any Office personnel involved or who may reasonably be expected to become involved in the decisionmaking process on that proceeding, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties.

Proceedings include pending cases, rulemakings that might affect a pending case, and any other related action pending before the Office. This regulation does not prohibit communications concerning procedural matters or case status. Any oral communication made in violation of this regulation shall be reduced to writing in a memorandum to the file by the person receiving the communication and shall be included in the record. Any written communication made in violation of this regulation shall be included in the record. Copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

(2) *Sanctions.* The administrative law judge, board, or Director who has responsibility for the matter with respect to which a prohibited communication has been knowingly made may impose appropriate sanctions on the offending person or persons, which may include requiring an offending party to show cause why its claim, motion, or interest should not be dismissed, denied, or otherwise adversely affected; disciplining offending Office personnel pursuant to the Department's standards of conduct (43 CFR Part 20); and invoking such sanctions against other offending persons as may be appropriate under the circumstances.

* * * * *

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

§ 4.317 [Amended]

4. In § 4.317, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b).

Subpart I—Special Procedural Rules Applicable to Practice and Procedure for Hearings, Decisions, and Administrative Review Under Part 17 of This Title—Nondiscrimination in Federally Assisted Programs of the Department of the Interior—Effectuation of Title VI of the Civil Rights Act of 1964.

§ 4.832 [Amended]

5. The heading of § 4.832 is revised to read: *§ 4.832 Consultation and advice.*

6. In § 4.832, paragraph (a) is removed, and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b).

[FR Doc. 85-6537 Filed 3-18-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

43 CFR Parts 2800 and 2880

Rights-of-Way, Principles and Procedures; Rights-of-Way Under the Mineral Leasing Act; Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period on notice of intent to propose rulemaking.

SUMMARY: The Bureau of Land Management and the United States Forest Service joined in the publication of a second Notice of Intent to Propose Rulemaking in the **Federal Register** of January 18, 1985 (50 FR 2697), which provided for a 60-day comment period. That Notice of Intent to Propose Rulemaking contained a discussion of a new process that could be the basis for the establishment of rentals for rights-of-way granted under title V of the Federal Land Policy and Management Act of 1976 and the Mineral Leasing Act of 1920. The public has requested an extension of the comment period to allow them more time to make comments on the complex issues presented in the Notice of Intent to Propose Rulemaking. In response to that request, the Department of the Interior has decided to extend the comment period to provide the public with more time to consider the issues raised in the Notice of Intent. Therefore, the comment period is hereby extended for an additional 30 days to April 18, 1985.

DATE: Comments should be submitted by April 18, 1985. Comments received or postmarked after that date may not be considered as part of the decisionmaking process on issuance of a proposed rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Theodore Bingham, (202) 343-5441.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

March 14, 1985.

[FR Doc. 85-6524 Filed 3-18-85; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Part 3140

Combined Hydrocarbon Leasing; Reopening of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reopening of comment period on proposed rulemaking covering paying quantities and diligent development of hydrocarbon leases.

SUMMARY: A proposed rulemaking that would amend the Hydrocarbon Leasing regulations to provide definitions and procedures for meeting the producing in paying quantities and the diligent development requirements for tar sand in all combined hydrocarbon leases was published in January 10, 1985, **Federal Register** (50 FR 1300) with a 60-day comment period ending on March 11, 1985. The public has requested that the comment period be extended for a period of 15 days. The Department of the Interior has decided to grant that request and the comment period is hereby reopened for 15 days.

DATE: Comments should be submitted by April 3, 1985. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Main Interior Bldg., Room 5555, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward E. Coggs, (202) 343-3258,

or

Elizabeth Owen, (202) 343-2454,

or

Robert C. Bruce, (202) 343-8735.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

March 14, 1985.

[FR Doc. 85-6525 Filed 3-18-85; 8:45 am]

BILLING CODE 4310-84-M

ACTION

45 CFR Part 1206

Denial of Application for Refunding

AGENCY: ACTION.

ACTION: Notice of proposed rulemaking.

SUMMARY: ACTION is proposing revisions of present regulations to implement the changes in notice and hearing procedures contained in the Domestic Volunteer Service Act Amendments of 1984, Pub. L. 98–288. The proposed changes, specifically revising § 1206.2–4 of 45 CFR, Procedures, are discussed in Supplementary Information.

DATE: Comments must be received by April 18, 1985.

ADDRESS: Sent comments to ACTION, 806 Connecticut Ave., NW., Room 607, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: J.C. Argetsinger, General Counsel, ACTION, 806 Connecticut Avenue, NW., Washington, D.C. (202) 634–9333.

SUPPLEMENTARY INFORMATION: The 1984 amendment (cited above) to the Domestic Volunteer Service Act of 1973 (Pub L. 93–113, as amended) made three significant changes to the Agency's notice and hearing procedures, sec. 412 of the Act, pertaining to the denial of applications for refunding. Accordingly, the regulations contained in 45 CFR 1206.2–4 dealing with Procedures, are proposed to be revised.

Specifically, the three changes contained in the statute are:

1. Grant recipients are to be given at least 75 days notice of the intent to deny refunding, sec. 412(a)(2) of the Act. The prior statute and current agency regulations do not specify a definite time.

2. All meetings or hearings to be afforded the recipient under the section are to be "held at locations convenient to the grant recipient," sec. 412(b) of the Act. The prior statute was silent on this issue.

3. In those situations in which the denial of refunding is based upon a charge of "failure to comply with the terms and conditions of the grant or contract award, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to be the recipient and the Agency," sec. 412(g)(3), of the Act. Previously, an informal meeting with an agency official was the sole procedure available under current regulations for grantees in all denial situations.

The change noted in item 1, pertaining to the 75 day notice requirement, is relatively self-explanatory and is reflected in proposed § 1206.2–4(b).

The second change, reflected in proposed regulation 1206.2–4(e), regarding location of meetings, is explained by the Congressional Conference Report accompanying the 1984 legislation, House Report 98–679. The Report states that "the location selection for the hearings and meetings should take into consideration convenience to the recipient and the agency as well as the cost of travel and other related costs for the hearing. The Conferees intend the provision in section 412 to improve the services to clients of the ACTION programs, not to defer considerable amounts of funding to a hearing process."

In accordance with the Congressional guidance, this proposed revision, paragraph (e), is designed to achieve a reasonable balance between convenience to the grantee and the cost to the agency. The proposal requires that consideration be given to the locale of the recipient and to pay for travel expenses of two recipient representatives, if the location of the meeting with the agency official is elsewhere.

The third change, which deals with the nature of the hearing, is reflected in proposed regulation 1206.2–4(d). This statutory requirement, which calls for an "impartial hearing officer" (Subsection (a)(3) of section 412 of the Act) should be understood as not to be applicable in all denial of refunding situations. Still remaining in the law is the procedure of providing the recipient an informal meeting with an agency official to discuss the reasons for denial, sec. 412(a)(2) of the Act.

To understand the distinction between the application of Subsection (a)(2) and (a)(3) procedures, it is instructive to note that the Conference Report indicates that the new provision, Subsection (a)(3), would apply only "in cases where there is a *charge of failure* to comply with terms of the grant or contract." (Italics supplied) The Conference Report further states that the Conferees "do not intend to interfere with the right of the agency to exercise administrative discretion in deciding which grantees or contractors to refund on grounds of generally applicable policy, or where funding reductions become necessary for reasons beyond the agency's control, or where the recipient has ineffectively managed agency resources or substantially failed to comply with a contract or grant agreement with the agency. In these types of cases the agency would be required to provide the recipient with reasons for the decision and afford it an opportunity to show cause at an informal meeting as to why the action should not be taken."

The proposed regulation, Sec. 1206.2–4(d), is designed to implement the distinction between these situations requiring an informal meeting and those requiring an informal hearing. In those more extreme cases in which there is a charge of failure to comply with the grant, implying wrongdoing, the recipient will be given the opportunity to present its case in front of a neutral party. As noted in the Conference Report, "the authority of the hearing officer shall be to conduct the hearing and to make recommendations, but the final decision on refunding will remain with the ACTION Agency." Because the hearing is specified as "informal", such proceeding is not anticipated to involve mandatory procedures such as the swearing of witnesses, recording of testimony, strict application of the rules of evidence or other features inherent in formal hearing proceedings.

Informal meetings, those instances not requiring an impartial hearing officer, will continue to be conducted as they have in the past, as outlined in proposed regulation Sec. 1206.2–4(c). Paragraph (c) is revised to permit a longer time period between the time of notification and holding of the informal meeting, from 21 to 30 days. This change is made in light of the fixed time now required for notification of tentative denial, 75 days.

ACTION has determined that this regulation is not a major rule as defined by Executive Order 12291. Pursuant to Sec. 3(c)3 of E.O. 12291, entitled "Federal Regulation", the required review process has been completed by the Director of the Office of Management and Budget.

List of Subjects in 45 CFR Part 1206

Grant programs—social programs, Volunteers.

Accordingly, § 1206.2–4 of Subpart B—*Denial of Application for Refunding*—of Title 45 of the Code of Federal Regulations is revised to read as follows:

Subpart B—Denial of Application for Refunding

§ 1206.2–4 Procedures.

(a) The procedures set forth in paragraphs (b) through (g) of this section shall apply only where an application for refunding submitted by a current recipient is rejected or is reduced to 80 percent or less of the applied-for level of funding or the recipient's current level of operations, whichever is less. It is further a condition for application of these procedures that the rejection or reduction be based on circumstances related to the particular grant or contract. These procedures do not apply to reductions based on legislative requirements, or on general policy or in

instances where, regardless of a recipient's current level of operations, its application for refunding is not reduced by 20 percent or more. The fact that the basis for rejecting an application may also be a basis for termination under subpart A of this part shall not prevent the use of this subpart to the exclusion of the procedures in Subpart A.

(b) Before rejecting an application of a recipient for refunding ACTION shall notify the recipient of its intention, in writing, at least 75 days before the end of the recipient's current program year or grant budget period. The notice shall inform the recipient that a tentative decision has been made to reject or reduce an application for refunding. The notice shall state the reasons for the tentative decision to which the recipient shall address itself if it wishes to make a presentation as described in paragraphs (c) and (d).

(c) If the notice of tentative decision is based on any reasons, other than those described in paragraph (d) of this section, including, but not limited to, situations in which the recipient has ineffectively managed agency resources or substantially failed to comply with agency policy and overall objectives under a contract or grant agreement with the agency, the recipient shall be informed in the notice, of the opportunity to submit written material and to meet informally with an ACTION official to show cause why its application for refunding should not be rejected or reduced. If the recipient requests an informal meeting, such meeting shall be held on a date specified by ACTION. However, the meeting may not, without the consent of the recipient, be scheduled sooner than 14 days, nor more than 30 days, after ACTION has mailed the notice to the recipient. If the recipient requests an informal meeting, the meeting shall be scheduled by ACTION as soon as possible after receipt of the request. The official who shall conduct this meeting shall be an ACTION official who is authorized to finally approve or make the grant of assistance in question, or his designee.

(d) If the notice of tentative decision is based upon a specific charge of failure to comply with the terms and conditions of the grant or contract, alleging wrongdoing on the part of the recipient, the notice shall offer the recipient an opportunity for an informal hearing before a mutually agreed-upon impartial hearing officer. The authority of such hearing officer shall be limited to conducting the hearing and offering recommendations. ACTION will retain all authority to make the final determination as to whether the application should be finally rejected or reduced. If the recipient requests an informal hearing, such hearing shall be held at a date specified by ACTION. However, such hearing may not, without the consent of the recipient, be scheduled sooner than 14 days nor more than 30 days after ACTION has mailed the notice to the recipient.

(e) In the selection of a hearing official and the location of either an informal meeting or hearing, the Agency, while mindful of considerations of the recipient, will take care to insure that costs are kept to a minimum. The informal meeting or hearing shall be held in the city or county in which the recipient is located, in the appropriate Regional Office, or another appropriate location. Within the limits stated in the preceding sentence, the decision as to where the meeting shall be held will be made by ACTION, after weighing the convenience factors of the recipient. For the convenience of the recipient, ACTION will pay the reasonable travel expenses for up to two representatives of the recipient, if requested.

(f) The recipient shall be informed of the final Agency decision on refunding and the basis for the decision by the deciding official.

(g) If the recipient's budget period expires prior to the final decision by the deciding official, the recipient's authority to continue program operations shall be extended until such decision is made and communicated to the recipient. If a volunteer's term of service expires after receipt by a sponsor of a tentative decision not to refund a project, the period of service of the volunteer may be similarly extended. No volunteers may be reenrolled for a full 12-month term, or new volunteers enrolled for a period of service while a tentative decision not to refund is pending. If program operations are so extended, ACTION and the recipient shall provide, subject to the availability of funds, operating funds at the same levels as in the previous budget period to continue program operations.

Authority: 42 U.S.C. 5052.

Signed at Washington, D.C., this 28th day of February 1985.

Thomas W. Pauken,

Director, ACTION.

[FR Doc. 85-6264 Filed 3-18-85; 8:45 am]

BILLING CODE 6050-28-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, 76

[Docket No. 21323, RM-2836; BC Docket No. 81-741, RM-3727, RM-3876; MM Docket No. 84-168]

Program-Related Multi-Channel Television Sound (MTS)

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order regarding annual report on Multi-Channel Television Sound (MTS) Technology to Commission.

SUMMARY: The Commission has decided not to act at this time on the question of whether to require cable television systems to retransmit program-related multi-channel sound (MTS) services of broadcast television stations. Program-related MTS services include aural program enhancements such as stereo sound and second language audio. The Commission also has decided not to act now on the mandatory cable carriage issue for program-related teletext and other vertical blanking interval services of broadcast television stations. In adopting this position, the Commission stated that, based on the record with respect to development of these services, it was not prepared to implement mandatory carriage protection at present. The Commission indicated that it would continue to monitor the development of MTS technology, its use, demand, and delivery to the cable consumer. The Commission stated that at such time as it chooses to act on this issue, it will call for additional comments to develop a timely record to support a decision. Accordingly, the Commission left the dockets in these three proceedings open and instructed the Mass Media to report to it annually concerning the development of MTS services.

FOR FUTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

In the matter of the use of subcarrier frequencies in the aural baseband of television transmitters (Docket No. 21323, RM-2836); amendment of Parts 2, 73 and 76 of the Commission's rules to authorize transmission of teletext by TV stations (BC Docket No. 81-741, RM-3727, RM-3876); and amendment of Parts 2, 73 and 76 of the Commission's rules to authorize the offering of data transmission services on the vertical blanking interval by TV stations (MM Docket No. 84-168).

Memorandum Opinion and Order

Adopted: February 8, 1985.
Released: February 8, 1985.

By the Commission: Commissioners Fowler, Chairman; and Patrick issuing a separate statement.

1. On March 29, 1984, the Commission adopted a *Second Report and Order* in Docket No. 21323, 49 FR 18100. In that decision, the Commission expanded the authority for broadcast stations to operate subcarrier services on the TV aural baseband. The new rules use of aural baseband subcarriers for stereophonic sound, second language audio, and any other broadcast or non-broadcast service. In granting this expanded authority, the Commission determined that aural subcarriers services unrelated to program content are ancillary in nature and do not merit the protective regulation that is accorded to primary television services.

2. With respect to program-related multi-channel television sound (MTS) services such as a stereophonic sound and second language programming, the Commission "decline[d] to impose mandatory signal carriage of these aural subcarrier transmissions at this time." *Id* at para. 27. Soon thereafter, on July 26, 1984, we adopted a *Second Further Notice of Proposed Rule Making*, 49 FR 32619, (*Second Further Notice*) to collect for the record additional factual information about program-related MTS services and carriage of these services by cable systems.[1] The Commission sought to determine the answers to questions involving, *inter alia*, MTS receiver penetration projections, consumer demand for MTS, costs associated with retransmission of MTS, the technical problems that arise in cable carriage of MTS, and the need for mandatory carriage obligations in order to assure that these services will be retransmitted on cable systems.

3. Based on the record,[2] a majority of Commissioners believe that program-related MTS is a part of the basic signal and is required to be delivered by whatever technical means the cable system chooses, but are not prepared to implement mandatory carriage at the present; while others remain unconvinced that any regulatory intervention is required. Accordingly, we will continue to monitor the development of MTS technology, its use, demand, and delivery to the cable consumer. At such time as the Commission chooses to act on the question of mandatory carriage of MTS, we will call for an additional round of comments to develop a timely record to decide the question. Accordingly, Docket No. 21323 will remain open.[3]

4. In order for the Commission to appraise the development of multi-channel sound, the Commission instructs the Mass Media Bureau annually to determine and report to the Commission on the following: (1) The extent to which television broadcasters are transmitting using MTS, (2) the extent to which consumers are purchasing and using television receivers or other devices with MTS reception capabilities, and (3) the extent and manner of cable carriage of broadcast MTS.

5. This order does not impose upon our licensees or the public any reporting requirements. We believe that the Mass Media Bureau will be able to assess the development and use of this technology without such formal reporting requirements. When the Commission decides to revisit this issue, a formal record can be developed to receive information relating to MTS use and development at that time.

6. Accordingly, it is ordered, that the Mass Media Bureau is instructed to report annually to the Commission consistent with the instructions contained herein.

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

Federal Communications Commission.

William Tricarico,

Secretary.

Separate Statement of Chairman Mark S. Fowler and Commissioner Dennis R. Patrick

Re: Memorandum Opinion and Order in Docket No. 21323.

We applaud the restraint of the Commission in declining to impose mandatory carriage of program-related multi-channel television sound (MTS). The annual reports the Mass Media Bureau will prepare will allow us to assess the development of MTS and decide the issue of mandatory carriage at some point in the future when it is ripe for decision

We believe that this is quintessentially a situation where marketplace forces will accomplish the goals that a prior Commission—with a pro-regulatory philosophy and less understanding of the value of unregulation in fostering the development of telecommunication—would have tried to accomplish by imposing rules. We are of the view that the Commission cannot impose mandatory carriage unless and until we know that broadcasters and consumers will desire MTS and will be willing to pay for it, and that it will not be carried voluntarily by cable systems in response to market demand. Since MTS has not yet had the opportunity to develop, it is unreasonable to suggest that the heavy hand of government must interfere.

Surprisingly, some Commissioners appear to feel otherwise; yet no Commissioner is prepared to impose and implement mandatory carriage at this time. We recognize the inhibitory effect such a decision would have on the development of the technology and the additional costs it would impose unnecessarily and unjustifiably on cable operators and subscribers. The threat, which still hangs over the head of the cable industry after today's action, that some future Commission misguidedly might impose mandatory delivery obligations is mischievous enough regulatory intervention on its own. We hope it is not so destructive as to hamper the long sought-after growth and innovation by the cable industry.

Nonetheless, we can vote for this item because the Commission does decline to reach the decision about the need for, and propriety of, mandatory carriage of program-related MTS.

[FR Doc. 85-6433 Filed 3-15-85; 8:45 am]

BILLING CODE 6712-01-M

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[1] The Commission also postponed its decision on must carry status for program-related teletext and VBI telecommunications services until its decision on this question for TV aural subcarriers. *See, Memorandum Opinion and Order* in BC Docket 81-741, adopted November 8, 1984, 50 FR 4678 (February 1, 1985); see also *Report and Order* in MM Docket 84-168, adopted November 8, 1984, 50 FR 4658 (February 1, 1985).

[2] For example, the comments of the major television networks indicate that while they are committed to stereo service, there are no plans for major conversion to stereo programming in the near future. Predictions submitted by the Electronics Industries Association, Zenith, and the National Association of broadcasters indicate that MTS receiver penetration will grow gradually, perhaps reaching 10 percent by mid-1985 and between 18 and 44 percent by 1989. Finally, we note that according to *Broadcast Management/Engineering* magazine (January 1985, p. 59) only eight television stations have actually started stereo broadcasting to date. Information from trade publications also indicates that only a limited amount of stereo-enhanced programming is currently available, most of this in the form of feature films and syndicated music video shows that were not produced specifically for broadcast television.

[3] We believe the records in the teletext and VBI proceedings suggest that it would be inappropriate to require carriage at this time for program-related teletext and other VBI services. The dockets in these proceedings will remain open.

Notices

Federal Register
Vol. 50, No. 53
Tuesday, March 19, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Agreement Regarding the Rural Electrification Administration's Assistance Program for Wood Pole Utility Lines

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the Rural Electrification Administration, U.S. Department of Agriculture, and the National Conference of State Historic Preservation Officers. The Agreement will establish criteria and procedures for the Rural Electrification Administration and its Federal assistance recipients to follow in the identification, evaluation, and treatment of historic properties in areas to be affected by the installation, operation, and maintenance of various wood pole telephone and electric power lines with less than a 69 kilovolt (kV) power capacity. The Agreement will thus assist the Rural Electrification Administration to meet its responsibilities under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f). A draft of the proposed agreement is available for review.

Comments Due: 30 days after date of publication.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Ronald D. Anzalone, Eastern Division of Project Review, Advisory Council on Historic Preservation, 202–786–0505, or Kenneth Kumor, Rural Electrification Administration, 202–382–0096.

Dated: March 14, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85–6514 Filed 3–18–85; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Northwest Region States of Oregon, Washington, and Portions of California and Idaho; Intent To Prepare an Environmental Impact Statement

This Notice of Intent revises and updates an October 17, 1983, published Notice of Intent. That Notice indicated the Pacific Northwest Region National Forests, depending on the situation of the individual National Forests, would prepare either a Draft Environmental Impact Statement (DEIS), a revised DEIS, or a supplement to an existing DEIS for Forests' Land and Resource Management Plans (Forest Plans). Such DEIS's or supplements would include a reevaluation of roadless areas. The October 1983 Notice of Intent was in response to a Ninth Circuit Court of Appeals' decision on the National Roadless Area Review and Evaluation (RARE II) process which challenged the adequacy of the Environmental Impact Statement (EIS). The situation has now changed.

Wilderness Acts for both Oregon and Washington were passed into law in July 1984, and included release language affecting the evaluation of roadless areas in the Forest Plans. The Acts stated that those areas which were reviewed in RARE II, or for the 1984 legislation, and not designated as wilderness or for further planning, shall be managed for multiple use and need not be managed to protect their suitability for wilderness designation prior to or during revision of the Forest Plans. As a result, National Forests of the Pacific Northwest Region will not evaluate the possibility of recommending wilderness designation for roadless areas within their boundaries (with some minor exceptions). National Forests may, however, evaluate possible undeveloped management for roadless areas where such management may be an issue.

As a result of changes in direction relative to the roadless area evaluation, as well as new economic and other analysis requirements, DEIS's for the 19 National Forests in the Pacific Northwest Region are now expected to be published on the following schedule:

National Forest	DEIS date
Colville, Colville, WA	September 1985.
Deschutes, Bend, OR	August 1985.
Fremont, Lakeview, OR	September 1985.
Gifford Pinchot, Vancouver, WA	Do.
Malhour, John Day, OR	Do.
Mt. Baker-Snoqualmie, Seattle, WA	Do.
Mt. Hood, Gresham, OR	Do.
Ochoco, Prineville, OR	Do.
Okanogan, Okanogan, WA	Do.
Olympic, Olympia, WA	Do.
Rogue River, Medford, OR	July 1985.
Siskiyou, Grants Pass, OR	September 1985.
Siuslaw, Corvallis, OR	July 1985.
Umatilla, Pendleton, OR	September 1985.
Umpqua, Roseburg, OR	Do.
Wallowa-Whitman, Baker, OR	Do.
Wenatchee, Wenatchee, WA	Do.
Willamette, Eugene, OR	Do.
Winema, Klamath Falls, OR	Do.

Final EIS's should be completed within 6 to 9 months following the DEIS for each National Forest.

Dated: March 8, 1985.

Jeff M. Sirmon,

Regional Forester

[FR Doc. 85–6480 Filed 3–18–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Technology Medal Nomination Evaluation Committee

AGENCY: Office of Productivity, Technology and Innovation, Office of Economic Affairs, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces the forthcoming closed meeting of the National Technology Medical Nomination Evaluation Committee. The Committee was chartered on February 9, 1984. The Committee shall make recommendations to the Secretary of Commerce, through a Steering Committee, concerning award of the National Technology Medal.

The Committee will meet only in executive session to discuss matters dealing with the relative merits of all persons and companies nominated for the Medal as a result of a public solicitation.

Time and place: The meeting will begin at 9:30 a.m. and end at 5:00 p.m. on April 2, 1985. The meeting will be held in Room 250 of the National Academy of Sciences Building, 21st St. and Constitution Ave., NW., Washington, D.C. 20418.

FOR FURTHER INFORMATION CONTACT: Dr. Philip Goodman, Executive Director, National Technology Medal Nomination Evaluation Committee, Room 4829, Herbert C. Hoover Building, U.S. Departmemt of Commerce, Washington, D.C. 20230, (202) 377–0825.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close the meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c) (4) and (6) was approved by the Assistant Secretary of Commerce for Administration, with the concurrence of the General Counsel in accordance with the Federal Advisory Committee Act, since the discussions are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and may also disclose trade secrets and commerical or financial information obtained from person and privileged or confidential. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230, (202 377–4217).

Dated: March 14, 1985.

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 85-6543 Filed 3-18-85; 8:45 am]

BILLING CODE 3510-18-M

International Trade Administration

[A-122-020]

Pig Iron From Canada; Final Results of Administrative Review of Antidumping Finding and Revocation in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Final Results of Administrative Review of Antidumping Finding and Revocation in Part.

SUMMARY: On November 26, 1984 the Department of Commerce published preliminary results of its administrative review and intent to revoke in part the antidumping finding on pig iron from Canada. The review covers the six known manufacturers and/or exporters of this merchandise to the United States and generally the period July 1, 1982, through June 30, 1983.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and intent to revoke in part. We received no comments. Based on our analysis, the final results of our review are the same as the preliminary results, and we revoke the antidumping finding with regard to Stelco, Inc.

EFFECTIVE DATE: March 19, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Helen Askins or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–1130/3601.

SUPPLEMENTARY INFORMATION:

Background

On November 26, 1984 the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 46453) the preliminary results of its administrative review and intent to revoke in part the antidumping finding on pig iron from Canada (36 FR 13780, July 24, 1971). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of pig iron, which is used in steel production and in the iron foundry industry for making iron castings such as pipe, automobile castings, and machine parts. Such merchandise is currently classifiable under items 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated.

The review covers the six known manufacturers and/or exporters of Canadian pig iron to the United States and generally the period July 1, 1982, through June 30, 1983.

Final Results of Review and Revocation in Part

We invited interested parties to comment on the preliminary results and intent to revoke in part. We received no comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review and we determine that the following margins exist:

Manufacturer/exporter	Period	Margin (percent)
Abex Industries, Ltd	07/01/82—06/30/83	*0
Algoma Steel Corp., Ltd	07/01/82—06/30/83	0
Dofasco Inc	07/01/82—06/30/83	0
Philip Brothers (Canada) Ltd	07/01/82—06/30/83	*7.30
Stelco Inc./Hickman Williams Canada, Ltd	07/01/82—06/30/83	*0
Stelco, Inc	07/01/82—10/17/83	0

*No shipments during the period.

For the reasons set forth in the preliminary results, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Stelco, Inc. Accordingly, we revoke the antidumping finding in part on pig iron from Canada. This revocation in part applies to all unliquidated entries of this merchandise manufactured and exported by Stelco, Inc. entered, or withdrawn from warehouse, for consumption on or after October 17, 1983.

The Department shall instruct the Customs Service not to assess antidumping duties on all appropriate entries.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for the other firms. We shall not require a cash deposit for any future entries from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after October 17, 1983, and who is unrelated to any reviewed firm. These deposit requirements are effective for all shipments of Canadian pig iron entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

This administrative review, revocation in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

March 12, 1985.

[FR Doc. 85-6542 Filed 3-18-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-427-501]

Initiation of a Countervailing Duty Investigation; Low Fuming Brazing Copper Rod and Wire From France

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in France of low-fuming brazing copper rod and wire, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before April 5, 1985. If the investigation proceeds normally, we will make our preliminary determination on or before May 15, 1985.

EFFECTIVE DATE: March 19, 1985.

FOR FURTHER INFORMATION CONTACT: Ken Haldenstein or Laura Winfrey, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4136 or 377-0160.

SUPPLEMENTARY INFORMATION:

Petition

On February 19, 1985, we received a petition in proper form from American Brass, Century Brass and Cerro Metal Products, filed on behalf of the U.S. low-fuming brazing copper rod and wire industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in France of low-fuming brazing copper rod and wire receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). Since France is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to these investigations, and the ITC is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury, to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on low-fuming brazing copper rod and wire from France, and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether the manufacturers, producers, or exporters in France of low-fuming brazing copper rod and wire, as described in the "Scope of the Investigation" section of this notice, receive subsidies.

Scope of the Investigation

The products covered by this investigation are low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bar or flux-coated, currently classified in the Tariff Schedules of the United States, Annotated (TSUSA), under items 612.6205, 612.7220 and 653.1500. The chemical composition of the products under investigation is defined by Copper Development Association (CDA) standards 680 and 681.

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in France of low-fuming brazing copper rod and wire receive benefits under the following programs which constitute subsidies:

- Government Loans and Equity Infusions.
- National Employment Fund.
- Subsidized Electricity Rates.
- Investment Loan Schemes.
- Loans and Loan Guarantees.
- Regional Development Incentives.
- Export Credit Insurance.
- Export Credits from the French Bank for Foreign Commerce.

We have determined not to initiate on the following allegations:

- Research and Development Incentives.
- Assistance for Plant Operating Expenses.
- Cancellation of Debt.

Notification of ITC

Section 702(d) of the Act requires us to notify the U.S. International Trade Commission (ITC) of these actions, and to provide it with the information we used to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonconfidential information in our files. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Dated: March 11, 1985.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-6185 Filed 3-18-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-501]

Initiation of Countervailing Duty Investigation; Low-Fuming Brazing Copper Rod and Wire From New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in New Zealand of low-fuming brazing copper rod and wire, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from New Zealand materially injure, or threaten material injury to, a U.S. industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before April 5, 1985, and we will make our preliminary determination on or before May 15, 1985.

EFFECTIVE DATE: March 19, 1085.

FOR FURTHER INFORMATION CONTACT: Jack Davies, Roy Malmrose, or Vincent Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1784, 337-8320, or 377-5414.

SUPPLEMENTARY INFORMATION:

Petition

On February 19, 1985, we received a petition in proper form from American Brass, Century Brass and Cerro Metal Products, filed on behalf of the U.S. low-fuming brazing rod and wire industry. In compliance with the filling requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in New Zealand of low-fuming brazing copper rod and wire receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). Since New Zealand is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from New Zealand materially injure, or threatren material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on low-fuming brazing copper rod and wire from New Zealand, and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether the manufacturers, producers, or exporters in New Zealand of low-fuming brazing copper rod and wire, as described in the "Scope of the Investigation" section of this notice, receive subsidies.

Scope of the Investigation

The products covered by this investigation are low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 612.6205, 612.7220 and 653.1500. The chemical composition of the products under investigation is defined by Copper Development Association (CDA) standards 680 and 681.

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in New Zealand of low-fuming brazing copper rod and wire receive benefits under the following programs which constitute subsidies:

- Export Performance Taxation Incentive (EPTI).
- Export Market Development Taxation Incentive (EMDTI).
- Export Programme Suspensory Loan Scheme (EPSLS).
- Export Programme Grant Scheme (EPGS).
- Industrial Development Plan Investment Allowance (IDPIA).
- Extraordinary Depreciation Allowance.
- Export Suspensory Loans (ESL).
- Regional Development Investment Incentives.
- Industry Study Investment Allowance.
- Flexible Incentives under the Investiment Unit of the Department of Trade and Industry.
- Exemption from Import Duties and Sales Taxes.
- Export Production Assistance Scheme.
- Export Guarantees and Credits.
- Export Promotion.
- Research and Development Incentives.

We will not initiate an investigation on the following allegation:

Labor Subsidies

Petitioners have not made a proper allegation that labor programs confer either an export subsidy or a countervailable domestic subsidy. Furthermore, supporting documentation to the petition provides no evidence that a countervailable subsidy exists, except as regards regional employment incentives covered above.

Notification of ITC

Section 702(d) of the Act requires us to notifiy the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information in our files. We will also allow the ITC access to all privileged and confidental information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Dated: March 11, 1985.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-6484 Filed 3-18-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-501]

Initiation of Countervailing Duty Investigation; Low-Funding Brazing Copper Rod and Wire From South Africa

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investgation to determine whether manufacturers, producers, exporters in South Africa of low-fuming brazing copper rod and wire products, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If the investigation proceeds normally, we will make our preliminary determination on or before May 15, 1985.

EFFECTIVE DATE: March 19, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3003.

SUPPLEMENTARY INFORMATION:

Petition

On February 19, 1985, we received a petition in proper form from American Brass, and Cerro Metal Products, filed on behalf of the U.S. low-fuming brazing copper rod and wire industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (29 CFR 355.26), the petition alleges tat manufacturers, producers, or exporters in South Africa of low-fuming brazing copper rod and wire products receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since South Africa is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303 (a)(1) and (b)(1) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise from South Africa materially injure, or threaten material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on low-fuming brazing copper rod and wire from South Africa, and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether the manufacturers, producers, or exporters in South Africa of low-fuming brazing copper rod and wire, as described in the "Scope of Investigation" section of this notice, receive bounties or grants.

Scope of Investigation

The products covered by the investigation are low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimensions in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classified in Tariff Schedules of the United States, Annotated (TSUSA), under items 612.6205, 612.7220 and 653.1500. The chemical composition of the products under investigation is defined by Copper Development Association (CDA) standards 680 and 681.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in South Africa of low-fuming brazing copper rod and wire receive benefits under the following programs which constitute bounties or grants.

We will initiate a countervailing duty investigation on the following programs:

- Export Incentive Scheme—Categories A through D.
- Beneficiation Allowances.
- Investment Allowances.
- Railroad Rate Subsidies (both on the shipment of exports and the internal shipment of raw materials).
- Industrial Development Corporation (IDC) loans.

Dated: March 11, 1985.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-6483 Filed 3-18-85; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant Coexclusive Patent Licenses; Melvin L. Hubbard

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Melvin L. Hubbard, having a place of business at Capistrano Beach, CA 92624 and to Anaconda Minerals Company, having a place of business at Tucson, AZ 85726, co-exclusive licenses to manufacturer, use and sell products embodied on the invention entitled "Formation of Tungsten Monocarbide from a Molten Tungstate Halide Phase by Gas Sparging," U.S. Patent No. 4,489,044. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquires, comments and other materials relating to the proposed licenses must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-6478 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade NASDAQ 100 Index Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in the NASDAQ 100 Index. The Commodity Futures Trading Commission ("Commission") has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, making available the proposed contract for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before May 20, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CBT NASDAQ 100 Index.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254–7227.

A copy of the terms and conditions of the proposed CBT NASDAQ 100 Index futures contract will be available for inspection at the Office of Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBT in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by May 20, 1985.

Issued in Washington, D.C. on March 14, 1985.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85-6519 Filed 3-18-85; 8:45 am]

BILLING CODE 6351-01-M

Chicago Mercantile Exchange Standard and Poor's Over-the-Counter Industrial Stock Price Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in the Standard and Poor's Over-the-Counter Industrial Stock Price Index ("S&P's O.T.C. Index"). The Commodity Futures Trading Commission ("Commission") has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, making available the proposed contract for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before May 20, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 Reference should be made to the CME S&P's O.T.C. Index.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7227.

A copy of the terms and conditions of the proposed CME—S&P's O.T.C. Index futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., 20581, May 20, 1985.

Issued in Washington, D.C. on March 14, 1985.

Jean A Webb,

Secretary to the Commission.

[FR Doc. 85-6518 Filed 3-18-85; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 85-C0003]

Settlement Agreement; Scovill Inc.

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: Under requirements of 16 CFR 1118.20(e), the Commission must publish in the **Federal Register** consent agreements which it provisionally accepts under the Consumer Product Safety Act. The Commission publishes below the Settlement Agreement it has provisionally entered into with Scovill Inc., a corporation; in which the firm agrees to pay a civil penalty in settlement of allegations by the Staff that the firm violated the reporting requirements of the Consumer Product Safety Act.[1]

DATES: Any interested person may ask the Commission not to accept this agreement by filing a written request with the Office of the Secretary by April 3, 1985.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Leonard Goldstein, Directorate for Compliance and Administrative Litigation, Consumer Products Safety Commission, Washington, D.C. 20207; telephone (301) 492-6626.

[1] Commissioner Saundra Brown Armstrong voted against acceptance of the settlement agreement.

Dated: March 13, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

SUPPLEMENTARY INFORMATION:

Settlement Agreement and Order

[CPSC Docket No. 85-C0003]

In the Matter of Scovill Inc., a corporation doing business as Hamilton Beach Division.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between Scovill Inc., a corporation doing business as Hamilton Beach Division, and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of law and fact.

The Parties

2. Scovill Inc. is a corporation organized and existing under the laws of the State of Connecticut with its principal corporate offices located at 500 Chase Parkway, Waterbury, Connecticut 06708. The Hamilton Beach Division is an unincorporated division of Scovill Inc.

3. Scovill Inc. manufactured through its Hamilton Beach Division certain 4-cup mini-drip coffeemakers, identified further below, (a) for sale to a consumer for use in or around a pemanent or temporary household or residence, a school, in recreation or otherwise, or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. These coffeemakers are "consumer products" within the meaning of section 3(a)(1) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2052(a)(1).

4. Scovill Inc. manufactured and sold these coffeemakers throughout the United States. Scovill Inc. is, therefore, a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (4) and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4) and (11).

5. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission established by Congress pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

The Model 784 Coffeemaker

6. The coffeemakers which are the subject of this Settlement Agreement and Order were sold in the United States under the model designations 784,

785AL, 779AL, 2290, 62360 and in Canada HD5184, HD5185, 67001 and 67002 (hereinafter, collectively, "Model 784 Coffeemakers").

7. The Model 784 coffeemaker can brew up to 4 cups of coffee or tea to a temperature of 168°, and consists of a water reservoir, a calrod heating system, a warming plate, and a glass carafe.

8. The carafe sold as part of the Model 784 coffeemaker consists of a glass container with a plastic handle attached to the carafe by means of a stainless steel band encircling the body of the carafe.

Staff Allegations of a Defect

9. The staff alleges that approximately 403,000 glass carafes which were sold with Model 784 coffeemakers manufactured between August 1980 and August 1981 were manufactured in such a way that the stainless steel band surrounding the carafe could loosen and separate from the glass container without warning.

10. The staff alleges that during the period prior to August 1983 when Scovill Inc. filed a report pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to carafes described in paragraph 9 hereof, the company received approximately 243 complaints of carafe slippage, including 122 complaints of first degree burns and 13 complaints of cuts.

11. The staff alleges that Scovill Inc. knew or should have known by 1981 that a significant number of consumers had complained of carafe slippage involving the Model 784 coffeemaker.

12. The staff alleges that Scovill Inc. knew or should have known by 1981 that the carafes sold with the Model 784 coffeemaker since August 1980 could permit slippage of the carafe from its stainless steel band.

13. The staff alleges that Scovill Inc. possessed sufficient information by 1981 to reasonably support the conclusion that glass carafes, described in paragraph 9 hereof, contained a defect which could create a substantial product hazard but failed to report that information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

14. Scovill Inc. and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

15. Scovill Inc. agrees to pay the Commission a civil penalty in the amount of $35,000 within 30 days of final acceptance of this Settlement Agreement by the Commission and service of the Commission's Order on Scovill Inc. This payment is made in settlement of allegations by the staff that Scovill Inc. violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to glass carafes sold with Model 784 coffeemakers manufactured between August 1980 and August 1981. Scovill Inc. makes no admission of any fault or liability. The Commission does not make any determination that such glass carafes or the Model 784 coffeemakers, described in paragraph 9 hereof, contain a defect which could create a substantial product hazard or that a violation of the CPSA has occurred.

16. Upon final acceptance of this Settlement Agreement by the Commission, Scovill Inc. knowingly voluntarily and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's action, (3) to a determination by the Commission whether a violation has occurred, and (4) to a statement of findings of fact and conclusions of law.

17. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b) this matter shall be treated as if a complaint had issued.

18. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of the $35,000 settlement amount by Scovill Inc., the Commission agrees to waive its right to pursue any penalty proceeding for a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), relating to the matter encompassed by this Settlement Agreement and Order.

19. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e).

If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

20. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Scovill Inc. to appropriate legal action.

21. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Scovill Inc.

Dated: February 4, 1985.

By:

John J. Flaherty,

Vice President.

Dated:

Consented to by:

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Order

Upon consideration of the Settlement Agreement of the parties, it is hereby

Ordered that Scovill Inc. shall pay within 30 days of final acceptance of this Settlement Agreement and entry of this Order, a civil penalty in the sum of $35,000 to the Consumer Product Safety Commission.

Provisionally accepted on 13th day of March 1985.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-6492 Filed 3-18-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on "Journal of Defense Research"; Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on "Journal of Defense Research" will meet in closed session on 12 April 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on 12 April 1985 the Task Force will review the advisability of continuing the classified publication entitled "Journal of Defense Research."

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)

(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 14, 1985.

[FR Doc. 85-6531 Filed 3-18-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board, Ad Hoc Committee on the Enhancement Of Special Operations Forces; Meeting

March 7, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Enhancement Of Special Operations Forces will meet May 15–17, at 8:00 a.m. to 5:00 p.m. Hurlburt AFB, FL, location to be determined.

The purpose of the meeting will be to discuss Special Operations mission planning. The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically, subparagraphs (1) and (4) thereof and is closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-6474 Filed 3-18-85; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board, Ad Hoc Committee on the Enhancement of Special Operations Forces; Meeting

March 7, 1985.

The Training and Human Factors and Logistics subcommittees of the USAF Scientific Advisory Board Ad Hoc Committee on Enhancement of Special Operations Forces will meet June 3–4, at 8:00 a.m. to 5:00 p.m. Wright-Patterson AFB and IBM, Binghamton, NY, location to be determined.

The purpose of the meeting will be to discuss COMBAT TALON II cockpit design and integration. The meeting concern matters listed in section 552b(c) of Title 5, United States Code, specifically, subparagraphs (1) and (4) thereof and is closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

[FR Doc. 85-6475 Filed 3-18-85; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board, Ad Hoc Committee on the Enhancement of Special Operations Forces; Meeting

March 7, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Enhancement of Special Operations Forces will meet July 7–19, 1985, 8:00 a.m. to 5:00 p.m. daily at Whidbey Island Naval Air Station, Officers Ward Room.

The purpose of the meeting is to provide technical and procedural recommendations on Special Operations Forces enhancements to CINCMAC. The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically, subparagraphs (1) and (4) thereof and is closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-6476 Filed 3-18-85; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board, Space Division Advisory Group Meeting

March 7, 1985.

The USAF Scientific Advisory Board Space Division Advisory Group Meeting will meet April 9, 1985 from 1:00 p.m. to 5:00 p.m. and April 10, 1985 from 8:00 a.m. to 12:00 noon at Vandenberg AFB, CA, Building 7000, Room 200.

The purpose of the meeting will receive classified briefings on selected Air Force Space programs. The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically, subparagraphs (1) and (4) thereof and is closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-6473 Filed 3-18-85; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board, Ad Hoc Committee on the Enhancement of Special Operations Forces; Meeting

March 7, 1985.

The Training and Human Factors subcommittee of the USAF Scientific Advisory Board Ad Hoc Committee on Enhancement Of Special Operations Forces will meet April 3–5, at 8:00 a.m. to 5:00 p.m. Hurlburt AFB, FL, location to be determined.

The purpose of the meeting will be to discuss training techniques employed by Special Operations Forces. The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically, subparagraphs (1) and (4) thereof and is closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-6469 Filed 3-18-85; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board, Ad Hoc Committee on the Enhancement of Special Operations Forces; Meeting

March 7, 1985

The Training and Human Factors subcommittee of the USAF Scientific Advisory Board Ad Hoc Committee on Enhancement of Special Operations Forces will meet April 16, at 8:00 a.m. to 5:00 p.m. Brooks AFB, TX, location to be determined.

The purpose of the meeting will be to discuss chemical warfare protective measures applicable to Special Operations Forces. The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically, subparagraphs (1) and (4) thereof and is closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-6470 Filed 3-18-85; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board, Ad Hoc Committee on the Enhancement of Special Operations Forces; Meeting

March 7, 1985.

Selected members of USAF Scientific Advisory Board Ad Hoc Committee on Enhancement of Special Operations Forces will meet April 16, at 8:00 a.m. to 5:00 p.m. at Kelly AFB, TX, location to be determined.

The purpose of the meeting will be to discuss Electronic Security Command mission planning support to Special Operations Forces. The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically, subparagraphs (1) and (4) thereof and is closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–6471 Filed 3–18–85; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board, Ad Hoc Committee on the Enhancement of Special Operations Forces; Meeting

March 7, 1985.

The C³I and Logistics subcommittees of the USAF Scientific Advisory Board Ad Hoc Committee on Enhancement of Special Operations Forces will meet April 30 to May 9, at classified locations in Spain and the United States.

The purpose of the meeting will be to review C³I and logistics difficulties encountered in Special Operations. The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically, subparagraphs (1) and (4) thereof and is closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–6472 Filed 3–18–85; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday–Thursday, 8–11 April 1985.

Times of Meeting: 1200–1700 hours, 8 April (Closed); 0830–1700 hours, 9 & 10 April (Closed); 0830–1200 hours, 11 April (Closed).

Place: HQS, U.S. Army Forces Command (FORSCOM), Atlanta, Georgia.

Agenda: The Army Science Board 1985 Summer Study Panel on Manpower Implications of Logistic Support for Army 21 will meet to further organize the study panel, receive classified background briefings, and plan future meetings to include the final 2-week working session in August. The first two and one-half days will be a Plenary Session; the remainder will be spent in subpanel sessions. This follow-on to the 1984 Summer Study on Technology to Improve Logistics and Weapon Support for Army 21 will focus on facilitating the battalion task force's mission. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any poriton of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–6533 Filed 3–18–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Wednesday-Thursday, 10–11 April 1985.

Time: 0830–1630 hours, 10 April (Open); 0900–1630 hours, 11 April (Open).

Place: 10 April at U.S. Army Research Institute for the Behavioral and Social Sciences (ARI), Alexandria, Virginia; 11 April at U.S. Army Training Support Center, Fort Eustis, Virginia.

Agenda: The Training Effectiveness Subpanel of the Army Science Board 1985 Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts/Army 21 will meet for orientation on ARI projects relating to training efficiency and obtain information from the Army Training Support Center regarding training support systems, programs, and materials to improve training efficiency. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–6534 Filed 3–18–85; 8:45 am]

BILLING CODE 3710–08–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 27, 1985, beginning at 1:30 p.m. *The hearing location has been changed from the Commission's offices in West Trenton, New Jersey to the Pennsylvania West Room of the Philadelphia Centre Hotel, 1725 Kennedy Boulevard, Philadelphia, Pennsylvania.* The hearing will be a part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin. Notice was given in 50 FR 7350, February 22, 1985 and 50 FR 9284, March 7, 1985 that the Commission would hold a public hearing on March 27, 1985 to receive comments on a proposed amendment to the Comprehensive Plan and Water Code in relation to well registration. The proposed amendment calls for the registration by the four signatory states of all new and existing wells or projects that withdraw 10,000 gallons per day or more during any calendar month.

The primary objectives of the proposed well registration program are:

1. To provide a means for the acquisition of additional information necessary to more accurately plan and manage water resources in the Basin;

2. To collect and compile uniform and compatible water use and hydrogeologic data for individual wells;

3. To quantify preexisting water users and to identify areas where water demands are increasing; and

4. To minimize well interference issues.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project—Texaco (formerly Getty) Refining and Marketing Inc. D–84–50.* A ground water withdrawal project to replace existing Well Nos. P–1, P–4 and P–10 which have supplied water since the mid-1950's to the applicant's oil refinery near Delaware City, New Castle County, Delaware. The applicant requests a combined withdrawal rate of 2.74 million gallons per day (mgd) from replacement Well Nos. P–1A, P–4A and P–10A. The applicant is not requesting an increase in their allocation of 180 mg/30 days from all wells. This hearing continues that of January 30, 1985.

2. *East Goshen Municipal Authority D–84–56 CP.* A sewage treatment project to serve portions of East Goshen Township in Chester County, Pennsylvania. The new treatment plant is designed to remove 95 percent BOD_5 (summer) and 90 percent TSS from an average flow of 0.4 mgd. Treated effluent will discharge to Ridley Creek in East Goshen Township, Chester County.

3. *Borough of Roosevelt D–85–8 CP.* An application for approval of ground water withdrawals supplying the Borough of Roosevelt in Monmouth

County, New Jersey. The applicant requests withdrawal of up to 4.65 mg/30 days from Well No. 2 and a total withdrawal of 9.3 mg/30 days from Well Nos. 1 and 2. The wells are located in the Borough of Roosevelt and are drilled into the Raritan formation.

4. *A resolution to extend Commission approval of Docket Decisions until March 31, 1986 for:* Docket No. D-78-84 CP for Well No. 8, Borough of Hatfield; Docket No. D-77-90 CP for Well No. 23, North Wales Water Authority; and Docket No. D-78-94 CP for Well No. 25, North Wales Water Authority.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

March 12, 1985.

[FR Doc. 85-6521 Filed 3-18-85; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 18, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extention, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: March 13, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review Requested: Revision
Title: Application for Grant Under the Bilingual Education Act
Agency Form Number: ED 4561
Frequency: Annually
Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions
Reporting Burden: Responses: 1,725; Burden Hours: 138,000
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This application is used for new awards under Title VIII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511, 20 U.S.C. 3221-3262, and 34 CFR Part 75 of the Education Department General Administrative Regulations. Title VII authorizes grants to State and local educational agencies, institutions of higher education, and for-profit and non-profit private organizations. This form will be used for Fiscal Year 1985 awards for specific programs.

Office of Elementary and Secondary Education

Type of Review Requested: Revision
Title: Recordkeeping Requirements in 34 CFR 200.55(d)(1)(iv) and 204.32(b)(4)—Chapter 1 of the Education Consolidation and Improvement Act of 1981
Agency Form Number: NA
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 0; Burden Hours: 0
Recordkeeping Burden: Recordkeepers: 600; Burden Hours: 24,000

Abstract: Chapter 1 permits agencies to exclude, for the purpose of determining compliance with the supplement, not supplant and comparability requirements, state and local funds spent in carrying out certain special programs. If an agency claims an exclusion, the agency must comply with the recordkeeping requirements in 34 CFR 200.55(d)(1)(iv) and 204.32(b)(4).

Office of Educational Research and Improvement

Type of Review Requested: Extension
Title: Standard Application for Grants under Library Career Training Program (Higher Education Act, Title II-B)
Agency Form Number: ED 547
Frequency: Annually
Affected Public: State or local governments, Non-profit institutions
Reporting Burden: Responses: 60; Burden Hours: 720
Recordkeeping Burden: Recordkeepers: 40; Burden Hours: 240

Abstract: Institutions of higher education use this form to apply for grants under the Library Career Training program, Higher Education Act (HEA), Title II-B. Grants are awarded to assist institutions of higher education and library organizations and agencies in training persons in the principles and practices of librarianship and information science, including new techniques of information transfer and communication technology, thereby increasing their educational opportunities.

Type of Review Requested: Revision
Title: Library Services and Construction Act (Pub. L. 98-480) Application and Project Plans for State Administered Programs—Titles I, II and III
Agency Form Number: ED 921 and ED 915
Frequency: Annually
Affected Public: States
Reporting Burden: Responses: 54; Burden Hours: 2,430
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The application, consisting of the Basic State Plan, the Long-range Program and the Annual Program, is a required submission from State in order

to receive Federal funds under Title I (Library Services), Title II (Public Library Construction), and Title III (Interlibrary Cooperation and Resource Sharing) of the Library Services and Construction Act, as amended by Pub. L. 98-480.

Type of Review Requested: New
Title: Library Services and Construction Act (Pub. L. 98-480) Application for Foreign Language Materials Acquisition—Title V
Agency Form Number: G50-6P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 800; Burden Hours: 12,800
Recordkeeping Burden: Recordkeepers: 0; Burden Hours 0

Abstract: This application is used by State and local public libraries to apply for funds to acquire foreign language materials under Title V of the Library Services and Construction Act, as amended by Pub. L. 98-480.

Type of Review Requested: New
Title: Library Services and Construction Act (Pub. L. 98-480) Application for Library Literacy Program—Title VI
Agency Form Number: G50-7P
Frequency: Annually
Affecting Public: State or local governments
Reporting Burden: Responses: 800; Burden Hours: 12,800
Recordkeeping Burden: Recordkeeping: 0; Burden Hours: 0

Abstract: This application is used by State and local public libraries to apply for funds for the provision and coordination of programs which provide literacy training for illiterate and functionally illiterate adults under Title VI of the Library Services and Construction Act, as amended by Pub. L. 98-480.

Type of Review Requested: New
Title: Application for Basic Grants under the Library Services for Indian Tribes and Hawaiian Native Organizations Program
Agency Form Number: G50-3P
Frequency: Annually
Affecting Public: Indian Tribes or Hawaiian Native Organizations
Reporting Burden: Responses: 500; Burden Hours: 1,000
Recordkeeping Burden: Recordkeeping: 0; Burden Hours: 0

Abstract: This form is needed to enable Indian Tribes and Hawaiian Native Organizations to apply annually for basic grants as awarded under section 403 of the Library Services and Construction Act Basic Grants for Indian Tribes and Hawaiian Native Organizations Program, Title IV of the Library Services and Construction Act, as amended.

Type of Review Requested: New
Title: Application for Special Projects Grants under the Library Services for Indian Tribes and Hawaiian Native Organizations Programs.
Agency Form Number: G50-4P
Frequency: Annually
Affecting Public: Indian Tribes and Hawaiian Native Organizations
Reporting Burden: Responses: 200; Burden Hours: 1,600
Recordkeeping Burden: Recordkeeping: 0; Burden Hours: 0

Abstract: This form is needed to enable Indian Tribes and Hawaiian Native Organizations to apply annually for special project grants as awarded under section 404 of the Library Services and Construction Act of Indian Tribes and Hawaiian Native Organizations Program, Title IV of the Library Services and Construction Act, as amended.

[FR Doc. 85-6522 Filed 3-18-85; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF85-214-000]

Northeast Oklahoma Energy Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 13, 1985.

On January 29, 1985, Northeast Oklahoma Energy Company (Applicant), of P.O. Box 1106, Pryor, Oklahoma 74362 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 had been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Mid-America Industrial District south of Pryor, Oklahoma using, in part, leased unused space in a qualifying congeneration facility owned by the Epic Mid America Corporation (Docket No. QF85-243-003). The facility will consist of two gas-turbine generators exhausting to waste heat recovery boilers. Steam produced in the boilers will be sold for use in industrial plant processes. The primary energy source for the facility will be natural gas. The electric power production capability of the facility will be 30 megawatts. Construction of the facility is scheduled to begin in May 1985 and operation is expected to commence in November 1985.

Any person desiring to be heard or objecting to the granting of qualifying status 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 85-6538 Filed 3-18-85; 8:45 am]
BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM

Alliance Bancorp; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition.

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alliance Bancorp*, Danville, Indiana; to acquire Poynter Insurance Agency, Inc., Danville, Indiana, and thereby engage in acting as an insurance agent or broker in a community with a population of less than 5,000. This activity will be conducted in Danville, Indiana.

Board of Governors of the Federal Reserve System, March 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6502 Filed 3-18-85; 8:45 am]

BILLING CODE 6210-01-M

Commonwealth Bancshares Corporation, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompained by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically and questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Commonwealth Bancshares Corporation*, Williamsport, Pennsylvania; to engage *de novo* through its subsidiary, Commonwealth Bancshares Community Development Corporation, Williamsport, Pennsylvania (Company will engage *de novo*, for profit, in the following activities): equity investments in commercial and low-to-moderate income projects; own, manage and develop real estate beneficial to revitalization of deteriorating downtown sections and assist small businesses in low-to-moderate income areas. These activities are to be conducted in the north-central Pennsylvania and communities of Williamsport, Danville and Wellsboro, Pennsylvania.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Dunlap Iowa Holding Co.*, Dunlap, Iowa; to engage *de novo* through a subsidiary, in making, acquiring or servicing loans or other extensions of credit for the company's account. Applicant seeks to conduct the activity in the counties of Harrison, Monona, Shelby and Crawford in the State of Iowa.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Colorado Funding Company*, Denver, Colorado; to engage *de novo* through its subsidiary, Colorado Funding Service Corporation, Denver, Colorado, in providing financial, banking and economic data processing pursuant to § 225.25(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, March 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6503 Filed 3-18-85; 8:45 am]

BILLING CODE 6210-01-M

First National Bancorp in Fort Lee, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 10, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First National Bancorp In Fort Lee*, Fort Lee, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Fort Lee, Fort Lee, New Jersey.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *FMB Financial Holdings, Inc.*, Fayetteville, Georgia, to become a bank holding company by acquiring 83.9 percent of the voting shares of Farmers and Merchants Bank, Fayetteville, Georgia.

2. *The Colonial BancGroup, Inc.*, Montgomery, Alabama; to acquire 100 percent of the voting shares of First Tuscumbia Corp., Tuscumbia, Alabama,

thereby indirectly acquiring 100 percent ot the voting shares of First National Bank in Tuscumbia, Tuscumbia, Alabama and 100 percent of the voting shares of Bank of Lexington, Lexington, Alabama.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Lake Forest Corporation*, Lake Forest, Illinois; to acquire 100 percent of the voting shares of Lake Forest National Bank, Lake Forest, Illinois.

2. *First Lake Forest Corporation*, Lake Forest, Illinois; to acquire 100 percent of the voting shares of The First National Bank of Lake Bluff, Lake Bluff, Illinois.

3. *First Wayne County BanCorporation, Inc.*, Corydon, Iowa; to become a bank holding company by acquiring 99.6 percent of the voting shares of Corydon State Bank, Corydon, Iowa.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *C.F.C. Bancorp, Inc.*, Crystal Falls, Michigan, to become a bank holding company by acquiring 99.9 percent of the voting shares of First National Bank of Crystal Falls, Crystal Falls, Michigan.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Community Bancshares, Inc.*, Grants, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Grants State Bank, Grants, New Mexico.

2. *First National Bancor, Inc.*, Lee's Summit, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Lee's Summit, Missouri.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Benson Investment Company*, San Antonio, Texas; to become a bank holding company by acquiring 92.08 percent of the voting shares of Kelly Fields Bancshares Corporation, San Antonio, Texas, thereby indirectly acquiring Kelly Field National Bank, Leon Valley, Texas and Exchange National Bank, San Antoni, Texas.

2. *First Bancshares of Natchitoches, Inc.*, Natchitoches, Louisiana; to become a bank holding company by acquiring 67 percent of the voting shares of First Bank of Natchitoches and Trust Company, Natchitoches, Louisiana.

Board of Governors of the Federal Reserve System, March 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6504 Filed 3-18-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77F-0159]

Goodyear Tire & Rubber Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition (FAP 7B3272) proposing that the food additive regulations be amended to provide for the safe use of acrylonitrile-butadiene copolymer blended with vinyl chloride homopolymer in films for use in contact with dairy products.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 26, 1977 (42 FR 38016), FDA published notice that it had filed a petition (FAP 7B3272) from the Goodyear Tire and Rubber Co., Akron, OH 44316, that proposed to amend the food additive regulations to provide for the safe use of acrylonitrile-butadiene copolymer blended with vinyl chloride homopolymer in films for use in contact with dairy products. Goodyear Tire and Rubber Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 11, 1985.

Richard J. Ronk,

Acting Director, Center for Food and Safety and Applied Nutrition.

[FR Doc. 85-6465 Filed 3-18-85; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Boston district office, chaired by Frederick R. Carlson, District Director. The topic to be discussed in Post-Menopause Estrogen Replacement Therapy and Calcium Supplementation.

DATE: Tuesday, March 19, 1985, 9:30 a.m. to 12:00 p.m.

ADDRESS: Auditorium, Women and Infants Hospital, 50 Maude St., Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: Paula B. Fairfield, Consumer Affairs Officer, Food and Drug Administration, 585 Commercial St., Boston MA 02109, 617-223-5857.

Minneapolis district office, chaired by John Feldman, District Director. The topic to be discussed is Rx-to-Over-the-Counter (OTC) Switch.

DATE: Tuesday, March 26, 1985, 1 p.m. to 3 p.m.

ADDRESS: Blue Earth County Government Center, Mankato, MN 56001.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-349-3907.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions of vital issues.

Dated: March 13, 1985

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-6466 Filed 3-18-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Availability of a Draft Environmental Impact Statement on the Proposed Norton-Tesuque 115 kV Transmission Line and Substation in Santa Fe County, NM

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Draft Environment Impact Statement (DEIS) on the proposed Norton-Tesuque 115 kV Overhead Transmission Line and Substation in Santa Fe County, New Mexico is available for public review. The Public Service Company of New Mexico is proposing to be granted a right-of-way

from the existing Norton Station for approximately 9.1 miles east of a new substation site, in order to construct a 115 kV overhead transmission line. The project area is located approximately three miles north of Santa Fe, New Mexico.

DATES: Written comments are due May 20, 1985. A public meeting will be held on March 27, 1985, at 7 p.m. at the Santa Fe County Commission Chambers, 102 Grant, Santa Fe, New Mexico.

ADDRESSES: Comments should be addressed to: Mr. Vincent Little, Area Director, Albuquerque Area Office, P.O. Box 8327, Albuquerque, New Mexico 87198.

A public meeting will be held for the purpose of receiving oral comments on March 27, 1985, at 7 p.m. in the Santa Fe County Commission Chambers, 102 Grant, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Allan, Area Environmental Quality Specialist, Albuquerque Area Office, Bureau of Indian Affairs, P.O. Box 8327, Albuquerque, New Mexico 87198, telephone (505) 766–3374. Individuals wishing copies of this Draft Environmental Impact Statement should immediately contact the above named individual.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs (BIA), Department of the Interior, has prepared a DEIS on its proposal to approve a right-of-way for the Public Service Company of New Mexico on lands belonging to the Pueblo of Tesuque.

This action is designed to provide reliable electrical service for the northern Santa Fe service area and provide monetary reimbursement to the Pueblo of Tesuque.

This action will result in more reliable electrical service to an area of increasing development and will also result in impacts to the visual character of the area, effects upon wildlife, vegetative cover, erosion, residents lifestyles, property values and sales.

The principal alternatives under consideration that were analyzed and evaluated during planning are: A. No action, B. Approval of proposed rights-of-way and necessary construction for eight alternative routes, and C. Construction alternatives including: (1) Underground transmission lines and, (2) construction of overhead transmission lines with various materials and design alternatives.

Other Government agencies and members of the public contributed to the planning and evaluation of the proposal and the preparation of this Environmental Impact Statement (EIS). The Notice of Intent was published in the **Federal Register** on September 21, 1983. Three scoping meetings were held: one on September 15, 1983, at Tesuque Pueblo, and two in Santa Fe on September 20, 1983, and October 25, 1983. The October 25 meeting was announced in the **Federal Register**, while the September 20 meeting was announced in the Santa Fe New Mexican. Cooperating Agencies include the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the County of Santa Fe.

Agencies and individuals are urged to provide comments on this DEIS as soon as possible. All comments received by the dates above will be considered in preparation of the final EIS for this proposed action.

Dated: March 14, 1985.

Theodore C. Krenzke,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85–6516 Filed 3–18–85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Resource Management Planning Record of Decision; Powder River, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Record of Decision, Powder River Resource Management Plan/Environmental Impact Statement.

SUMMARY: A record of Decision approving the Powder River Resource Management Plan/Final Environmental Impact Statement has been issued approving the proposed plan for implementation.

EFFECTIVE DATE: March 15, 1985.

FOR FURTHER INFORMATION CONTACT: Ray Brubaker, District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: The Powder River RMP/FEIS was issued December 15, 1985, providing proposed management of public land and federal minerals in Powder River and Treasure Counties and portions of Rosebud, Carter, Big Horn and Custer Counties, Montana. No protests were received on any portions of the RMP/FEIS during a 30-day protest period. Copies of the RMP/FEIS as well as the record of decision are available at the Miles City District Office.

Ray Brubaker,

District Manager.

[FR Doc. 85–6477 Filed 3–8–85; 8:45 am]

BILLING CODE 4310-DN-M

Shoshone District Advisory Council and Grazing Advisory Board Joint Meeting; Cancellation

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Cancellation of meeting.

SUMARY: The joint meeting of the Shoshone District Advisory Council and Grazing Advisory Board schedule for Wednesday, March 20, 1985, as published in Vol. 50, No. 36, page 7393 of the **Federal Register** on February 22, 1985, is hereby cancelled.

FOR FURTHER INFORMATION CONTACT: Jon Idso, ADM for Resources, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352, telephone (208) 886–2206 or FTS 554–6576.

Charles J. Haszier,

District Manager.

[FR Doc. 85–6529 Filed 3–18–85; 8:45 am]

BILLING CODE 4310-GG-M

Hearing on Withdrawal; Colorado; Fort Carson-Pinon Canyon Military Reservation

[C–0124534]

March 11, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and agenda for a forthcoming hearing to provide the opportunity for public involvement on the pending Engle Act Withdrawal of 11,415 acres of public domain minerals at the Fort Carson Military Base and on the proposed temporary withdrawal of 144,071 acres of public lands and public domain minerals in the Fort Carson-Pinon Canyon Military Reservation. The temporary withdrawal will continue the segregation and protection of the reservation pending Congressional action.

DATE AND TIME OF HEARING: Thursday, April 25, 1985, 7:00 p.m.

Address of hearing: Sangre de Christo Arts and Conference Center, 210 N. Santa Fe Avenue, Pueblo, Colorado 81003.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, Bureau of Land Management, (303) 294–7635.

SUPPLEMENTARY INFORMATION: The notice of proposed withdrawal for the 11,415 acres of public domain minerals at the Fort Carson Military Base which was published on June 21, 1983 (43 28343–28344) is hereby amended to provide for a public hearing as required by 43 U.S.C. 1714, and 43 CFR Part 2310.

This hearing also provides the opportunity for interested persons to be heard on a proposed temporary withdrawal to be made by the Secretary of the Interior for a period of five years. This action would continue the segregation and protection of the Fort Carson-Pinon Canyon Military Reservation withdrawal application pending Congressional action. The descriptions, as corrected, of the lands to be considered were published in the Federal Register on May 26, 1983 (48 FR 23713), June 21, 1983 (48 FR 28343–28344) and September 1, 1983 (48 FR 39703–39704).

This hearing will be open to all persons who desire to be heard on the subject. Those who desire to be heard in person and those who desire to submit written statements on this subject, should file notice thereof with the Colorado State Director, 2020 Arapahoe Street, Denver, Colorado 80205, to be received no later than April 19, 1985.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–6482 Filed 3–18–85; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

Alaska Offshore; Availability of the Draft Environmental Impact Statement and Locations and Dates of Public Hearings for Proposed Oil and Gas Lease Sale 100 in the Norton Basin Area

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a draft environmental impact statement (EIS) for proposed oil and gas lease Sale 100 in the Norton Basin. The draft EIS contains, among other things, an evaluation pursuant to Section 810, Alaskan National Interest Lands Conservation Act (ANILCA).

Single copies of the draft EIS can be obtained from the Office of the Regional Director, Minerals Management Service, Alaska Region, P.O. Box 101159, Anchorage, Alaska 99510, telephone (907) 261–4080.

Copies of the draft EIS will also be available for inspection in the following libraries: Alaska Federation of Natives, Suite 304, 1577 O Street, Anchorage, AK 99501; Anchor Point Public Library, Anchor Point, AK 99556; Department of the Interior Resources Library, Box 36, 701 C Street, Anchorage, AK 99513; Cordova Public Library, Box 472, Cordova, AK 99574; Kenai Community Library, Box 157, Kenai, AK 99611; Elim Learning Center, Elim, AK 99739; Haines Public Library, P.O. Box 36, Haines, AK 99827; North Star Borough Library, Fairbanks, AK 99701; University of Alaska, Institute of Social and Economic Research Library, Fairbanks, AK 99801; Home Public Library, Box 356, Homer, AK 99603; Z.J. Loussac Public Library, 427 F Street, Anchorage, AK 99801; Juneau Memorial Library, 114 W. 4th Street, Juneau, AK 99824; Alaska State Library, Documents Librarian, Pouch G, Juneau, AK 99811; Ketchikan Public Library, 629 Dock Street, Ketchikan, AK 99901; Department of Defense, Army Corps of Engineers Library, P.O. Box 7002, Anchorage, AK 99501; Kodiak Public Library, P.O. Box 985, Kodia, AK 99615; Metlakatla Extension Center, Metlakatla, AK 99926; Department of the Interior, Bureau of Mines Library, AF–F.O. Center, P.O. Box 550, Juneau, AK 99802; Petersburg Extension Center, Box 289, Petersburg, AK 99833; Seldovia Public Library, Drawer D, Seldovia, AK 99663; Seward Community Library, Box 537, Seward, AK 99664; University of Alaska Juneau Library, P.O. Box 1447, Juneau, AK 91447; Sitka Community Library, Box 1090, Sitka, AK 99835; Douglas Public Library, Box 469, Douglas, AK 99824; University of Alaska Anchorage Library, 3211 Providence Drive, Anchorage, AK 99504; University of Alaska Elmer E. Rasmusson Library, Fairbanks, AK 99701; Wrangell Extension Center, Box 651, Wrangell, AK 99929.

In accordance with 30 CFR 256.26, the MMS will hold public hearings to receive comments and suggestions relating to the EIS. The hearings are also being held for the purpose of receiving comments and suggestions regarding subsistence.

The hearings will be held on the following dates and times indicated:

April 22, 1985, Municipal Building, Emmonka, Alaska, (7:00 p.m.)

April 23, 1985, City Hall, Nome, Alaska, (7:00 p.m.)

April 24, 1985, City Hall, Savoonga, Alaska, (7:00 p.m.)

April 25, 1985, Municipal Building, Gambell, Alaska, (12:00 noon)

May 1, 1985, 6th Floor Conf. Rm., 949 E. 36th Avenue, Anchorage, Alaska, (12:00 noon).

The hearings will provide the Secretary of the Interior with information from government agencies and the public which will help in the evaluation of the potential effects, including effects on subsistence uses, of the proposed lease sale.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are asked to contact the Alaska Regional Office at the above address by telephone by Friday, April 19, 1985. Time limitation may make it necessary to limit the length of oral presentation to 10 minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until May 14, 1985. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until May 14, 1985, and should be addressed to the Regional Director, Minerals Management Service, Alaska Region, P.O. Box 101159, Anchorage, Alaska 99510.

William D. Bettenberg,

Director, Minerals Management Service.

Lillian K. Stone,

Acting Director, Environmental Project Review Director.

[FR Doc. 85–6517 Filed 3–18–85; 8:45 am]

BILLING CODE 4310–MR–M

CNG Producing Co., Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that CNG Producing Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2391, Block A–571, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on March 11, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at

the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 11, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-6528 Filed 3-18-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 9, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 18, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ALASKA

Juneau Division

Juneau, *Thane-Holbrook House*, 206 7th St.

CALIFORNIA

Los Angeles County

Los Angeles, *Hollywood Boulevard Commercial and Entertainment District*, 6200-7000 Hollywood Blvd., N. Vine St., N. Highland Ave. and N. Ivar St.

San Francisco County

San Francisco, *The Real Estate Associates (TREA) Houses*, 2503, 2524, 2530 and 2536 Clay St.

COLORADO

Boulder County

Bouler, *Boulder Post Office (U.S. Post Offices in Colorado 1900-1941 TR)*, 1905-15th-St.

Delta County

Delta, *Delta Post Office and Federal Building (U.S. Post Offices in Colorado 1900-1941 TR)*, 360 Meeker St.

El Paso County

Colorado Springs, *Colorado Springs Post Office and Federal Courthouse (U.S. Post Offices in Colorado 1900-1941 TR)*, 210 Pikes Peak Ave.

Manitou Springs, *Manitou Springs Post Office (U.S. Post Offices in Colorado 1900-1941 TR)*, 307 Canon Ave.

Fremont County

Canon City, *Canon City Post Office and Federal Building (U.S. Post Offices in Colorado 1900-1941 TR)*, 5th St. and Macon Ave.

Florence, *Florence Post Office (U.S. Post Offices in Colorado 1900-1941 TR)*, 121 N. Pikes Peak St.

Garfield County

Rifle, *Rifle Post Office (U.S. Post Offices in Colorado 1900-1941 TR)*, Railroad Ave. and 4th At.

Las Animas County

Trinidad, *Trinidad Post Office (U.S. Post Offices in Colorado 1900-1941 TR)*, 301 E. Main St.

Logan County

Sterling, *Sterling Post Office, Federal Building and Courthouse (U.S. Post Offices in Colorado 1900-1941 TR)*, 3rd and Popular Sts.

Montrose County

Montrose, *Montrose Post Office (U.S. Post Offices in Colorado 1900-1941 TR)*, 321 S. 1st St.

Morgan County

Fort Morgan, *Fort Morgan Post Office (U.S. Post Offices in Colorado 1900-1941 TR)*, 300 State St.

Prowers County

Lamar, *Lamar Post Office (U.S. Post Offices in Colorado 1900—1941 TR)*, 300 S. 5th St.

Rio Grande County

Monte Vista, *Monte Vista Post Office and Federal Building (U.S. Post Offices in Colorado 1900—1941 TR)*, Washington and 2nd Ave.

CONNECTICUT

Fairfield County

Bridgeport, *Fairfield County Jail*, 1106 N. Ave.

Bridgeport, *Nathaniel Wheeler Memorial Fountain*, Park and Fairfield Aves.

New London County

Norwich, *Downtown Norwich Historic District*, Roughly bounded by Union Sq., Park, Main and Shetland Sts., and Washington Sq.

IOWA

Jefferson County

Fairfield, *Ball, W. C., House*, R.R. #2

KANSAS

Atchison County

Atchison, *Trinity Episcopal Church*, 300 S. 5th St.

Cloud County

Clyde, *Van De Mark, Charles W., House*, 504 Washington

Harvey County

Newton, *Santa Fe Depot*, 414 N. Main

Lyon County

Emporia, *Granada Theater*, 809 Commercial

KENTUCKY

Green County

Greensburg, *Federal House (Green County MRA)*, S. Main and E. Columbia

Greensburg, *Herndon, William H., House (Green County MRA)*, 203 S. Main St.

Greensburg, *Lewis, Woodson, House (Green County MRA)*, Main St. and Hodgenville Ave.

MASSACHUSETTS

Bristol County

Attleboro, *East Attleborough Academy*, 28 Sanford St.

Essex County

Amesbury, *Amesbury and Salisbury Mills Village Historic District*, Market Sq. roughly bounded by Boardman, Water, Main and Pond Sts.

Middlesex County

Arlington, *Ally House (Arlinton MRA)*, 94 Oakland Ave.

Arlington, *Arlington Coal & Lumber (Arlington MRA)*, 41 Park Ave.

Arlington, *Arlington Gaslight Company (Arlington MRA)*, Grove St. Town Yard

Arlington, *Arlington Pumping Station (Arlington MRA)*, Brattle Court off Brattle St.

Arlington, *Arlington Reservoir (Arlington MRA)*, Park Circle

Arlington, *Baptist Society Meeting House (Arlington MRA)*, 3-5 Brattle St.

Arlington, *Bassett, Maria, House (Arlington MRA)*, 8 College Ave.

Arlington, *Building at 1334 and 1339 Massachusetts Ave. (Arlington MRA)*, 1334 and 1339 Massachusetts Ave.

Arlington, *Call-Barlett House (Arlington MRA)*, 216 Pleasant St.

Arlington, *Capitol Theater Building (Arlington MRA)*, 202-208 Massachusetts Ave.

Arlington, *Chapel of St. Anne (Arlington MRA)*, Claremont Ave.

Arlington, *Cushman House (Arlington MRA)*, 104 Barlett Ave.

Arlington, *Cutter, Jefferson, House (Arlington MRA)*, 1146 Massachusetts Ave.
Arlington, *Cutter, Second, A. P., House (Arlington MRA)*, 89 Summer St.
Arlington, *Damon House (Arlington MRA)*, 275 Broadway.
Arlington, *Farmer, Kimball, House (Arlington MRA)*, 1173 Massachusetts Ave.
Arlington, *First Parish Church Parsonage (Arlington MRA)*, 232–234 Pleasant St.
Arlington, *Hall, Edward, House (Arlington MRA)*, 187 Pleasant St.
Arlington, *Highland Hose House (Arlington MRA)*, 1007 Massachusetts Ave.
Arlington, *Hill, Addison, (Arlington MRA)*, 83 Appleton St.
Arlington, *Hornblower, Edward, House and Barn (Arlington MRA)*, 200 Pleasant St.
Arlington, *House at 45 Claremont Avenue (Arlington MRA)*, 45 Claremont Ave.
Arlington, *House at 5 Willow Court (Arlington MRA)*, 5 Willow Court.
Arlington, *House at 5–7 Winter Street (Arlington MRA)*, 5–7 Winter St.
Arlington, *Kensington Park Historic District (Arlington MRA)*, Roughly bounded by Kensington Park, Brantwood and Kensington Rds.
Arlington, *Kimball, W.W., House (Arlington MRA)*, 13 Winter St.
Arlington, *Locke School (Arlington MRA)*, 88 Parke Ave.
Arlington, *Locke, Lt. Benjamin, Store (Arlington MRA)*, 11–13 Lowell St.
Arlington, *Milestone (Arlington MRA)*, Appleton St. and Paul Revere Rd.
Arlington, *Orvis Road Historic District (Arlington MRA)*, Roughly bounded by Massachusetts Ave., Freeman, Randolph and Newcomb Sts. on Orvis Rd
Arlington, *Pierce Farm Historic District (Arlington MRA)*, Roughly bounded by Claremont and Oakland Aves.
Arlington, *Prentiss, William, House (Arlington MRA)*, 252 Gray St.
Arlington, *Prentiss-Payson (Arlington MRA)*, 224–226 Pleasant St.
Arlington, *Proctor, William, House (Arlington MRA)*, 390 Massachusetts Ave.
Arlington, *Rawson, Warren, Building (Arlington MRA)*, 68–74 Franklin St.
Arlington, *Rawson, Warren, House (Arlington MRA)*, 37—49 Park St.
Arlington, *Robindreau, Alfred E., House (Arlington MRA)*, 28 Lafayette St.
Arlington, *Robinson House (Arlington MRA)*, 19 Winter St.
Arlington, *Robinson-Lewis-G.F., Fessenden House (Arlington MRA)*, 40 Westminister Ave.
Arlington, *Russell Common (Arlington MRA)*, 2—10 Park Terrace
Arlington, *Shattuck, Ralph W., House (Arlington MRA)*, 274—276 Broadway
Arlington, *Sterling-Cutter, Ella Mahalla, House (Arlington MRA)*, 93 Summer St.
Arlington, *Swadkins, Thomas, House (Arlington MRA)*, 160 Westminister Ave.
Arlington, *Swan, Henry, House (Arlington MRA)*, 418 Massachusetts Ave.
Arlington, *Symmes, Jr., Stephen, House (Arlington MRA)*, 215 Crosby St.
Arlington, *Taylor-Dallin House (Arlington MRA)*, 69 Oakland Ave.
Arlington, *Town Center Historic District (Arlington MRA)*, Roughly bounded by Jason St., Massachusetts Ave., Pleasant and Gray Sts.
Arlington, *Wayside Inn (Arlington MRA)*, 393 Massachusetts Ave.
Arlington, *Whittemor House (Arlington MRA)*, 267 Broadway
Arlington, *Winn Farm (Arlington MRA)*, 57 Summer St.

Worcester County

Sutton, *Waters Farm*, 53 Waters Rd.
Worcester, *Claremont Street Historic District (Worcester MRA)*, Roughly bounded by Woodland, Claremont and Main Sts. and Claremont Sq.

MISSISSIPPI

Yalobusha County

Water Valley, *Water Valley Post Office*, 2322 Main St.

MISSOURI

Jackson County

Independence, *Kritser House*, 115 E. Walnut

St. Louis (Independent City)

Winston Churchill Apartments, 5475 Cabanne

NEW YORK

New York County

New York, *Sidewalk Clock at 1501 3rd Avenue, Manahattan (Sidewalk Clocks of New York City TR)*, 1501 3rd Ave.
New York, *Sidewalk Clock at 200 5th Avenue, Manhattan (Sidewalk Clocks of New York City TR)*, 200 5th Ave.
New York, *Sidewalk Clock at 519 3rd Avenue, Manhattan (Sidewalk Clocks of New York City TR)*, 519 3rd Ave.
New York, *Sidewalk Clock at 522 5th Avenue, Manhattan (Sidewalk Clocks of New York City TR)*, 522 5th Ave.
New York, *Sidewalk Clock at 783 5th Avenue, Manhattan (Sidewalk Clocks of New York City TR)*, *783 5th Ave.*

Queens County

New York, *Sidewalk Clock 161–11 Jamaica Avenue, New York, NY (Sidewalk Clocks of New York City TR)*, 161–11 Jamaica Ave.

OKLAHOMA

Carter County

Ardmore, *Ardmore Masonic Temple*, Broadway and B St.
Ardmore, *Noble, Lloyd, House*, 907 D St. NW

RHODE ISLAND

Newport County

Gardiner Pond Shell Midden,

TENNESSEE

Hamilton County

Chattanooga, *Maclellan Building (Buildings in Hamilton County Designed by R.H. Hunt TR)*, 721 Broad St.

Knox County

Knoxville, *St. John's Lutheran Church*, 544 Broadway, NW

Rutherford County

Murfreesboro, *North Maney Avenue Historic District*, Roughly bounded by N. Maney and N. Highland Aves., E. College St. and N. Academy Ave.

Sullivan County

Bristol, *Paramount Theatre and Office Building*, 516 State St.

Warren County

McMinnville vicinity, *My Grandfather's House*, US 70, South

TEXAS

Tarrant County

Forth Worth, *U.S. Post Office (Fort Worth Main)*, Lancaster and Jennings Ave.

[FR Doc. 85–6560 Filed 3–18–85; 8:45 am]
BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Assistant Administrator for Near East; Amendment to Delegation of Authority No. 147

This document amends Delegation of Authority No. 147 published December 17, 1984 (page 49000) and corrected March, 1, 1985 (page 8404).

1. Section 12 of Delegation of Authority No. 147 ("Delegation") is hereby deleted in its entirety and the following is substituted therefor:

The authorities contained herein shall be redelegated to the Mission Director in Egypt with authority by the Mission Director to further redelegate such authorities at the discretion of the Assistant Administrator.

2. All other terms, conditions and provisions of the delegation remain in full force and effect.

Dated: January 7, 1985.

M. Peter McPherson,

Administrator, Agency for International Development.

[FR Doc. 85–6361 Filed 3–18–85; 8:45 am]
BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–3 (Sub-46)]

Missouri Pacific Railroad Co.; Abandonment—in Nemaha, Otoe, Johnson, and Lancaster Counties, NE; Notice of Findings

The Commission has found that the public convenience and necessity permit the Missouri Pacific Railroad Company to abandon its 51.5-mile rail line between milepost 416.4 at Crete Junction and milepost 467.9, near Hickman, in

Nemaha, Otoe, Johnson, and Lancaster Counties, NE.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purpose) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85–6499 Filed 3–18–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–10 (Sub-21F)]

Wabash Railroad Co. and Norfolk and Western Railway Co.; Abandonment; Elkhart, Lagrange, Noble and Steuben Counties, IN; Findings

The Commission has found that the public convenience and necessity permit Wabash Railroad Company and Norfolk and Western Railway Company (N&W) to abandon N&W's 47.71-mile rail line between milepost 122.53 near Ashley-Hudson, IN and milepost 170.24 at Wakarusa, IN, in Elkhart, Lagrange, Noble, and Steuben Counties, Indian. The certificate authorizing this abandonment will be effective in 30 days, unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85–6551 Filed 3–18–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–18 (Sub-53)]

Chesapeake and Ohio Railway Co.; Abandonment in Boyd, Carter, Rowan, Bath, Montgomery and Clark Counties, KY; Findings

The Commission has found that the public convenience and necessity require the Chesapeake and Ohio Railway Company to abandon its 92.94 mile rail line between Coalton (milepost 531.29) and Winchester (milepost 624.23), in Boyd, Carter, Rowan, Bath, Montgomery and Clark Counties, KY. A certificate will be issued authorizing this abandonment unless by April 3, 1985, the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant by March 29, 1985.

The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: **"Rail Section, AB–OFA."** Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85–6628 Filed 3–18–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Cooper Industries, Inc.; Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed consent decree and competitive impact statement have been filed with the United States District Court for the District of Columbia in the case of *United States* v. *Cooper Industries, Inc.*, Civil Action No. 85–0765.

The complaint in the case alleged that the acquisition by Cooper Industries, Inc., of the aviation lighting equipment business of Westinghouse Electric Corporation substantially lessened competition in the market for the manufacture and sale of aviation lighting equipment in the United States, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed judgment would require the defendant to notify the government prior to consummating any further acquisition of any plant which produced aviation lighting equipment sold in the United States within two years before the proposed acquisition. The proposed judgment prohibits consummation of any such acquisition without the government's consent or, if the government refuses to consent, the Court's consent, upon a showing that the acquisition will not harm competition. If approved by the Court, the judgment would be in effect for ten years.

Public comment on the proposed judgment is invited for a period of 60 days following publication of the required public notices. Comments should be directed to Alan L. Marx, Chief, General Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. All comments will be filed with the Court and published in the **Federal Register**.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

In the United States District Court for the District of the District of Columbia; United States of America, Plaintiff, v. Cooper Industries, Inc., Defendant.

Civil Action No. 85–0765

Antitrust.

Filed: March 6, 1985.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that the Court may file and enter a Final Judgment in the form attached to this Stipulation on the Court's own motion or on the motion of any party at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), and without further notice to any party or other proceedings, if plaintiff has not withdrawn its consent, which it may do at any time before the entry of the judgment by serving notice of its withdrawal on defendant and filing that notice with the Court.

2. Venue is proper in this District for purposes of this action.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this

Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be be without prejudice to any party in this or any other proceeding, except that the preceding paragraph two regarding venue of this action shall remain in full force.

For the plaintiff: J. Paul McGrath, *Assistant Attorney General, Antitrust Division;* Joseph H. Widmar, Alan L. Marx, *Attorneys United States Department of Justice;* Kenneth L. Jost, *Attorney for the United States; United States Department of Justice, Antitrust Division,* Washington, D.C. 20503, (202) 724-6468.

For the defendant: Edgar A. Bircher, *Vice President and General Counsel Cooper Industries, Inc.,* First City Tower, Suite 4000, Houston, Texas 77210; Robert E. Liedquist, *Squire, Sanders & Dempsey,* 1201 Pennsylvania Avenue, NW., Washington, D.C. 20004, *Attorneys for Cooper Industries, Inc.*

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on March 6, 1985, and defendant, by its attorney, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact of law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted under Section 7 of the Clayton Act, 15 U.S.C. 18.

II

As used in this Final Judgment:

A. "Aviation lighting equipment" means airport identification and airport ground navigation lighting and control apparatus that provide visual guidance for the safe navigation of piloted air transportation, including but not limited to airport: in-pavement lights for runway and taxiway center line, touchdown zone and approach lighting, elevated edge lights for runways and taxiways, taxiway guidance signs, approach lighting systems, identification beacons, signaling devices, wind cones, obstruction lights, isolating transformers, constant current regulators, circuit selectors, and power adapters. Specifically excluded from the definition of "aviation lighting equipment" are underground electrical cable and, also, component parts of a fixture.

B. "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity.

III

This Final Judgment applies to the defendant and to its officers, directors, managers, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

The defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it in its aviation lighting equipment business, that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with plaintiff and the Court.

V

Defendant is hereby enjoined and restrained, for a period of ten years from the entry of this Final Judgment, from purchasing, consolidating with, acquiring control of, or leasing any aviation control of, or leasing any aviation lighting equipment plant (except for renewal of an existing lease) from any person who has been engaged in the business of manufacturing aviation lighting equipment within two years preceding the date of the proposed transaction without the prior written consent of the Department of Justice or the Court. At least forty-five days in advance of the closing date of any such transaction, the defendant shall supply plaintiff with complete details concerning the terms and conditions of the proposed transaction. Within thirty days after its receipt of the above information plaintiff shall advise the defendant of any objection it may have to the consummation of the proposed transaction. If such an objection is made by plaintiff, then the proposed transaction shall not be consummated unless approved by the Court on the basis of a showing by defendant, by a preponderance of the evidence, that the proposed transaction will not substantially lessen competition in any line of commerce in any section of the country. Provided, however, that this Section V shall not apply to any plant located outside the United States if none of its production was sold in the United States within the two year period preceding the proposed acquisition.

VI

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees, and agents of defendant, who may have counsel present, regarding any such matter.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten days notice to the defendant before divulging the material in any legal proceedings (other than a

grand jury proceeding) to which the defendant is not a party.

VII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for the enforcement of compliance with it or for the punishment of any violation of it.

VIII

This Final Judgment shall be in effect for a period of ten years following its date of entry.

IX

Entry of this Final Judgment is in the public interest.

United States District Judge.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), the United States files this Competitive Impact Statement, relating to the proposed Final Judgment submitted for entry in this case.

I. Nature and Purpose of the Proceeding

On March 6, 1985, the United States filed a civil antitrust suit alleging that Cooper Industries, Inc. ("Cooper") violated section 7 of the Clayton Act, 15 U.S.C. 18, when it acquired the aviation lighting equipment business of Westinghouse Electric Corporation ("Westinghouse") in October 1982. Cooper is a diversified international manfacturing concern headquartered in Houston, Texas. Its primary business activities include the manfacture of compression and drilling equipment, hardware and tools, and electrical and electronic products, including aviation lighting equipment. Its 1982 sales exceeded $2.3 billion. Westinghouse is a Pennsylvania corporation engaged primarily in the manufacture, sale, and service of equipment for the generation, transmission, distribution, utilization and control of electricity. Westinghouse exited the aviation lighting equipment business by selling its aviation lighting assets to Cooper.

The complaint alleges that Cooper's acquisition of the Westinghouse aviation lighting equipment business eliminated actual and potential competition in the manufacture and sale of aviation lighting equipment between those firms, increased concentration in the aviation lighting equipment industry, and threatened that industry with a substantial lessening of competition. The complaint asks the Court to find that the acquisition violated section 7 of the Clayton Act and to enjoin Cooper from acquiring any other plant in the avaition lighting equipment industry for ten years without consent of the plaintiff or the Court.

On the same day the complaint was filed, the parties filed a proposed Final Judgment, Stipulation, and this Competitive Impact Statement. Under the Stipulation, the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action. The Court will retain jurisdiction to interpret, modify, or enforce compliance with the provisions of the proposed Final Judgment.

II. The Nature of the Alleged Violation

Aviation lighting equipment consists primarily of the lighting systems at airports that guide airplanes on approach and landing, as well as lights that are used on taxiways. The Federal Aviation Administration ("FAA") provides funding for most aviation lighting equipment. To be eligible for use in FAA funded projects, aviation lighting equipment must receive FAA approval. The necessity of obtaining FAA approval lengthens the time required for a firm to enter production and marketing of aviation lighting equipment. FAA requirements are also a significant factor in eliminating from the United States market most aviation lighting equipment produced abroad.

Aviation lighting equipment is generally sold to airports as part of a complete lighting system. To compete fully for sales of these systems, a manufacturer must offer a relatively broad range of products. Prior to the acquisition described in the complaint, Cooper, Westinghouse, and one other firm provided the primary competition in lighting systems. Other firms in the industry concentrated on market "niches."

The manufacture and sale of aviation lighting equipment in the United States is a highly concentrated industry. Prior to the acquisition that is the subject of this suit, the four largest domestic firms accounted for at least 72% of sales, the eight largest accounted for approximately 87% of sales, and the HHI (the Herfindahl-Hirschman Index, a measure of market concentration calculated by squiring the market share of each firm competing in the market the then summing the resulting numbers) was approximately 3107.

Cooper is by far the dominant firm in the United States market. Prior to the acquisition, its Crouse-Hinds subsidiary had a market share conservatively estimated as 54% of sales of all domestic firms. Prior to the acquisition, Westinghouse had a market share of approximately 7%. On October 1, 1982, Cooper purchased the assets that Westinghouse had used in its aviation lighting equipment business. This transaction substantially increased industry concentration, raising the HHI 756 points to 3863.

The probable effect of an acquisition causing an increase of this magnitude in the level of concentration in the manufacture and sale of aviation lighting equipment in the United States is a substantial lessening of competition in violation of section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment provides all the substantive relief the complaint requests. It provides that for a period of ten years Cooper shall not acquire, directly or indirectly, any plant which produced aviation lighting equipment which was sold in the United States within two years prior to the proposed acquisition, without first obtaining the permission of the plaintiff or the Court. Cooper must notify plaintiff of any such proposed acquisition at least 45 days before its closing date. Plaintiff must then notify Cooper of any objection it has to the proposed transaction within 30 days. If Cooper wishes to proceed with the transaction in the face of plaintiff's objection, it can only do so if it shows the Court that the transaction will not substantially lessen competition in any line of commerce in any section of the country.

IV. Competitive Effect of the Proposed Final Judgment

The United States' aviation lighting equipment market is relatively small. In 1982, the domestic industry had approximately $48 million in sales. Some firms which are important members of this industry have assets and sales that, compared to other industries, are not large. Acquisitions having a significant adverse effect on concentration in this market, including the subject of this action, can therefore involve dollar amounts that do not require reporting under the premerger reporting program created by section 7A of the Clayton Act, 15 U.S.C. 18(a). Thus, anticompetitive acquisitions may occur without prior notice to the government.

Cooper has grown in aviation lighting in part through acquisitions. In 1978 it acquired a competitor, and in 1982 it acquired the Westinghouse business. Without the prohibition imposed by the proposed Final Judgment, we believe it likely that Cooper would propose or enter additional acquisitions which could eliminate additional competitors in this marketplace. This could occur with no advance notice to the government. The proposed Final Judgment eliminates this possibility.

V. Remedies Available to Private Parties

Entry of the proposed Final Judgment will have no effect on the rights of persons who may have been injured by the alleged violation. Private plaintiffs may sue for any remedy they deem appropriate. However, pursuant to section 5(a) of the Clayton Act, 15 U.S.C. 16(a), this judgment may not be used as prima facie evidence in private litigation.

VI. Procedures Available For Modification of the Proposed Final Judgment

For a period of 60 days following the filing of the proposed Final Judgment and its publication in newspapers and the Federal Register, interested persons may submit written comments concerning the proposed judgment to Alan L. Marx, Chief, General Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. These comments and the government's response will be filed with the Court and published in the **Federal Register**. The government will carefully consider all comments to determine if there is any reason for withdrawing its consent to the proposed judgment, which it may do at any time before the decree is entered by the Court. The Court will retain jurisdiction over the judgment following its entry so as to permit any of the parties to apply for orders modifying or enforcing the decree.

VII. Alternatives to the Proposed Final Judgment

The primary alternative relief considered was divestiture of the assets acquired when Cooper acquired Westinghouse's aviation lighting business. However, the plant in which Westinghouse manufactured the equipment was leased, and Cooper did not renew the lease. Cooper sold part of the manufacturing equipment it acquired from Westinghouse, and moved part of it to existing Cooper facilities. We concluded that an asset divestiture was therefore not feasible, and that if further anticompetitive acquisitions by Cooper were prevented, normal market forces would eventually restore full competition in the market.

VIII. Determinative Documents and Materials

There are no materials or documents that the United States considered determinative in formulating the proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Respectfully submitted,

Kenneth L. Jost, *Attorney for the United States, United States Department of Justice*, Antitrust Division, Washington, D.C. 20530, (202) 724-6468.

[FR Doc. 85-6501 Filed 3-18-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

CE Diary and Interview Survey Questionnaires and Cover Letters

1220-0050; CE-801, CE-802, CE-803(L), CE-300, CE-301, CE-302, CE-303(L1-L5), CE-302

Other—Diary: Daily Interview: Quarterly

Individuals or households

Diary: 12,140 responses; 30,754 hours; 3 forms

Interview; 26,980 responses; 66,101 hours; 5 forms

The Consumer Expenditure Surveys gather detailed information on expenditures, income and other related subjects to periodically update the Consumer Price Index. The published data provide a continuing measurement of changes in consumer expenditure patterns for economic analysis.

Extension

Mine Safety and Health Administration

Record of Examinations for Hazardous Conditions (30 CFR 77.1713) 1219-0083

Each shift

Businesses and other for profit; small businesses or organizations

5,225 respondents; 2,821,500 hours

Requires operators of surface coal mines and surface facilities to conduct examinations for hazardous conditions of work areas during each shift. Records are required to be kept of the nature and location of any hazardous conditions found and the actions taken to abate the hazardous conditions.

Extension

Mine Safety and Health Administration
Records of Fire Drills and Programs to Instruct and Train Miners in the Location and Use of Firefighting Equipment (30 CFR 75.1101-23)
1219-0054
On occasion/quarterly
Businesses and other for profit; small businesses or organizations
2,075 respondents; 34,124 hours

Requires underground coal mine operators to have a plan approved by MSHA for the instruction of miners in firefighting and evacuation procedures to be followed in event of an emergency. The standard also requires fire drills to be conducted quarterly to implement the plan and that a record be kept of the fire drills.

Signed at Washington, D.C. this 14th day of March 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85-6563 Filed 3-18-85; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-18]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearinghouse Officer. Comments on the items listed should be submitted to the Agency Clearinghouse Officer and the OMB Reviewer.

DATE: Comments must be received in writing by March 29, 1985. If you anticipate commenting on a form but find that the time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearing Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer (202) 453-2941.

Reports

Title: Request for Guest Speaker.
OMB Number: 2700-0015.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: State or local governments, business or other for-profit.
Annual Responses: 100.
Annual Reporting Hours: 10.
Abstract-Needs/Uses: the NASA Form 1201 is used only when it is necessary to obtain additional information needed to adequately judge the merits of a request already received for a NASA speaker. It is to be used primarily by employees of NASA Public Affairs Offices who have the responsibility of processing requests for speakers.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 85-6446 Filed 3-18-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., 20506:

Date: April 1, 1985
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects for Adults, Division of General Programs, for projects beginning after October 1, 1985.

Date: April 4, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review the computer methodology of applications submitted to the Reference Works Program (Research Tools, and Editions), Division of Research Programs, for projects beginning after July 1, 1985.

Date: April 11-12, 1985
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects for Adults, Division of General Programs, for projects beginning after October 1, 1985.

Date: April 12, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Intercultural Research/ACLS Regrants Program, Division of Research Programs, for projects beginning after July 1, 1985.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary

Advisory Committee

[FR Doc. 85-6505 Filed 3-18-85; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting

this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 375–9421

OMB Desk Officer: Carlos Tellez, (202) 395–7340

Title: Evaluation of Presidential Awards Program

Affected Public: Individuals

Number of Respondents: 105 respondents; total of 26 burden hours.

Abstract: Survey form by which Presidential Awards winners may evaluate the awards program administered by the National Science Foundation.

Dated: March 14, 1985.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 85–6507 Filed 3–18–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published February 20, 1985 (50 FR 7150). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the April 1985 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634–3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

Air Systems, March 21, 1985—POSTPONED (until May).

Combined Extreme External Phenomena and Diablo Canyon, March 21 and 22, 1985, Culver City, CA. The Subcommittee will discuss the status of the NRC Staff's seismic design margins programs and PG&E's program plan for a seismic reevaluation of Diablo Canyon.

Class 9 Accidents, March 27, 1985, Washington, DC. The Subcommittee will continue the review of the suite of NRC severe accident codes. The codes to be reviewed will be containment codes and MELCOR.

Combined GESSAR II, Reliability & Probabilistic Assessment and Safeguards and Security, March 27, 28, and 29, 1985, Albuquerque, NM. The Subcommittees will continue their review of GESSAR II for a Final Design Approval applicable to future plants. The principal topics to be discussed are plant safeguards and the GESSAR II probabilistic risk assessment.

Emergency Core Cooling Systems, April 3, 1985, Washington, DC. The Subcommittee will discuss the following: (1) The *W* BART/BASH ECCS codes, (2) review the resolution of TMI Item II.K.3.30, revision of small break LOCA ECCS Evaluation Models; and (3) review the resolution of the RCP trip issues given a small break LOCA.

Human Factors, April 4, 1985, Washington, DC. The Subcomittee will discuss NUREG/CR–3737, a method of ascertaining management/organization's contribution to safety of operating reactors and NUREG/CR–3215, Organizational Analysis and Safety for Nuclear Power Plants. Also to be discussed is the topic of operator requalification and the check operator concept.

Long Range Plan for the NRC, April 5, 1985, Washington, DC. The Subcommittee will continue discussions on developing a long range plan for the NRC. Topics under discussion are technical and administrative issues related to the regulation of nuclear power plant safety and safety regulation over the next 5 to 10 years.

Safety Research Program, April 10, 1985, Washington, DC. The Subcommittee will discuss a draft report in the "NRC Safety Research Program" prepared by RES dealing with the justifications for a base NRC Safety Research Program in the future.

State of Nuclear Power Safety, April 10, 1985, Washington, DC. The Subcommittee will discuss Subcommittee Charter and proposed schedules.

Safety Philosophy, Technology, and Criteria, April 10, 1985, Washington, DC. The Subcommittee will review the status of the NRC Staff's evaluation of the trial use of the Commission's proposed Safety Goal Policy.

Reliability Assurance (valves), April 23, 1985, Washington, DC. The Subcommittee will continue discussion from the March 19 meeting regarding methods to enhance the reliability of air- and motor-operated valves.

Qualification Program for Safety-Related Equipment, Date to be determined (April, tentative), Washington, DC. The Subcommittee will discuss the NRC Staff's resolution of USI A–46, "Seismic Qualification of Equipment in Operating Plants." Also to discuss valve operability with the NRC Staff and industry.

Emergency Core Cooling Systems, Date to be determined (mid/late April), Washington, DC. The Subcommittee will: (1) Continue the review of the proposed revision to Appendix K of 10 CFR 50; and (2) continue review of the USI A–43 issue relating to the effects of insulation debris on containment pumps post-LOCA.

Combined Metal Components and Seismic Design of Piping, Date to be determined (April/May, tentative), Washington, DC. The Subcommittee will review the NRC Piping Review Committee's overall recommendations on piping system concerns.

Seismic Design of Piping, Date to be determined (April/May, tentative), Washington, DC. The Subcommittee will review draft reports issued by the NRC Piping Review Committee on dynamic loads and load combinations and seismic design requirements of piping.

Combined Waste Management and Site Evaluation, May 2 and 3, 1985, Washington, DC. The Subcommittees will review the following: (1) EPA Standards for HLW Repository; (2) consideration of earthquakes in emergency preparedness; and (3) proposed rule on emergency preparedness for fuel cycle and other radioactive material licensees.

Reactor Operations, May 6, 1985, Washington, DC. The Subcommittee will discuss recent operating occurrences.

Safeguards and Security, May 7, 1985, Washington, DC. The Subcommittee will review the potential consequences of sabotage at nonpower reactors, be briefed by NMSS on sabotage protection at power reactors, and hear how the NRC Staff reviews and evaluates licensees' security plans.

Safety Research Program, May 8, 1985, Washington, DC. The Subcommittee will discuss the proposed

NRC Safety Research Program and budget for FY 1987 and gather information for use by the ACRS in its preparation of the annual report to the Commission on the NRC Safety Research Program.

Decay Heat Removal Systems, Date to be determined (May), Washington, DC. The Subcommittee will continue the review of NRR resolution position on USI A-45, "Shutdown Decay Heat Removal Requirements."

Regulatory Activities, June 4, 1985 (tentative), Washington, DC. The Subcommittee will review the following: (1) Proposed General Revisions to Appendix J to 10 CFR 50, "Leak Tests for Primary and Secondary Containments of Light-Water Cooled Nuclear Power Plants," (2) Draft Regulatory Guide on "Containment Leakage Testing," and (3) Regulatory Guide 1.23, Rev. 1, "Meteorological Measurement Programs for Nuclear Power Plants."

Safety Research Program, June 5, 1985, Washington, DC. The Subcommittee will discuss the updated information (possibly the Budget Review Group mark) on the proposed NRC Safety Research Program and budget for FY 1987. Also, it will discuss a draft ACRS report to the Commission on the NRC Safety Research Program and budget for FY 1987.

Emergency Core Cooling Systems, June 12-13, 1985, Alliance, OH. The Subcommittee will continue the review of the joint NRC/B&WOG/EPRI/B&W joint IST Program. A visit to the MIST facility is also planned.

River Bend 1 and 2, Date and location to be determined (early June). The Subcommittee will continue the review of Gulf States Utilities' application for an operating license for the River Bend Nuclear Power Plant Units 1 and 2.

Palo Verde, Date to be determined, Maricopa County, AZ. The Subcommittee will review the final reports for various construction deficiencies and the results of the preoperational testing as requested in ACRS letter dated December 15, 1981.

Combined Reliability and Probabilistic Assessment and Millstone 3, Date and location to be determined. The Subcommittee will review the probabilistic risk assessment for Millstone 3.

Fluid Dynamics, Date to be determined, Washington, DC. The Subcommittee will review the status of the implementation effort on the hydrodynamic loads issue for GE BWR Mark I-III containments.

ACRS Full Committee Meeting

April 11-13, 1985: Items are *tentatively* scheduled.

*A. *Meeting with NRC Commissioners*—discuss ACRS comments/activities regarding safety-related matters including backfitting of nuclear facilities, consideration of a separate board to evaluate accidents at nuclear facilities, and the ACRS role in the civilian radwaste program.

*B. *Source Term Considered in Nuclear Power Plant Accidents*—briefing by representatives of the American Physical Society regarding the recent APS report on the source term.

*C. *Scram System Reliability in Water-Cooled Power Reactors*—discuss the reliability of electrical circuit breakers used in PWR scram systems and NRC activities associated with ATWS.

*D. *Office of International Program*—briefing by Office Director regarding office activities.

*E. *Vendor Inspection Program*—briefing by representatives of the NRC Office of Inspection and Enforcement regarding the NRC vendor inspection program.

*F. *NRC Research Programmatic Activities and Policies*—ACRS comments in response to an inquiry from Congressman Morris K. Udall regarding the NRC research and other programmatic activities and policies.

*G. *Standardized Nuclear Power Plant*—continue review of GESSAR II. Representatives of the NRC Staff and the General Electric Company will participate as appropriate.

*H. *Quantitative Safety Goals*—discuss NRC staff evaluation of the two-year trial period regarding use of quantitative safety goals.

*I. *Systematic Review of Nuclear Power Plants*—discuss proposed clarification of ACRS report dated July 18, 1984 on proposed NRC Severe Accident Policy Statement.

*J. *NRC Consideration of Safety-Related Issues*—proposed ACRS comments on conduct of NRC proceedings.

*K. *ACRS Subcommittee Activities*—discuss recent and proposed activities of ACRS subcommittees regarding designated areas, including provisions for requalification of reactor operators, a long range program plan for NRC activities, emergency core cooling systems, emergency power supplies in nuclear plants seismic design margins and ACRS procedures and practices.

*L. *Management and Disposal of Radwaste*—discuss proposed inquiry regarding the role of the ACRS in the NRC evaluation of DOE activities related to the civilian nuclear radwaste program.

*M. *ACRS Activities*—discuss proposed activities of ACRS members, ACRS subcommittees and the full committee.

May 9-11, 1985—Agenda to be announced.

June 6-8, 1985—Agenda to be announced.

Dated: March 13, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85-6545 Filed 3-18-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on April 4, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, April 4, 1985——8:30 a.m. until the conclusion of business

The Subcommittee will discuss NUREG/CR-3737, a method of ascertaining management/organization's contribution to safety of operating reactors and NUREG/CR-3215, Organizational Analysis and Safety for Utilities with Nuclear Power Plants. Also to be discussed is the topic of operator requalification and the check operator concept.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the

opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., e.s.t. Persons planning to attend this meeting are urged to contact the above named individual one or two days befor the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 14, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–6546 Filed 3–18–85; 8:45 am]

BILLING CODE 7590–01–M

Detroit Edison Co.; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–341]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of partial exemption from the requirements of Appendix J to 10 CFR Part 50 to the Detroit Edison Company (the applicant) for the Fermi-2 facility located on Lake Erie in Monroe County, almost 8 miles east-northeast of Monroe, Michigan.

Environmental Assessment

Identification of Proposed Action: The exemptions would (1) Allow Type C testing of the main steam isolation valves to be conducted at a differential pressure less than that required by Paragraph III.C.2 of Appendix J, and (2) eliminate the full pressure test required by paragraph III.D.2(b)(ii) of Appendix J normal air lock opening and substitute a seal leakage test to be conducted at a pressure specified in the Technical Specifications. The proposed exemptions are in accordance with the applicant's requests dated October 22, 1984 and January 19, 1985, as supplemented by letter dated January 26, 1985.

The need for the Proposed Action: The proposed exemptions are required because of the design of the main steam isolation valves and to provide the applicant with greater plant availability over the lifetime of the plant.

Environmental Impacts of the Proposed Action: The requested exemptions would allow the Type C testing of the main steam isolation valves to be conducted at a differential pressure less than that required by Appendix J and would grant the substitution of an airlock seal test for an airlock pressure test while the reactor is in a shutdown or refueling mode. With respect to these exemptions from Appendix J, the increment of environmental impact is related solely to the potential increased probability and the magnitude of containemnt leakage during an accident which could lead to potentially higher offsite and control room doses. However, the potential increase due to the exemption granted for testing of the airlock is small and would result from the potential leakage path through the door mechanism which will not be measured by this modified test. Other tests at each refueling or when maintenance is performed on the door, will measure the leakage through the door mechanism. Additionally, the reduced pressure when performing the Type C testing of the main steam isolation valves will not increase doses.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemptions, any alternative to these exemptions will have either on environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemptions. This would not reduce the environmental impacts of plant operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the operation of Enrico Fermi Atomic Power Plant, Unit No. 2," dated August 1981.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's requests that support the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the exemptions dated October 22, 1984, January 19, 1985, and January 26, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Bethesda, Maryland, this 11th day of March 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85–6549 Filed 3–18–85; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–277; and 50–278]

The Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Units 2 and 3); Exemption

I

The Philadelphia Electric Company (the licensee) and three other co-owners are the holders of Facility Operating Licenses Nos. DPR–44 and DPR–56 which authorize the operation of the Peach Bottom Atomic Power Station, Units 2 and 3 (the facilities), at steady-state power levels not in excess of 3293 megawatts thermal for each unit. These facilities are boiling water reactors located at the licensee's site in York County, Pennsylvania. These licenses are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

On November 19, 1980, the Commission published in the **Federal Register** (45 FR 76602) revised 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nucler power plants. The revised regulation and new appendix became effective on February 17, 1981. Section III of Appendix R identifies specific fire protection requirements in fifteen subsections, lettered A through O. This exemption relates to certain aspects of Sections III.F and III.G, as follows, from which the licensee has requested relief:

(a) A requirement of Section III.F of Appendix R to provide the installation of automatic fire detection systems in all areas of the plant that contain or present an exposure fire hazard to safe shutdown or safety-related systems or components;

(b) A requirement of Subsection III.G.2 to provide the installation of 3-hour fire rated barriers to separate redundant trains;

(c) A requirement of Subsection III.G.2 to provide the installation of automatic suppression systems in specific fire areas, and,

(d) A requirement of Section III.G.3 to provide for the installation of a fixed

suppression system in specific fire areas.

III

By letters dated May 27, 1983, September 16, 1983, and December 2, 1983, the licensee requested exemptions from Sections III.F and III.G Appendix R. By letters dated January 16, 1984, and February 10, 1984, the licensee provided additional information. The specific requests and the acceptability of the exemption are addressed herein.

(a) *Exemptions from Section III.F.* Section III.F of Appendix R to 10 CFR Part 50 requires the installation of automatic fire detection systems in all areas of the plant that contain or present an exposure fire hazard to safes shutdown or safety-related systems or components.

At Peach Bottom Atomic Power Station, the main steam isolation valve (MSIV) rooms, chemical waste tank room, offgas line tunnel, and diesel generator building supply enclosures contain one division of safe shutdown or safety-related systems. Fire protection for each area consists of manual hose stations and portable fire extinguishers. The in situ fuel load in each area is negligible. Each area has limited personnel access.

The technical requirements of Section III.F of Appendix R are not met in these areas because automatic fire detection systems have not been installed.

The fire load in these areas is low. Combustible material in each area is negligible. Consequently, we do not expect a fire of any significant magnitude or duration to occur. If a fire were to occur in these areas, it would be detected by fire detectors in adjoining locations or by plant operators who wold summon the fire brigade. The safety-related and safe shutdown equipment in these areas would not be prone to fire damage. Therefore, pending arrival of the brigade and eventual extinguishing of the fire, no loss of safety function would result.

Based on the above evaluation, we conclude that the existing fire protection for the MSIV rooms, chemical waste tank room, offgas line tunnel and the diesel generator building supply enclosures provides a level of fire protection equivalent to the technical requirements of Section III.F, and therefore, the licensee's request for exemption from Section III.F or Appendix R should be granted.

(b) *Exemptions from Section III.G.* Subsection III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

(1) Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

(2) Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

(3) Enclosure of the cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

The licensee requested an exemption from Subsection III.G.2 of Appendix R to the extent that it requires the installation of 3-hour fire rated barriers to separate redundant trains.

Thirty-two heating and ventilating penetrations through safe shutdown barriers have been identified which contain fire dampers rated at less than 3 hours. The installed dampers are UL rated for 1½-hour fire resistance and were installed during plant construction.

The maximum fixed fire resistance required in any of the areas as listed above is the cable spreading room 1 hour, 14 minutes. The cable spreading room is protected by area smoke detection and an automatic carbon dioxide suppression system. The next largest fixed combustible loading equates to a 27-minute fire resistance requirement.

Twenty-eight of the dampers in question are installed two dampers in series, though only one damper is required in the wall for a 1½-hour rating.

Four locations, three dampers in the cable spreading room and one in the switchgear room, have only one damper installed in the wall.

Fire protection for each of the above areas consists of early warning fire detection, manual hose stations and portable fire extinguishers.

In lieu of providing 3-hour fire rated dampers in 3-hour fire rated barriers, the licensee has installed two 1½-hour dampers in series in the barriers or one damper in the cable spreading room and switchgear rooms as indicated above. In every area where 1½-hour dampers are installed, early warning fire detection has been provided. The early warning fire detectors will provide reasonable assurance that a fire will be discovered in its incipient stage and be extinguished by the fire brigade within a short time span. Although a time delay is anticipated between the receipt of the initial fire alarm and the arrival of the fire brigade, the low fuel load in all areas except the cable spreading room and the automatic carbon dioxide extinguishing system in the cable spreading room provides reasonable assurance that the 1½-hour rated dampers will provide adequate protection in the above barriers.

Based on our evaluation, we find that the existing 1½-hour fire rated dampers provide a level of fire protection equivalent to the technical requirements of Subsection III.G.2 of Appendix R, and therefore, the exemption should be granted.

The licensee also requested an exemption from Subsection III.G.2 of Appendix R to the extent that it requires the installation of automatic suppression systems throughout Fire Areas 05 and 12.

Fire Areas 05 and 12 are located at the 91 foot 6 inch and 116 foot elevations of the Unit 2 and Unit 3 Reactor Buildings, respectively.

Fire Areas 05 and 12 are 19,278 ft^2 in area and have clear floor-to-ceiling heights of approximately 42 feet and volumes of approximately 800,000 ft^3. With the exception of the two steel grates for each fire area in the ceiling to the 135-foot elevation of the Reactor Buildings which are provided for personnel access to the torus area, water drainage and pressure relief purposes in design basis accidents, all boundary fire barrier penetrations are sealed and dampered to provide a fire rating commensurate with the hazard. The west wall corridor grates have automatic water spray systems directly over them.

The fixed combustible loadings for Fire Areas 05 and 12, when distributed evently throughout the fire area, are 1038 and 949 Btu/ft^2, respectively, with resultant equivalent fire severities of under 1 minute. Except for the vacuum breaker areas of the 116-foot elevation, radiological conditions in these fire areas are such that access is controlled by Health Physics. This minimizes the presence and use of transient combustible material within these fire areas. Fire protection in the areas consists of early warning fire dectors, manual hose stations, and portable fire extinguishers.

Fire Areas 05 and 12 contain redundant components for the residual heat removal (RHR) system and

suppression pool temperature monitoring instruments and cables of the respective units.

There are a total of eight RHR motor-operated valves in the redundant loop of each unit in the respective area, all of which are located in the torus compartment. The valves are located approximately 140 feet apart; however, the separation between power cables is less than 20 feet. Two factors mitigate the potential effects of any postulated fire damaging the control cables to both RHR valves for manual operation. First, handwheels are provided on both valves for manual operation. Second, there is a significant time lag of approximately 3 hours before the RHR systems would be required for safe shutdown. The redundant suppression and temperature elements are separated by approximately 140 feet and the corresponding temperature transmitters for each unit are located in separate fire areas. The horizontal separation between the power cables is approximately 90 feet.

These areas do not comply with Subsection III.G.2 of Appendix R because automatic supperssion systems are not installed throughout the areas.

Redundant cables and equipment associated with the suppression pool temperature sensors are separated by approximately 90 feet. The early warning fire detectors will provide reasonable assurance that a fire will be discovered in its incipient stage before significant damage results. Because of the low in situ fuel load, available manual firefighting equipment and fire brigade training, it is our conclusion that any postulated fire in the areas would not be beyond the capabilities of the fire brigade to extinguish within a short time span. Although a time delay is anticipated between the receipt of the initial fire alarm and the arrival of the fire brigade, the separation of the redundant trains will provide sufficient passive fire protection until the fire is extinguished.

Although the redundant RHR valves in the areas are located approximately 140 feet apart, the separation between redundant power cables is less than 20 feet. The licensee justifies this configuration based on the following:

a. Handwheels are provided on the valves for manual operation;

b. The RHR sysem is not required until approximately 3 hours into the safe shutdown process.

Because of the low in situ fuel load in these areas, it is our assessment that any postulated fire in the areas would be extinguished in a short time span and allow operators to enter the areas and allow manual operation of the valves before the RHR system would be required in the safe shutdown process.

Based on our evaluation, we conclude that the existing fire protection provides a level of fire protection in Fire Areas 05 and 12 equivalent to the technical requirements of Subsection III.G.2, and therefore, the exemption should be granted.

The licensee also requested an exemption from Subsection III.G.2 of Appendix R to the extent that it requires the installation of automatic suppression systems throughout Fire Areas 06 and 13.

Fire Areas 06 and 13 are located at the 135-foot elevations of the Unit 2 and Unit 3 Reactor Buildings, respectively. Each fire area is made up of the drywell access areas (Zone 022 for Unit 2 and Zone 028 for Unit 3), the isolation valve compartments (Zone 23 and 19 for Unit 2 and Zones 027 and 031 for Unit 3), and the neutron monitoring rooms (Zone 020 for Unit 2 and Zone 030 for Unit 3).

Fire Areas 06 and 13 are 10,482 and 9802 ft^2 in area, respectively, and have clear floor-to-ceiling heights of approximately 28 feet. This results in volumes of 290,000 and 270,000 ft^3, respectively. Due to the extension of the steam pipe tunnel out of the eastern-most wall to both fire areas, a corridor is formed that is approximately 12 feet wide by 12 feet high by 45 feet long. On either end of this corridor, the ceiling height rises from approximately 12 feet to 23 feet. With the exceptions of the two steel grates in the floor to the torus compartment and the large open hatch in the ceiling to the 165 foot elevation of each Reactor Building, all boundary fire barriers are sealed and dampered to provide a fire rating equal to that required of the barriers.

The fixed combustible loading for Fire Areas 06 and 13, when distributed evenly throughout the fire areas, are 32,109 and 33,403 Btu/ft^2 with resultant equivalent fire severities of 24 and 25 minutes, respectively. Fire protection in the areas consists of early warning fire detectors, manual hose stations, and portable fire extinguishers. In addition, automatic suppression is provided in the form of water curtains at the closest junction of the west wall to each fire area and the reactor drywell. The water curtains are arranged in two branches 13 feet apart with application rates of 0.3 gmp/ft^3. The water curtains are provided to eliminate the hazard of intervening combustibles in the form of horizontal cable trays installed between redundant trains.

Fire areas 06 and 13 located at the 135-foot elevation of the Reactor Building contain components/cables of the following safe shutdown systems for the respective unit:

(1) RHR System (all trains);

(2) Core Spray (CS) System (all trains);

(3) High Pressure Coolant Injection (HPCI) System;

(4) Reactor Core Isolation Cooling (RCIC) System;

(5) Nuclear System Pressure Relief System (NSPRS);

(6) AC Emergency Power System;

(7) DC Emergency Power System (only power to HPCI MCC); and

(8) Monitoring Instrumentation.

Two redundant methods of safe shutdown can be identified for these areas in the Reactor Building, one based on the north side of the Reactor Building and the other on the south side:

(1) *North Side Safe Shutdown Method* (for fires in the south side). Based on the Main Control Room control of HPCI, NSPRS, RHR (B or D), AC Emergency Power System (B or D), DC Emergency Power System B/D, and instrumentation based on the 165-foot elevation of the Reactor Building.

(2) *South Side Safe Shutdown Method* (for fires in the north side). Based on the Main Control Room control of NSPRS, RCIC, RHR (A or C), AC Emergency Power System (A or C), and DC Emergency Power System A/C, as well as 165-foot elevation instrumentation.

The above areas do not comply with Subsection III.G.2 of Appendix R because automatic suppression systems have not been installed throughout the areas. Redundant methods of safe shutdown in each area are separated by greater than 100 feet. The early warning fire detectors will provide reasonable assurance that a fire will be discovered in its incipient stage before significant damage results. Because of the low in situ fuel load, available manual fire fighting equipment, and fire brigade training, it is our assessment that any postulated fire in the area would not be beyond the capabilities of the fire brigade to extinguish within a short time span. Although a time delay is anticipated between receipt of the initial fire alarm and the arrival of the brigade, the separation of redundant safe shutdown methods will provide sufficient passive fire protection until the fire is extinguished. In addition, the water curtains will eliminate the spread of fire via any intervening combustibles in the area. Based on our evaluation, we conclude that the existing fire protection in Fire Areas 06 and 13 provides a level of fire protection equivalent to the technical requirements of Subsection III.G.2, and therefore, the exemption should be granted.

In addition, the licensee requested an exemption from Subsection III.G.3 of Appendix R to the extent that it requires the installation of a fixed suppression system in the control room.

The control room is a continuously occupied space that houses controls and instruments necessary to remotely operate valves, pumps, motors, etc. required for plant operation. Most of these controls and instruments are mounted on centrally located panels. Redundnant safe shutdown-related cables are routed in the area to various control panels. Ionization types fire detectors are located throughout the control room. No automatic fire suppression capability is provided. However, portable fire extinguishers and standpipe and hose stations are available for use throughout the control room. The licensee will also install an alternative shutdown capability independent of the control room.

Plant Technical Specifications require that the control room be continuously manned by the operations personnel. Most of these personnel are trained members of the fire brigade. Therefore, these personnel constitute a continuous fire watch. The fuel load in the area is low. Manual suppression, if a fire occurred, would be prompt and effective; thus, a fixed suppression system would not enhance the fire protection in this area.

Based on the above evaluation, we conclude that the existing and proposed fire protection for the control room, Fire Area 29, provides a level of fire protection equivalent to the technical requirements of Section III.G, and therefore, the exemption should be granted.

The licensee also requested an exemption from Subsection III.G.3 of Appendix R to the extent that it requires the installation of a fixed suppression system in Fire Areas 47 and 48.

Fire Areas 47 and 48 are located at the 112-foot elevation of the cooling water pump structure. The fire areas are similar, each containing high pressure service water (HPSW) pumps, and an emergency service water (ESW) pump. In Fire Area 49, the diesel fire pump room is adjacent to the east wall and is fully enclosed in 3-hour rated barriers. The access door to the diesel fire pump room has a 15-inch door still to prevent spreading of spilled fuel.

Excluding the common wall between the fire areas, the boundaries are reinforced concrete or masonry construction. The common wall is fabricated of ¼ inch and ⅜ inch steel plate set on wide flange columns which, although not tested for specified fire rating, provides a level of protection in excess of the hazard in the areas. The barrier is water-tight. All access doors are water-tight construction necessary for plant safeguards system flood protection. The common wall between the fire areas has been reviewed and accepted as an adequate fire boundary in our fire protection SER dated May 23, 1979.

The in situ combustible loading in the areas results in fire severity of less than 2 minutes. Cables in these areas are in conduit and lubricating oil is present in enclosed pump motor coolers. The lubricating oil is not pressurized and is considered combustible only if it is sprayed upon a hot surface which raises its temperature to above its flash point (approximately 450° F). Such surfaces do not exist within these fire areas. Ignition of a contained floor spill by an external ignition source is also precluded by the presence of water floor drains. Fire protection in the areas consists of early warning fire detection, manual hose stations and portable fire extinguishers.

Fire Areas 47 and 48 contain components of the ESW and HPSW systems for both units. Fire Area 47 contains one ESW pump and four HPSW pumps of Unit 3, in addition to the cross-tie gate valve (516B) between the two HPSW systems. Fire Area 48 contains one ESW pump and four HPSW pumps, in addition to one cross-tie gate valve (516A) for Unit 2. The ESW system is a common system for both units. Two HPSW pumps and one ESW pump are needed for safe shutdown. The ESW power cable will be encapsulated in Fire Area 47. The cross-tie valve between HPSW systems must be manually operated for safe shutdown. A minimum of 3 hours exists after the intitiation of safe shutdown operations before these valves must be operated.

These areas do not comply with Subsection III.G.3 of Appendix R because fixed suppression systems are not installed throughout the areas. In these areas, the combustible loading is low, and fire detection and manual fire suppression equipment are available. There is alternate shutdown capability, independent of each area. We have reasonable assurances that a fire in these areas would be promptly detected and extinguished. The low combustible loading in these areas ensures that safety-related equipment in adjacent areas will not be threatened. The installation of a fixed fire suppression system will not significantly increase the level of fire protection in these areas. In addition, because of the low fuel load in these areas, it is our opinion that any postulated fire would be extinguished in a short time span and allow operators to enter the area to allow manual operation of the cross-tie valve before the HPSW system is required in the safe shutdown process.

Based on our evaluation, we conclude that the existing fire protection in conjunction with the alternate shutdown capability for Fire Areas 47 and 48 provides a level of fire protection equivalent to the technical requirements of a Section III.G, and therefore, the exemption should be granted.

Finally, the licensee requested an exemption from Subsection III.G.3 of Appendix R to the extent that it requires the installation of a fixed suppression system in Fire Area 25.

Fire Area 25 is located at Elevation 165' of the Radwaste Building. The room contains the remote shutdown panels for both units as well as the control structure for mechanical ventilation equipment and associated control panel.

The boundary fire barriers of Fire Area 25 are of heavy reinforced concrete construction having fire ratings in excess of 3 hours. The in situ fuel in the area is 32,640 Btu/sq. ft., with an equivalent fire severity of approximately 25 minutes in the ASTM E-119 Standard Time Temperature Curve. Fire protection features in the area consist of early warning fire detectors, hose stations and portable fire extinguishers.

This areas contains the remote shutdown panels for Units 2 and 3. Safe shutdown and process monitoring instrumentation control cables and some of the AC power cables leading to and from the emergency load centers are routed in this area. Also, ESW, HPCI, and RCIC cables, as well as AC off-site power and feeds to load center breakers, are routed in this area.

Alternative shutdown capability is provided independent of this area to operate the safe shutdown systems by using a combination of the Control Room and the HPCI alternative control panel.

The technical requirements of Section III.G are not met in the area because a fixed fire suppression system has not been installed. In this area, the combustible loading is moderate, fire detection and manual fire suppression equipment are available. There is alternate shutdown capability independent of this area. There is reasonable assurance that a fire in this area would be promptly detected and extinguished. The moderate combustible loading in the area ensures that safety-related equipment in adjacent areas will not be threatened. The installation of a fixed fire suppression system will not significantly increase the level of fire protection in this area.

Based on our evaluation, we find that the existing fire protection features in conjunction with alternate shutdown capability for Fire Area 25 provide a level of fire protection equivalent to the technical requirements of Subsection III.G.3 of Appendix R, and therefore, the exemption should be granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions requested by the licensee's letters as referenced and discussed in II. and III. above are authorized by law, will not endanger life or property or the common defense and security, are otherwise in the public interest, and are hereby granted.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (50 FR 9735).

This Exemption is effective upon issuance.

Dated at Bethesda, Md., this 13th day of March 1985.

For the Nuclear Regulatory Commission.

Hugh Thompson,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-6550 Filed 3-18-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Long Range Plan for the NRC; Meeting

The ACRS Subcommittee on Long Range Plan for the NRC will hold a meeting on April 5, 1985, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to the public attendance.

The agenda for subject meeting shall be as follows:

Friday, April 5, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will continue discussions on developing a long range plan for the NRC. Topics under discussion are technical and administrative issues related to the regulation of nuclear power plant safety and safety regulation over the next 5 to 10 years.

Oral statement may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 14, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-6547 Filed 3-18-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on April 3, 1985, Room 1046, 1717 H Street, NW., Washington, DC.

To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss proprietary information relating to details of the Combustion Engineering CE FLASH 4AS and Westinghouse BART/BASH thermal hydraulic codes.

The agenda for the subject meeting shall be as follows:

Wednesday, April 3, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the following: (1) The *W* BART/BASH ECCS codes, (2) review the resolution of TMI Item II.K.3.30, revision of small break LOCA ECCS Evaluation Models; and (3) review the resolution of the RCP trip issues given a small break LOCA.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 14, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-6548 Filed 3-18-85; 8:45 am]

BILLING CODE 7590-01-M

Statement of Policy: Handling of Late Allegations

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy: Handling of Late Allegations.

SUMMARY: This policy statement presents the criteria the Commission will follow in addressing late allegations received from sources outside the Commission, in the context of licensing reviews. It also directs that the staff's procedures for notifying Atomic Safety

and Licensing Boards, Atomic Safety and Licensing Appeal Boards, and the Commission of the receipt of allegations be revised to provide for an initial, coarse screening prior to issuance of a Board Notification.

EFFECTIVE DATE: March 19, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Chandler, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: 301–492–8658.

SUPPLEMENTARY INFORMATION:

Statement of Policy

The purpose of this policy statement is to explain the policy which the Commission expects to follow regarding the treatment of late allegations, received from sources outside the Commission, in operating license reviews and in the board notification process. The focus of this statement is on NRC staff and Commission pre-licensing safety reviews of uncontested issues, and Commission pre-licensing immediate effectiveness reviews of contested issues. The treatment of allegations in formal adjudicatory licensing proceedings will continue to be governed by the Rules of Practice in 10 CFR Part 2. Apart from this policy statement, the Commission has initiated a rulemaking to codify NRC caselaw criteria for reopening a closed evidentiary record in a formal licensing proceeding and to specify further the documentary bases for motions to reopen, including those which may be based on allegations. 49 FR 50189 (December 27, 1984).

The most fundamental tenet flowing from the NRC's statutory mandate under the Atomic Energy Act is that a license may be issued only if it can be found that there is reasonable assurance that the activity to be authorized presents no undue risk to the health and safety of the public. There can be no abdication of the responsibility to make this determination and if there is a serious question as to the ability to make such finding, no license may be issued and the time necessary to resolve such question must and will be taken. Therefore, in the context of late allegations, it is necessary that appropriate criteria be applied to enable the decisionmaker, be it the NRC's staff or the Commission itself, to expeditiously determine the significance, in terms of safe operation of the facility, of any allegations made.

In connection with its review of a number of recent cases, the NRC has been confronted with the task of addressing large numbers of allegations which were brought to its attention very shortly before, and in some cases on the eve of, the date on which a decision on whether to authorize the issuance of an operating license was to be made. Some of these allegations related to matters in controversy and others related to previously uncontested issues not under consideration by a particular adjudicatory tribunal. Significant commitments of staff resources often must be diverted at the last minute to address large numbers of late allegations, many of which have proven to be unsubstantiated or of little, if any, safety significance.

Ideally, all allegations concerning a particular facility will be resolved before any license is authorized. If, however, because of the number of allegations and/or their tardy submission, all allegations cannot be resolved in a timeframe consistent with reasonable and responsible licensing action, it may be necessary to give priority to those allegations which, because of their potential impact on safety, must be resolved before licensing action can be taken.

Initial Screening of Allegations

Any concerns bearing on the safety of a facility should be brought promptly to the attention of the applicant or licensee.[1] If, however, this approach is unsatisfactory, any person is free to bring such concerns directly to the NRC. To eliminate unnecessary delay in the licensing process to the extent possible, any person who has an allegation concerning the design, construction, operation, or management of a nuclear power plant has a duty to bring such information to the Commission's attention as promptly as possible. All allegations should be specific and documented to the fullest extent possible. Those submitting allegations in good faith should be aware that appropriate protection against retaliatory action by an applicant or licensee (including its contractors and subcontractors) is afforded by Section 210 of the Energy Reorganization Act of 1974, 42 U.S.C. 5851. All parties and persons are reminded that Federal law imposes penalties upon any person who intentionally makes any false statement or representation to any agency of the United States.

In reviewing allegations, the appropriate Commission staff office will first determine whether, if true, the allegations are material to the licensing decision in that they would require denial of the license sought, the imposition of additional conditions on such license, or further analysis or investigation. Allegation which, even if true, are not material to any licensing decision or which on their face or after initial inquiry are determined to be frivolous or too vague or general in nature to provide sufficient information for the staff to investigate will receive no further consideration.

As to allegations which are material to the licensing decision, the Commission staff will next determine whether the information presented is new in the sense of raising a matter not previously considered or tending to corrobrate previously received but not yet resolved allegations. In making this determination, all information available to the Commission will be considered, including that previously provided by an applicant or licensee and that obtained by the Commission in the course of its review and inspection efforts or from its investigation of prior allegations. In some cases, information already available to the NRC may be sufficient to resolve certain allegations. However, if an allegation is found to be both material and new, the staff will investigate the allegation further.

Further Review

If the staff determines that, as a result of the number of allegations or the timeframe in which they are received it appears likely that full consideration of all allegations cannot be accomplished consistent with responsible and timely Commission action, the Commission staff will conduct a further screening of the allegations to determine their significance to safety and therefore what priority should be assigned relative to the activity to be authorized.[2] The following screening criteria will be considered:

1. The likelihood that the allegation is correct, taking into consideration all available information including the apparent level of knowledge, expertise, and reliability of the individual submitting the allegation in terms of the allegation submitted and the possible existence of more credible contrary information.

[1] The Commission encourages the establishment of programs by utilities for the purpose of identifying and resolving allegations affecting safety in a timely manner as design and construction of a nuclear facility proceeds.

[2] As a general matter, the Commission has authorized issuance of operating licenses first for low power testing (up to 5% of rated power) and subsequently for full power operation (operation above 5% of rated power). In some cases these steps have been further refined, for example, into fuel load, hot system testing, criticality and zero power testing. Other refinements too are possible and may be authorized.

2. The need for prompt consideration of the allegation recognizing the public interest in avoiding undue delay. If the staff determines that an allegation raises a significant safety concern regarding, for example the design, construction, or operation of a facility or about quality assurance or control or management conduct, which brings into question the safe operation of the facility at a given stage of operation, the allegation must be addressed prior to authorizing that stage. For purposes of this policy statement, an allegation will be considered safety significant if the allegation would, if true, (1) raise a significant question about the ability of a particular structure, system, or component to perform its intended safety function or (2) raise a significant question of management competence, integrity, or conduct or about implementation of the quality assurance program, sufficient to raise a legitimate doubt as to the ability to operate the plant safely. Allegations which are not safety significant will be resolved in the normal course of business independent of license issuance.

Board Notification Procedures

Parties to ongoing adjudicatory proceedings have an obligation to bring allegations to the attention of the presiding board. All parties have an obligation to inform boards promptly of relevant and material information that may affect the decisionmaking process.

The Commission's staff, in accordance with its obligations for board notification has in the past submitted allegations to boards promptly and without awaiting their resolution or determinaton of significance relative to the decisionmaking process. This practice is consistent with the Commission-approved board notification policy. However, it has resulted, on occasion, in presenting boards with new information, the significance of which is not readily apparent. Consequently, in the future, staff board notifications of allegations will not be made until the staff has made at least an initial screening of the allegations. Only those allegations which are found not to be frivolous, which are relevant and material to the decisionmaking process (as determined under existing board notification procedures) and which are determined to warrant further scrutiny will be submitted to the presiding tribunal. Board notifications should still be made promptly, consistent with the need and time required for screening. The staff's board notification procedures should be revised accordingly.

Dated at Washington, D.C., on this 13th day of March 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary.

[FR Doc. 85-6544 Filed 3-18-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: Hydropower Assessment Steering Committee 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:

- Losses/Goals/Production work plan.
- Hydro Assessment Study reports.
- Cumulative Impact Methods Study report.
- Update on FERC activities.
- Other.
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its hydropower Assessment Steering Committee.

DATE: March 26, 1985, 10:00 a.m.

ADDRESS: The meeting will be held at the Council's auditorium, 850 SW. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-6467 Filed 3-18-85; 8:45 am]

BILLING CODE 0000-00-M

Columbia River Basin Fish and Wildlife Program; Final Amendments

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of final amendments.

SUMMARY: The Council has amended Sections 201 and 1504 (Action Item 36) of the Columbia River Basin Fish and Wildlife Program, to change the funding source and make other procedural modifications related to an assessment of salmon and steelhead losses attributable to hydropower development and operation, statement of program goals, development of program objectives, and measurement of progress toward goals and objectives.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, Director of Public Information and Involvement, Northwest Power Planning Council, Suite 1100, 850 SW. Broadway, Portland, Oregon 97205. Telephone: 503-222-5161 (toll free 1-800-452-2324, within Oregon; 1-800-222-3355, from Idaho, Montana, and Washington).

SUPPLEMENTARY INFORMATION: The Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839 ("the Northwest Power Act") authorized the Council to amend its Columbia River Basin Fish and Wildlife Program from time to time. At its regularly-scheduled meeting in Boise, Idaho on February 21, 1985, the Council voted unanimously to amend two portions of its Program. In adopting those amendments, the Council complied with all relevant requirements of the Act. Pursuant to those requirements the Council:

- Announced the proposed amendments, public hearings and public comment period through the **Federal Register**, the Council's mailing list and the Council's newsletter;
- Held public hearings in Portland, Oregon (January 10, 1985); Missoula, Montana (January 18, 1985); Spokane, Washington (January 24, 1985); and Boise, Idaho (January 28, 1985); and
- Compiled an administrative record.

The amendments described in this notice change Program Section 201 and Action Item 36 in Program Section 1504, which deal with the process for assessing salmon and steelhead losses attributable to development and operation of hydropower projects in the Columbia River Basin and developing program goals to address these losses. The Council has deleted prior language in Program Sections 201(1)-201(7) and substituted language indicating the Council's intent to assess losses, set goals, adopt related objectives, and develop methods for measuring progress toward goals and objectives, rather than to call for direct funding of such efforts by the Bonneville Power Administration in the U.S. Department of Energy ("Bonneville"). Associated changes are made to Action Item 36 (Program Section 1504).

The amendments change only the funding and procedural mechanisms for assessing losses, setting goals, adopting objectives, and developing methods for measuring progress. They do not state

substantive conclusions on the nature or extent of losses, set goals, establish objectives, identify the means for measuring progress toward goals or objectives, or determine the technical methods to be employed in those activities.

The Columbia River Basin Fish and Wildlife Program is amended as follows:

Section 201

Delete Sections 201(1)–201(7) and substitute the following:

201. The Council will assess salmon and steelhead losses attributable to hydropower development and operations, state goals, adopt objectives, develop methods for measuring progress toward goals and objectives, and otherwise provide a systemwide framework for program measures and action items, following the guidelines listed in Action Item 36.

Section 1504. Action Item 36

Delete existing Action Items 36.1–36.4 and substitute the following:

Council Actions:

36.1 Request a supplemental budget to provide for initiation of Section 201 activities in fiscal year 1985. [Section 201.]

36.2 Develop a detailed work plan for assessing losses, stating goals, adopting objectives, developing methods for measuring progress toward goals and objectives, and otherwise providing a framework for program measures and action items, following these general principles:

- The Council will lead the effort to collect information on salmon and steelhead losses attributable to development and operation of hydroelectric projects in the Columbia River Basin.
- At approximately the same time that it begins to collect information on losses, the Council also will begin to collect information on exisiting and potential production of salmon and steelhead throughout the Columbia River Basin.
- The Council also will identify areas in the Basin where salmon and steelhead once were produced and no longer can be produced, due to hydropower development and operations. Then it will collect information on potential resident fish production in those areas.
- In assessing losses, stating goals, developing objectives, and developing methods for measuring progress toward goals and objectives, including information-gathering efforts, the Council will seek the advice of and exchange information with the fish and wildlife agencies, tribes, land management agencies, and other entities regulating harvest, planning enhancement, protecting habitat and otherwise responsible for fishery management. It also will consult with project operators and regulators, Bonneville, and Bonneville customers.
- The Council will initiate amendment proceedings before incorporating any statements of losses, goals, and objectives into the program. [Section 201.]

The following summarizes the public comments received regarding the amendments and provides the Council's responses to those comments:

1. *Council leadership.* Several commenters (the Upper Columbia United Tribes (UCUT), Shoshone-Bannock Tribes and Fort Hall Reservation (Sho-Ban), Bonneville Power Administration (Bonneville), Pacific Northwest Utilities Conference Committee (PNUCC), Idaho Department of Fish and Game (IDFG) and the Columbia Basin Fish and Wildlife Council (CBFWC)) supported the Council's proposal to assume the lead role in the goals effort. The UCUT stated that: 1) the Council can be trusted to take all points of view into account; 2) centralized coordination is necessary to avoid duplication of effort; and, 3) the Council represents the only regional forum where all interested parties are represented. The Columbia River Inter-Tribal Fish Commission (CRIFTC) supported the Council's proposal to take a lead role and urged the Council to assign top staff and perhaps a Council member to lead the Council's goals efforts.

Council response: The Council has retained language in the final amendment indicating its intent to lead the goals effort. The goals work will be a top priority for the Council members and its fish and wildlife staff.

2. *Contracting.* CRITFC, Sho-Ban and UCUT urged the Council to avoid delegating any policy-making responsibility to contractors.

Council response: The Council will not delegate policy-making responsibility to its contractors.

3. *Coordination.* CBFWC expressed its concern that the proposed amendments lacked specifics and failed to recognize the special role of the fish and wildlife agencies and tribes in the determination of losses and the development of objectives and schedules. It also urged that production plans developed under the goals process be meshed with other planning efforts, including those under the Salmon and Steelhead Conservation and Enhancement Act, the Magnuson Fishery Conservation and Management Act and the proposed U.S.-Canada Pacific Salmon Treaty.

Council response: The Council will outline specific schedules and tasks in its 201 work plan, as provided in new Action Item 36.2 The Council has recognized the special role of the fish and wildlife agencies and tribes in the fourth principle in that action item. It will take those entities' planning efforts into account in developing its work plan.

4. *Tribal role.* CRITFC suggested it was difficult to ascertain from the proposed amendments what role CRITFC and the tribes might play in the actual performance of goals-related tasks. It urged the Council to make a special effort to include Indian tribes and said adequate funding assistance would be necessary to facilite their participation.

Council response: The Council will continue to make a special effort, in developing and carrying out its 201 work plan, to include the tribes in 201 activities.

5. *Participation.* UCUT asked the Council to contract with tribes, fish and wildlife agencies, utilities and federal project operators and regulators for the collection of information. It also urged the Council to provide opportunities for public comment throughout the goals process, to consult with tribes and other entities in development of the work plan and statements of losses and goals, and to coordinate goals and objectives in a manner consistent with recommendations submitted by the fish and wildlife agencies and tribes. PNUCC also urged the Council to ensure that all interested parties participate in the development of the work plan.

Council response: The Council is planning agreements or contracts with certain tribal groups, fish and wildlife agencies, and other major depositories of information on salmon and steelhead productivity. It will consider the same approach in gathering other types of information needed for 201 work. The Council will continue to provide a variety of forums for public comment (e.g., at Council meetings, advisory committee meetings, consultations, hearings and amendment proceedings). It intends to consult widely prior to adopting its 201 work plan.

6. *Consultation.* Montana Department of Natural Resources and Conservation urged the Council to amend the fourth principle under proposed action item 36.2 to provide for seeking the advice of, and exchanging information with, state water management agencies within the region.

Council response: The fourth principle states the Council's intent to consult

with entities charged with "protecting habitat" for fish. It includes water management agencies in that group. Programs Section 1104(d)(1)(E) also recognizes the role of state water management agencies in program group implementation.

7. *Crediting.* Both CRITFC and UCUT urged the Council to treat "crediting" as a major issue and to take a lead role in addressing it. UCUT specifically stated its belief that, in defining the Council's responsibilities in the Northwest Power Act, Congress intended the Council to take the lead in such areas.

Council response: The Council has retained language in its final amendment expressing its intent to develop methods for "measuring progress toward goals and objectives"; it continues to consider measurement (or crediting) techniques to involve major issues which require its leadership

8. *Historical Information.* Both CRIFTC and UCUT complimented the Council for its statement, in the notice announcing the proposed amendments, that the Council envisions developing its loss statement through the use of historical, archaeological and cultural data. UCUT described in detail its efforts to develop such data and offered to share that data with the Council.

Council response: The Council welcomes and encourages the exchange of information among all parties interested in the 201 work

9. *Scheduling.* CBFWC urged the Council to add to action item 36.2 a schedule for development of the proposed detailed work plan. It also suggested that two to three months should be sufficient time to develop the work plan, provided that a "base run" approach is acceptable and that production allocation decisions are left to fish and wildlife agency and tribal agreements.

Council response: The Council intends to include schedules in its 201 work plan, which it hopes to circulate in draft form in March 1985.

10. *Scheduling.* PNUCC urged the Council to allow all of 1985 for "the first stage of the goals-setting process." PNUCC stated that, because Bonneville's 1986–87 rate case is nearly concluded, there may be little value in rushing to set goals when such numbers might have little influence on the Bonneville budget. PNUCC supported a nine- to ten-month process for setting "preliminary goals."

Council response: The Council will take these comments into account in developing the 201 work plan.

11. *Principles.* UCUT supported the third principle under proposed action item 36.2 regarding areas where salmon and steelhead can no longer be produced, and urged the Council to identify such areas and to collect information regarding resident fish production there. UCUT specifically suggested that the areas above Chief Joseph and Grand Coulee dams would fit this description.

Council response: The Council has retained the third principle in its final amendment language.

12. *Principles.* CBFWC stated that the first two principles under action item 36.2 seem to indicate that both losses and production potential would be addressed at the same time in the work plan. CBFWC suggested treating them instead as separate steps, with work on losses preceding an assessment of production.

Council response: The Council believes that time can be saved by beginning to collect information on losses and productivity at approximately the same time. It agrees that the assessment of past losses raises different issues than the assessment of existing and future production, but sees no reasons why the data needed for each assessment cannot be collected simultaneously.

13. *Technical Suggestions.* The Sho-Ban expressed concern about an "adjusted base run" approach to setting of goals and requested more detailed analysis of that method in the Council's staff work plans. It also expressed skepticism about a basin-wide loss assessment, suggesting that individual subbasin loss estimates would be preferable. It urged the Council to 1) quickly set priorities among geographic areas and fish stocks to be enhanced, emphasizing the areas providing habitat for wild stocks now in jeopardy; 2) incorporate quality control mechanisms in project implementation; and, 3) emphasize wild runs over hatchery stocks. CBFWC expressed its support for use of a "base run" approach using methods compatible with that used in the Corps of Engineers' Lower Snake River Compensation Plan. PNUCC repeated the questions it raised in its earlier comments on the goals issue paper. Specifically: Should natural production remain a primary goal? Should goals be achievable? What natural, political, legal or financial factors may constrain goals? Bonneville urged the Council to identify promptly those fish stocks and geographic areas to be emphasized in program implementation.

Council response: The technical methods to be used and major policy issues involved in setting goals are not determined by the amendment language. The merits of alternative aproaches will be discussed as part of the actual goal-setting process. To the extent feasible, information on losses in specific areas will be collected. The program already recognizes the importance of protecting gene pools for wild stocks. *See, e.g.,* Program Section 703. The Council will not identify specific areas and stocks of emphasis before collecting the information needed to support such an identification.

14. *Hydro Assessment Study.* IDFG expressed concern that the notice announcing the proposed amendments indicated that the Council's Hydro Assessment Study would provide quantitative data on present and potential fish production. IDFG stated that, to the contrary, that study would only identify fish distribution and provide qualitative description of habitat. According to IDFG, only state fish agencies and tribes should estimate production potential, because these entities have actual experience in fishery management.

Council response: The Council staff is structuring information-gathering efforts under the Hydro Asessment Study to provide quantitative data on productivity, to the extent available. Fishery agencies and tribes are being included in those efforts.

15. *Miscellaneous comments.* The Weiser (Idaho) Chamber of Commerce and a member of the Weiser City Council urged the Council to support the proposed Galloway project on the Weiser River to assist in providing flows for the Water Budget. Idaho Consumer Affairs, Inc. and Idaho Wildlife Federation expressed concern over preserving minimum flows on the Snake River, particularly in light of recent legislative proposals resulting from the proposed settlement of litigation between the Idaho Power Company and the State of Idaho. Similarly, the Sho-ban urged the Council to take an active role in ensuring that there are adequate minimum stream flows in th Snake River to protect the program interests.

Council response: The Council appreciates these comments. Since they did not address the subject matter of the amendment at issue, the Council has not modified the proposed amendment language. The Council continues to recognize the importance of adequate flows to the realization of the Columbia Basin potential for producing salmon and steelhead. Several program measures already address the need for

flows to protect fish runs. *See, e.g.*, Program Sections 107, 304, 704(b).

Edward Sheets,

Executive Director.

[FR Doc. 85-6494 Filed 3-18-85; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

[Docket No. C85-1; Order No. 606]

Order Inviting Formal Intervention

Issued: March 14, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Complaint of Advo-System, Inc., [Docket No. C85-1].

In Order No. 604, the Commission sought comments from interested persons on a jurisdictional objection the Postal Service raised to the December 27, 1984 compliant filed by Advo-System, Inc. In light of the Service's withdrawal of its jurisdictional objection (*see* USPS Response to Commission Order No. 604 and Motion for a Stay in Proceedings filed March 12, 1985), the Commission believes it is appropriate to notice the complaint for possible further proceedings on the merits. Accordingly, the Commission invites those interested in becoming participants to file notices of intervention within ten days of this order, under sections 20 and 20a of the rules of practice. Parties wishing to respond to the Service's motion to stay the complaint proceeding pending its rulemaking on "Plus" issues of second-class newspapers [1] will furnish their responses with or as part of their notices of intervention. Attached is a list of those who have filed comments on Order No. 604.

By the Commission.

Charles L. Clapp,

Secretary.

Name and Representative

United States Postal Service

Frances G. Beck, Esquire, Associate General Counsel, Law Department, U.S. Postal Service, COMSAT Building, Room 5004, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260-1140

and

Robert C. Lowry, Esquire, Law Department, U.S. Postal Service, COMSAT Building, Room 5103, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260-1140

Advo-System, Inc.

John M. Burzio, Esquire, Hydeman, Mason, Burzio & Lloyd, 1220 19th Street, N.W., Suite 700, Washington, D.C. 20036

and

Thomas W. McLaughlin, Esquire, Hydeman, Mason, Burzio & Lloyd, 1220 19th Street, N.W., Suite 700, Washington, D.C. 20036

and

Vince Giuliano, Vice President, Advo-System, Inc., 239 West Service Road, Hartford, Connecticut 06102

American Newspaper Publishers Association

W. Terry Maguire, Esquire, Tonda F. Rush, Esquire, American Newspaper Publishers Association, The Newspaper Center, Box 17407, Dulles International Airport, Washington, D.C. 20041

Third Class Mail Association

Gene A. Del Polito, Executive Director, Third Class Mail Association, 1133 15th Street, N.W., Suite 1037, Washington, D.C. 20005

and

Keith R. McCrea, Ann J. LaFrance, 1201 Pennsylvania Avenue, N.W. Suite 500, Washington, D.C. 20004

Office of the Consumer Advocate Postal Rate Commission

Stephen A. Gold, Director, Office of the Consumer Advocate, Postal Rate Commission, 1333 H Street, N.W., Suite 300, Washington, D.C. 20268-0001

and

Mark T. Stephens, Esquire, Office of the Consumer Advocate, Postal Rate Commission 1333 H Street, N.W., Suite 300, Washington, D.C. 20268-0001

[FR Doc. 85-6530 Filed 3-18-85; 8:45 am]

BILLING CODE 7715-01-M

[1] *See* 50 FR 9061 (March 6, 1985).

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY:

Summary of Proposal(s):

(1) Collection title: Pension Reports.

(2) Form(s) submitted: G-88p.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Business or other for profit.

(6) Annual responses: 3,300.

(7) Annual reporting hours: 440.

(8) Collection description: The RRA provides for payment of supplemental annuity to a qualified retirement annuitant based on age, length of service and a current connection with the railroad industry. The collection obtains information from the annuitant's employer to be used in determining entitlement to and the amount of annuity applied for.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Robert Fishman (202-395-6880), office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85-6526 Filed 3-18-85; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21838; SR-NASD-82-11]

National Association of Securities Dealers, Inc., Order Approving Proposed Rule Change

March 12, 1985.

I. Introduction

The National Association of Securities Dealers, Inc. ("NASD") 1735 K Street, NW., Washington, D.C., 20006, filed a proposed rule change on August 6, 1982 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder, which would adopt a comprehensive Code of Procedure ("Code") to be used by the NASD and its members to resolve certain controversies. On September 28, 1982, the NASD filed an amendment to

the proposal that expanded Section I, captioned "Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change," to provide a more detailed summary of the proposed rule.[1] Notice of the proposed rule change, together with its terms of substance, was given by issuance of Securities Exchange Act Release No. 19097 (October 4, 1982) and by publication in the **Federal Register** (47 FR 44903, October 12, 1982) inviting interested persons to comment. No letters of comment were received.

II. Description

The proposed rule change would revise the NASD's Code of Procedure by making it applicable to virtually all disputes between the NASD and its members, such as disciplinary actions, admissions decisions, limitations or denials of access to services, and other appropriate proceedings. Under the NASD's current rules, the Code may be used only to resolve disputes concerning trade practices. Other disputes are resolved by a variety of procedural rules outlined in several other sections of the NASD Manual.[2] The proposed rule, among other things, would replace these scattered procedural provisions with one uniform body of procedural rules.[3]

The proposal would provide, for example, that all disciplinary actions would be handled according to the procedural rules established by the Code, rather than by a separate set of procedural rules. Under the terms of the proposal, which are substantially similar to current procedures, either the District Business Conduct Committee ("DBCC")[4] or a person aggrieved by the actions of a member ("complainant") can file a written complaint against the member ("respondent"). The respondent must reply to the complaint in writing. Unless the respondent makes an offer of settlement,[5] this dispute will be adjudicated by the DBCC[6] or a hearing committee ("committee") panel of three or more persons,[7] at least two of whom are members of the DBCC.[8] Disputes may be adjudicated on the basis of a written record alone but the complainant, if other than the DBCC, or the respondent may request an oral hearing. Normally, complaints will be heard by the DBCC of the district in which the principal office of the respondent is located, although, to ensure fairness, the hearing may be held in an alternate location under certain circumstances.[9] The hearing committee has wide discretion to allow parties to submit additional evidence.

After the DBCC reaches a determination concerning a complainant, the respondent is notified in writing of that decision and may appeal to the Board of Governors for a review of the DBCC's determination. Either the complaint, if other than the DBCC, or the respondent may note an appeal and request an oral hearing before a hearing panel of the Board of Governors ("hearing panel").[10] If the respondent waives the oral hearing, the hearing panel reaches a determination based on the record submitted from the DBCC (or its committee) and any new material submitted by the parties. If the Board of Governors grants an oral hearing, parties are entitled to be heard in person before the hearing panel, be represented by counsel, and present any new evidence deemed relevant by the hearing panel. In all cases, the hearing panel keeps a record of the proceedings.

After reaching a decision, the hearing panel presents its recommended findings and sanctions to the NBCC which, based on the record, makes its

[1] During the time that the Commission was reviewing the Code, the NASD submitted other proposed rule changes that add or modify certain NASD procedures. To integrate these procedures into the Code, the NASD filed conforming amendments to the Code and filed, or expects to file, additional proposed rule changes that affect the proposed Code. For example, the NASD filed two rule changes that made substantive adjustments to existing NASD regulations and, incidentally, contained certain procedural provisions. *See* SR-NASD-83-21 (early warning rule), approved in Securities Exchange Act Release No. 20673 (February 17, 1984), 49 FR 7170 (February 27, 1984); SR-NASD-84-7 (ceiling on fines imposed in summary complaint procedures), approved in Securities Exchange Act Release No. 20909 (April 30, 1984), 49 FR 19425 (May 7, 1984). In order to conform the Code with these rule changes, the NASD filed amendments to the Code incorporating the procedural regulations specified in those rule filings. *See* letter from Andrew Barnes to Sarah Ackerson dated November 14, 1983, in SR-NASD-82-11 file (procedural provisions of SR-NASD-83-21 conformed to the Code) and Amendment No. 2 to SR-NASD-82-11 (procedural provisions of SR-NASD-84-7 conformed to the Code).

In addition, the NASD filed a proposed rule change that would permit the NASD to expel members that no longer satisfy NASD membership requirements. SR-NASD-82-28, published for comment in Securities Exchange Act Release No. 19391 (January 3, 1983), 48 FR 1138 (January 10, 1983). Because the NASD intended that these procedures be used in conjunction with Code, the NASD requested that this proposal not be approved until the Commission approves the Code. Accordingly, the Commission is issuing an order approving SR-NASD-82-28 concurrently with approval of the Code. *See* Securities Exchange Act Release No. 21841, (March 12, 1985).

The NASD also has recently submitted two other rule changes that will amend certain sections of the Code of Procedure and will be published for comment concurrently with the publication of this approval order. The first rule change, among other things, SR-NASD-85-3, makes certain technical amendments to the Code of Procedure. The Commission is approving this proposal on an accelerated basis. *See* Securities Exchange Act Release No. 21840, (March 12, 1985). The second of these rule changes, SR-NASD-85-2 published for comment in Securities Exchange Act Release No. 21839, (March 12, 1985), adds a new Article V to the Code. This article provides procedures that the NASD will follow when it cancels or suspends a member or bars or suspends a person from association with a member, pursuant to certain sections of the By-Laws. (These procedures are in addition to summary suspension procedures in Article VII of the Code.) This rule change also adds a provision entitling a member or person associated with a member to a hearing when the NASD believes a person should not be associated with a member because that person may be subject to a statutory disqualification.

Finally, the NASD anticipates submitting another proposed rule change that will transfer procedural portions of the premembership interview provisions to appropriate sections of the Code. The Commission approved these procedures in SR-NASD-82-24, Securities Exchange Act Release No. 21159 (July 20, 1984), 49 FR 30268 (July 27, 1984).

[2] *See e.g.*, NSDA By-Laws, Schedule D, Part VI, *NASD Manual* CCH ¶ 1653 at 1149-5.

[3] The proposal also would make numerous technical or non-substantive changes to these procedural rules.

[4] NASD examiners in each district investigate alleged violations of NASD rules and federal securities laws. The examiners must present the evidence to the DBCC, which decides whether a complaint should be filed against a member. National Association of Security Dealers, Inc., Disciplinary Procedures 3 (1981) (hereinafter referred to as "NASD Procedures").

[5] The proposed retains the Code's basic procedures for resolving disputes by settlement. The proposal, however, specifies that additional information must be contained in the written offer of consent. Art. II, section 4, SR-NASD-82-11, at 7.

[6] Persons who comprise the District Committee and the District Business Conduct Committee are the same persons. Explanation, Art. VIII, Sec. 2(c) of proposed NASD By-Laws, SR-NASD-84-14 published for comment in Securities Exchange Act Release No. 21302 (September 10, 1984) and approved concurrently with this rule change. *See* Securities Exchange Act Release No. 21843, (March 12, 1985). In nominating candidates for the District Committee, the nominating committee attempts to provide fair representation on the District Committee by nominating members active in the various segments of the investment banking and securities industries within the district. *Id.* at Art. VIII, Sec. 4(a).

[7] The DBCC may appoint principals of, or persons associated with, NASD members to hear disputes. *See* Art. II, section 7, SR-NASD-82-11 at 12.

[8] The National Business Conduct Committee ("NBCC"), discussed *infra*, can waive the requirement that at least two members of the DBCC sit on each hearing committee. Art. II, section 7 SR-NASD-82-11 at 12.

[9] During the hearing, the district staff presents the information it has gathered concerning allegations against the member to the DBCC or a hearing committee. It is the role of the district staff to build an adequate record so that the Board of Governors and the Commission will have all the information necessary to reach an informed decision. NASD Procedures at 5.

[10] The Board of Governors hearing panel is appointed by the NBCC and must consist of at least two NASD members, one of whom is a member of the Board of Governors. Art. III, section 2(b) of SR-NASD-82-11. The NBCC is a standing Committee of the Board of Governors that has delegated authority to exercise powers with respect to disciplinary and other matters. Art. I, section 5, of SR-NASD-82-11.

recommendations to the full Board of Governors. The Board of Governors makes the final determination and can accept, reject, or modify the NBCC's recommendation. Finally, if a party remains unsatisfied with the Board of Governor's decision, that party may appeal to the Commission, in accordance with Sections 15A and 19(d) of the Act.

In addition to the above requirements for conducting disciplinary actions, the proposed rule sets forth regulations for qualification proceedings for members and associated persons, summary suspensions, and various other proceedings related to the National Association of Securities Dealers Automated Quotation System ("NASDAQ"). The proposed rule also states that a member may not serve on any reviewing panel if it has a substantial adverse interest in the matter under consideration.

III. Discussion

In the legislative history of the Maloney Act of 1938,[11] Congress noted that a securities association could define the specific procedures for disciplining its members provided those procedures were consistent with the Act.[12] More specifically, Section 15A(b)(8) of the Act requires that:

> [t]he rules of the association * * * provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to and person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof.[13]

In addition Section 15A(h)(1) of the Act provides that:

> [i]n any proceeding by a registered securities association to determine whether a member or person associated with a member should be disciplined * * * the association shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record.

The Act further requires that the association specify the act or omission for which the member or associated person is being charged, the specific statute, regulation, or rule violated by such action or omission, and the sanction imposed.[14] The Act imposes similar constraints on procedures denying membership, barring a person from becoming associated with a member, or prohibiting or limiting a person's access to services offered by the association or a member.[15] Moreover, in the Senate Report of the Securities Acts Amendments of 1975, Congress stated that national securities associations have a responsibility as self-regulatory organizations to provide fundamental due process in conducting their proceedings.[16]

After reviewing the proposed rule change in light of the Act's requirements, the Commission has concluded that the proposed rule change would provide NASD members with fair procedures for resolving disputes. The Commission believes that the Code is consistent with the requirements of the Act because, among other things, it sets forth provisions by which specific charges will be brought against a member,[17] provides adequate notice to the affected parties [18] and permits the member fully to defend itself against such charges.[19] In addition, the proposed rule provides that the adjudicator must keep a record of the proceedings [20] and, if it imposes a sanction, state why such action is appropriate.[21] The Commission further believes that the remaining portions of the proposed rule dealing with eligibility hearings and NASDAQ proceedings provide similar protection to complainants and respondents and are also consistent with the Act. Finally, the Commission finds that the technical and non-subsantive changes are consistent with, and in futherance of, the Act.

Despite these findings, the Commission believes that the proposal raises two substantial issues: (1) What degree of separation of prosecutorial and adjudicatory functions in NASD proceedings is required by the Act, and (2) whether the proposed rule ensures that hearing committees will be unbiased and disinterested.

1. Separation of Functions

Although there is no provision in the Code prohibiting commingling of prosecutoral and adjudicatory roles in NASD proceedings, a series of Commission decisions indicates that such a separation of functions is required in NASD disciplinary hearings. For example, in *In re Richard W. Perkins*, the Commission denied applicant's contentions that it was deprived of due process, in part, because the NASD staff allegedly participated in the DBCC's deliberation.[22] The Commission noted, however, that while the NASD prosecutorial staff engaged in *ex parte* discussions with the District Committee following the Committee hearing, such conversations were for the limited purpose of helping the NASD staff understand the rationale for the Committee's decision in order to incorporate this reasoning into the staff's draft of the decision.[23] The Commission, therefore, found that the prosecutoral staff's interaction with the Committee in this substantially ministerial role did not constitute impermissible commingling of functions under these circumstances.

Moreover, in *In re Sumner B. Cotzin* ("*Cotzin*"), the Commission specifically stated that, while rigid separation of investigatory and adjudicatory functions was not required by the Act, significant separation of prosecutory and adjudicatory roles nevertheless should be observed.[24] In *Cotzin*, the applicant appealed to the Commission for review of disciplinary action taken by the NASD based, in part, on the applicant's charges that it had been denied due process as a result of commingling of

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[11] 15 U.S.C. 15A (1938).

[12] S. Rep. No. 1455 at 7, 75th Cong., 3d Sess. 1 (1938). The courts have noted the role that the Commission should play in overseeing NASD rulemaking with respect to its adjudicative procedures. *See e.g., Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *NASD*, 616 F.2d 1363 (5th Cir. 1980) (the Commission must ensure that NASD rules offer a fair procedure for disciplinary hearings).

[13] *See also* section 15A(g).

[14] Section 15A(h)(1)(S)-(C) of the Act. *See also* Section 15A(h)(3) of the Act.

[15] Section 15A(h)(2) of the Act.

[16] Senate Comm. on Banking, Housing, & Urban Affiars, *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 75, 94th Cong., 1st Sess. 25 ("Senate Report"), *reprinted in*, 1975 U.S. Code Cong. & Ad. News 179, 203. In prior judical proceedings, the Commission has taken the position that the Act specifies the process that is due, and courts have not required any additional process beyond that specified in the Act. *See, e.g., Allan* v. *SEC*, 577 F.2d 388, 392 (7th Cir. 1978) (NYSE) (these "procedural safeguards * * * and the opportunity for review by the [Commission] * * * satisfy the requirements of due process under the Fifth Amendment"). Furthermore, the Fifth Circuit stated that it was the intent of Congress to allow self-regulatory organizations to review the conduct of their peers in the securities market in an informal and flexible manner. *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *NASD*, 616 F.2d 1363 (5th Cir. 1980).

[17] Art. II, section 2(a) of SR-NASD-82-11.

[18] *Id.*

[19] Art. II, section 3, 5, and 8 of SR-NASD-82-11.

[20] Art. II, section 8(c) of SR-NASD-82-11.

[21] Art. II, section 9 of SR-NASD-82-11.

[22] *In re Richard W. Perkins*, Securities Exchange Act Release No. 19345 (December 16, 1982), 26 SEC Docket 1512.

[23] *Perkins*, 26 SEC Docket at 1515. *See also Langley-Howard, Inc. et al.* 43 S.E.C. 155 (1966) (applicant was not denied due process where the district secretary, a member of the NASD staff now known as district director, introduced the results of a NASD investigation at the hearing); *In re Palombi*, 41 S.E.C. 266 (1962) (no impermissible commingling of functions was found where the secretary of DBCC performed investigatory functions but did not participate in decision making functions).

[24] *In re Sumner B. Cotzin*, 4 SEC Docket 420 (1944).

investigative, prosecutorial, and decision making responsibilities. Although the Commission disagreed with the applicant's contentions, it cautioned the NASD to limit its staff's interaction with the District Committee to ministerial functions. The Commission further stated that NASD officers should not, in any circumstances, participate in the decision making process and, furthermore, should avoid even the appearance of such participation.[25] Thus, the Commission has indicated in this series of decisions reviewing NASD disciplinary proceedings that the NASD should maintain significant separation of prosecutorial and adjudicatory functions and the NASD staff, in general, should provide assistance to a DBCC only in a ministerial capacity.[26]

In response to the Commission's concerns, the NASD stated that it is reluctant to include in the Code a specific provision prohibiting intermingling of prosecutory and adjudicatory functions because it believes that such a separation of functions does not lend itself to a specific rule.[27] The NASD has agreed, however, to separate adjudicatory and prosecutorial functions as a matter of practice in disciplinary hearings and to set forth a description of the manner in which it provides for a separation of these functions in a booklet outlining its disciplinary procedures.

In light of the NASD's representation on this matter, the Commission is satisfied that the NASD will maintain appropriate separation of prosecutory and adjudicatory functions in its disciplinary hearings and does not find the proposed Code to be inconsistent with the Act for that reason. The Commission specifically does not intend, however, for its decision approving the NASD's Code to modify the established law regarding such separation.

2. Conflict of Interest

The Commission also is concerned about the proposed change in a provision in the Code intended to minimze conflicts of interest of hearing panel members. The NASD's present conflict of interest provisions states that no member of the Board of Governors or DBCC shall particpate in a hearing on any matter affecting its interest.[28] The NASD has determined to modify this provision in the proposed rule to require that no member of the Board of Governors or DBCC shall participate in a hearing substantially affecting its interest.[29] The NASD has stated that the requirement that a substantial interest exist before a member of a hearing committee or Board be disqualified is designed to prevent disruption of proceedings where a minimal conflict of interest exists.[30]

When reviewing NASD disciplinary proceedings under Section 19(d) of the Act, the Commission has examined the composition of disciplinary hearing committees for both structural unfairness *i.e.*, unfairness inherent in the NASD's adjudicatory mechanisms and specific bias *i.e.*, personal bias of individual committee members. The Commission has consistently upheld the structural fairness of NASD disciplinary hearing committees against allegations that those committees where biased because they were comprised of respondents' competitors.[31] When this issue was considered by the Third Circuit, the court rejected applicant's claims that NASD proceedings were inconsistent with the Act's requirements because NASD adjudicators included competitors of the appellant.[32] That court explained that the benefits of the congressionaly mandated scheme of self-regulation of the securities industry, which is protected by extensive substantive and procedural provisions, outweights any theoretical bias that may result from potential competitors disciplining fellow members of self-regulatory organizations.[33]

In the past, the Commission also has considered the problem of conflicts of interest of individual hearing committee members and, in the cases reviewed, rejected charges of specific bias.[34] Moreover, the Commission has noted that even if such conflict of interest exists, it does not necessarily taint the entire disciplinary hearing. *De novo* or appellate reviews by disinterested NASD panels or by the Commission have overcome such apparent conflicts or made them harmless error. For example, in *In re Sherman Gleason*, the Commission considered applicant's charges that a member of a DBCC has expressed prior criticism of the applicant's business methods and considered the applicant guilty before the hearing.[35] Because of that member's influence on the entire committee, the applicant asserted that he was deprived of a fair hearing.[36] The Commission found impropriety in the disciplinary proceedings, but it stated that any prejudice on the part of the DBCC would be cured by the independent review procedure of the Commission.[37] The

[25] *Id.* at 423. *See also Shultz* v. *S.E.C.*, 614 F.2d 561 (7th Cir. 1980) (no impermissible commingling of functions was found where prosecutor of a New York Stock Exchange disciplinary action drafted the Committee's response letter that denied petitioner's motion to dismiss).

[26] In a series of decisions, the Commission has upheld the propriety of the NASD disciplinary procedure in which the DBCC weighs the results of the NASD's staff investigations, determines on the basis of that information whether a complaint should be issued against a member, and considers the evidence presented by its staff in adjudicating that complaint. *See Pittman & Company, Inc.*, Securities Exchange Act Release No. 15709 (April 9, 1979), 17 SEC Docket 249, 250 91979); *Langley-Howard, Inc. et al.*, 43 S.E.C. 155, 157 (1966); *Boren & Co.*, 40 S.E.C. 217, 227 (1960).

[27] Letter from Andrew Barnes, Assistant General Counsel, NASD, to the staff dated August 24, 1983.

[28] Section 24 of Code of Procedure for Trade Practice Complaints, *NASD Manual* (CCH) ¶ 3022 at 3030.

[29] Art. X, section 1 of SR-NASD-82-11.

[30] Explanation, Art. X, section 1 of SR-NASD-82-11.

[31] It is inevitable, in a system of self-regulation, that review of disciplinary actions will be conducted by one's peers who, to a greater or lesser degree, are likely to be competitors of the firm or individual against whom charges are being brought. Hence, in a series of decision, the Commission has rejected applicants' allegations that NASD disciplinary proceedings were biased because members judging the case were applicants' competitors. *See In re Management Financial, Inc.*, Securities Exchange Act Release No. 12098, 8 SEC Doc. 1248, 1252, n.17 (1976); *In re Handley Investment Co.*, 52 S.E.C. 370, 372 n.5 (1964), *aff'd. sub nom. Handley Investment Co.* v. *S.E.C.*, 354 F.2d 64 (10th Cir. 1965); *In re Boruski*, 40 S.E.C. 258, 263 (1960).

[32] *First Jersey Securities, Inc.* v. *Bergen*, 605 F.2d 690, 698 (3d Cir. 1979), *cert. denied* 444 U.S. 1074 (1980). The case arose in the context of a request for a preliminary injunction to enjoin an NASD disciplinary proceedings based, in part, on allegations of structural and specific bias.

[33] *Id.* at 698.

[34] *In re Management Financial*, Securities Exchange Act Release No. 12098, 8 SEC Doc. 1248, 1252 n.17 (1976) (applicants claims that a district official was pursuing a "personal vendetta" and was subjecting them to widespread harassment did not constitute bias. The Commission noted that applicants made no claim that the district official's actions deprived them of a fair hearing and further concluded that, in any event, the NASD's findings were not affected by the alleged misconduct and neither were the findings of the Commission); *Boren & Co.*, 40 S.E.C. 217, 227 (1960) (asserted rumors in the investment community that Boren & Co. was "being closed" by the NASD and certain activities of the district secretary and a NASD examiner did not establish bias on the part of members of the district committee where district committee members were not shown to be connected with such activities). *Cf. J.B. Howard Investment Co. et al*, 41 S.E.C. 960, 193 n.3 (1963) (applicant's charges that the NASD district secretary was prejudiced against it were contradicted by applicant's earlier statement that it has been provided a fair hearing).

[35] *In re Sherman Gleason*, 15 S.E.C. 639 (1944).

[36] *Id.* at 646.

[37] *Id.* at 648-649. Furthermore, in another case appealed to the Commission, an applicant sought review of a NASD disciplinary hearing based, in part, upon the charge that a member of the hearing panel cleared applicant's accounts and would have been the obvious party to receive the applicant's business if the DBCC ruled against the applicant. The Commission found the contention without merit and indicated that, even if such a conflict existed,

Continued

Commission cautioned, however, that the problem of Committee bias should be "one of grave internal concern to the NASD."[38]

Although the Commission has found that NASD disciplinary hearing committees are not structurally biased and that allegations of specific bias can be cured by *de novo* review, the Commission believes that the NASD should continue to strive to eliminate inappropriate or material conflicts of interest from its hearing committees. By ensuring that members of these committees are not materially biased, the NASD will continue to provide a respondent with a fair hearing at all levels of its disciplinary proceedings. In addition, such precautions may further reduce the opportunity for disciplined members or associated persons to bring appeals based on allegations of conflict of interest. The Commission believes that the conflict of interest provision of the Code, as interpreted by the NASD, advances these goals because it empowers the NASD to continue to ensure that adjudicators are not affected by conflicts of interest proscribed by the Act.

Based upon discussion with the NASD staff and the Commission staff, the Commission understands that the NASD will enforce the conflict of interest provision conscientiously and with consideration of individual circumstances. For example, the Commission believes that the NASD may not need to disqualify individuals from serving on committees when the conflict is particularly attenuated or technical. Nonetheless, the Commission anticipates that the NASD will administer the conflicts provisions to avoid inappropriate conflicts of interests.

the *de novo* review by both the NASD Board of Governors and the Commission would cure any injury suffered by the applicant. *In re Paul F. Kendrick*, 19 SEC Docket 153, 155 (1980).

Similarly, in a case appealed to the First Circuit, the appellant, First Jersey Securities, Inc. ("First Jersey"), challenged the propriety of a disciplinary proceeding on a variety of procedural and substantive grounds, including allegations that the NASD and one of its corporate officers had a long standing bias against First Jersey. The court found, among other things, that any specific bias of DBCC members would be neutralized by independent review of the Board of Governors and the right of appeal to the Commission. *First Jersey Securities, Inc.* v. *Bergen*, 605 F.2d 690, 699–700 (3rd Cir. 1979), *cert denied* 444 U.S. 1074 (1980). *See also R. H. Johnson & Co.* v. *S.E.C.*, 198 F.2d 690, 695 (2d Cir.) (errors in the proceedings of a securities association will be considered only if they affected the Commission's independent review of the association's proceedings), *cert denied*, 344 U.S. 855 (1952) (errors in the proceedings of a securities exchange will be considered only to the extent that they infected Commission action and led to error on its part).

[38] *Gleason*, 15 S.E.C. at 649.

IV. Conclusion

Accordingly, the Commission finds that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that SR–NASD–82–11 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85–6570 Filed 3–18–85; 8:45 am]

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[Release No. 21850; SR–NASD–84–29]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

March 13, 1985.

The National Association of Securities Dealers, Inc. ("NASD") 1735 K Street, NW., Washington, D.C. 20006, submitted on December 5, 1984, a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend Schedule A under Article III of its By-Laws by adding a new section, Section 11, that will authorize the NASD to impose and collect compensatory charges to cover the cost of data and NASD publications provided, upon request, to members of the public.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 21569, December 17, 1984) and by publication in the **Federal Register** (49 FR 50349, December 27, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85–6569 Filed 3–18–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21841; SR–NASD–82–28]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

March 12, 1985.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C., 20006, submitted on December 22, 1982, a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to delete Article I, Section 13 of the NASD's By-Laws that were in effect prior to the approval of the NASD's revised By-Laws.[1] Article I, Section 13 provided procedures to be followed by the NASD Board of Governors in making a determination whether a member should retain its membership status or whether an applicant for membership possesses the necessary qualifications. Similar provisions have been incorporated in the NASD's proposed Code of Procedure. Accordingly, the NASD requested that the approval of the proposed rule change deleting membership continuance proceedings coincide with Commission approval of the proposed Code of Procedure. In a companion release today the Commission has approved SR–NASD–82–11, the NASD Code of Procedure.[2]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 19391, January 3, 1983) and by publication in the **Federal Register** (48 FR 1138, January 10, 1983). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

[1] *See* Securities Exchange Act Release No. 21843, (March 12, 1985). The NASD's revised By-Laws were approved concurrently with this order.

[2] Securities Exchange Act Release No. 21838, (March 12, 1985).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85-6567 Filed 3-18-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21843; SR-NASD-84-14]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

March 12, 1985.

On June 14, 1984, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, DC 20006, filed with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, a proposed rule change to codify and revise generally the NASD's By-Laws. The proposed rule change is part of the NASD's effort to review and revise its rules, By-Laws, and Interpretations. The proposed amendments: (1) Codify existing interpretations of the NASD's Board of Governors; (2) conform the By-Laws' language to changes in the Act made by the Securities Acts Amendments of 1975; and (3) eliminate or modify obsolete provisions of the By-Laws. The proposal includes numerous technical and substantive modifications to the By-Laws.

Notice of the original proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release Securities Exchange Act Release No. 21302 (September 10, 1984) and by publication in the **Federal Register** (49 FR 36184, September 14, 1984). In response to this notice, one comment on the proposal was received by the Commission.[1]

The one comment letter received by the Commission was submitted by the Municipal Securities Rulemaking Board ("MSRB"), which stated that the NASD's revised By-Laws failed to indicate that certain provisions in the By-Laws do not apply to NASD members that deal in municipal securities.[2] The letter noted that the municipal securities activities of such broker-dealers are governed by the MSRB's rules, not the NASD's rules. For example, the MSRB noted that municipal securities brokers and dealers are subject to MSRB rules concerning their professional qualifications and not the requirements of the NASD. The MSRB suggested, therefore, that municipal securities brokers and dealers be specifically exempted from Article II, Sections 2 and 3 of the proposed NASD By-Laws dealing with member qualification standards.

In addition to the comments of the MSRB, the Commission staff ("staff") was concerned about several provisions in the proposed By-Laws permitting summary suspension of members and associated persons. The staff believed that portions of the proposal were inconsistent with Section 15A(h)(3) of the Act, which permits summary suspension of members and persons associated with members only under specified conditions. In the staff's view, where such conditions are not present, notice and opportunity for a hearing are required by Section 15A(h)(2) of the Act. The staff, therefore, suggested that Article II, Section 3(c), Article VI, Section 3 and Article VII, Section 2 be amended to provide notice and opportunity for a hearing as required by the Act.[3]

Finally, the staff noted that the By-Laws contained no conflicts of interest provision. The staff suggested that such a provision be included in the By-Laws to ensure that all decision-making panels of the NASD be impartial.

To address these concerns, the NASD has filed a new proposed rule change, SR-NASD-85-2 (the "Amending Proposal") to further amend the By-Laws.[4] The Amending Proposal, described more fully in a companion release,[5] would, among other things, (1) modify the NASD summary suspension authority and provide notice and opportunity for hearings under appropriate circumstances; (2) include a conflicts of interest provision; and (3) add language stating that the municipal securities activities of NASD members are governed by the MSRB's rules, and not the NASD's rules.

As noted, the Commission is publishing concurrently the Amending Proposal for comment, and the Commission expects to approve it absent significant adverse public comment.[6] The Commission wishes to emphasize, however, that during the time between the approval of SR-NASD-84-14 and the Amending Proposal, it is clear that the Act allows the NASD to use its summary suspension authority only in those circumstances outlined in Section 15A(h)(3) of the Act. Prior to any suspensions not covered in that section, the Commission and the NASD have agreed that affected persons will receive the notice and opportunity for a hearing that would be provided pursuant to the Amending Proposal. In addition, the Commission emphasizes that all MSRB regulations remain in full effect during this interim period.

The Commission believes that the provisions of the proposal relating to membership qualifications are consistent with the Act. Specifically, the By-Laws provide that any registered broker, dealer, or municipal securities broker or dealer will be eligible for membership in the NSAD as required in Section 15A(b)(3) of the Act. In addition, the sections of the proposed By-Laws relating to denial of membership are consistent with Section 15A(g)(3)(A) of the Act, which permits a securities association to deny membership to an applicant if it does not meet that organization's qualification requirements. The NASD also may deny or cancel membership if a party is subject to a statutory disqualification, as specified in Section 15A(g)(2) of the Act. Furthermore, the section of the By-Law dealing with the National Association of Securities Dealers Automated Quotation

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[1] In addition to the one comment received by the Commission, the NASD received five comments when it submitted the text of the proposed By-Laws to the NASD's members for comment, prior to submitting the proposal to the Commission. *See* NASD Notice-to-Members 83-8 (February 4, 1983). The NASD agreed with a majority of the comments submitted by its members and revised the proposal accordingly before submitting it to the Commission. None of those commentators has responded to the Commission's request for comment. The Commission believes that the NASD, in its revisions of the instant proposed rule change and its submission of the Amending Proposal, has addressed adequately these comments. *See infra* note 4 and accompanying text.

[2] Letter from Diane G. Klinke, Deputy General Counsel, MSRB, to Shirley E. Hollis, Acting Secretary, SEC, October 10, 1984.

[3] One commentator made similar objections and suggestions to the NASD concerning the summary suspension provisions of the proposed By-Laws prior to the submission of the proposal to the Commission. Letter from Sullivan & Cromwell to S. William Broka, Secretary, NASD, dated April 22, 1983.

[4] On March 5, 1985, the NASD filed Amendment No. 1 to SR-NASD-85-2 which stated that the proposed amendments to the By-Laws were submitted for membership vote in *Note to Members* 85-3 (January 14, 1985) and subsequently approved.

[5] Securities Exchange Act Release No. 21839, (March 12, 1985) (Publication for comment).

[6] In another recently filed rule change, the NASD has stated it will consolidate all Schedules in the present By-Laws into a separate section of the NASD Manual. In addition, that amendment deletes certain obsolete or redundant portions of Schedule C and D of the By-Laws. This rule change, SR-NASD-85-3, Securities Exchange Act Release No. 21840, (March 12, 1985), has received accelerated approval and becomes effective at the same time as the By-Laws.

System enables the NASD to adopt rules that ensure that quotations are disseminated accurately and efficiently, as required by Section 15A(b)(11) of the Act. The Commission also finds that the technical changes include in the proposal are consistent with the Act.

Accordingly, the Commission believes that the proposed rule change will facilitate the NASD's ability to admit or deny members and otherwise to regulate membership in its organization. Furthermore, the Amending Proposal, which the Commission expects to approve after the expiration of the comment period, will provide additional procedural safeguards to NASD members and will make certain other necessary clarifications. The Commission finds, for the reasons set forth above and based on the NASD's commitment to apply the summary suspension contained in the rule in a manner consistent with the requirements of Section 15A(h)(3) of the Act, that proposed rule change SR-NASD-84-14 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR-NASD-84-14 be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85-6568 Filed 3-18-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21839; File No. SR-NASD-85-2]

Self Regulatory-Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to NASD By-Laws and Code of Procedure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 5, 1985,[1] the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing to make certain amendments to the NASD's By-Laws and Code of Procedure as discussed below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendments to the By-laws, as well as the amendments to the Code of Procedure, shall codify certain Association practices relating to the expulsion and suspension of members and associated persons. In addition, the amendments to the By-laws would prohibit participation in adjudicatory proceedings in which a conflict of interest exists and would recognize the rulemaking authority of the Municipal Securities Rulemaking Board.

The proposed revisions to the By-Laws and Code of Procedure are designed to aid the Association in more adequately fulfilling its responsibilities as defined under Section 15A of the Securities Exchange Act of 1934 (the "Act").

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendment will not result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed amendments to the By-Laws were approved by membership vote.[2] The proposed amendments to the Code of Procedure were approved by the NASD Board of Governors at its November 1984 meeting. Amendments to the Code of Procedure do not require membership vote.

Comments were solicited in Notice to Members 85-3 (January 14, 1985). The Association has received two written comments and has filed with the Commission an analysis of those comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450—5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450—5th Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 9, 1985.

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[1] The NASD originally submitted SR-NASD-82-5 on February 12, 1985 and subsequently filed Amendment No. 1 to SR-NASD-85-2 on March 5, 1985.

[2] The results of the membership vote were submitted in Amendment No. 1 to SR-NASD-85-2.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

March 12, 1985.

[FR Doc. 85-6554 Filed 3-18-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21840; File No. SR-NASD-85-3]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Accelerating Approval of Proposed Rule Change Regarding the Code of Procedure and By-Laws

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 March 5, 1984, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The proposal would make certain technical changes to the NASD's recodified Code of Procedure ("Code") [1] and delete certain sections of Schedule C and D to the By-Laws which have become obsolete. The proposed amendments are designed to aid the Association in more adequately fulfilling its responsibilities as defined under Section 15A of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-NASD-85-3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NASD.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that this filing is a companion to the NASD's Code which was published for comment and is being approved concurrently with this rule change. This rule change provides mere technical adjustments to the Code. The Commission believes, therefore, that it is useful to approve this rule change so that these technical amendments become effective at the same time the Code is approved.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

March 12, 1985.

[FR Doc. 85-6565 Filed 3-18-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21842; SR-NASD-84-23]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

March 12, 1985.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, submitted on October 2, 1984, a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to modify several sections of the NASD's amended Code of Procedure ("Code") which the Commission is approving concurrently with this proposal.[1] The proposal modifies the Code by creating a Market Surveillance Committee and specifying that committee's operating procedures. The proposal also deletes Section 8 of the Code, which deals with the violation of rules of the National Association of Securities Dealers Automated Quotation System, since the proposal transfers jurisdiction over the proceedings contained in that section to the Market Surveillance Committee. In addition, the proposal makes several minor technical amendments to the Code.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 21434, October 29, 1984) and by publication in the **Federal Register** (49 FR 44257, November 5, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85-6565 Filed 3-18-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from April 22, at 9 a.m., through April 26, 1985, at 4 p.m., at FAA Headquarters, 800 Independence Avenue, SW., Washington, D.C.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

[1] *See* SR-NASD-82-11 published for comment in Securities Exchange Act Release No. 19097 (October 4, 1982), 47 FR 44903 October 12, 1982. The Commission is approving SR-NASD-82-11 concurrently with this rule change. *See* Securities Exchange Act Release No. 21838, (March 12, 1985).

[1] SR-NASD-82-11 was published for comment in Securities Exchange Act Release No. 19097 (October 4, 1982), 47 FR 44903 (October 12, 1982) and approved in Securities Exchange Act Release No. 21838, (March 12, 1985).

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than April 19, 1985, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic, ATO-301, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426-3725. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is planned to be held from July 23 through July 26, 1985, in New York.

A member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on March 8, 1985.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 85-6448 Filed 3-18-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 14, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0059
Form Number: IRS Form 4137
Type of Review: Extension
Title: Computation of Social Security Tax on Unreported Trip Income

OMB Number: 1545-0901
Form Number: IRS Form 1098
Type of Review: Revision
Title: Mortgage Interest Statement

Clearance Oficer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-6506 Filed 3-18-85; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor and Reference Price for Calendar year 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Publication of inflation adjustment factor and reference price for calendar year 1984 as required by section 29(d)(2)(A) of the Internal Revenue Code (26 U.S.C. 29(d)(2)(A)) (formerly 44D renumbered by the Tax Reform Act of 1984).

SUMMARY: The inflation adjustment factor and reference price are used in determining the availability of the tax credit for production of fuel from nonconventional sources under section 29 of the Internal Revenue Code.

DATE: The 1984 inflation adjustment factor and reference price apply to qualified fuels sold during calendar year 1984.

Inflation Factor: The inflation adjustment factor for calendar year 1984 is 1.3673.

Price: The reference price for all qualified fuels is $25.88 per equivalent barrel for the 1984 calendar year.

Because the above reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) of the Internal Revenue Code does not occur for any qualified fuel based on the above reference price.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor—Robert O'Keefe, PM:PFR:R, 1111 Constitution Avenue, N.W., Internal Revenue Service, Washington, D.C. 20224 Telephone Number (202) 376-0720 (not a toll-free number)

For the reference price—Noel J. Sheehan, CC:C:E:E:2, Room 5232, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Telephone Number (202) 566-4463 (not a toll-free number)

Charles M. Morgan III,

Associate Chief Counsel (Technical).

[FR Doc. 85-6572 Filed 3-18-85; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 53
Tuesday, March 19, 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).

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1

FEDERAL COMMUNICATIONS COMMISSION

Deletion of agenda item from March 14th open meeting.

The following item has been deleted at the request of the Common Carrier Bureau from the list of agenda items scheduled for consideration at the March 14, 1985 Open Meeting and previously listed in the Commission's Notice of March 7, 1985.

Agenda, Item No. and Subject

Common Carrier—2—*Title:* Memorandum Opinion and Order, Reconsideration of the Accounting Treatment for AT&T's Judgment and Litigation Expenses from the Litton Systems Antitrust Lawsuit. *Summary:* The Commission will consider petitions for reconsideration challenging the accounting treatment for AT&T's judgment and litigation costs from the Litton Systems antitrust lawsuit.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-6575 Filed 3-15-85; 10:15 am]

BILLING CODE 6712-01-M

2

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, March 25, 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 item 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: March 15, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6646 Filed 3-15-85; 3:46 pm]

BILLING CODE 6210-01-M

3

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Tuesday, April 2, 1985.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of March, 1985.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523-5920.

DATE OF NOTICE: March 13, 1985.

E. B. Meredith,

Acting Executive Secretary, National Mediation Board.

[FR Doc. 85-6645 Filed 3-15-85; 3:46 pm]

BILLING CODE 7555-01-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 18, 25, April 1, and 8, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 18

Wednesday, March 20

10:00 a.m.
Discussion of Proposed Revisions to Part 35 (Public Meeting)
2:00 p.m.
Briefing by NUMARC on Status of NUMARC Initiatives (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 25—Tentative

Tuesday, March 26

10:00 a.m.
Discussion of Commission Policy and Current Capability for Committing NRC's Resources for Other Than Domestic Purposes (Open/Closed to be determined)
2:00 p.m.
Discussion of Motion to Disqualify in TMI-1 Restart Case (Closed—Ex. 10)

Thursday, March 28

10:00 a.m.
Discussion of Environmental Qualification of Electrical Equipment—Status of Compliance with Rule (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of April 1—Tentative

Wednesday, April 3

10:00 a.m.
Briefing on Source Term (Public Meeting)
2:00 p.m.
Briefing by IDCOR on Evaluation of Nuclear Power Plant Accident Risk (Public Meeting)

Thursday, April 4

10:00 a.m.
Discussion of Management—Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (if needed)
2:00 p.m.
Briefing on Design Basis Threat Statement (Closed—Ex. 1 & 3) (tentative)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of April 8—Tentative

Thursday, April 11

2:00 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Andrew L. Bates,

Office of the Secretary.

March 15, 1985.

[FR Doc. 85-6632 Filed 3-15-85; 3:36 pm]

BILLING CODE 7590-01-M

5

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 8047, February 27, 1985.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATES PREVIOUSLY ANNOUNCED: Friday, February 22, 1985.

CHANGE IN THE MEETING: Additional items.

The following additional items were considered at a closed meeting scheduled for Tuesday, March 5, 1985, at 2:30 p.m.
Administrative proceeding of an enforcement nature.
Institution of injunctive action.
Subpoena enforcement action.
Opinion.

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters 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: David Wescoe at (202) 272-2092.

John Wheeler,

Secretary.

[FR Doc. 85-6553 Filed 3-14-85; 4:28 pm]

BILLING CODE 8010-01-M

6

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 10578, March 15, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:15 a.m. (EST), Tuesday, March 19, 1985.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee

STATUS: Open.

ADDITIONAL MATTER: The following item is added to the previously announced agenda:

F. UNCLASSIFIED
3. Modifications to Interagency Agreement No. TV-65526A with the Department of Energy for Construction of Watchtowers.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

SUPPLEMENTARY INFORMATION:

TVA BOARD ACTION

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Approved:

C.H. Dean, Jr.,

Director and Chairman.

Richard M. Freeman,

Director.

John B. Waters,

Director.

Dated: March 14, 1985.

[FR Doc. 85-6615 Filed 3-15-85; 1:14 pm]

BILLING CODE 8120-01-M

Federal Register

Tuesday
March 19, 1985

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 172, 173, 174, 176, 177, 178, and 179

Shipment of Hazardous Materials; Miscellaneous Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, 174, 176, 177, 178, and 179

[Docket No. HM-166R; Amdt. Nos. 172-96, 173-185, 174-47, 176-21, 177-65, 178-83, and 179-37]

Shipment of Hazardous Materials; Miscellaneous Amendments

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This action is being taken to incorporate into the Department's Hazardous Materials Regulations a number of changes based on rulemaking petitions from industry and on initiations within the Department. This action is necessary to update the regulations, to eliminate the need for filing of reports with MTB and to reduce MTB's backlog of rulemaking petitions.

All of the amendments in this rulemaking are designed to reduce government regulation and paperwork, and to clarify existing regulations.

EFFECTIVE DATE: This amendment is effective July 1, 1985. However, compliance with the regulations as amended herein, is authorized as of March 19, 1985.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Washington, D.C. 20590 (202-426-2075).

SUPPLEMENTARY INFORMATION: On March 22, 1984, the MTB published a Notice of Proposed Rulemaking, Docket No. HM-166R; Notice No. 84-3 (49 FR 10780), which proposed a number of miscellaneous amendments to the Hazadous Materials Regulations. Notice No. 84-3 included a brief statement regarding each proposal and invited public comment prior to the closing date of June 29, 1984. Based on comments received on the notice, those proposals are incorporated as final amendments to the Hazardous Materials Regulations (HMR).

Eighteen commenters responded to Notice 84-3.

Six commenters objected to the proposed change to § 173.34(e)(10) to add DOT Specification 3AA cylinders for argon, helium, nitrogen, oxygen, breathing air and dry compressed air. Each commenter objected very strongly that the proposed amendment would not be in the best interest of safety. In view of the objections and upon further consideration the proposed amendment has been withdrawn from this rulemaking.

One commenter objected to (1) Having two complete entries for the same compound (i.e., "Acetonitrile" and "Methyl cyanide") and (2) "Fluosilicic acid" and "Hydrofluorosilicic acid or Hydrofluosilicic acid". This same commenter also recommended that further alignment of the § 172.101 Table and the § 172.102 Table should be undertaken for certain hazardous materials. That recommendation will be considered under separate rulemaking.

One commenter requested that the MTB consider adding nitrous oxide to the list of commodities that were proposed for addition to DOT § 173.34(e)(10). In view of the objections discussed above, no action is being taken to add nitrous oxide to § 173.34(e)(10).

One commenter proposed that the amendment to § 173.7(a) include all hazardous materials shipment exemptions involving items listed in 22 CFR, International Traffic in Arms Regulations be issued by DOD for both domestic and international shipments where a DOD contract has been let for the item manufacture or development. This would allow continued shipping of the items to foreign military customers not involved in a DOD contract provided the item in question has had no Class 1 engineering changes made to it. The suggested change goes far beyond what was proposed in notice and cannot be considered for adoption at this time.

Two commenters objected to the proposed amendment of adding ammonium persulfate, potassium persulfate, and sodium persulfate to the § 172.101 Table as oxidizers because they considered this to be a controversial issue. In addition, they referred to the work that is being done on this subject under Docket No. HM-179. The MTB does not agree that this is a controversial matter and has added ammonium persulfate, potassium persulfate, and sodium persulfate to the § 172.101 Table as proposed in the notice. The decision to add these materials as oxidizers is based on test data submitted by a petitioner. Testing was completed by the Bureau of Explosives (B of E) of the Association of American Railroads in October 1984 and the B of E Chemical Laboratory Report on the tests indicates that the three materials, as tested, are oxidizers under the DOT regulations. Ammonium persulfate, UN1444, potassium persulfate, UN1492 and sodium persulfate, UN1505 are classed as 5.1 under the United National Transport of Dangerous Goods and the IMDG Code. Entering these materials in the Hazardous Materials Table does not automatically mean that all such materials produced by other manufacturers are oxidizers. Tests may show that a similar product produced by another manufacturer may not be an oxidizer because of slightly different properties.

The proposed amendments to § 173.119 (a)(17), (e)(3), (e)(3)(i) and (f)(5) to add DOT Specification MC 310, MC 311 and MC 312 cargo tanks inadvertently omitted any reference that these particular cargo tanks must be equipped with pressure relief devices as required for DOT Specification MC 306 and MC 307 cargo tanks. That requirement has been added in the final rule.

The National Transportation Safety Board (NTSB) offered general comments and specific comments on three topics. The general comments were critical of the notice and of the way MTB identifies and classifies hazardous materials. The NTSB expressed the view that safety analyses should be performed in depth for each quantity and form of material in transportation. The NTSB is of the opinion that no changes should be made to classify or reclassify a hazardous material unless a safety analysis has been completed and such analyses should be used to evaluate all materials within similar chemical groups. NTSB also made reference to two accidents involving aluminum chloride.

The NTSB comments on specific proposals are quoted as follows:

1. *Aluminum Chloride.* This material has not been regulated as a hazardous material for the more than a dozen years during which agencies within DOT (Transportation Safety Institute and U.S. Coast Guard) have known that aluminum chloride presents a serious transportation risk. It is not clear why only aluminum chloride has been singled out for action with the limited information on the properties of a corrosive solid provided in 49 CFR 173.240. Because shippers have failed to recognize that aluminum chloride when contaminated with moisture presents a major hazard, there may be other materials with properties similar to aluminum chloride that presently are being shipped as "unregulated" or not listed in Table 172.102, such as aluminum carbide, calcium hydride, and phosphorus pentoxide.

2. *Hexamethyleneimine (HEX).* As stated in the NPRM, the flash point of this material is 65 °F (cc) which requires that it be classified as flammable rather than corrosive. MTB staff assured the Safety Board staff that HEX was the only product with flammable properties which was inappropriately classed in Table 172.101 as a corrosive. Consequently, future rulemaking was not

anticipated for other similar materials. However, our cursory review of materials listed as corrosive revealed three (3) similar products in Table 172.101 listed as corrosive which also have flash points (cc) under 100 °F.[1] These products are allyl trichlorosilane, 95 °F, cc; phenyl trichlorosilane 91 °F, cc; and valeryl chloride 74 °F, cc. Therefore, shippers may not be identifying the primary hazard of these materials for transportation. This finding further supports the need for a systematic review of the hazardous material classifications and the need for the DOT to act on our Safety Recommendation I-81-14.

3. *Persulfates.* We could not find in the NPRM any specific reason for including in Table 172.101 the three (3) additional persulfates. Referenced Coast Guard literature identifies these materials as strong oxidizers as does the UN classification system. However, similar materials are listed in the Optional Hazardous Material Table 172.102 as oxidizers, but are not listed in Table 172.101. Since the rationale to include some materials in Table 172.101 and exclude others with similar properties has not been provided by MTB, meaningful comments about the need for such changes cannot be provided.

The MTB proposed to add aluminum chloride, anhydrous as a corrosive material to the Hazardous Materials Regulations in 1970. However, because of unfavorable public comments, aluminum chloride was withdrawn pending further investigation of the material. The MTB recognizes the fact that aluminum chloride, anhydrous is not corrosive to skin when tested according to the method specified in Appendix A to Part 173. The reason the chemical does not destroy the skin of a rabbit is that the rabbit does not perspire and its skin is dry. However, since 1970 paragraph (b) to § 173.240 has been added which reads "If human experience or other data indicate that the hazard of a material is greater or less than indicated by the results of the tests specified in paragraph (a) of this section, the Department may revise its classification or make the material subject to the requirements of Parts 170–189 of this subchapter". Since it is very unlikely that aluminum chloride can exist outside of its shipping container without being in contact with some moisture, the material is hereby added to the § 172.101 Table as proposed. Also, MTB was aware of the accident in Stroudsburg, Pennsylvania mentioned by NTSB. It was this accident that prompted MTB to take action concerning aluminum chloride in this rulemaking.

In regard to hexamethyleneimine, the MTB is not absolutely sure that there is no other product in the § 172.101 Table with flammable properties which is classed as a corrosive nor do we recall ever making such a statement.

The proposed persulfates entries were added based on a petition from a large shipper of hazardous materials who requested relief from dual marking requirements. Each of the three persulfates listed in the notice are listed by name and classed as an oxidizer in the § 172.102 Table, ICAO Technical Instructions, and the IMDG Code.

The Association of American Railroads (AAR) submitted a late comment regarding the proposed change to § 174.104(b)(6). It would require that the rail carrier who furnishes a car to a shipper for loading Class A explosives decontaminate the car when it is clear that the floor or walls of the car are saturated with a foreign material that may be a hazardous material. If decontamination is not feasible, the carrier must furnish a substitute car.

The AAR stated in part that they were mystified as to the reason this proposal has been put forth, that they were not aware of any contamination problems in rail cars transporting explosives, and wondered why MTB suggested such a vague rule. They also inquired about what the word "apparent" meant? Would a carrier be required to analyze any unidentifiable residue? They felt that this amendment, given its ambiguity, and the lack of a reason for its promulgation, should be withdrawn.

The MTB does not agree with the AAR that the proposal should be withdrawn. The contamination problem is not considered to be an everyday occurrence. However, MTB does believe that in view of the potential for a major incident that all possible precautions should be taken. The word "apparent" as defined in Webster's dictionary means: (1) Visible; readily seen, (2) readily understood, evident, obvious. MTB believes that if a car is swept out and the shipper sees that there is a substance of some kind on the floor, or the sides, or ends of the car, there is reason to further investigate what the residue is. A visual examination may be all that is needed to determine whether a particular car should be loaded with explosives or a substitute car is required. The need to have the carrier analyze an unidentifiable residue is not likely to occur. If a controversial situation did arise between the shipper and the carrier, it would probably be faster and easier to use a substitute car.

At the present time, the regulations do not have a provision for rejection of rail cars suspected of being contaminated. The NTSB in their report on the Benson, Arizona, incident on May 24, 1973, commented that the regulations are vague as to how and who is responsible for cleaning residue from cars.

The Materials Transportation Bureau has determined that this regulatory amendment is not a major rule under the terms of Executive Order 12291 or significant under DOT's regulatory procedures (44 FR 11034), and does not require a Regulatory Impact Analysis, nor does it require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4231, et seq.). A regulatory evaluation is not warranted since the anticipated impact is minimal.

Based on information available concerning size and nature of entities likely to be affected, I certify that these amendments will not, as promulgated, have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

49 CFR Part 179

Hazardous materials transportation, Railroad safety.

In consideration of the foregoing, 49 CFR Parts 172, 173, 174, 176, 177, 178 and 179 are amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. In § 172.101, paragraph (i)(1) is revised; (i)(4), (i)(5), and (i)(6) are redesignated as (i)(6), (i)(7), and (i)(8); paragraphs (i)(2) and (i)(3) are redesignated as (i)(4) and (i)(5) and are revised; and new paragraphs (i)(2) and (i)(3) are added to read:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(i) * * *

(1) "1" means the materials must be stowed "on deck" subject to the requirements of § 176.63(b) of this subchapter. When both "on deck" and "under deck" are authorized, "under deck" should be used if available.

(2) "1,2" means the material must be stowed either "on deck" or "under deck"; however, "under deck" should be used if available.

(3) "1,3" means the material must be stowed either "on deck" or "under deck away from heat"; however, "under deck away from heat" stowage should be used if it is available.

(4) "2" means the material must be stowed "under deck" in a compartment or hold subject to the requirements of § 176.63(c). When both "on deck" and "under deck" are authorized, "under deck" should be used if available.

(5) "3" means the material must be stowed "under deck away from heat" in a ventilated compartment or hold subject to the requirements of § 176.63(d) of this subchapter.

* * * * *

2. Section 172.101, the Hazardous Materials Table is amended by adding, removing or revising the entries listed below:

§ 172.101 Hazardous Materials Table

+EAW	Hazardous materials descriptions and propery shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	(3a)	(4)	5(a)	5(b)	6(a)	6(b)	7(a)	7(b)	7(c)
	ADD										
	Aluminum chloride, anhydrous	Corrosive material	UN1726	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry.
	Ammonium persulfate	Oxidizer	UN1444	Oxidizer	173.153	178.154	50 pounds	200 pounds	1,2	1,2	
	Diacetone alcohol	Combustible liquid	UN1148	None	173.118a	None	No limit	No limit	1,2	1,2	
	Fluosilicic acid	Corrosive material	UN1778	Corrosive	None	173.265	1 quart	1 gallon	1,2	1,2	
	Hydrofluorosilicic acid *or* Hydrofluosilicic acid	Corrosive material	NA1778	Corrosive	None	173.265	1 quart	1 gallon	1,2	1,2	
	Methyl cyanide	Flammable liquid	UN1648	Flammable liquid	173.118	173.119	1 quart	10 gallons	1	4	Shade from radiant heat.
	Potassium persulfate	Oxidizer	UN1492	Oxidizer	173.153	173.154	50 pounds	200 pounds	1,2	1,2	
	Sodium persulfate	Oxidizer	UN1505	Oxidizer	173.153	173.154	50 pounds	200 pounds	1,2	1,2	
	Sodium sulfide, anhydrous *or* Sodium sulfide *with less than 30% water of crystallization*	Flammable solid	UN1385	Flammable solid	173.153	173.207	25 pounds	100 pounds	1,2	1,2	Stow separated from liquid acids.
	Sodium sulfide, hydrated *with not less than 30% water*	Corrosive material	UN1849	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Stow away from acids.
	Trichloroisocyanuric acid, dry	Oxidizer	UN2468	Oxidizer	173.153	173.217	10 pounds	50 pounds	1,2	1,2	Shade from radiant heat. Keep dry, stow separated from nitrogen compounds.
	REMOVE										
	Aircraft rocket engine (Commercial)	Flammable solid	NA2791	Flammable solid	None	173.238	Forbidden	550 pounds	1,3	5	
	Aircraft rocket engine igniter (Commercial)	Flammable solid	NA2792	Flammable solid	None	173.238	Forbidden	25 pounds	1,3	5	
	Cartridge cases, empty, primed	Class C explosive		None	None	173.107	50 pounds	150 pounds	1,3	1,3	
	Hydrofluorosilicic acid	Corrosive material	NA1778	Corrosive	None	173.265	1 quart	1 gallon	1,2	1,2	
	Sodium sulfide, anhydrous	Flammable solid	UN1385	Flammable solid	173.153	173.207	25 pounds	300 pounds	1,2	1,2	Stow separate from liquid acids. Separate from flammable gases or liquids, oxidizing materials or organic peroxides.
	REVISED										
	Hexamethyleneimine	Flammable liquid	UN2493	Flammable liquid and Corrosive	None	173.119	1 quart	1 gallon	1,2	1	
+E	Motor fuel antiknock compound *or* Antiknock compound (*these materials may contain various hazardous substances for which the appropriate RQ applies*)	Poison B	UN1649	Poison	None	173.354	Forbidden	55 gallons	1	5	If flashpoint less than 141. deg. F. segregation same as for flammable liquids.

+EAW	Hazardous materials descriptions and propery shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	(3a)	(4)	5(a)	5(b)	6(a)	6(b)	7(a)	7(b)	7(c)
	Trichloro-s-triazine-trione dry, *containing over 39% available chlorine,*	Oxidizer	NA2468	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	Shade from radiant heat. Keep dry. Stow separated from nitrogen compounds.

3. In § 172.101, the last sentence of the first paragraph of the note preceding the CERCLA list is revised to read as follows:

CERCLA List

Note.—* * * With respect to other materials in the following listing, those that are not forbidden materials or do not fall within a hazard class defined in this subchapter are not subject to the requirements of this subchapter.

* * * * *

4. In § 172.504, paragraph (c) is revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(c) When the gross weight of all hazardous materials covered by Table 2 is less than 1000 pounds, no placard is required on a motor vehicle, rail car, or freight container for the Table 2 materials. A Table 1 material must be placarded as specified in Table 1. This paragraph does not apply to a portable tank, cargo tank, tank car, or to transportation by aircraft or vessel.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

5. In § 173.7, the intoductory text of paragraph (a) is revised to read as follows:

§ 173.7 U.S. Government material.

(a) Hazardous materials offered for transportation by, for, or to the Department of Defense (DOD) of the U.S. Government, including commercial shipments pursuant to a DOD contract, must be packaged in accordance with the regulations in this subchapter or in packagings of equal or greater strength and efficiency as certified by DOD pursuant to the "Policies and Procedures for Hazardous Materials Packaging Certification, AFLCR 800–29/AFSCR 800–29/DARCOM–R 700–103/NAVMATINST 4030.11/DLAR 4145.37." Hazardous materials offered for transportation by DOD under this provision may be reshipped by any shipper to any consignee provided the original packaging has not been damaged or altered in any manner.

* * * * *

6. In § 173.31, paragraphs (a)(2), (c)(9), (c)(10), and Retest Table 1 in paragraph (c)(13) and footnotes c, f, j, q, r, u, v, and w are revised to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) * * *

(2) Tanks prescribed in the following table are authorized for service provided they conform to all applicable safety requirements of this subchapter:

Specifications prescribed in current regulations	Other specifications permitted (subject to the notes)	Notes
105A200W	105A100W	1
105A 200A LW	105A100A LW	1
105A300W	ICC–105, 105A300	
105A400W	105A400	
105A500W	105A500	
105A600W	105A600	
106A500X	ICC–27, BE–27; 106A500	
106A800X	106A800	
107A * * *		2

NOTE 1.—Tanks built as Spec. DOT–105A100–W or 105A100AL–W may be altered and reclassified as Spec. DOT 105A200W or 105A200ALW, respectively, by installing safety relief valves, retesting and stenciling in accordance with the applicable specification.

NOTE 2.—The test pressures of tanks built in the United States prior to January 1, 1956, may be increased to conform with current Spec. DOT–107A except that tanks built prior to 1941 are not authorized. Original and revised test pressure must be indicated and may be shown on a plate attached to the bulkhead of the car.

* * * * *

(c) * * *

(9) After repairs requiring welding, riveting, caulking of rivets, or hot or cold forming to restore tank contour, tanks must be retested at the presure specified in Retest Table 1 of this paragraph before being returned to service. Glass, lead, rubber, elastomeric or polyvinyl chloride lined tanks must be retested before lining is renewed or after lining is removed. Interior heater systems must be retested before the tank is returned to service after repairs or renewals of any part of the system.

(10) The year of a pressure test, the pressure to which it was tested, and tests due dates for the tank, pressure relief valve and interior heating system must be stenciled on the tank (or on the tank jacket if the tank is insulated). If a retest is required during a particular calendar month, the month and the year must be stenciled. On existing cars, the test due date stencil must be applied at the next test date or tank painting whichever comes first. Any pressure relief valve from a stock which has been tested within six months of installation may be considered as having been tested or retested in the month in which installed, providing the valve has been protected from deterioration during this period.

* * * * *

(13) * * *

RETEST TABLE 1

Specification	Car age and retest interval (years[1])			Retest pressure—p.s.i.			
	Tank and interior heater systems			Pressure relief valve			
	Up to 10 years old	Over 10 to 22 years old	Over 22 years old	Pressure relief valve	Tank	Start to discharge	Vapor tight
REVISE							
DOT–103		10	10	10	60	[c]35	28
DOT–103A		3	1	2	60	35	28
DOT–103A–ALW*	[c]5	3	1	(*)	60	[c]35	28
DOT–103B		[c]3	[c]1	None	60		
DOT–103C		3	1	(*)	60	35	28
DOT–104		10	10	10	60	[c]35	28
DOT–104A		10	10	5	100	75	
DOT–105A100**		10	10	5	100	75	60
DOT–105A200ALW**	10	10	10	5	200	150	120
DOT–105A300*		[c]10	[c]10	[c]5	300	[c]225	180
DOT–105A300W**	10	10	10	5	300	225	180
DOT–105A400*		[c]10	[c]10	[c]5	400	[w]300	240
DOT–105A500*		[c]10	[c]10	[c]5	500	[c]375	300
DOT–105A600*		[c]10	[c]10	[c]5	600	450	360
DOT–111A60ALW1*	10	10	10	10	60	35	28

RETEST TABLE 1—Continued

Specification	Car age and retest interval (years [1])			Retest pressure—p.s.i.			
	Tank and interior heater systems			Pressure relief valve			
	Up to 10 years old	Over 10 to 22 years old	Over 22 years old	Pressure relief valve	Tank	Start to discharge	Vapor tight
DOT-111A60ALW2[8]	[5]	3	1	(7)	60	35	28
DOT-111A60F1[8]	10	10	10	10	60	35	28
DOT-111A60W1[8]		[20]	10	10	60	35	28
DOT-111A60W5	[5]	[3]	[1]	None	60		
DOT-111A100ALW1[8]	10	10	10	10	100	75	60
DOT-111A100ALW2[8]	5	3	1	(7)	100	75	60
DOT-111A100F1[8]		10	10	10	100	75	60
DOT-111A100W1[8]		[20]	10	10	100	75	60
DOT-112A340W[8]	10	10	10	5	340	[255]	[204]
DOT-112A400F[8]		10	10	5	400	300	240
DOT-112A400W[8]	10	10	10	5	400	[300]	[240]
DOT-112A500W[8]	10	10	10	5	500	[375]	300
DOT-114A340W[8]	10	10	10	5	340	[255]	[204]
DOT-114A400W[8]	10	10	10	5	400	[300]	[240]
DELETE							
DOT-103CAL		2	1	(7)	60	35	28
EMERG. USG-A, B, and C		10	10	10	60	25	
ARA-III		10	10	60	[25]	20	
ARA-III acid (unlined)			1	None	60		
ARA-III (rubber lined)			(1)	None	60		
ARA-IV			10	10	60	[25]	20
ARA-IV-A			10	5	100	35	28
ARA-V			[10]	[5]	300	[225]	180

[1] Class 103 and 104 tank cars built before January 1, 1959 and equipped with 25 psi pressure relief valves may remain in service with start-to-discharge retested at 25 psi, vapor tight at 20 psig.

[2] Nickel clad tanks in bromine service and any glass, rubber, lead, or elastomeric lined tank need not be periodically retested, but the interior heater systems and pressure relief valves must be retested at the prescribed interval. For testing requirements for glass, rubber or other lined tanks see paragraphs (c)(9), (c)(11), and (c)(12) of this section.

[3] When the retest interval changes due to the age of the tank, the new retest interval must be measured from the last retest date but in no case shall the time between retests exceed the interval specified in Table 1 for the age of the tank. The retest of a tank because of repairs may alter the normal retest schedule specified in the table.

[4] Tanks must be retested at the time they are converted from existing pressure type tanks to a non-pressure specification. When tanks are converted to DOT 103A-ALW from DOT 103ALW or AAR 201A70W, the tank must be retested at the time of conversion if welding on the tank is performed. For future retests of converted tanks, the retest interval must be selected from the table based on the age of the tank computed from the date converted instead of the date built. The conversion date must be stenciled on the tank below the built date.

[5] When tanks are converted to DOT-103AW from existing DOT-103W or 103BW tanks, the tank must be retested at time of conversion if welding on the tank is performed. Lined tanks must be retested before the lining is renewed or after the lining is removed. For future retests, the retest interval must be selected from the Table as though the tank were 10 years old at time of conversion. The conversion date must be stenciled on the tank below the built date.

[6] Tank cars stenciled 105S, 105J, 112S, 112T, 112J, 114S, 114T or 114J have the same retest requirements as 105A, 112A, or 114A, respectively.

[7] Pressure tank cars authorized for corrosive materials service must have tank and pressure relief valve retested when removed from the service and prior to return to compressed gas service.

[8] Tank cars stenciled 105S or 105J have the same retest requirements as 105A.

7. In § 173.32, the introductory text of paragraph (a) is revised to read as follows:

§ 173.32 Qualification, maintenance and use of portable tanks other than specification IM portable tanks.

(a) Except as otherwise provided in this section, each portable tank used for the transportation of hazardous materials must conform to the requirements of the specification and regulations for the transportation of the particular commodity. Except for Specification 56 and 57 portable tanks, a manufacturer's data report of the portable tank must be procured and retained in the files of the owner during the time that such portable tank is used for such service.

8. In § 173.32a, paragraph (e) is removed and reserved as follows:

§ 173.32a Approval of Specification IM portable tanks.

(e) [Reserved]

9. In § 173.33, the introductory text of paragraph (d)(12) and paragraph (d)(13) is revised to read as follows:

§ 173.33 Qualification, maintenance, and use of cargo tanks.

(d) * * *

(12) *Reports required.* Each motor carrier operating an MC 330 or MC 331 cargo tank subject to paragraph (d)(10) of this section must make a written report concerning the cargo tank following the required inspection or test. This reporting requirement does not apply to a motor carrier leasing a cargo tank for less than 30 days if the lessor has submitted the reports required by this section. The report for each cargo tank must contain the following:

(13) *Report retention.* A copy of the report required by this section must be retained by the carrier at its principal place of business during the period the tank is in the carrier's service and for 1 year thereafter. However, upon a written request to, and with the approval of the Director, Regional Motor Carrier Safety Office, for the region in which a motor carrier has its principal place of business, the carrier may maintain the reports at a regional or terminal office.

§ 173.34 [Amended]

10. In § 173.34, paragraph (c)(4) is removed.

11. In § 173.53, the introductory text of paragraph (h) is revised to read as follows:

§ 173.53 Definition of class A explosives.

(h) *Type 8.* Any device or solid or liquid compound or mixture which is not specifically included in any of the above types, and which under special conditions may be so designated and examined by the Bureau of Explosives or the Bureau of Mines, U.S. Department of the Interior, and approved by the Associate Director for HMR. Example: Shaped charges, commercial.

12. In § 173.91, paragraph (a)(6) is revised to read as follows:

§ 173.91 Special fireworks.

(a) * * *

(6) Illuminating projectiles, incendiary projectiles, and smoke projectiles exceeding 90 pounds each, or of not less than 4½ inches in diameter, may be offered for transportation without being boxed, only by, for, or to the Department of Defense (DOD) of the U.S. Government when securely blocked and braced in accordance with methods prescribed by DOD.

(i) Illuminating projectiles, incendiary projectiles, and smoke projectiles less than 4½ inches in diameter may be offered for transportation without being boxed, when palletized, only by, for, or to the Department of Defense (DOD) of the U.S. Government when securely blocked and braced in accordance with methods prescribed by DOD.

13. In § 173.107, the heading and paragraph (h) are revised and paragraph (b) is removed and reserved to read as follows:

§ 173.107 Primers, percussion caps, and grenades, empty, primed.

* * * * *

(b) [Reserved]

* * * * *

(h) No restrictions other than proper shipping name, packaging and marking are prescribed in this subpart for the transportation of those materials named in paragraph (a) of this section.

14. In § 173.119, paragraphs (a)(18), (g) and (h) are removed and reserved; footnotes 3 and 4 in paragraph (a), and footnote 3 in paragraph (f) are removed; Note 3 following paragraph (f)(4) is revised; and paragraphs (a)(12), (a)(17), (e)(2), (e)(3), the introductory text of paragraph (f), and paragraphs (f)(3), (f)(4) and (f)(5) are revised to read as follows:

§ 173.119 Flammable liquids not specifically provided for.

(a) * * *

(12) Specification 103,[2] 103W, 103ALW, 103DW, 104,[2] 104W, 105A100,[2] 105A100ALW, 105A100W, 106A500X, 106A800XNC, 106A800NCI,[2] 109A100ALW, 109A300W, 110A500W, 111A60ALW1, 111A60F1, 111A60W1, 111A100W3, 111A100W4, 111A100W6, 112A200W, 112A400F, 114A340W, 115A60W1, 115A60ALW, or 115A60W6, (§§ 179.100, 179.101, 179.200, 179.201, 179.220, 179.300, 179.301 of this subchapter) tank cars. For cars equipped with expansion domes, manway closures must be so designed that pressure will be released automatically by starting the operation of removing the manway cover. Openings in tank heads to facilitate application of lining are authorized on tank cars constructed before January 1, 1975. These openings must be closed in an approved manner (§ 179.3 of this subchapter).

* * * * *

(17) Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330 or MC 331 (§§ 178.340, 178.341, 178.342, 178.343, 178.337 of this subchapter) cargo tanks, subject to the following conditions:

(i) Bottom outlets on Specification MC 304, MC 310, MC 311 or MC 312 cargo tanks must conform to § 178.342–5(a). Bottom outlets on Specification MC 330 cargo tanks must be equipped with valves conforming to § 178.337–11(c).

(ii) Specification MC 319, MC 310 or MC 312, cargo tanks must be equipped with pressure relief devices conforming to § 178.342–4. Safety relief devices on Specification MC 330 cargo tanks must conform with § 178.337–9.

(iii) Necessary interior cleaning of cargo tanks must be performed between changes in lading.

(18) [Reserved]

* * * * *

(e) * * *

(2) Specification 103,[2] 103W, 103ALW, 103DW, 104,[2] 104W, 105A100,[2] 105A100ALW, 105A100W, 106A500X, 106A800XNC, 106A800NCI,[2] 109A100ALW, 109A300W, 110A500W, 111A60ALW1, 111A60F1, 111A60W1, 111A100W3, 111A100W4, 111A100W6, 112A200W, 112A400F, 114A340W, 115A60W1, 115A60W6, or 115A60ALW, (§§ 179.100, 179.101, 179.200, 179.201, 179.220, 179.221, 179.300, 179.301 of this subchapter) tank cars. Openings in tank heads to facilitate the application of linings are authorized on tank cars constructed before January 1, 1975. These openings must be closed in an approved manner (§ 179.3 of this subchapter).

(3) Specification MC 304, MC 307, MC 310, MC 311, MC 312, MC 330, or MC 331 (§§ 178.340, 178.342, 178.343, 178.337 of this subchapter) cargo tanks, subject to the following conditions:

(i) Bottom outlets on Specification MC 304, MC 310, MC 311 cargo tanks must conform to § 178.342–5. Bottom outlets on Specification MC 330 cargo tanks must be equipped with valves conforming to § 178.337–11(c).

(ii) MC 310, MC 311 or MC 312 cargo tanks must have a design pressure of at least 25 psig. These cargo tanks must be equipped with pressure relief devices conforming to § 178.342–4.

(iii) MC 330 cargo tanks must be equipped with pressure relief devices conforming to § 178.337–9.

(iv) Each safety relief device must be set to discharge at no less than 25 psig.

(v) Necessary interior cleaning of cargo tanks must be performed between changes in lading.

* * * * *

(f) *When the vapor pressure exceeds 27 pounds per square inch absolute at 100 °F.* When the vapor pressure exceeds 27 psia at 100 °F., but does not exceeds 40 psia (see note 1) at 100 °F., flammable liquids must be packed in specification containers as follows:

* * * * *

(3) Specification 105A100,[2] 105A100ALW, 105A100W, 106A500X, 106A800XNC, 106A800NCI,[2] 109A100ALW, 109A300W, 110A500W, 111A100W4, 112A200W, 112A400F, or 114A340W, §§ 179.100, 179.101, 179.200, 179.210 (179.300, 179.301 of this subchapter) tank cars. (See Note 1 of this paragraph.) Specification 104 [2], 104W, and 111A100W3 (§§ 179.200, 179.201 of this subchapter), tank cars are authorized under conditions prescribed in paragraph (f)(4), of this section and Note 2 of this paragraph. Openings in tank heads to facilitate the application of linings are authorized on tank cars constructed before January 1, 1975. These openings must be closed in an approved manner (§ 179.3 of this subchapter).

(4) Specification 103 [2], 103W, 103ALW, 104,[2], 104W, 111A60ALW1, 111A60F1, 111A60W1, 115A60W1, 115A60W6, or 115A60ALW (§§ 179.200, 179.201, 179.220, 179.221, of this subchapter) tank cars.

Note 3.—Spec. 104 [2] or 104–W tank cars are authorized provided they are equipped with approved fittings designed to provide for the loading, unloading, gauging, sampling, and taking temperature of the contents without removing the manway closure; that pressure relief valves are set to open at pressure of 35 pounds gauge (with a tolerance of plus or minus 3 pounds), and are vapor tight at 28 pounds per square inch gauge pressure; that bottom discharge outlets are of the same type as authorized for specification 104 [2] or 104–W tank cars; and that there is stenciled on each side of the tank above the specification mark, in letters and figures at least 1 inch high. "For vapor pressures not exceeding 40 pounds per square inch, absolute, at 100 °F." Specification ICC–104 [2] or 104–W tank cars, equipped with pressure relief valves set to open at pressure of 35 pounds gauge (with a tolerance of plus or minus 3 pounds) and which are vapor tight at 28 pounds per square inch gauge pressure are authorized provided that they are stenciled as required above.

(5) Specification cargo tanks as prescribed in paragraph (e)(3) of this section.

* * * * *

(g) [Reserved]

(h) [Reserved]

* * * * *

15. In § 173.123, paragraph (a)(5) is revised to read as follows:

§ 173.123 Ethyl chloride.

(a) * * *

(5) Specification 105A100,[1] 105A100W, 111A100W4, 112A200W, 112A400F, or 114A340W (§§ 179.100, 179.101, 179.200, 179.201 of this subchapter) tank cars. Specification 114A340W tank cars must not be equipped with any bottom outlet. Bottom washout permitted. (See Note 1 following § 173.119(f)(3).) (See § 173.10 for shipping instructions.)

* * * * *

16. In § 173.124, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 173.124 Ethylene oxide.

(a) * * *

(1) Specification 15A, 15B, 15C, 16A, or 19B (§§ 178.168, 178.169, 178.170, 178.185, 178.191 of this subchapter) wooden boxes and Spec. 12B (§ 178.205 of this subchapter) fiberboard boxes, with inside metal packaging not over 12-

ounce capacity each. Each inside packaging must have a minimum bursting strength of 180 psig as prepared for shipment and be provided with a safety vent having a minimum diameter of 0.1023 inch and closed with fusible metal having a yield temperature of 157° to 170 °F. The safety vent opening must be hot tinned before filling with fusible metal. Filling must be such that the container will not be liquid full below 185 °F. Each inside packaging must be completely insulated except for top closure. Not more than 12 inside packages nor more than one layer of packagings may be packed in one outside box.

(2) Cylinders as prescribed for any compressed gas, except acetylene, not exceeding 30 gallons nominal water capacity, which meet the following requirements: All cylinders must be seamless or steel welded. Cylinders must be equipped with safety devices of the fusible plug type with threaded straight bore orifice, with yield temperature of 157° to 170 °F., having a minimum vent area of 0.0055 square inch per pound of water capacity for packagings not over 1-gallon capacity and 0.0012 square inch per pound of water capacity for all packagings over 1-gallon capacity. Each cylinder must be tested for leakage at a pressure of at least 15 psig with an inert gas before each refilling. Fillings must be such that the packaging will not be liquid full at 185 °F. Pressurizing valves must be provided for all packaging over 1-gallon capacity. Eductor tubes must be provided for all packagings over 5-gallon capacity. Cylinders having a water capacity in excess of 1-gallon must be insulated.

* * * * *

17. In § 173.202, paragraph (a)(1) is revised to read as follows:

§ 173.202 Sodium metal liquid alloy, potassium metal liquid alloy, and sodium potassium liquid alloy.

(a) * * *

(1) Specification 15A, 15B, or 19B (§§ 178.168, 178.169, 178.191 of this subchapter) wooden boxes with inside metal packagings. Inside packagings must be cushioned with incombustible cushioning material. Each inside metal packaging must have been tested hydrostatically to a pressure of not less than 60 pounds per square inch without rupture. Closing devices on inside metal packagings must be protected from injury. Not more than 300 pounds of the material may be shipped in one outside box.

* * * * *

18. In § 173.206, paragraph (c)(2) is revised to read as follows:

§ 173.206 Sodium or potassium, metallic; sodium amide; sodium potassium alloys; sodium aluminum hydride; lithium metal; lithium silicon; lithium ferro silicon; lithium hydride; lithium borohydride; lithium aluminum hydride; lithium acetylide-ethylene diamine complex; aluminum hydride; cesium metal; rubidium metal; zirconium hydride; powdered.

* * * * *

(c) * * *

(2) Specifications 17C, 17H, 37A, or 37B (§§ 178.115, 178.118, 178.131, or § 178.132 of this subchapter) metal drums (single-trip). These drums are authorized for cylindrical blocks which must be at least 2 inches in diameter and not less than 6 inches in length, or rectangular blocks not less than 6 inches in length and not less than 2 inches in any other dimension.

* * * * *

§ 173.238 [Removed and reserved]

19. Section § 173.238, is removed and reserved.

20. In § 173.245, paragraph (a)(25) is revised to read as follows:

§ 173.245 Corrosive liquids not specifically provided for.

(a) * * *

(25) Specification 12A or 12B (§§ 178.210, 178.205 of this subchapter) fiberboard boxes with inside aluminum packagings which must be compatible with the lading.

* * * * *

21. In § 173.252, paragraph (g)(1) is revised to read as follows:

§ 173.252 Bromine.

* * * * *

(g) * * *

(1) Specification 5K (§ 178.88 of this subchapter) nickel drums, of not over 10 gallons capacity each, and containing not more than 225 pounds net weight of bromine, or Specification 5M (§ 178.90 of this subchapter) monel drums, of not over 25 gallons capacity each, and containing not more than 600 pounds net weight of bromine. Drums must be at least 14-gauge throughout and must have chime reinforcement adequate for their protection. All openings must be in one head and the closing parts (plug, cap, flange, etc.) must be of the same metal as the drum. One opening not over 2.3 inches in diameter and one opening not over ¾-inch standard pipe size are permitted. Each drum must be completely emptied and dried before reuse.

* * * * *

22. In § 173.256, paragraph (a)(3) is revised to read as follows:

§ 173.256 Compounds, cleaning, liquid.

(a) * * *

(3) Specification 22B (§ 178.197 of this subchapter) plywood drums equipped with a liner of rubber, polyethylene or other material impervious to the solution.

* * * * *

23. In § 173.263, paragraph (a)(9) is revised to read as follows:

§ 173.263 Hydrochloric (muriatic) acid; hydrochloric (muriatic) acid mixtures; hydrochloric (muriatic) acid solution, inhibited; sodium chlorite solution (not exceeding 42 percent sodium chlorite) and cleaning compounds, liquids, containing hydrochloric (muriatic) acid.

(a) * * *

(9) Specification 103B,[1] 103BW, or 111A60W5 (§§ 179.200, 179.201 of this subchapter) tank cars. These cars are authorized for acid not over 38 percent strength by weight. A safety relief valve or a safety vent of approved design equipped with frangible disc having ⅛-inch breather hole in center thereof or a safety vent of approved design equipped with carbon discs permitting continuous venting may be used, but may not be used for hydrochloric (muriatic) acid of 22° Baume strength or greater, and other fuming acids.

* * * * *

§ 173.265 [Amended]

24. In § 173.265 in the heading and in paragraphs (a), (b), (c), and (d) the words "Hydrofluorosilicic acid" are revised to read "Fluosilicic acid (hydrofluorosilicic acid) (hydrofluosilicic acid)".

25. In § 173.289, paragraph (a)(2)(i) is revised to read as follows:

§ 173.289 Formic acid and formic acid solutions.

(a)* * *

(2)* * *

(i) Each tank car authorized under this section must be marked "FORMIC ACID" in accordance with the requirements in § 172.330 of this subchapter.

* * * * *

26. In § 173.314, the Table following paragraph (c) is amended by revising the entry "Chlorotrifluoromethane (R-13)" and Note 12 following the Table to read as follows:

§ 173.314 Requirements for compressed gases in tank cars.

* * * * *

(c)* * *

[1] The use of existing tanks authorized but new construction not authorized.

King of gas	Maximum permitted filling density, Note 1	Required tank car, see § 173.31(a)(2) and (3)
Revised		
Chlorotrifluoro-methane (R-13); Note 13.	Note 21	DOT-105A300W, DOT-114A340W, Note 29.

NOTE 12.—For special tank requirements applying to chlorine, see § 179.102-2 of this subchapter. The quantity of chlorine loaded into a single-unit tank car must not exceed 90 tons. Nominal 16- , 30- , 55- , 85- or 90-ton tank car tanks must not be loaded in excess of the normal lading weights. Tank cars built to ICC-105A500 may be stenciled either ICC-105A300 or ICC-105A500; tank cars built to ICC or DOT 105A500W may be stenciled either 105A300W or 105A500W; each tank must be equipped with safety relief valve required by the stenciled specification. Cars not larger than 55-ton chlorine capacity built to ICC-105A300, or ICC-105A300W may be continued in service if equipped with excess flow valves in accordance with § 179.102-2. DOT-105A cars having forge welded anchors must not be used for transportation of chlorine.

* * * * *

27. In § 173.315, the heading of the Table in paragraph (b) is amended by adding "See Note 1" to the second column; the last column of the Table is removed and Note 1 following the Table is revised as follows:

§ 173.315 Compressed gases in cargo tanks and portable tank containers.

* * * * *

(b)* * *

Maximum specific gravity of the liquid material at 60 °F.	Maximum permitted filling density in percent of the water-weight capacity of the tanks (percent) See Note 1	
	1,200 gallons or less	Over 1,200 gallons

NOTE 1.—Filling is permitted by volume provided the same filling density is used as permitted by weight, except when using fixed length dip tube or other fixed maximum liquid level indicators (paragraph (f) of this section), in which case the maximum permitted filling density shall not exceed 97 percent of the maximum permitted filling density by weight contained in the table.

* * * * *

28. In § 173.354, paragraph (a)(5) is revised and paragraph (a)(6) is amended by adding a sentence at the end to read as follows:

§ 173.354 Motor fuel antiknock compound or tetraethyl lead.

(a)* * *

(5) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tanks. (See Note 1). These cargo tanks are authorized for motor fuel antiknock compound only. A frangible disc may be used in series with and inboard of the pressure relief valve. The relief valve and the frangible disc must be set to function in a range of no less than 100 percent and no greater than 110 percent of the maximum allowable working pressure.

(6)* * * A frangible disc may be used in series with and inboard of the pressure relief valve. The relief valve and the frangible disc must be set to function in a range of no less than 100 percent and no greater than 110 percent of the maximum allowable working pressure.

* * * * *

§ 173.417 [Amended]

29. In § 173.417, paragraph (a)(6)(v) is amended by removing the reference "§ 173.350" and inserting, in its place, the reference "§ 178.350".

§ 173.433 [Amended]

30. In § 173.433, Table 9 is amended by removing the title "Table 9—A_3 for Alpha Emitters" and inserting, in its place, the title "Table 9—A_3 Values".

31. In § 173.860, paragraph (c)(5) is added to read as follows:

§ 173.860 Mercury, metallic.

* * * * *

(c)* * *

(5) In manufacturer's original packaging if each item does not contain more than 100 milligrams of mercury per tube and if the outside package does not contain more than one gram total net quantity. Packages conforming to these quantity limitations are not subject to any other requirements of this subchapter.

PART 174—CARRIAGE BY RAIL

32. In § 174.104, paragraphs (a) and (b)(6) are revised to read as follows:

§ 174.104 Class A explosives; car selection, preparation, inspection, and certification.

(a) Except as provided in § 174.101 (b), (n), and (o), Class A explosives being transported by rail may be transported only in a certified and properly placarded closed car of not less than 80,000 pounds capacity, with steel underframes and friction draft gear or cushioned underframe, except that on a narrow-gauge railroad they may be transported in a car of less capacity as long as the car of greatest capacity and strength available is used.

(b) * * *

(6) The car must be carefully swept out before it is loaded. For less-than-carload shipments the space in which the packages are to be loaded must be carefully swept. If evidence of a potential hazardous residue is apparent after the floor has been swept, the carrier must either decontaminate the car or provide a suitable substitute car.

* * * * *

PART 176—CARRIAGE BY VESSEL

§§ 176.76, 176.78, 176.135, 176.150, 176.163 and 176.340 [Amended]

33. In §§ 176.76(a), 176.78(d), 176.135(d), 176.150(b), 176.163(c) and 176.340(a)(3) the codes "GMHM", or "G-MHM" are amended to read "G-MTH".

34. In § 176.305, paragraph (c)(5) is revised to read as follows:

§ 176.305 General stowage requirements.

* * * * *

(c) * * *

(5) Flammable liquids in excess of one ton, except flammable liquids with a flashpoint above 73 °F., may not be transported in any hold or compartment that is fitted with a gooseneck type of vent head.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

35. In § 177.817, paragraphs (a) and (d) are revised to read as follows:

§ 177.817 Shipping papers.

(a) *General requirements.* A carrier may not transport a hazardous material unless it is accompanied by a shipping paper that is prepared in accordance with §§ 172.200, 172.201, 172.202, and 172.203 of this subchapter.

* * * * *

(d) This section does not apply to any material, other than a hazardous substance or a hazardous waste, that is classed as an ORM-A, B, C or D. (See § 172.200 of this subchapter.)

* * * * *

PART 178—SHIPPING CONTAINER SPECIFICATIONS

36. In § 178.24, § 178.24-7 the introductory text of paragraph (a) is revised to read as follows:

§ 178.24 Specification 2U; molded or thermoformed polyethylene containers.

§ 178.24-7 Tests.

(a) Samples taken at random must withstand prescribed tests without breakage or leakage. Tests must be made on each type and size produced at each manufacturing location starting production and repeated each four months. Testing may be performed at a location other than the manufacturing location. The type of tests are as follows:

* * * * *

37. In § 178.27, § 178.27-3 the introductory text of paragraph (a) is revised to read as follows:

§ 178.27 Specification 2TL; polyethylene container.

§ 178.27-3 Type test.

(a) Samples taken at random must withstand prescribed tests without breakage or leakage. Tests must be made on each type and size produced at each manufacturing location starting production and repeated each four months. Testing may be performed at a location other than the manufacturing location. The type of tests are as follows:

* * * * *

38. In § 178.35a, § 178.35a-3 the introductory text of paragraph (a) is revised to read as follows:

§ 178.35a Specification 2SL; molded or thermoformed polyethylene container.

§ 178.35a-3 Type test.

(a) Samples taken at random must withstand prescribed tests without breakage or leakage. Test must be made on each type and size produced at each manufacturing location starting production and repeated each four months. Testing may be performed at a location other than the manufacturing location. The type of tests are as follows:

* * * * *

39. In § 178.37, § 178.37-5 paragraph (a) is amended by revising Note 1 following the first table and adding a Note 2 to read as follows: Note 2 following the second table is removed.

§ 178.37 Specification 3AA; seamless steel cylinders made of definitely prescribed steels or 3AAX; seamless steel cylinders made of definitely prescribed steels of capacity over 1,000 pounds water volume.

§ 178.37-5 Authorized steel.

(a) * * *

Note 1.—A heat of steel made under the above specifications, check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in the following tables are not exceeded.

Note 2.—This designation shall not be restrictive and the commerical steel is limited in analysis as shown in the table.

* * * * *

40. In § 178.44, § 178.44-5, paragraph (a) is amended by revising Note 1 following the table to read as follows:

§ 178.44 Specification 3HT; inside containers, seamless steel cylinders for aircraft use made of definitely prescribed steel.

§ 178.44-5 Authorized steel.

(a) * * *

Note 1.—A heat of steel made under the specifications listed in the first table, check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in the second table are not exceeded.

* * * * *

41. In § 178.46, § 178.46-4 paragraph (d)(12) and § 178.46-8, paragraphs (e)(2) and (e)(3) are revised to read as follows:

§ 178.46 Specification 3AL; seamless cylinders made of definitely prescribed aluminum alloys.

§ 178.46-4 Duties of the Inspector.

* * * * *

(d) * * *

(12) Furnishing complete test reports required by this specification to the maker of the cylinder and, upon request, to the purchaser. The test report must be retained by the Inspector for fifteen years from the original test date of the cylinder.

* * * * *

§ 178.46-8 Openings.

* * * * *

(e) * * *

(2) Taper threads, when used, must be either the American Standard Pipe Thread (NPT) type conforming with Federal Standard H-28 (1978), Section 7, or the National Gas Taper Thread (NGT) type conforming with Federal Standard H-28 (1978), Section 7 and 9.

(3) Straight threads, when used, must conform with Federal Standard H-28 (1978) as follows:

(i) National Gas Straight Thread (NGS) type must conform with Sections 7 and 9.

(ii) Unified Thread (UN) type must conform with Section 2.

(iii) Controlled Radius Root Thread (UNJ) type must conform with Section 4.

* * * * *

42. In § 178.47, § 178.47-8 paragraph (a) is revised to read as follows:

§ 178.47 Specification 4DS; inside containers, welded stainless steel for aircraft use.

§ 178.47-8 Manufacture.

(a) By best appliances and methods; dirt and scale to be removed as necessary to afford proper inspection; no defect is acceptable that is likely to weaken the finished cylinder appreciably, reasonably smooth and uniform surface finish required. No abrupt change in wall thickness is permitted. Welding procedures and operators must be qualified in accordance with of CGA Pamphlet C-3.

* * * * *

43. In § 178.50, § 178.50-8 paragraph (b) is added to read as follows:

§ 178.50 Specification 4B; welded and brazed steel cylinders.

§ 178.50-8 Manufacture.

* * * * *

(b) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C-3.

44. In § 178.51, § 178.51-8 paragraph (d) is added to read as follows:

§ 178.51 Specification 4BA; welded or brazed steel cylinders made of definitely prescribed steels.

§ 178.51-8 Manufacture.

* * * * *

(d) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C-3.

45. In § 178.53, § 178.53-8 paragraph (b) is added to read as follows:

Section 178.53 *Specification 4D; inside containers, welded steel for aircraft use.*

Section 178.53-8 *Manufacture.*

* * * * *

(b) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C-3.

46. In § 178.54, § 178.54-8 paragraph (a)(2) is revised to read as follows:

§ 178.54 Specification 4B240-FLW; welded or welded and brazed cylinders with fusion-welded longitudinal seam.

§ 178.54-8 Manufacture.

(a) * * *

(2) Longitudinal seams shall be fusion butt welded. This seam shall be double butt welded unless means are provided for accomplishing complete penetration from one side, in which case a butt weld from one side may be used. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C-3.

47. In § 178.55, § 178.55-8, paragraph (d) is added to read as follows:

§ 178.55 Specification 4B240ET; welded and brazed cylinders made from electric resistance welded tubing.

§ 178.55-8 Manufacture.

* * * * *

(d) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C-3.

48. In § 178.56, § 178.56-8 paragraph (d) is added to read as follows:

§ 178.56 Specification 4AA480; welded steel cylinders made of definitely prescribed steels.

§ 178.56-8 Manufacture.

* * * * *

(d) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C-3.

49. In § 178.57, § 178.57–8 paragraph (e) is added and in § 178.57–10 paragraph (a)(5) is revised to read as follows:

§ 178.57 Specification 4L; welded cylinders, insulated.

§ 178.57–8 Manufacture.

* * * * *

(e) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3. In addition, impact test of the weld shall be performed in accordance with § 178.57–17(d) as part of the qualification of each welding procedure and operator.

§ 178.57–10 Wall thickness.

(a) * * *

(5) Further provided that wall stress for cylinders having longitudinal seams must not exceed 85 percent of the above value, whichever applies.

* * * * *

50. In § 178.58, § 178.58–8 paragraph (a) is revised to read as follows:

§ 178.58 Specification 4DA; inside containers, welded steel for aircraft use.

§ 178.58–8 Manufacture.

(a) By best appliances and methods; dirt and scale to be removed as necessary to afford proper inspection; no defect is acceptable that is likely to weaken the finished container appreciably. A reasonably smooth and uniform surface finish is required. No abrupt change in wall thickness is permitted. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

* * * * *

51. In § 178.59, § 178.59–7 paragraph (b) is added to read as follows:

§ 178.59 Specification 8; steel cylinders with approved porous filling for acetylene.

§ 178.59–7 Manufacture.

* * * * *

(d) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

52. In § 178.60, § 178.60–7 paragraph (b) is added to read as follows:

§ 178.60 Specification 8AL; steel cylinders with approved porous filling for acetylene.

§ 178.60–7 Manufacture.

* * * * *

(b) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

53. In § 178.61, § 178.61–8 paragraph (d) is revised and in § 178.61–15 paragraph (a) is revised to read as follows:

§ 178.61 Specification 4BW; welded steel cylinders made of definitely prescribed steels with electric-arc welded longitudinal seam.

§ 178.61–8 Manufacture.

* * * * *

(d) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

* * * * *

§ 178.61–15 Physical tests.

(a) Specimens must be taken from one cylinder after heat treatment and chosen at random from each lot of 200 or less, as follows:

(1) *Body specimen.* One specimen must be taken longitudinally from the body section at least 90 degrees away from the weld.

(2) *Head specimen.* One specimen must be taken from either head on a cylinder when both heads are made of the same material; however—

(i) If the two heads are made of differing materials, a specimen shall be taken from each head; and

(ii) If due to welded attachments on the top head there is insufficient surface from which to take a specimen, it may be taken from a representative head of the same heat treatment as the test cylinder.

* * * * *

54. In § 178.65, § 178.65–5 paragraph (b) is revised and in 178.65–6 paragraph (d) is added to read as follows:

§ 178.65 Specification 39; non-reusable (non-refillable) cylinder.

§ 178.65–5 Material; steel or aluminum.

* * * * *

(b) Aluminum: Aluminum is not authorized for service pressures in excess of 500 p.s.i.g. The analysis of the aluminum must conform to the Aluminum Association standard for alloys 1060, 1100, 1170, 3003, 5052, 5086, 5154, 6061, and 6063 as specified in its publication entitled "Aluminum Standards and Data" (7th edition dated June 1982).

* * * * *

§ 178.65–6 Manufacture.

* * * * *

(d) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

55. In § 178.80, § 178.80–11 is revised, § 178.80–12 is removed and reserved and in § 178.80–13 the introductory text is revised to read as follows:

§ 178.80 Specification 5; steel barrels or drums.

§ 178.80–11 Marking.

(a) Each barrel or drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached by drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT–5.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first. (For example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minumum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.80–12 [Reserved]

§ 178.80–13 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

56. In § 178.81, § 178.81–11 is revised, § 178–81–12 is removed and reserved, and the introductory text of paragraph

(a) of § 178.81–13 is revised to read as follows:

§ 178.81 Specification 5A; steel barrels or drums.

§ 178.81–11 Marking.

(a) Each barrel or drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows

(1) DOT–5A.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first. (for example, 18/16–55–83 for body 18 gauge and head 16 gauge.)

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.81–12 [Reserved]

§ 178.81–13 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

57. In § 178.82, § 178.82–11 is revised, § 178.82–12 is removed and reserved, and the introductory text of paragraph(a) of § 178.82–13 is revised to read as follows:

§ 178.82 Specification 5B; steel barrels or drums.

§ 178.82–11 Marking.

(a) Each barrel or drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT–5B.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When—the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.82–12 [Reserved]

§ 178.82–13 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

58. In § 178.83, § 178.83–11 is revised, § 178.83–12 is removed and reserved, and the introductory text of paragraph (a) of § 178.83–13 is revised to read as follows:

§ 178.83 Specification 5C; steel barrels or drums.

§ 178.83–11 Marking.

(a) Each barrel or drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT–5C.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.83–12 [Reserved]

§ 178.83–13 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The test must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or

for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

59. In § 178.88, § 178.88-10 is revised, § 178.8-11 is removed and the introductory text of paragraph (a) of § 78.88-12 is revised to read as follows:

§ 178.88 Specification 5K; nickel barrels or drums.

§ 178.88-10 Marking.

(a) Each barrel or drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring or drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT-5K.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letter HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18-55-83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16-55-83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.88-11 [Reserved]

§ 178.88-12 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The test must be repeated every 12 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 2 years, whichever period is shorter. The type tests are as follows:

* * * * *

60. In § 178.89, § 178.89-9 is revised, § 178.89-10 is removed and reserved, and the introductory text of paragraph (a) of § 178.89-11 is revised to read as follows:

§ 178.89 Specification 5L steel barrels or drums.

§ 178.89-9 Marking.

(a) Each barrel or drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT-5L.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets are identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18-55-83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16-55-83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.89-10 [Reserved]

§ 178.89-11 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

61. In § 178.90, § 178.90-10 is revised, § 178.90-11 is removed and reserved, and the introductory text of paragraph (a) of § 178.90-12 is revised to read as follows:

§ 178.90 Specification 5M; monel drums.

§ 178.90-10 Marking.

(a) Each drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT-5M.

(2) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used must be registered with the Associate Director for HMR.

(3) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18-55-83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16-55-83 for body 18 gauge and head 16 guage).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.90-11 [Reserved]

§ 178.90-12 Type tests.

(a) Samples taken a random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 12 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

62. In § 178.92, § 178.92-12 is revised and the introductory text of paragraph (a) of § 178.92-13 is revised to read as follows:

§ 178.92 Specification 5P; lagged steel drums.

§ 178.92–19 Marking.

(a) Each drum must be marked by embossing on a permanent head or on a permanently attached head protection ring) with clearly legible raised characters as follows:

(1) DOT–5P.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designated on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.92–13 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 12 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

63. In § 178.98, § 178.98–9 is revised, § 178.98–10 is removed and reserved, and the introductory text of paragraph (a) of § 178.98–11 is revised to read as follows:

§ 178.98 Specification 6B; steel barrels or drums.

§ 178.98–9 Marking.

(a) Each barrel or drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT–6B.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.98–10 [Reserved]

§ 178.98–11 Type tests.

(a) Samples taken at random and closed as for use shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

64. In § 178.99, § 178.99–9 is revised, § 178.99–10 is removed and reserved, and the introductory text of paragraph (a) of § 178.99–11 is revised to read as follows:

§ 178.99 Specification 6C; steel barrels or drums.

§ 178.99–9 Marking.

(a) Each barrel or drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT–6C.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.99–10 [Reserved]

§ 178.99–11 Type test.

(a) Samples taken at random and closed as for use, shall withstand the prescribed test without leakage. Each packaging design type must successfully pass the test before the packaging is used. The tests must be repeated every 4 months. a packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year whichever period is shorter. The type test are as follows:

* * * * *

65. In § 178.100, § 178.100–9 is revised, § 178.100–10 is removed and reserved, and the introductory text of paragraph

(a) of § 178.100–11 is revised to read as follows:

§ 178.100 Specification 6J; steel barrels or drums.

§ 178.100–9 Marking.

(a) Each barrel or drum must be marked by embossing on a permanent head (or by embossing or die stamping of footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT–6J.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.100–10 [Reserved]

§ 178.100–11 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

66. In § 178.102, § 178.102–4 is revised to read as follows:

§ 178.102 Specification 6D; cylindrical steel overpack, straight sided, for inside plastic container.

§ 178.102–4 Marking.

(a) Each steel overpack must be marked by embossing on a permanent head with clearly legible raised characters as follows:

(1) DOT–6D.

(2) If the steel overpack is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge to the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is revised.

67. In § 178.107, § 178.107–9 is revised, § 178.107–10 is removed, and reserved and the introductory text of paragraph (a) of § 178.107–11 is revised to read as follows:

§ 178.107 Specification 42B; aluminum drums.

§ 178.107–9 Marking.

(a) Each drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT–42B.

(2) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(3) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.107–10 [Reserved]

§ 178.107–11 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

68. In § 178.109, § 178.109 is revised, § 178.109–10 is removed and reserved, and the introductory text of paragraph (a) of § 178.109–11 is revised to read as follows:

§ 178.109 Specification 42D; aluminum drums.

§ 178.109–9 Marking.

(a) Each drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT–42D.

(2) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(3) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first. (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.109–10 [Reserved]

§ 178.109–11 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year whichever period is shorter. The type tests are as follows:

* * * * *

69. In § 178.115, § 178.115–10 is revised, § 178.115–11 is removed and reserved, and the introductory text of paragraph (a) of § 178.115–12 is revised to read as follows:

§ 178.115 Specification 17C; steel drums.

§ 178.115–10 Marking.

(a) Each drum must be marked by embossing on a permanent head (or by embossing or die stamping on footrings on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT–17C and the letters STC located near the DOT mark to indicate a single-trip drum.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.115–11 [Reserved]

§ 178.115–12 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

70. In § 178.116, § 178.116–10 is revised, § 178.115–16 is removed and reserved, and the introductory text of paragraph (a) of § 178.116–12 is revised to read as follows:

§ 178.116 Specification 17E; steel drums.

§ 178.116–10 Marking

(a) Each drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT-17E and the letters STC located near the DOT mark to indicate a single-trip drum.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designating on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first. (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.116–11 [Reserved]

§ 178.116–12 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

71. In § 178.117, § 178.117–9 paragraph (e) is added, § 178.117–11 is revised, § 178.117–12 is removed and reserved, and the introductory text of paragraph (a) of § 178.117–13 is revised to read as follows:

§ 178.117 Specification 17F; steel drums.

§ 178–117–9 Closures.

* * * * *

(e) Other types of closures are authorized if they perform without failure under the tests required by this section and a record of the tests is retained during the period the closure is in use.

§ 178.117–11 Marking.

(a) Each drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT-17F and the letters STC located near the DOT mark to indicate a single-trip drum.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first. (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.117–12 [Reserved]

§ 178.117–13 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

72. In § 178.118, in § 178.118–10, paragraphs (a)(1) through (a)(3) are revised and (a)(4) and (b) are added, § 178.118–11 is removed and reserved, and the introductory text of paragraph (a) of § 178.118–12 is revised to read as follows:

§ 178.118 Specification 17H; steel drums.

§ 178.118–10 Marking.

(a) * * *

(1) DOT–17H and the letters STC located near the DOT mark to indicate a single-trip drum.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first. (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.118–11 [Reserved]

§ 178.118–12 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

73. In § 178.130, in § 178.130–8 is revised, § 178.130–9 is removed and reserved, and the introductory text of paragraph (a) of § 178.130–10 is revised to read as follows:

§ 178.130 Specification 37K; steel drums.

§ 178.130–8 Marking.

(a) Each drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring or drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT–37K and the letters STC located near the DOT mark to indicate a single-trip drum.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first. (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.130–9 [Reserved]

§ 178.130–10 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

74. In § 178.131, § 178.131–9 is revised, § 178.131–10 is removed and reserved, and the introductory text of paragraph (a) of § 178.131–11 is revised to read as follows:

§ 178.131 Specification 37A; steel drums.

§ 178.131–9 Marking.

(a) Each drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT–37A and the letters STC located near the DOT mark to indicate a single-trip drum.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during

manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol or person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§178.131–10 [Reserved]

§ 178.131–11 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

75. In § 178.132, § 178.132–9 is revised, § 178.132–10 is removed and reserved, and the introductory text of paragraph (a) of § 178.132–11 is revised to read as follows:

§ 178.132 Specification 37B; steel drums.

§ 178.132–9 Marking.

(a) Each drum must be marked by embossing on a permanent head (or by embossing or die stamping on footring on drums equipped with footrings, or on metal plates securely attached to drum by brazing or welding not less than 20 percent of the perimeter of the plate) with clearly legible raised characters as follows:

(1) DOT–37B and the letters STC located near the DOT mark to indicate a single-trip drum.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge.)

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.132–10 [Reserved]

§ 178.132–11 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are follows:

* * * * *

76. In § 178.133, § 178.133–9 is revised, § 178.133–10 is removed and reserved, and the introductory text of paragraph (a) of § 178.133–11 is revised to read as follows:

§ 178.133 Specification 37P; steel drums with polyethylene liner.

§ 178.133–9 Marking.

(a) Each drum must be marked by embossing on a permanent head with clearly legible raised characters as follows:

(1) DOT–37P and the letters NRC located near the DOT mark to indicate a nonreusable drum.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letter HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first. (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.133–10 [Reserved]

§ 178.133–11 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used.The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

77. In § 178.134, § 178.134–2 the introductory text of paragraph (c) is revised and § 178.134–134–4 is revised to read as follows:

§ 178.134 Specification 37M; cylindrical steel overpack, straight sided for inside plastic container; nonreusable containers.

§ 178.134–2 Construction requirements.

* * * * *

(c) Two holes not exceeding ¼ inch each are permitted diametrically opposite each other in the overpack body immediately below the top chime or immediately above the double seam of the bottom chime or three holes not exceeding 3/16 inch in a diameter on centers 120 degrees apart in the bottom head.

* * * * *

§ 178.134–4 Marking.

(a) Each steel overpack must be marked by embossing on a permanent

head with clearly legible raised characters as follows:

(1) DOT–37M and the letters NRC located near the DOT mark to indicate a nonreusable overpack.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letter HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the guage of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

78. In § 178.135, § 178.135–8 is revised, § 178.135–9 is removed and reserved, and the introductory text of paragraph (a) of § 178.135–10 is revised to read as follows:

§ 178.135 Specification 37C; steel drum.

§ 178.135–8 Marking.

(a) Each drum must be marked by embossing on a permanent head with clearly legible raised characters as follows:

(1) DOT–37C and the letters NRC located near the DOT mark to indicate a nonreusable drum.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.135–9 [Reserved]

§ 178.135–10 Type tests.

(a) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter The type tests are as follows:

* * * * *

79. In § 178.137, §178.137–6 is revised and in § 178.137–7, paragraph (a) is removed and reserved and the introductory text of paragraph (b) is revised to read as follows:

§ 178.137 Specification 37D; steel drum. Nonreusable container. Open-head not authorized.

§ 178.137–6 Marking.

(a) Each drum must be marked by embossing on a permanent head with clearly legible raised characters as follows:

(1) DOT–37D and the letters NRC located near the DOT mark to indicate a nonreusable drum.

(2) If the drum is manufactured of stainless steel, the type of steel used in the body and head sheets as identified by the American Iron and Steel Institute type number, and also the letters HT following the steel designation on barrels or drums subjected to stress relieving or heat treatment during manufacture (for example, 304, 316, 304 HT). This mark should be near the DOT mark.

(3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(4) The gauge of the metal in the thinnest part, the rated capacity in gallons, and the year of manufacture (for example, 18–55–83). When the gauge of the metal in the body differs from that in the heads, both must be indicated with a slanting line between them and with the gauge of the body indicated first (for example, 18/16–55–83 for body 18 gauge and head 16 gauge).

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.137–7 Type tests.

(a) [Reserved]

(b) Samples taken at random and closed as for use, shall withstand the prescribed tests without leakage. Each packaging design type must successfully pass the tests before the packaging is used. The tests must be repeated every 4 months. A packaging design type is defined by the design, size, material, thickness, and manner of construction, but may include various surface treatments. A type may also include packagings which differ from the design type only in their lesser design heights. The samples last tested must be retained until further tests are made, or for 1 year, whichever period is shorter. The type tests are as follows:

* * * * *

80. In § 178.140, § 178.140–6 is revised and § 178.140–7 is removed and reserved to read as follows:

§ 178.140 Specification 13; metal kegs.

§ 178.140–6 Marking.

(a) Each metal keg must be marked by embossing on a permanent head with clearly legible raised characters as follows:

(1)DOT–13.

(2) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be registered with the Associate Director for HMR.

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

§ 178.140–7 [Reserved]

81. In § 178.141, § 178.141–7 is revised to read as follows:

§ 178.141 Specification 13A; metal drums.

§ 178.141–7 Marking.

(a) Each drum must be marked by embossing on a permanent head with clearly legible raised characters as follows:

(1) DOT–13A.

(2) Name of symbol of person making the mark specified in paragraph (a)(1) of this section. A symbol, if used, must be

registered with the Associate Director for HMR.

(b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.

82. In § 178.251, § 178.251–3 paragraph (d) is revised to read as follows:

§ 178.251 General design and construction requirements applicable to specification 56 (§ 178.252) and 57 portable tanks (§ 178.253).

§ 178.251–3 General construction requirements.

* * * * *

(d) *Compliance test.* Compliance with the requirements contained in paragraph (b) or (c) of this section for the welded joints must be determined by preparing two test specimens from materials and fabrication techniques representative of those to be used in each tank. Each specimen must be tested to failure under tension. Each test speciment must be prepared and tested in accordance with ASTM Standard E8–81 for metallic materials and ASTM Standard B557–81 for aluminum and magnesium-alloy products. As a minimum, one pair of representative test specimens, consisting of the minimum and maximum thickness for each type of material used, may represent all the related tanks manufactured in the same shop within 12 months after the tests on the samples have been successfully completed. The butt welded specimens tested may be considered as qualifying other types or combinations of types of welds using the same filler material and welding process as long as parent metals are the same.

83. In § 178.255, § 178.255–8 paragraph (a) is revised and in § 178.255–15 the introductory text of paragraph (a) is revised to read as follows:

§ 178.255 Specification 60; steel portable tanks

§ 178.255–8 Safety devices.

(a) See § 173.315(i) of this subchapter.

* * * * *

§ 178.255–15 Report.

(a) A copy of the manufacturer's data report required by the Code (See § 178.245–1(a)) under which the tank is fabricated must be furnished to the owner for each new tank.

* * * * *

84. In § 178.337, § 178.337–17 the first sentence in paragraph (a) is revised to read as follows:

§ 178.337 Specification MC 331; cargo tanks constructed of steel, primarily for transportation of compressed gases as defined in the Compressed Gas Section

§ 178.333–17 Marking.

(a) *Metal identification plate.* Each tank shall have a noncorrosive metal plate permanently affixed by brazing or welding around its perimeter, on the left side near the front, in a place readily accessible for inspection and maintained legible. * * *

* * * * *

85. In § 178.338, § 178.338–18, the first sentence in paragraph (a) and (b) are revised to read as follows:

§ 178.338 Specfication MC 338; insulated cargo tank.

§ 178.338–18 Marking.

(a) *Nameplate.* On the left side near the front of each tank a corrosion resistant metal nameplate must be permanently affixed by brazing or welding around its perimeter. * * *

* * * * *

(b) *Specification plate.* An additional plate, in the form specified in paragraph (a) of this section, must be welded, brazed, or riveted to the jacket on the left side near the front, or at the control station, in a position readily legible to operating personnel. * * *

* * * * *

86. § 178.340, § 178.340–10 the second sentence in paragraph (b) is revised read as follows:

§ 178.340 General design and construction requirements applicable to specifications MC 306 (§ 178.341), MC 307 (§ 178.342) and MC 312 (§ 178.343) cargo tanks.

§ 178.340–10 Certification.

* * * * *

(b) *Metal certification plate.* * * * The metal certification plate, not subject to corrosion, must be located on the left side, near the front, in a place readily accessible for inspection. * * *

* * * * *

87. In § 179.200, § 179.200–15 paragraph (a) is revised to read as follows:

§ 179.200 General specifications applicable to non-pressure tank car tanks (classes DOT–103, 104, and 111).

§ 179.200–15 Closures for manways.

(a) Manway covers must be of approved type.

* * * * *

§ 179.201–1 [Amended]

88. In § 179.201, the Table in § 179.201–1 is amended by removing the reference to 179.202–1 for DOT Specification 103ALW, 103DW, 103W, 104W, 111A60ALW1, 111A100W1,[1] 111A100W3, 111A100W4 and 111A100W6; for specifications 103BW, 111A60W5 and 111A100W5 on the line entry "Safety relief devices (see § 179.200–18)" the word "vent" is changed to read "valve or vent".

89. In § 179.202, § 179.202–1 is revised to read as follows:

§ 179.202 Special commodity requirements for non-pressure tank car tanks.

§ 179.202–1 Flammable liquids not specifically provided for.

Tank cars used to transport flammable liquids not specifically provided for must have manway closures so designed that pressure will be released automatically by starting the operation of removing the manway cover.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1)

Issued in Washington, D.C., on February 28, 1985.

L.D. Santman,

Director, Materials Transportation Bureau

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Part III

Environmental Protection Agency

40 CFR Parts 260, 264, 265, and 270
Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, 265, and 270

[SWH-FRL 2756-1]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the definitions in 40 CFR Part 260, Subpart B, and the closure and post-closure care (40 CFR Subpart G) and financial responsibility (40 CFR Subpart H) requirements applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs), and the permitting standards in 40 CFR Part 270. Many of the proposed amandments conform to a settlement agreement signed by EPA and petitioners in *American Iron and Steel Institute* v. *U.S. Environmental Protection Agency* (D.C. Cir., No. 81-1357 and Consolidated Cases). The remainder of the proposed amendments are designed to clarify the regulations and to address the issues that have arisen as EPA has implemented the Subparts G and H regulations, which cover closure and post closure requirements and financial responsiblity, respectively.

DATE: Comments must be submitted on or before May 20, 1985..

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket 3004, Revisd Closure/Financial Standards), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. Comments received by EPA, and all references used in this document, may be inspected in Room S-112-C, U.S. EPA, 401 M Street, SW, Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Carole J. Ansheles, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, (202) 382-4761.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Background

A. Subtitle C of the Resource Conservation and Recovery Act (RCRA)

Subtitle C of RCRA creates a "cradle-to-grave" management system to ensure that hazardous wastes are transported, treated, stored, and disposed in a manner that ensures the protection of human health and the environment. Section 3004 of Subtitle C requires the Administrator of EPA to promulgate

regulations establishing such performance standards, applicable to the owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFS), as may be necessary to protect human health and the environment. Section 3005 requires the Administrator to promulgate regulations requiring each person owning or operating a TDSF to have a permit, and to establish requirements for permit applications.

Under Section 3005(a), on the effective date of the Section 3004 standards, all treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit that implements the Section 3004 standards. Recognizing, however, that not all permits would be issued within six months of the promulgation of Section 3004 standards, Congress created "interim status" in Section 3005(e) of RCRA. Owners and operators of existing hazardous waste TSDFs who qualify for interim status will be treated as having been issued a permit until EPA takes final administrative action on their permit application. Interim Status does not relieve a facility owner or operator of complying with Section 30004 standards. The privilege of carrying on operations in the absence of a permit carries with it the responsibility of complying with appropriate portions of the Section 3004 standards.

B. 40 CFR Part 260, Subpart B; Parts 264 and 265, Subparts G and H

EPA has issued several sets of regulations to implement the various sections of Subtitle C. Part 160 of 40 CFR, among other provisions, includes definitions that apply to all other parts of the regulations. Part 264 provides standards for owners and operators of TSDFs that have been issued RCRA permits. Part 265 provides interim status standards for owners and operators of TSDFs. Part 270 establishes permitting standards for TSDFs. These four parts would be amended by today's proposal.

On May 19, 1980, EPA promulgated Part 265, Subpart G regulations in 45 FR 33242 specifying general standards for closure of interim status TSDFs and four post-closure care of interim status hazardous waste disposal facilities. Financial responsibility requirements for closure and post-closure care and liability coverage (Subpart H) were proposed on that date in 45 FR 33260. On January 12, 1981, EPA added Subparts G and H rules to Part 264 in 46 FR 2849. EPA also made limited changes to Part 265 on January 12, 1981, in response to public comments on subpart G, in 46 FR 2875. Subpart H requirements were subsequently amended in 47 FR 15047 (April 7, 1982) and 47 FR 16554 (April 16, 1982).

C. American Iron and Steel Institute (AISI) Litigation and Settlement

Shortly after EPA published Subpart G and H standards on January 12, 1981, individual companies and industry trade associations filed 17 separate law suits challenging those standards. These cases were consolidated as *American Iron and Steel Institute* v. *U.S. Environmental Protection Agency* (D.C. Cir., No. 81-1357 and Consolidated Cases) ("*AISI* litigation"). On August 16, 1984, the parties (with the exception of several parties who voluntarily dismissed their lawsuits) filed a settlement agreement with the Court.

Under the terms of the settlement agreement, EPA agreed to propose and take final action upon certain amendments to the closure and post-closure regulations which were promulgated on January 12, 1981. Among the regulations EPA is proposing today are those amendments to Subparts G and H required by the *AISI* settlement agreement. In addition, certain of these amendments require conforming amendments to other regulations in Subpart H. Those changes are also being proposed today.

D. Subparts G and H Implementation Experience

Since January 12, 1981, EPA and authorized States have developed considerable experience with the implementation of Subparts G and H. Based on this implementation experience, EPA is today proposing additional changes to the Subparts G and H regulations.

II. Analysis of Rules

The following sections of this preamble include discussions of the major issues and present the rationales for the specific regulations proposed today. The preamble is arranged in a section-by-section sequence for ease of reference. Because many of the regulatory amendments to Interim Status Standards (Part 265) are parallel to the Final Status Standards (Part 264), only those changes to the Part 265 Interim Status Standards that differ from the Part 264 standards are addressed independently.

A. Definitions (Part 260)

1. Active Life (§ 260.10)

Sections 264.112(b) and 265.112(b) currently define "active life" of a facility as that period during which wastes are periodically received. The Agency is proposing to redefine "active life" to extend the period from the initial receipt of hazardous wastes until the Regional Administrator has received the final closure certification.

Sections 264.90(c) and 265.90(b) specify that owners or operators must comply with the Subpart F ground-water monitoring requirements during the active life of the facility and during the post-closure care period. The proposed language clarifies that activities such as ground-water monitoring, run-on and run-off control, and leachate collection must be continued during the closure period. Similarly, cost estimates must include all activities that are required during the closure period as well as those activities conducted to shut down operations.

2. Hazardous Waste Management Unit (§ 260.10)

Section 260.10 currently defines partial closure as closure of a "discrete portion" of a facility; however, "discrete portion" is not defined. Because the Agency is proposing to require explicitly that closure regulations apply to partial closures as well as final closures (see below), the Agency is proposing to define a new term—"hazardous waste management unit"—to help clarify the concept of partial closure of a facility.

The preamble to the July 26, 1982 land disposal regulations (47 FR 32289) informally defined a waste management unit as a contiguous area of land on or in which waste is placed, or the largest area in which there is a significant likelihood of mixing of waste constituents in the same area. Today's proposed definition is consistent with the July 26, 1982 preamble language and expands the term to include tank storage/treatment and container units.

The purpose of defining "hazardous waste management unit" in today's proposal is to (1) incorporate the substance of the definition of a unit discussed in the preamble to the July 26, 1982 regulations into the regulations, and (2) clarify the applicability of the partial closure requirements. A hazardous waste management unit is the smallest area of the facility that isolates wastes within a facility. The proposed definition would define the following as hazardous waste management units: A landfill cell, surface impoundment, waste pile, land treatment area, incinerator, tank system (i.e., individual tank and its associated piping and underlying containment system), and a container storage area. Because each container at a container storage facility does not have its own underlying containment system, the hazardous waste management unit includes both

the containers and the land or pad on which they are placed. A container alone does not constitute a hazardous waste management unit.

The Agency requests comments on the adequacy of the proposed definition of hazardous waste management unit, especially with regard to landfills composed of cells, subcells, or trenches.

3. Partial Closure (§ 260.10)

Partial closure is currently defined in § 260.10 as "the closure of a discrete part of a facility in accordance with the applicable closure requirements of Parts 264 or 265 of this Chapter." Today's proposed definition of "partial closure" together with the new definition of "hazardous waste management unit" clarify the concept of a "discrete part of a facility."

A facility may be partially closed in a number of different ways. Partial closures may involve: (1) closing an entire hazardous waste management unit while another hazardous waste management unit at the facility continues operating (e.g., a surface impoundment or container storage area is closed but a landfill continues to operate), or (2) closing one or more hazardous waste management units while other associated units at the facility remain operational (e.g., one landfill cell of a ten-cell landfill is closed, one tank is removed from a tank farm).

The Agency generally encourages owners or operators to close those portions of their facilities that are no longer in operation, thus minimizing the extent of hazardous waste activities and the associated risks to human health and the environment. At the same time, however, the Agency considers it essential that all portions of a facility, whenever closed, be closed in accordance with all Subpart G and associated technical standards to ensure the continued protection of human health and the environment.

As will be discussed in subsequent sections of this preamble, the Agency is proposing to amend other portions of the Subpart G regulations to require explicitly that certain technical and procedural closure requirements apply to partial closures as well as final closure. As part of this effort, the Agency is proposing to clarify that partial closure occurs upon the closure of hazardous waste management units (discussed above).

4. Final Closure (§ 260.10)

The current regulations do not define final closure. The Agency today is proposing to define final closure to clarify the distinction between partial and final closure.

As discussed immediately above, the Agency is proposing to redefine partial closure as closure of a hazardous waste management unit. A facility is considered partially closed if at least one hazardous waste management unit at the facility continues to operate after other units have been closed in accordance with Subpart G requirements. the Agency is proposing to define *final* closure as closure of *all* hazardous waste management units not otherwise covered by the provisions of § 262.34, in accordance with Subpart G requirements.

B. Final Status Standards (Part 264) and Conforming Changes to Interim Status Standards (Part 265)

1. Closure and Post-Closure Care (Subpart G)

a. *Closure performance standard* §§ 264.111, 265.111). Sections 264.111 and 265.111 establish general closure performance standards applicable to all TSDFs that specify that a facility must be closed in a manner that (1) minimizes the need for further maintenance, and (2) controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated rainfall, or waste decomposition products to the ground or surface waters or to the atmosphere. (The language in §265.111 differs slightly and specifies that the facility must be closed in a manner "that * * * controls, minimizes or eliminates, to the extent necessary to *protect* human health and the environment * * *")

The Agency is proposing to amend §§ 264.111 and 265.111 in three ways. First, the amendments will incorporate into the general standard a reference to the specific closure standards included in 40 CFR §§264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and the parallel interim status provisions. These regulations establish specific closure requirements for containers, tanks, surface impoundments, waste piles, land treatment units, landfills, and incinerators, respectively. Second, the Agency is proposing to make the language in § 265.111 parallel to that in § 264.111. Finally, the proposed rules contain a minor change to the wording of the regulation.

Incorporating references to the specific technical closure requirements is intended to ensure that the general closure performance standard in §§ 264.111 and 265.111 is not interpreted improperly as more or less stringent in particular circumstances than the process-specific standards. The amendment explicitly requires owners or operators of TSDFs to comply with both the general performance standard and the applicable process-specific standards. Owers or operators must close their facilities in a manner that complies with applicable process-specific requirements where specified; the general performance standards apply to activities that are not otherwise addressed by the process-specific standards but are necessary to ensure that the facility is closed in a manner that will ensure protection of human health and the environment.

Although the language in §§ 264.111 and 265.111 currently differs slightly, the Agency has interpreted them to have the same meaning. Nevertheless, for the sake of clarity and consistency, the Agency is proposing to amend § 265.111 to make the language parallel to that in § 264.111.

The Agency is also proposing a minor change to the wording in §§ 264.111 and 265.111. The current regulation specifies that closure must control, minimize, or eliminate the post-closure escape of contaminated rainfall. To clarify the intent of the requirement, the Agency is proposing to replace the phrase "contaminated rainfall" with "contaminated run-off."

b. *Requirement to furnish closure and post-closure plans to the Regional Administrator* (§§ 264.112(a), 264.118(a), 265.112(a), 265.118(a)). Sections 264.112(a), 264.118(a), 265.112(a), and 265.118(a) require the owner or operator of a TSDF to keep a copy of the approved closure and post-closure plan and all revisions at the facility until closure is completed and certified. Post-closure plans must be retained at the facility until the post-closure care period begins.

Petitioners in the *AISI* litigation argued that a hazardous waste management facility may not be properly equipped to maintain files and safeguard closure and post-closure plans and that the plans could be kept more efficiently and safely at nearby offices of the owner or operator of the facility. The EPA, however, was concerned that the plans be available on-site to an inspector on the day of inspection, in order to ensure that the plan is consistent with facility conditions.

Consistent with these dual concerns, the Agency is today proposing to drop the requirement that the closure and post-closure plans be kept at the facility and instead to amend §§ 264.112(a), 264.118(a), 265.112(a), and 265.118(a) to require that such plans be furnished to

the Regional Administrator upon request and also be provided during site inspections. The plan must be provided during site inspections, on the day of inspection. Moreover, the plans must be made available upon request, including request by mail. This provision is consistent with the requirements on the availability of records established in §§ 264.74 and 265.74.

Because the plans for facilities with permits are part of the permit and thus should already be in the Agency's possession, it may be unnecessary to require owners or operators of permitted facilities to make the plans available onsite on the day of inspection. The Agency is requesting comments on whether this requirement should be dropped for permitted facilties.

c. *Clarification of contents of closure plan* (§§ 264.112(b), 265.112(b)). Sections 264.112(a) and 265.112(a) specify that the closure plan must describe how and when a facility will be partially closed, if applicable, and finally closed. The Agency today proposes a number of changes that explicitly require a greater level of detail in the closure plan.

Because the closure plan is the mechanism for ensuring that an owner or operator has made adequate preparations for closing the facility in a manner that will prevent future threats to human health and the environment, it is important that the closure plan explicitly address how each partial closure will satisfy the Subpart G regulations. Moreover, the plans serve as the basis for certifying that closure activities have been conducted in accordance with the approved plan. The proposed amendments to §§ 264.112(b)(1) and 265.112(b)(1) emphasize the closure plan must address explicitly all partial as well as final closure activities. The proposed change supports the Agency's belief that partial closure activities are as important as final closure for ensuring long-term protection of human health and the environment.

The regulations do not currently specify the level of detail required in the closure plan. To eliminate potential ambiguities, the Agency is proposing to clarify the kinds of information that should be included in the closure plan. First, today's proposed rule requires the owner or operator to include in the plan not only an estimate of the maximum inventory over the life of the facility but also a detailed description of the procedures that will be used to handle the hazardous wastes during partial and final closure. For example, the plan must describe all proposed methods for removing, transporting, treating, or disposing of hazardous wastes at partial and final closure.

Second, the proposed rule clarifies that the closure plan must address not only activities required to shut down operations but also all ancillary activities necessary during the partial and final closure periods. Therefore, the Agency is proposing to add the requirement (§§ 264.112(b)(5) and 265.112(b)(5)) that the plan describe all such activities, such as ground-water monitoring, leachate collection, and run-on and run-off control, as applicable.

d. *Description of removal or decontamination of facility structures and soils in closure plan* (§§ 264.112(b)(4), 265.112(b)(4)). Sections 264.112(a)(3) and 265.112(a)(3) require owners or operators to include a description of the steps needed to decontaminate facility equipment at closure. Today's proposed regulatory amendment expands this provision to require that the closure plan also include a description of steps to decontaminate or remove contaminated facility structures and soils.

The process-specific closure regulations applicable to surface impoundments, waste piles, land treatment facilities, and landfills address decontamination of soils in Subparts K, L, M, and N, respectively. EPA is also intending to amend the technical closure standards for tanks to require soil decontamination. At present, the Subpart G regulations explicitly require that the closure plan address decontamination only of facility equipment. As a result of process residues, drips, spills, and deposition of emissions, however, facilities also may have contaminated soils and structures at closure which must be decontaminated or removed. It is, therefore, important that owners or operators prepare a comprehensive plan for decontaminating the facility at closure.

In addition, it is important that the plan describe in detail the procedures that will be used at closure to ensure that the facility is decontaminated. Therefore, the Agency is proposing to amend §§ 264.112(b)(4) and 265.112(b)(4) to specify that the plan must include a discussion of methods for decontaminating the facility, including but not limited to sampling and testing procedures and criteria to be used for evaluating soil contamination levels.

Because drips and spills should be cleaned up as they occur, many of the activities described in the closure plan for removing or decontaminating soils should be similar to those conducted during the operating life of the facility as part of routine operations. For some types of units (e.g., storage) soil testing may not be a routine operating activity and may not be conducted until closure. The Agency intends that the plan should address cleanup of the maximum amount of contaminated soil that the owner or operator expects to be on-site at closure or anytime over the operating life of the facility. Extensive cleanups that may be required at the time of closure as a result of a major contingency, however, need not be addressed in the plan unless the owner or operator is aware of the extent of contamination.

e. *Requirements to estimate the expected year of closure* (§ 264.112(b)(7)). Section 264.112(a)(4) currently requires each owner or operator of a TSDF to include in its written closure plan an estimate of the expected year of closure. Petitioners in the *AISI* litigation argued that compliance with the provision is unnecessarily burdensome for owners or operators of on-site TSDFs, such as storage and treatment facilities associated with industrial processes. In the case of those facilities, the expected date of closure may not be determined by the hazardous waste management activities but by the primary industrial activity with which the facility is associated, and therefore, in many cases, may be difficult to predict.

In the case of owners or operators using a trust fund to provide financial assurance, however, an estimate of the expected year of closure is necessary to enable both the owners or operators and EPA to determine whether appropriate payments are being made into the trust fund. Sections 264.143(a)(3) and 264.145(a)(3) currently require such payments to be made annually by the owner or operator over the term of the RCRA permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter. This provision could not be implemented unless the expected year of closure were specified. Therefore, the Agency is proposing to amend the regulation to retain the requirement that owners or operators estimate the expected year of closure only for owners or operators who use trust funds to establish financial assurance under § 264.143 and whose facilities are expected to close prior to permit expiration. (A discussion of proposed changes to the interim status regulations is included in Section III.C.2 of this preamble.)

f. *Modifications to closure and post-closure plans* (§§ 264.112(c), 264.118(e), 265.112(c), 265.118(g)). Sections

264.112(b) and 265.112(b) currently state that an owner or operator may amend the closure plan at any time during the active life of the facility. The Agency is proposing amendments to make this regulation consistent with other proposed regulatory amendments. In addition, the proposed amendments establish procedures and deadlines for requesting modifications to plans.

Because today's proposed definition of active life expands the period to the end of the closure period, §§ 264.112(b) and 265.112(b), as currently written, would allow owners or operators to request modifications to the closure plans *after* closure has already begun. The Agency considers it important to close facilities as quickly as possible to avoid facility deterioration and potential damage to human health and the environment. Therefore, the Agency is proposing that the language is §§ 264.112(c) and 265.112(c) be revised to retain the intent of the existing provision that the closure plans may only be modified *prior* to the notification of closure or approval of the closure plan, whichever is later. An exception is made for unexpected events that occur during the closure period that affect the closure plan (e.g., adverse weather conditions, fire, or more extensive soil contamination than anticipated resulting in the need to close the unit as a disposal rather than as a storage unit). Under these circumstances, modifications may be requested during the closure period.

A second amendment to these requirements specifies that the requirement to amend the closure plan if there is a change in the expected year of closure applies *only* to those facilities required to include an expected year of closure in the closure plan. This is consistent with the proposed amendment to §§ 264.112(b)(7) and 265.112(b)(7).

A number of procedural changes are made to the Parts 264 and 265 regulations for modifying closure and post-closure plans. First, the proposed amendments to §§ 264.112(c) and 264.118(e) clarify that an owner or operator use the permit modification procedures specified in Part 270 to apply for a change in the closure or post-closure plan. Because the approved plans are permit conditions, it has always been the Agency's intent that any change in a plan would constitute a permit modification and thus be subject to all the procedural requirements of Part 270.

Owners or operators of interim status facilities without approved closure and post-closure plans may amend their plans without receiving prior approval. No changes in the plans may be made however, that are inconsistent with the provisions of § 270.72. For example, an owner or operator cannot assume that at closure he will construct a new process type to handle his waste.

If the owner or operator of an interim status facility has an approved closure plan, then he must request the Regional Administrator to amend the plan. The Regional Administrator may, at his discretion, provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments and/or hold a public hearing on the amendment to the plan.

Second, the proposed amendments to the Parts 264 and 265 regulations specify deadlines for requesting closure and post-closure plan modifications to ensure that all requests are made in a timely fashion and that the level of financial assurance is adjusted, as necessary, to reflect any approved changes. Some modifications to the closure or post-closure plans result from planned changes in facility design or operations and thus can be predicted; others are due to unexpected events. The proposed amendments to the regulations require an owner or operator of a permitted facility and an interim status facility with an approved closure or post-closure plan to submit a written request to the Regional Administrator for approval of a closure or post-closure plan modification within 60 days prior to the change in facility design or operation, or within 60 days after an unexpected event has occurred. If an unexpected event that will affect the closure plan occurs during partial or final closure, a request to modify the closure plan must be made within 30 days. During the approval period, the owner or operator may continue those partial or final closure activities that are unaffected by the permit modification request.

g. *Notification of partial closure and final closure* (§§ 264.112(d), 265.112(d)). Sections 264.112(c) and 265.112(c) require owners or operators of TSDFs to notify the Regional Administrator at least 180 days prior to the date they expect to begin closure. Today's proposed rule first clarifies that the notification requirements apply to partial closures of hazardous waste disposal management units as well as final closure. Second, it amends the deadlines for notifying the Regional Administrator of partial and final closure. Finally, it defines the "expected date of closure."

As discussed in other sections of this preamble, the Agency wishes to encourage owners or operators to partially close their facilities during the active life so that hazardous wastes are removed as quickly as possible and thus pose a lesser threat to human health and the environment. The Agency also wants to ensure that these partial closures are conducted in accordance with an approved closure plan and all applicable closure requirements. To be consistent with the concerns expressed by the *AISI* petitioners, the Agency is limiting the notification requirement to partial closures that involve hazardous waste disposal units.

Second, the proposed rule amends the deadlines for notification of partial closure for disposal units and final closure in response to petitioners in the *AISI* litigation. They argued that because closure of a facility or unit is sometimes dictated by economic factors or production processes at associated enterprises, a 180-day notice period is unreasonable. Furthermore, they argued that a 180-day period is longer than necessary for the Agency's purposes.

EPA believes it necessary to ensure that it receives adequate advance notice so that an inspection can be made of the facility before closure activities begin. The Agency agrees with the petitioners that for facilities with approved closure plans, 180 days prior notice of closure may be unnecessary. The Agency is therefore proposing § 264.112(d), which would require the owner or operator to notify the Regional Administrator at least 60 days prior to the date he expects to begin closure of a landfill, land treatment, surface impoundment, or waste pile unit, or final closure of a facility with these types of units. An owner or operator must notify the Regional Administrator at least 45 days prior to the date he expects to begin final closure of a facility with only an incinerator, container storage, or tank units remaining to be closed. For interim status facilities with approved closure plans (i.e., those that received approval of the entire plan during a previous partial closure), the same deadlines apply as to permitted facilities.

For interim status facilities *without* approved closure plans (i.e., plans approved in accordance with the procedures established by § 265.112(d)), the Agency must have sufficient time to review the closure plan to ensure that all partial closures of land disposal units and final closure will be done in a manner that will avoid future environmental damages. The Agency is proposing to retain the 180-day notification requirement in § 265.112(d) for partial closures of a landfill, land treatment facility, surface impoundment, or waste pile unit, or final closure of a

facility with such units. The Agency believes the full 180 days is necessary to review land disposal closure plans. The Agency is also proposing that § 265.112(d) require the owner or operator to provide notice at least 45 days prior to the date he expects to begin final closure of a facility with only tanks, incinerator, or container storage remaining to be closed. This is consistent with the interim status deadlines in the *AISI* settlement agreement.

The Agency recognizes that it may not be possible to complete the public comment period and the closure plan review process in accordance with § 265.112(d) within 45 days. Because closure plans for tanks, container storage, and incinerators are less complex than those for land disposal facilities, however, the Agency anticipates that the review process may not require the total time allowed under § 265.112(d). Furthermore, because the proposed revisions in § 265.112(e), which are discussed below, allow an owner or operator to remove hazardous wastes and decontaminate or dismantle equipment prior to notification of partial or final closure, a delay in the plan approval process beyond the specified 45 days will not preclude an owner or operator from conducting these activities and minimizing the potential for damage to human health and the environment. The Agency requests comments on potential problems posed by reducing the notification period to 45 days for tanks, container storage, and incinerators.

The third proposed change clarifies the definition of the "expected date of closure." The current regulation states in a comment to §§ 264.112(c) and 265.112(c) that the expected date of closure should be interpreted as within 30 days of receipt of the "final volume of wastes". The Agency is concerned that (1) the definition of "final volume of wastes" is ambiguous, and (2) the definition may not be applicable to long-term storage units.

Because the Agency generally considers it good practice to close facilities as soon as operations cease to minimize the likehood of environmental and human health damage, the Agency is proposing to require explicitly in §§ 264.112(d)(2) and 265.112(d)(2) that an owner or operator notify the Regional Administrator within 30 days after the date on which a hazardous waste management unit received the known final volume of hazardous waste, or within one year of receipt of the most recent volume of hazardous waste. The Agency recognizes that some owners or operators may have cyclical operations which could make the one-year deadline burdensome. This is especially true for storage facilities that may only periodically add wastes. Therefore, the Agency is also proposing to allow an owner or operator the opportunity to request an extension if he can demonstrate that he will receive additional wastes and is taking all steps necessary to protect human health and the environment in the interim.

The Agency recognizes, on one hand, that this variance provision for storage facilities still may not adequately address the concerns of owners or operators of long-term storage facilities operating in compliance with all applicable regulations whose tanks are filled to capacity but who do not wish to close their facilities. On the other hand, the approach for long-term storage must also be consistent with the restrictions on storage of hazardous wastes banned from land disposal imposed by Section 3004(j) or RCRA. Under this provision, the storage of hazardous wastes banned from land disposal is prohibited unless such storage is solely for the purpose of accumulating such quantities as necessary to facilitate proper recovery, treatment, or disposal. The Agency is requesting comments on appropriate approaches for handling the concept of the "expected date of closure" for long-term storage facilities.

h. *Removal of wastes and decontamination or dismantling of equipment* (§§ 264.112(e), 265.112(e)). Sections 264.112 and 265.112 do not discuss whether activities such as removing waste and decontaminating or dismantling equipment can be undertaken prior to closure. The proposed amendment clarifies this issue.

Petitioners in the *AISI* litigation argued that requiring 180-day notification and, in the case of interim status facilities, requiring the completion of all plan approval procedures, before any hazardous wastes can be removed or facility equipment dismantled, unreasonably interferes with production processes and decisions. In particular, this requirement could be unreasonably burdensome for owners or operators who frequently replace tanks or containers as part or routine operations. In addition, the petitioners argued that postponing the removal of wastes for 180 days or until the approval of the closure plan, whichever is later, might be environmentally unsound.

The Agency agrees that removing hazardous wastes as quickly as possible will avoid potential threats to human health and the environment. Therefore, owners or operators should be allowed to remove hazardous wastes and to decontaminate and dismantle equipment prior to notification of partial or final closure. It is already clear under the current regulations that for facilities with permits, all activities, regardless of when they are undertaken, must be in accordance with all permit conditions, including the approved closure plan. Therefore, EPA is proposing to add new subsection § 264.112(e) providing that nothing in § 264.112 shall preclude the owner or operator from removing wastes and decontaminating or dismantling equipment at any time before or after notification of closure.

The Agency is also proposing to add a parallel subsection to § 265.112(e) to allow the same provisions for interim status facilities. Because it should be possible to evaluate whether the removal of hazardous wastes and decontamination or dismantling of equipment have been conducted in accordance with the subsequently approved plan, the Agency believes that the proposed amendment will not pose a threat to human health and the environment. Because of the importance of ensuring that interim status storage facilities are finally closed in accordance with approved plans, the Agency is requesting comments on the appropriateness of this provision for interim status facilities.

i. *Time allowed for closure* (§§ 264.113, 265.113). Sections 264.113(a) and 265.113(a) require the owner or operator to treat, remove from the site, or dispose of all hazardous wastes in accordance with the closure plan within 90 days after receiving the final volume of hazardous wastes. The Regional Administrator may extend the deadline if the owner or operator demonstrates, among other things, that there is a *reasonable likelihood that a person other than the owner or operator* will recommence operation of the facility and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment. Sections 264.113(b) and 265.113(b) similarly require the owner or operator to complete closure activities within 180 days after receiving the final volume of wastes unless the Regional Administrator grants a longer period. Today's proposal expands the circumstances under which the deadlines may be extended, clarifies what demonstrations must be made for an extension to be granted, and specifies deadlines for making these demonstrations.

Petitioners in the *AISI* litigation argued that the deadlines imposed by

§§ 264.113 and 265.113 may preclude the original owner or operator from temporarily suspending operations. Some facilities, especially storage and treatment facilities that are dependent on industrial operations that fluctuate due to market or economic conditions, may not receive additional wastes for indefinite periods of time, although the same owner or operator may expect to renew operations after a temporary shutdown. In addition, the petitioners argued that it may be difficult for an owner or operator to predict when operations will be reactivated and, as a result, a time extension granted by the Regional Administrator may expire before the owner or operator or another party renews operations.

The Agency agrees that the opportunity to request an extension to the deadlines for handling inventory and completing closure should be granted to an owner or operator as well as to a third party. Therefore, the Agency is proposing to amend §§ 264.113(a)(1)(ii)(B), 265.113(a)(1)(ii)(B), 264.113(b)(1)(ii)(B), and 265.113(b)(1)(ii)(B) to allow an owner or operator such an extension if he can demonstrate that there is a reasonable likelihood that "he or another person" will recommence operation of the facility and that the necessary steps will be taken to ensure protection of human health and the environment.

At this time, the Agency is not proposing standards for determining what constitutes a "reasonable likelihood." Because it may be difficult to implement this requirement, the Agency is requesting comments on the need for such standards and criteria for determining whether a facility is likely to recommence operations.

The Agency also agrees with the petitioners that, in some cases, it may be appropriate to allow owners or operators the opportunity to reapply for an extention to the 90-day deadline for handling all hazardous waste and the 180-day deadline for completing closure of a hazardous waste management unit of closure of the facility. To ensure that the facility does not remain inactive but unclosed for an extensive period of time, however, the Agency is proposing to limit the initial extension of each of these deadlines to one year. An owner or operator may, at the end of the period, request a second extension of up to one additional year under today's proposed amendment. Hazardous waste management units (or the facility) would be forced to close after the second extension.

As discussed above, these dealines may not be appropriate for long-term storage. The Agency is requesting comment on the appropriate approach to use for handling these types of facilities.

Sections 264.113 (a) and (b) and 265.113 (a) and (b) do not specify when the demonstrations must be made upon which the Regional Administrator will base his decision to extend the deadlines for handling hazardous wastes within 90 days or completing closure within 180 days. The Agency, therefore, today is proposing to add two new subsections, §§ 264.113(c) and 265.113(c), which provide that the demonstrations referred to should be made at least 30 days prior to the expiration of the 90-day period established in §§ 264.113(a) and 265.113(a) and at least 30 days prior to the 180-day period established in §§ 264.113(b) and 265.113(b), or within 90 days of the effective date of the regulation, whichever is later.

In order to assure that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed facility, the Agency is also proposing to amend §§ 264.113(a)(2), 265.113(a)(2) 264.113(b)(2) and 265.113(b)(2) to require owners or operators to show, among other things, that they are in compliance with all applicable operating permit requirements (in the case of permitted facilities) or interim status requirements.

j. *Disposal or decontamination of equipment and soils* (§§ 264.114, 265.114). Sections 264.114 and 265.114 require owners or operators to dispose of or decontaminate all facility equipment and structures. Today's proposed rule would expand the requirement to require owners or operators to remove all contaminated soils as part of partial and final closure, as needed.

To satisfy the objectives of the closure performance standards and to prevent threats to human health and the environment, it is important that all hazardous wastes and hazardous constituents be removed at partial and final closure. It's the Agency's position that owners or operators of *all* TSDFs must remove all hazardous wastes and hazardous constituents during the partial and final closure periods. This provision does not apply to those hazardous wastes, hazardous constituents, or contaminated soils that are allowed to remain in place at closed landfills and at surface impoundments and waste piles closed as landfills.

k. *Certification of closure* (§§ 264.115, 265.115). Sections 264.115 and 265.115 currently provide that when closure is completed the owner or operator must submit certification by both the owner or operator and an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan. The purpose of today's proposal is to (1) drop the requirement that the engineer be independent, (2) extend certification requirements to the partial closure of disposal units, and (3) include deadlines for submitting certifications. In addition, the Agency is requesting comments on approaches that may be appropriate for approving closure certifications.

Petitioners in the *AISI* litigation challenged the need for certification by an independent registered professional engineer on the grounds that an in-house engineer would be in the best position to observe the ongoing closure activities and to assure that they conformed to the approved closure plan.

EPA agrees with the petitioners that an in-house registered professional engineer may have better access to the information needed to make such a certification. Moreover, professional standards and statutory criminal penalties for false certifications should provide adequate assurance that in-house registered professional engineers will make competent and honest certifications.

The Agency is not currently proposing to specify the types of professional engineers that are allowed to certify closure. The Agency is concerned, however, that certain types or registered professional engineers may be unqualified to certify closure of a hazardous waste TSDF. For example, while the Agency would consider a civil or sanitary engineer qualified to certify closure, an electrical engineer may not be. In addition, differences among hazardous waste management units may significantly affect the types of qualifications that would be appropriate.

The Agency is currently relying on professional standards and statutory penalties to prevent inadequate certifications. The Agency is requesting comments, however, as to whether it should propose more specific requirements for professional engineer certification.

The current regulations specify that the owner or operator and a professional engineer must certify that the facility (including all partial closures) has been closed in accordance with the closure plan. The Agency is concerned that unless partial closures of landfills, surface impoundments, land treatment units, or waste piles are certified *as they are performed*, it may not be possible at final closure to

determine if they have been performed in accordance with the approved closure plan.

Therefore, the Agency is proposing that partial closures of landfill, surface impoundment, waste pile, and land treatment units must be certified as they are performed. Certification of partial closures involving other types of units (i.e., incinerators, container storage, and tank storage or treatment) may be delayed until closure of the next unit subject to the certification requirement or until final closure. If an owner or operator already has an approved closure plan under interim status (i.e., closure of the storage unit was preceded by closure of a land disposal unit), the partial closure must be in accordance with the approved closure plan but certification may be conducted at a later time.

The Agency is also proposing to require that certifications be submitted to the Regional Administrator by registered mail within 45 days of completing the partial closures, if applicable, or final closure activities. Because the existing regulation specifies no deadline for certifying closure, the proposed rule ensures that certifications are conducted and submitted to the Agency in a timely fashion.

To allow maximum flexibility to owners or operators, the Agency is not currently proposing that documentation be submitted to the Regional Administrator to support the certification of closure by the owner or operator or the registered engineer. The Agency is concerned, however, that unless inspection reports, quality assurance/quality control demonstrations, and other such documentation are available to the Agency, it will be difficult for the Regional Administrator to evaluate the accuracy of the closure certification. Therefore, the Agency is proposing that documentation supporting the certification be available upon request.

The Agency is requesting comments on the desirability of requiring supporting documentation to be submitted with closure certifications as well as the types of documentation that would be appropriate. In addition, the Agency is requesting comments on the appropriateness of requiring the Regional Administrator to approve or verify the accuracy of the closure certification.

l. *Survey plat* (§§ 264.116, 265.116). Sections 264.119 and 265.119 currently require the owner or operator of a disposal facility to submit to the local zoning authority, or the authority with jurisdiction over local land use, within 90 days after closure is completed, a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. (The current language in § 265.119 differs slightly by referring to the local land authority rather than to the local zoning authority or the authority with jurisdiction over local land use.) The proposed rule moved to §§ 264.116 and 265.116, would require that the survey plat be submitted no later than the submission of the certification of closure of each hazardous waste disposal unit. In addition, the proposed regulations would conform the language in § 265.119 parallel to that in § 264.119.

Because the survey plat must indicate the location and dimension of each disposal area it must be prepared prior to the completion of all closure activities. As a result, the Agency is proposing to require that the survey plat be included as a closure requirement. Therefore, the proposed rule requires the survey plat to be submitted to the appropriate local land use authority prior to the certification of closure of each hazardous waste disposal management unit.

m. *Post-closure care and use of property* (§§ 264.117(a)(1), 265.117(a)(1)). Sections 264.117(a)(1) and 265.117(a)(1) currently require post-closure care to continue for 30 years after the date of completing closure, with provisions for allowing a reduction of or extension to the period based on cause. The Agency is proposing today to clarify the applicability of the post-closure period for hazardous waste management units closed prior to final closure of the facility. The existing regulation does not explicitly state whether post-closure care activities are required after each partial closure of a hazardous waste management unit or only after final closure of the facility. In addition, the regulations do not specify whether the 30-year post-closure care period is triggered by partial closures or only by final closure of the entire facility.

Because of the importance of post-closure care activities for ensuring the long-term security of hazardous waste disposal facilities, the Agency considers it essential to conduct post-closure care activities as soon as the hazardous waste management unit has been closed. The Agency is therefore proposing to require that the post-closure care begin after the closure of each hazardous waste management unit subject to post-closure care requirements.

In determining when the 30-year post-closure care period should begin, the Agency considered triggering it with final closure or with each partial closure. The Agency is proposing to make the 30-year care period apply to each unit (i.e., partial closure) rather than to the entire facility to reduce the burden on an owner or operator who partially closes units prior to final closure.

The Agency recognizes, that in some circumstances post-closure care should continue for 30 years after closure of the entire facility rather than after closure of the individual hazardous waste management units. For example, unless separate ground-water monitoring systems can be established for each hazardous waste management unit, (e.g., each cell of a landfill) it would not necessarily be appropriate to terminate monitoring requirements 30 years after each unit was closed. Under these circumstances, the Regional Administrator still retains the authority under the proposed § §264.117 and 265.117 to extend the length of the post-closure care period as necessary to protect human health and the environment. Moreover, if the Regional Administrator extends the post-closure care period for any unit during the active life of the facility (i.e., prior to receipt of certification of final closure), the post-closure cost estimate and level of financial assurance must also be adjusted.

n. *Post-closure plan* (§§ 264.118(b), (c), 265.118(a) and (c)). Sections 264.118(a) and 265.118(a) require owners or operators of hazardous waste disposal focilities to have a post-closure plan. In addition, under §§ 264.228(c) and 264.258(c), storge surface impoundments and waste piles that do not meet the liner design standards are required to prepare post-closure plans to account for the need to close as disposal facilities. The Agency is proposing to require those storage surface impoundments and waste piles not initially required to prepare contingent closure and post-closure plans to do so at the time of closure if it is determined at that time that they will be closed as landfills. The Agency is also proposing to clarify the contents of the post-closure plan. Under §§ 264.228(c) and 265.258(c) owners or operators of storage surface impoundments and waste piles that meet the liner design standards are not required to prepare contingent post-closure plans for the possibility that they will be required to close as landfills. Under §§ 264.228(b) and 264.258(b), however, such facilities may be required by the Regional Administrator to be closed as landfills if it is not possible to remove all contaminated soils at closure. Because these facilities do not have post-closure

plans, the Agency is concerned that these owners or operators will not be adequately prepared for post-closure care activities. Similarly, interim status storage impoundments and waste piles are not required to prepare post-closure plans but may be closed as disposal facilities.

As a result, the Agency is proposing that §§ 264.118(b) and 265.118(a) explicitly require *all* facilities subject to post-closure care to have approved post-closure plans. An owner or operator who does not have an approved post-closure plan for a storage surface impoundment or waste pile that must be closed as a landfill must submit one for approval within 90 days from the date that the owner or operator or the Regional Administrator determines that it will be necessary to close the facility as a landfill.

Owners or operators of permitted facilities must comply with all Part 270 procedures applicable to modifying the conditions of their permit. Owners or operators of interim status facilities must submit their plans in accordnace with the provisions of § 265.118(e).

The current regulations specify that owners or operators of disposal facilities must have post-closure plans. Because one facility may have several hazardous waste disposal management units, the Agency is proposing to require that the post-closure plan explicitly address the post-closure care activities and the frequency of these activities applicable to each disposal unit.

o. *Post-closure notices* (§§ 264.119, 265.119). Sections 264.119 an 265.119 currently require the owner or operator of a facility subject to post-closure care to submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator a record of the wastes land use, and to the Regional Administrator a record of the wastes disposed of within each cell or area of a land disposal facility within 90 days after final closure. [The current language in § 265.119 differs slightly by referring to the local land authority rather than the local zoning authority or the authority with jurisdiction over local land use.] Sections 264.120 and 265.120 require that a notation be filed on the deed to the property indicating its use as a disposal facility. Section 264.120 also states that the notation on the deed must indicate that the plat and record of wastes have been filed with the appropriate local land use authority. The Agency is proposing a number of changes to clarify certain ambiguities in the provisions, to extend the requirements to partial closure activities, and to make the interim status provision parallel to the final status standards. In addition, the agency is proposing to combine both notice provisions under §§ 264.119 and 265.119. In addition, as discussed above in Section III.B.1.1, the Agency is proposing in §§ 264.116 and 265.116 to require the survey plat to be submitted during the closure rather than the post-closure period.

Currently, §§ 264.119 and 265.119 require that the survey plat and waste record be filed with the appropriate local land authority within 90 days of closure. The notice in the deed provisions in §§ 264.120 and 265.120 do not specify a deadline for filing the notice. In addition, the regulations do not provide the Agency with the opportunity to review the notice in the deed for accuracy.

The Agency considers the deed notation to be an important means of ensuring that prospective and subsequent owners of the property are informed of the presence of wastes, the existence of federal restrictions on land use, and the availability of the survey plat and waste record from the local land use authority. EPA, therefore, believes that the notation should be placed in the deed (or other appropriate title document) soon after each disposal unit has been closed. This is especially important if, prior to final closure, an owner or operator sells a closed portion of the facility on which hazardous wastes have been disposed. Moreover, the Regional Administrator should have the opportunity to review the notation to ensure that it is adequate in form and placed in the appropriate document.

The Agency is therefore proposing to require that the owner or operator record the notation and submit both a certification stating that the notation has been recorded and a copy of the recorded document to the Regional Administrator for review within 60 days after the certification of closure of each hazardous waste disposal unit subject to post-closure care. In addition, to be consistent with the Part 254 requirements, the Agency is proposing to amend the Part 265 regulations to require that the notation in the deed indicate that the survey plat and the waste record have been filed with the appropriate local land authority.

Because the deed notation must refer to the filing of the survey plat and waste record, the deadline for filing the survey plat and waste record must be consistent with the time limit for placing the notation in the deed to the facility property. As discussed above in II.B.1.1, the Agency is proposing to require that the survey plat be submitted *prior* to the certification of closure of each disposal unit, which would be consistent with the proposed deadline for the notice in the deed. The Agency is proposing to change the 90-day time limit for filing the waste record to 60 days after the certification of closure of each hazardous waste disposal unit to be the same as the proposed deadline for recording the notice in the deed. Because the owner or operator is required to maintain this information in the operating record as required by §§ 264.73 and 265.73, the Agency considers two months to be an adequate period of time for preparing the needed documents. In addition, the shorter time ensures the prompt availability of the documents to all interested parties.

Section 264.120(b) currently provides that if the owner or operator of a disposal facility subsequently removes all hazardous wastes and waste residues, the liner (if any), and all contaminated underlying and surrounding soils he may either remove the deed notation required by § 264.120(a) or add a notation indicating the removal of the wastes. Section 265.120(b) does not currently give owners or operators of interim status facilities the opportunity to remove the notice in the deed or amend it if all wastes have been removed.

For facilities with permits, any removal of hazardous waste after closure would constitute a change in the permit conditions and thus would be subject to the requirements of Part 270 for requesting modifications to the post-closure permit. The Agency is now proposing to require explicitly that an owner or operator or operator of a permitted facility request a modification to the post-closure permit in accordance with Part 270 requirements. In all cases, the owner or operator must demonstrate compliance with the criteria in § 264.117(c) for post-closure use of property. Moreover, because the owner or operator would be conducting hazardous waste management activities, he must comply with all applicable generator requirements and with the conditions of the post-closure permit.

The Agency believes owners or operators of interim status facilities also should be allowed the opportunity to remove all wastes during the post-closure care period, assuming that the Regional Administrator has a formal opportunity to review the plans for removing the hazardous wastes. Therefore, the Agency is proposing to allow owners or operators of interim status facilities to request the approval of the Regional Administrator to remove hazardous wastes, assuming the

procedures of § 265.118(g) for modifying the post-closure plan are followed.

Finally, the proposed rule requires the owner or operator to seek Regional Administrator approval before deleting the deed notation or placing a new notation in the deed regarding removal of the wastes.

The Agency is not currently proposing notice requirements that will assure that parties with rights-of-ways to property used to dispose of hazardous wastes are aware of its use. However, the Agency is concerned that because such parties are not purchasing the property, they may not refer to the notice in the deed and thus may be unaware of its previous use. The Agency requests comments on this issue and solicits possible approaches for ensuring that adequate notice is given to all potentially affected parties.

p. *Certification of completion of post-closure care* (§§ 264.120, 265.120). The existing regulations do not require that the owner or operator certify that post-closure care activities have been conducted in accordance with the approved post-closure plan. Today's proposed rule includes such a requirement.

It is especially important that the appropriate post-closure care activities have been undertaken to ensure the continued protection of human health and the environment after the termination of the post-closure care period. One way to ensure that the facility has been adequately maintained during the post-closure period is to inspect the facility prior to releasing the owner or operator from his post-closure care obligations.

As a result of these concerns, the Agency is proposing to require that an owner or operator submit to the Regional Administrator by registered mail, within 30 days after completing the established post-closure period, a certification signed by him stating that all post-closure care activities have been conducted in accordance with the approved post-closure plan. If an owner or operator partially closes disposal units prior to final closure and completes the post-closure care period at different times, he should submit certifications subsequent to the completion of each post-closure care period.

The Agency is concerned that requiring certification only after the end of the 30-year period may not provide adequate assurance that the post-closure care has been conducted properly over the entire period. Because of the importance of the post-closure care activities for ensuring long-term protection of human health and the environment, the Agency is requesting comments on the desirability of requiring post-closure certifications on an annual or periodic basis (e.g., every five years).

2. Financial Assurance Requirements (Subpart H)

a. *Cost estimates based on third-party costs* (§§ 264.142(a), 264.144(a), 265.142(a), 265.144(a)). The existing cost estimate rules in §§ 264.142(a) and 264.144(a) do not specify whether cost estimates should be based on the cost to the owner or operator of supplying his own labor and equipment (first-party costs) or the cost of hiring contractor labor and renting equipment (third-party costs). The Agency is proposing today to resolve the ambiguity by specifying that closure and post-closure cost estimates be based on the costs to the owner or operator of hiring a third party to perform closure or post-closure care activities. The Agency is also proposing to specify explicitly that salvage value may not be incorporated into the closure cost estimate.

Some members of the regulated community have argued that first-party costs should be allowable if the owner or operator has his own equipment or intends to use his own labor for closure or post-closure care activities. Some have also argued that the salvage value of hazardous wastes or facility equipment that may be resold at closure should be considered as credits when calculating the amount of the cost estimate. Owners or operators have argued that, at a minimum, they should be allowed to assume that hazardous wastes which can be resold at closure will be taken at no charge by a third party.

The Agency is concerned that if first-party costs are used and an owner or operator declares bankruptcy or abandons the facility, adequate funds will not be available to cover the costs of closure and, if applicable, post-closure care. Since the cost estimates serve as the basis for determining the amount of financial assurance needed, the Agency has decided that only third-party costs are consistent with the overall objectives of the financial assurance requirements—assurance that funds will be available to cover the costs of closure and post-closure care if an owner or operator goes bankrupt or abandons the facility.

To further ensure that the cost estimate is always sufficient to cover the costs of closing the facility, the Agency is proposing to disallow explicitly salvage value as a credit when calculating the cost estimates. This in no way would prevent the owner or operator from realizing salvage value from hazardous wastes or equipment at closure; rather, it prohibits an owner or operator from deducting credits for salvage value from his estimate of the costs of closure. The Agency believes this position is consistent with the intent of the financial assurance requirements to ensure that funds are available if needed. The Agency cannot be assured that hazardous wastes will be in a saleable condition or that a third party will take the hazardous wastes at no charge at the time of closure. Therefore, the Agency is proposing to add §§ 264.142(a)(3) and 265.142(a)(3) to specify that salvage value may not be incorporated as a credit in the closure cost estimate.

b. *Anniversary date for updating cost estimates for inflation* (§§ 264.142(b), 264.144(b), 265.142(b), 265.144(b)). The existing regulations require owners or operators to update their closure and post-closure cost estimates for inflation within 30 days after the anniversary of the date that the first cost estimates were prepared. Today's proposed regulation requires owners or operators to revise their cost estimates up to 60 days prior to the anniversay date of the establishment of their financial assurance instrument. For owners or operators using the financial test, the cost estimates must be updated for inflation within 30 days of the end of the firm's fiscal year. The Agency is also making a minor change to the procedures for adjusting the cost estimates for inflation.

The Agency is concerned that allowing the cost estimates to be adjusted up to 30 days *after* the anniversary date of preparing the first cost estimate could result in the annual renewals of the financial assurance mechanisms and the financial test being based on the previous year's cost estimates. As a result, the financial assurance instrument could be inadequate.

The Agency is proposing to amend the regulation to require that cost estimates be updated within 60 days *prior* to the anniversay date of the establishment of the financial instrument to ensure that the level of financial assurance reflects a more recent cost estimate. For firms using the financial test, the cost estimate should be updated within 30 days of the end of the firm's fiscal year and before the submission of the updated information required to be submitted to the Regional Administrator within 90 days after the close of the fiscal year.

Linking the updates of cost estimates to the establishment of the financial assurance mechanism rather than to the

date that the estimate was first prepared by the owner or operator has the additional advantage that it eases verification that the estimates have been updated when required. The Agency has copies of the financial instruments used to demonstrate financial assurance and therefore can verify the date that it was established.

The Agency is also proposing to offer owners or operators an alternative to using the Implicit Price Deflator published in the *Survey of Current Business*. The Agency is proposing to allow owners or operators the option of recalculating the cost estimates based on current costs. In addition, the Agency is proposing to require that owners or operators use the most recent Implicit Price Deflator rather than the annual Implicit Price Deflator to ensure the most up-to-date estimate.

c. *Revisions to the cost estimates* (§§ 264.142(c), 264.144(c), 265.142(c), 265.144(c)). The existing regulations require owners or operators to revise their cost estimates whenever changes in the plans affect the costs of closure or post-closure care. Post-closure cost estimates do not have to be revised during the post-closure care period. The regulations do not, however, specify deadlines for updating the cost estimates. The proposed regulations would specify a deadline for revising the cost estimates if the change in plans increases the costs of closure of post-closure care.

Changes in the closure or post-closure plan could result in a dramatic inscrease in the costs of closure or post-closure care (e.g., off-site rather than on-site disposal of wastes at closure). If such changes are not incorporated into the cost estimates in a timely manner, the amount of financial assurance available could be inadequate. Therefore, the Agency s proposing to require that for permitted facilities, or interim status facilities with approved closure or post-closure plans, owners or operators increase their cost estimates within 30 days after the Regional Administrator has approved modifications to the plans, if the modifications increase the costs of closure or post-closure care. For interim status facilities without approved closure or post-closure plans, the cost estimates must be increased within 30 days of the change in the plans, if the change increases the cost of closure or post-closure care. Revisions to the post-closure cost estimates under both Parts 264 and 265 are required only during the active life of the facility.

d. *Post-closure cost estimate* (§§ 264.144(c), 265.144(c)). Sections 264.144(c) and 265.144(c) require the owner or operator to revise the post-closure cost estimates during the operating life of the facility whenever a change in the post-closure plan increases the cost of post-closure care. The regulation does not define the operating life of the facility. The proposed rule would require the cost estimate to be increased anytime during the active life of the facility.

Although the regulations do not define operating life, the Agency intended that post-closure financial assurance be adjusted as necessary until the facility was closed and post closure care had begun. As discussed in Section III.A.1 of this preamble, the Agency is proposing to define active life as the period from the initial receipt of waste until certification of final closure. Consistent with this proposed definition, the Agency is proposing to require that the post-closure cost estimate be revised as necessary during the active life of the facility.

Events that occur during the partial or final closure periods that affect the costs of post-closure care must be accounted for by increasing the post-closure cost estimate. The post-closure cost estimate must be revised within 30 days after the Regional Administrator has approved a change in the post-closure plan. For interim status facilities without approved plans, the cost estimate must be revised within 30 days of the change in the plan.

e. *Trust fund pay-in period* (§§264.143(a)(3), 265.143(a)(3)). The current Part 264 regulations require the payments to the trust fund to be made over the term of the permit or over the remaining operating life of the facility, whichever is shorter. For interim status facilities, the pay-in period is 20 years or the remaining operating life of the facility, whichever is shorter. Although the trust fund may cover a number of units with different operating lives, the current requirement ties the pay-in period to the life of the facility rather than to particular units. The Agency is considering whether it may be appropriate to adjust the pay-in period to reflect the shorter operating lives of some units covered by the requirement. The Agency is requesting comments on approaches to handling the pay-in period for multiple process facilities.

f. *Reimbursement for closure and post-closure expenditures from trust fund and insurance* (§§ 264.143(a)(10), 264.143(e)(5), 264.145(a)(11), 264.145(e)(5), 265.143(a)(10), 265.143(d)(5), 265.145(a)(11), 265.145(d)(5)). The closure/post-closure trust fund and insurance provisions allow an owner or operator or any other person authorized to conduct closure or post-closure care to request reimbursement from the trust fund or face value of the insurance policy for expenditures for final closure and post-closure care by submitting itemized bills to the Regional Administrator. The Regional Administrator will instruct the trustee or insurer to make reimbursements if the activities have been in accordance with the approved plans or otherwise justified. The Regional Administrator may withhold reimbursements if he determines that the total costs of closure will exceed the value of the trust. The proposed rule would modify procedures for reimbursing expenditures from the trust fund or insurance. In addition, it would specify provisions for handling reimbursements for partial closure activities.

Petitioners in the *AISI* litigation argued that any decision by the Regional Administrator to withhold reimbursements from the trust fund presumably is an administrative determination that the expenditures are either unjustified or not in accordance with plans, or that closure or post-closure is incomplete. They contended that such administrative determinations must be supported by a written explanation that can then serve as a record for review of the determination.

The Agency agrees that owners or operators should be provided with an explanation of why the Regional Administrator is refusing reimbursements from trust funds or from insurance. The Agency is proposing to require that the Regional Administrator provide a detailed written statement of reasons if he does not instruct the trustee or insurer to make requested reimbursements. This amendment will ensure that the owner or operator and/or other persons obtain an explanation of why the Regional Administrator did not instruct the trustee or insurer to reimburse the owner or operator or other persons for partial or final closure or post-closure expenditures.

The proposed amendment would also clarify reimbursement procedures for partial closure activities. As in the case of final closure, an owner or operator may submit itemized bills for partial closure activities to the Regional Administrator. Before allowing reimbursement for partial closure, however, the Regional Administrator must determine if the activities are in accordance with the approved partial closure plan and funds remaining after reimbursement would be sufficient to complete final closure in accordance with the approved closure plan, as indicated by the cost estimate. Because the cost estimate must be based on the

cost of performing final closure of the facility assuming the maximum extent of its operation, the Regional Administrator must not approve reimbursement for partial closure if the remaining financial assurance would be insufficient to satisfy this condition. This is consistent with the procedures currently applicable to reimbursements for final closure.

If the expenditures can be approved, the Regional Administrator must instruct the trustee or insurer to reimburse those amounts that the Regional Administrator specifies in writing. The proposed amendment retains the 60-day period for the Regional Administrator to instruct the trustee or insurer to reimburse those amounts that the Regional Administrator specifies in writing. This 60-day requirement assures owners and operators the use of these funds within a reasonable period of time, while providing adequate time in which the Regional Administrator can decide whether to approve the reimbursements.

g. *Final Order Required* (§§ 264.143(b)(4)(ii), 264.145(b)(4)(ii), 265.143(b)(4)(ii), 265.145(b)(4)(ii). The current regulations provide that an owner or operator may satisfy the financial assurance requirements for closure and/or post-closure care by obtaining a financial guarantee surety bond. Sections 264.143(b)(4)(ii), 265.143(b)(4)(ii), 264.145(b)(4)(ii), and 265.145(b)(4)(ii) require that the surety bond guarantee that the owner or operator must fund a standby trust fund in an amount equal to the penal sum of the bond within 15 days after an order to begin closure or post-closure care is issued by the Regional Administrator or by a U.S. district court or other court of competent jurisdiction. The surety becomes liable on the bond when the owner or operator fails to perform as guaranteed by the bond.

Petitioners in the *AISI* litigation argued that expenditures of the funds cannot be compelled by law until the order to begin closure or post-closure care is a *final* order, and that there is no need to transfer money to the standby trust fund until that time. A final order is in general an order that ends the dispute on the merits and leaves nothing but execution of the decision to be done.

The Agency agrees that a *final* administrative order is required. A final administrative order refers to a final EPA determination and is not intended to include possible judicial review process. Therefore, the proposed amendment provides that the surety bond for assurance of closure or post-closure care must guarantee that the standby trust fund will be funded within 15 days after an administrative order to begin closure issued by the Regional Administrator becomes final (including any administrative review but not including possible judicial review), or within 15 days after an order to begin closure is issued by a U.S. district court or other court of competent jurisdiction. The Agency is retaining the requirement that the surety fund the standby trust fund if the owner or operator fails to provide alternative financial assurance upon receiving notice of cancellation of the bond.

h. *Final Determination Required* (§§ 264.143(c)(5) and (d)(8), 264.145(c)(5) and (d)(9), 265.143(c)(8) and (c)(9)). The existing Part 264 regulations provide that an owner or operator may demonstrate financial assurance for closure and/or post-closure care by obtaining a surety bond guaranteeing performance. Under Parts 264 and 265, an owner or operator may satisfy the financial assurance requirements by obtaining a closure letter of credit and/or a post-closure letter of credit. Under the terms of the performance bond and letter of credit, the surety or bank will become liable on the bond or letter or credit obligation when the owner or operator fails to perform closure or post-closure care as guaranteed by the bond or letter of credit.

The current regulations for permitted facilities provide that, after a determination made pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure or post-closure care in accordance with the closure or post-closure plan and other permit requirements, under the terms of the bond the surety will perform final closure or post-closure care as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund. Similarly, following a determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure or post-closure care in accordance with the relevant plan and other permit or interim status requirements, the Regional Administrator may draw on the letter of credit.

For the reasons stated above in connection with the need for a final order, EPA has concluded that a "final" determination under Section 3008 of RCRA is required before the surety must act under the Part 264 regulations or the Regional Administrator may draw on a letter or credit under both the Parts 264 and 265 regulations. The Agency is retaining the provision that the Regional Administrator will draw on the letter of credit if the owner or operator fails to establish alternative financial assurance after receiving notice of cancellation of the letter of credit.

i. *Cost estimates for owners or operators using the financial test or corporate guarantee must include UIC cost estimates for Class I wells* (§§ 264.143 (f)(1)(i) (B) and (D) and (f)(1)(ii) (B) and (D), 264.145 (f)(1)(i) (B) and (D) and (f)(1)(ii) (B)+(D), 265.143 (e)(1)(i) (B) and (D) and (e)(1)(ii) (B) and (D), 265.145(e)(1)(i) (B) and (D), and 265.145(e)(1)(ii) (B) and (D)). The current regulations specify the criteria that must be satisfied if an owner is to use the financial test to demonstrate financial responsibility. To pass this test, the owner or operator must have, among other things, net working capital and tangible net worth each at least six times the sum of the current closure and, if applicable, post-closure cost estimates. For facilities being covered by the financial test for closure and/or post-closure care and liability coverage, the owner or operator must have net working capital and tangible net worth each at least six times the sum of the closure and post-closure cost estimates and annual aggregate liability coverage requirements. The cost estimates include the costs of closing and providing post-closure care, and liability coverage, if applicable, of only those hazardous waste facilities subject to Parts 264 or 265 requirements and being covered by the test. The costs of closing a hazardous waste underground injection facility subject to the requirements of 40 CFR Part 144 *et seq.* are not included. The proposed amendment adds a requirement to include estimates of the plugging and abandonment costs of Class I underground injection control (UIC) facilities, if applicable, when calculating the sum of the closure and post-closure cost estimates for the financial test.

EPA has established in 40 CFR Part 144 financial responsibility requirements for the owners or operators of Class I UIC facilities paralleling those established in 40 CFR Parts 264 and 265, including the same set of criteria for passing the financial test. The cost estimate used for the financial test under Part 144 is the cost of plugging and abandoning the underground injection well as required under 40 CFR Part 146. Under the existing Part 264 or 265 regulations, owners or operators are not required to pass the financial test on the basis of closure and post-closure costs associated with their Part 264 or 265 facilities plus the plugging and abandonment costs of their UIC facilities subject to the financial responsibility regulations under Part 144. Because the net worth and assets

tests are applied to the UIC and RCRA financial tests separately, a firm able to pass the tests individually may not have the financial strength to pass the test if the cost estimates were combined.

Estimates of the costs of plugging and abandoning Class I UICs range from a low of $10,000 to $15,000 per well to a high of $100,000, depending on hydrogeologic factors. Large on-site facilities typically have one to five wells, and commercial off-site facilities typically have one well. Plugging and abandonment costs could therefore reach $500,000, which could considerably increase the size of the cost estimate otherwise used for the RCRA financial test. Because the objective of both regulatory programs is to ensure that funds are available to prevent threats to human health and the environment, it is especially important to ensure that a firm using the financial test and not otherwise demonstrating that funds will be available if needed is financially viable to cover liabilities under both programs. Therefore, the Agency is proposing that the cost estimates prepared as part of the Part 144 requirements be included in the total cost estimate required under 40 CFR Subpart H used to evaluate whether a firm is able to pass the financial test.

Although requiring the financial test criteria to account for the cost estimates associated with RCRA and UIC facilities could force some firms to demonstrate financial assurance by using a more costly financial instrument, the Agency does not expect this proposal to pose a significant burden on the regulated community. There are currently about 100 facilities with Class I wells. The Agency estimates that about 25 to 50 percent of the firms owning these facilities use the financial test to demonstrate financial assurance. Furthermore, data on the current owners of these facilities suggest that they are sufficiently viable to pass the financial test even when the cost of UIC facilities are included. The Agency invites comments on whether this requirement is likely to pose a significant burden on owners and operators of UIC facilities.

j. *Cost estimates must account for all facilities covered by financial test and corporate guarantee* (§§ 264.143(f)(2), 264.145(f)(2), 265.143(e)(2), 265.145(e)(2)). The current regulations specify that the phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The proposed amendment is a minor change to the regulatory language to include by reference the UIC cost estimates.

k. *Release of the owner or operator from the requirements of financial assurance for closure and post-closure care* (§§ 264.143(i), 264.145(i), 265.143(h), 265.145(h)). Sections 264.143(i) and 265.143(h) require the owner or operator, when closure is completed, to submit certification from himself and from an independent registered professional engineer to the Regional Administrator that closure has been accomplished in accordance with the closure plan. Within 60 days after receiving the certifications, the Regional Administrator is required to notify the owner or operator that he is no longer required to maintain financial assurance for closure of the particular facility unless the Regional Administrator has reason to believe that closure was not in accordance with the closure plan. The Agency is proposing, in order to be consistent with other proposed amendments, to drop the requirement that closure certification must be by an "independent" registered professional engineer.

In addition, the proposed regulation adds the requirement that the Regional Administrator shall provide a detailed written statement of any reasons to believe that closure or post-closure care has not been in accordance with the approved plans. This amendment would ensure that the owner or operator will be provided with necessary information to correct deficiencies in the closure or post-closure process.

l. *Period of liability coverage* (§§ 264.147(e), 265.147(e)). Sections 264.147(e) and 265.147(e) require owners or operators to provide sudden accidental and, if applicable, nonsudden accidental liability coverage until closure of the facility has been certified. Today's proposal clarifies that sudden and nonsudden liability coverage is required until *final* closure of the facility has been certified.

Financial assurance for liability is required on a firm level rather than on a per-facility basis. As a result, the amount of liability coverage required does not vary by the number of hazardous waste management units at the facility. Therefore, the Agency does not consider it appropriate to alter the amount of financial assurance required for sudden or nonsudden accidental liability coverage as a result of partial closures. The Agency is proposing to clarify this intent by specifying in (§§ 264.147(e) and 265.147(e) that an owner or operator must provide coverage continuously as required until the certification of *final* closure has been received by the Regional Administrator.

m. *Wording of instruments* (§ 264.151). Section 264.151 includes the wording of the instruments allowed under §§ 264.143, 264.145, 265.143, and 265.145. Two changes are proposed to ensure consistency with the other amendments in today's proposal.

The first change amends § 264.151(b) to specify that the surety is responsible for funding the standby trust fund under a final order to begin closure. The Agency is also proposing to amend § 264.151(f) by adding an additional paragraph requiring owners or operators using the financial test to list the cost estimates associated with their Class I U1C facilities as required by the Part 144 financial responsibility requirements.

C. Interim Status Standards (Part 265)

1. Waste Pile Closure Requirements Included by Reference in the Closure Performance Standard (§ 265.112(a)(1))

Section 265.112(a)(1) requires the closure plan to include a description of how and when the facility will be partially closed, if applicable, and finally closed. The description must include how the applicable requirements of the process-specific regulations will be met. Today's rule proposes to incorporate these technical standards into the closure performance standard in § 265.111 and to require that the closure plan address procedures for satisfying the standards in § 265.111. The Agency is also proposing to revise § 265.111 to include reference to § 265.258, which establishes closure requirements for waste piles. Closure requirements specific to waste pile facilities had not been promulgated prior to the promulgation of the Subpart G regulations, and thus were not previously referenced.

2. Requirement to Estimate the Expected Year of Closure (§ 265.112(b)(7))

Section 265.112(a)(4) requires that the closure plan include an estimate of the expected year of closure. Today's proposal retains this requirement in § 265.112(b)(7) only for facilities without approved closure plans and for all interim status facilities using trust funds to demonstrate financial assurance if the remaining operating life of the facility is less than twenty years. Petitioners in the *AISI* litigation argued that under Part 264, closure plans have already been approved and thus an estimated year of closure is unnecessary and imposes an unnecessary burden. In the case of interim status facilities, however, many facilities may not have

approved closure plans prior to closure. An estimate of the year of closure is therefore important to allow the Agency the opportunity to conduct facility inspections near the end of the facility's life and ensure that closure will be performed in a manner that will protect human health and the environment.

In addition, for facilities using trust funds, it is important that an estimate of the expected year of closure be included in the closure plan if the remaining operating life is less than twenty years. Although under interim status the closure plan may not be reviewed until final closure (i.e., if there were no partial closures), the owner or operator must accelerate the payments to the trust fund if he reduces the expected operating life of the facility.

For the reasons discussed in Section III.B.1.e., the Agency agrees that for facilities with approved closure plans that do not use trust funds to demonstrate financial assurance for closure or post-closure care (or use trust funds but will remain operating for at least twenty years), an estimated year of closure is unnecessary. The Agency is therefore proposing to revise § 265.112(b) to require an estimate of the expected year of closure only for (1) interim status facilities without approved closure plans and (2) interim status facilities using trust funds to demonstrate financial assurance that will remain open for less than twenty years.

3. Submission of Interim Status Closure and Post-Closure Plans (§§ 265.112(d), 265.118(e))

Sections 265.112(c) and 265.118(c) require owners or operators to submit their closure and post-closure plans 180 days prior to final closure. Similarly, the closure notification requirements apply to final closure. Today's regulatory amendment revises the requirements to make them applicable to certain partial closures.

As discussed above in other sections of this preamble, the Agency is committed to ensuring that partial closures of TSDF's are conducted in a manner that will prevent future threats to human health and the environment. The Agency is particularly concerned that if closure plans are not reviewed and approved prior to partial closures of landfills, surface impoundments, waste piles, and land treatment units, partial closure activities may not be adequate.

As a result of this concern, the Agency is requiring that the closure and post-closure plans applicable to the entire facility be submitted for review and approval 180 days prior to the first partial closure of a landfill, surface impoundment, waste pile, or land treatment unit undertaken after the effective date of these proposed regulations. If no partial closures of such units are undertaken after the effective date of these regulations, then the owner or operator must submit the closure and post-closure plans for approval 180 days prior to final closure. For facilities with only container storage, tank storage or treatment, or incinerators, the closure plan may be submitted 45 days prior to final closure. The owner or operator who closes such a hazardous waste management unit prior to final closure may choose to submit the closure plan for review and approval in order to be reimbursed for the partial closure in accordance with the reimbursement provisions of §§ 265.143 and 265.145. As part of the reimbursement provisions, the Regional Administrator must determine that the expenditures are in accordance with the approved closure plan or otherwise justified.

After the closure plan has been approved, and owner or operator is required to notify the Regional Administrator prior to all closures of landfills, surface impoundments, waste piles, and land treatment units and final closure in accordance with the notification requirements discussed above in Section III.B.1.g. Unless changes are made to the approved closure plan, however, the owner or operator is not required to seek reapproval of the closure plan for each subsequent partial closure or final closure.

The Agency recognizes that requiring the entire closure plan to be submitted for approval prior to the first partial closure may not be necessary for ensuring protection of human health and the environment and may pose a burden on the Agency to review the entire plan within the specified deadlines. For example, an interim status facility with a landfill may have inadequate monitoring data to evaluate the closure plan. If such a facility wishes to close its storage tanks but the lack of data for the landfill makes it impossible to complete the review process for the entire closure plan within the allotted time, the Regional Administrator should use his discretion and approve that portion of the plan applicable to the partial closure. This will help to minimize the burden on the Agency and owners or operators and retain the incentive to perform partial closures.

4. Written Statement by Regional Administrator of Reasons for Refusing to Approve or Reasons for Modifying Closure or Post-Closure Plan (§§ 265.112(d)(4), 265.118(f))

Sections 265.112(d) and 265.118(d) provide that the Regional Administrator will approve, modify, or disapprove the closure plan and, if applicable, post-closure plan within 90 days of their receipt from the owner or operator. If the Regional Administrator does not approve the plan, the owner or operator must modify the plan or submit a new plan for approval within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved closure and post-closure plan.

Petitioners in the *AISI* litigation argued that this procedure provided undue discretion to the Regional Administrator to disapprove or modify the closure or post-closure plan without sufficient explanation of the reasons underlying the disapproval or modification.

The Agency is proposing today in §§ 265.112(d) and 265.118(f) to require the Regional Administrator to provide a detailed written statement of reasons for refusing to approve or reasons for modifying a closure or post-closure plan within 90 days of its receipt. A written statement submitted to the owner or operator should assist him to modify the plan appropriately.

In addition, the Agency is proposing a minor technical correction to § 265.118 which outlines procedures for approving the post-closure plan. The regulation currently provides that the Regional Administrator *may* in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure or, if applicable, post-closure plan. The Agency is proposing to amend § 265.118(f) to provide that the Regional Administrator hold such a hearing to be consistent with the parallel language in Section 265.112(d) applicable to approving the closure plan.

D. Typographical Errors

A number of changes are proposed in Part 265 to correct typographical errors. Most of the errors involve references to other sections of the regulations. The changes are made to §§ 265.118(c), 265.140, 265.147(b), and 265.113.

E. Permitting Standards (Part 270)

1. Contents of Part B : General Requirements (§§ 270.14(b)(15) and (16))

Section 270.14 specifies that the Part B application must include a copy of the

financial assurance mechanism used for closure and post-closure care in accordance with the requirements of §§ 264.143 and 264.145, if applicable. The Agency is proposing to revise this section to make it consistent with other provisions in Part 264 Subpart H.

Sections 264.143 and 264.145 specify that demonstration of financial assurance must be made at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. Because an owner or operator may submit the Part B application more than 60 days prior to the first receipt of hazardous wastes, the Agency is proposing to amend §§ 270.14 (15) and (16) to specify that a copy of the demonstration of financial assurance must be included with the submission of the Part B application or at least 60 days prior to the initial receipt of hazardous wastes, whichever is later.

2. Minor Modifications of Permits (§ 270.41(d))

Section 270.42(d) states that a change in ownership or operational control of a facility may be considered a minor permit modification provided that the Director determines that no other change is necessary in the permit and that a written agreement has been submitted to the Director which specifies the date for transfer or permit responsibility, coverage, and liability between the current and new permittees. The Agency wishes to ensure that facilities are transferred to financially viable firms and thus proposes to require that the new owner must demonstrate compliance with the Subpart H regulations within six months of the transfer of ownership.

3. Changes During Interim Status (§ 270.72(d))

Section 270.72(d) states that when there is a transfer of ownership or operational control, the old owner or operator is responsible for complying with the Subpart H requirements until the new owner or operator demonstrates compliance with the financial responsibility requirements. The Agency is proposing to require that the new owner or operator must demonstrate financial assurance within three months of the transfer of ownership.

The current regulations require the old owner or operator to retain responsibility for demonstrating financial assurance until the new owner or operator does so. No deadlines, however, are imposed on the new owner or operator for taking over the Subpart H obligations. Because the Agency wishes to ensure that any new owner or operator of a TSDF has the financial capabilities to cover the costs of closure and post-closure care, today's proposal would require the new owner or operator to demonstrate compliance with the Subpart H requirements within three months of the transfer of ownership.

III. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgatd or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirments as State law.

In contrast, under newly enacted Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's announcement proposes standards that will not be effective in authorized States since the requirements will not be imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 261.21(e)(2) requires that States that have final authorization must revise their programs to include equivalent standards within a year of promulgation of these standards if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the State requirements become Subtitle C RCRA requirements.

States that submit official applications for final authorization less than 12 months after promulgation of these standards may be approved without including equivalent standards. However, once authorized, a State must revise its program to include equivalent standards within the time period discussed above. The process and schedule for revision of State programs is described in amendments to 40 CFR 271.21 published on May 22, 1984. (See 49 FR 21678).

It should be noted that authorized States are only required to revise their programs when EPA promulgates standards more stringent than the existing standards. Under Section 3009 of RCRA, States are allowed to impose standards which are more stringent than those in the Federal program. Some of the standards proposed today are considered to be less stringent than the existing Federal requirements. Those less stringent provisions appear in Sections: 264.112(a), 264.118(a), 265.112(a), 265.118(a), 264.112(b)(7), 264.112(e), 265.112(e), 264.113, 265.113, 264.115, 265.115, 264.143(a)(10), 264.143(e)(5), 264.145(a)(11), 265.145(e)(5), 265.143(a)(10), 265.143(d)(5), 265.145(a)(11), 265.145(d)(5), 264.143(b)(4)(ii), 264.145(b)(4)(ii), 265.143(b)(4)(ii), 265.145(b)(4)(ii), 264.143(c)(5), 264.143(d)(8), 264.145(c)(5), 264.145(d)(9), 265.143(c)(8), 265.143(c)(9), 265.112(b)(7), 265.112(d), 265.118(e), 265.112(d), and 265.118(f). Authorized States will not be required to revise their programs to adopt requirements equivalent or substantially equivalent to those less stringent standards which may ultimately be promulgated.

IV. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being proposed today to Subparts G and H are not "major rules". Some of the

amendments are technical corrections designed to clarify the intent of the regulations issued January 12, 1981. The changes are not likely to result in a significant increase in costs and thus are not a major rule, no Regulatory Impact Analysis has been prepared.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). Many of the proposed changes clarify the existing regulations and thus result in no additional costs. For those proposed amendments that will result in an increase in costs, the costs are not significant enough to impact adversely the viability of small entities.

Accordingly, I certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

VII. Supporting Documents

A background was prepared for the Subpart G closure and post-closure care regulations and for the financial assurance regulations promulgated January 12, 1981. In addition, background documents were prepared for the financial assurance regulations published on April 7, 1982. Supporting materials discussing the most significant issues raised by the amendments proposed today have been prepared and are included in the docket for these regulations.

The supporting materials are available for review in the EPA headquarters library, Room 2404 Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

EPA will prepare guidance manuals to assist owners or operators and regulatory officials and will make them available from EPA Headquarters and the Regional Offices.

Dated: March 8, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

40 CFR Part 260 is amended as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, and 3019 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938 and 6939).

Subpart B—Definitions

§ 260.10 [Amended]

1. In 40 CFR Part 260 Subpart B, § 260.10 is amended by adding the following terms alphabetically to the existing list of terms:

"Active life of the facility" means the period from the initial receipt of hazardous waste at the facility until the Regional Administrator receives certification of final closure. "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Parts 264 and 265 of this chapter are no longer conducted at the facility unless subject to the provisions in § 264.34.

"Hazardous waste management unit" means the smallest area of land on or in which hazardous waste is placed, or the smallest structure on or in which hazardous waste is placed, that isolates hazardous waste within a facility. Examples of hazardous waste management units include a tank system, a surface impoundment, a waste pile, a land treatment unit, a landfill cell, an incinerator and container areas. Containers alone do not constitute units; the unit includes the container and the land or pad upon which they are placed. Closure of a hazardous waste management unit is a partial closure. "Partial closure" means the closure of a hazardous waste management unit at a facility that contains other active hazardous waste management units in accordance with the applicable closure requirements of Parts 264 and 265 of this chapter. For example, partial closure may include the closure of a tank system, landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 264 is amended as follows:

Authority: Sections 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended.

Subpart G—Closure and Post-Closure

1. In 40 CFR Part 264 Subpart G, §§ 264.110–264.120 are revised to read as follows:

§ 264.110 Applicability.

Except as § 264.1 provides otherwise:

(a) Sections 264.111–264.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 264.117–264.120 (which concern post-closure care) apply to the owners and operators of:

(1) All hazardous waste disposal facilities; and

(2) Piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in §§ 264.228 or 264.258.

§ 264.111 Closure performance standard.

The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance, and

(b) Controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Complies with the closure requirements of this subpart including, but not limited to, the requirements of §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310 and 264.351.

§ 264.112 Closure plan; amendment of plan.

(a) *Written plan.* The owner or operator of a hazardous waste management facility must have a written closure plan. The plan must be submitted with the permit application, in accordance with § 270.14(b)(13) of this chapter, and approved by the Regional Administrator as part of the permit issuance proceeding under Part 124 of this chapter. In accordance with § 270.32 of this chapter, the approved closure plan will become a condition of any RCRA permit. The Regional Administrator's decision must assure that the approved closure plan is consistent with §§ 264.111–264.115 and the applicable requirements of §§ 264.90 *et seq.*, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351. Until final closure is completed and certified in accordance with § 264.115, a copy of the approved plan must be furnished to the

Regional Administrator upon request, including request by mail, and must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Agency who is duly designated by the Administrator.

(b) *Content of plan.* The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active live. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility will be closed in accordance with § 264.111; and

(2) A description of how final closure of the facility will be conducted in accordance with § 264.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility, and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and the type(s) of off-site hazardous waste management units to be used, if applicable; and

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standards; and

(5) A detailed description of other activities necessary during the closure period to insure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and

(6) A schedule for closure of each hazardous waste management until and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat and dispose of all hazardous waste inventory and of the time required to place a final cover must be included.)

(7) For facilities that use trust funds to establish financial assurance under §§ 264.143 or 264.145 and that are expected to close prior to permit expiration, the closure plan must include an estimate of the expected year of final closure.

(c) *Amendment of plan.* The owner of operator must request a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the procedures in Parts 124 and 270.

(1) The owner or operator may submit a written request to the Regional Administrator to modify the closure plan at any time prior to the notification of partial or final closure or the facility.

(2) The owner or operator must submit a written request for a permit modification to amend the approved closure plan whenever:

(i) Changes in operating plans or facility design affect the closure plan, or

(ii) There is a change in the expected year of closure, if applicable, or

(iii) In conducting partial or final closure activities, unexpected occurrences require a modification of the approved closure plan.

(3) The owner or operator must submit a written request for a permit modification within 60 days prior to the proposed change in facility design or operation, or within 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification within 30 days of the unexpected event.

(d) *Notification of closure.* (1) The owner or operator must notify the Regional Administrator in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the Regional Administrator in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed.

(2) The date when he "expects to begin closure" must be either within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a tank or container storage facility can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit.

(3) If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order under section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of this paragraph do not apply. However, the owner or operator must close the facility in accordance with the deadlines established in § 264.113.

(e) Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

§ 264.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, the owner or operator must treat, remove from the site, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve an extension of up to one year (or, upon reapplication, approve an additional one-year period) if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1)(i) The activities required to comply with this paragraph will, of necessity, take longer than 90 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the Hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to

human health and the environment, including compliance with all applicable permit requirements.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility. The Regional Administrator may approve an extension to the closure period of up to one year (or, upon reapplication, approve an additional one-year period) if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1)(i) The partial or final closure activities will, of necessary, take longer than 180 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(c) The demonstrations referred to above must be made (1) at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section or the 180-day period in paragraph (b) of this section, or (2) within 90 days after the effective date of this regulation, whichever is later.

§ 264.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of, or decontaminated unless otherwise specified in §§ 266.228, 264.258, 264.280, or 264.310. By removing all hazardous wastes and hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of Part 262 of this chapter.

§ 264.115 Certification of closure.

Within 45 days after completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 30 days of the completion of final closure, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by a registered professional engineer. Documentation supporting the registered professional engineer's certification must be furnished to the Regional Administrator upon request.

§ 264.116 Survey plat.

No later than the submission of the certification of closure of each hazardous waste disposal management unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal management unit in accordance with the applicable Subpart G regulations.

§ 264.117 Post-closure care and use of property.

(a)(1) Post-closure care for each hazardous waste management unit subject to the requirements of §§ 264.117–.120 must continue for 30 years after the date that the hazardous waste management unit was closed, and must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N of this part.

(2) During the 60-day period preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, the Regional Administrator may, in accordance with the permit modification procedures in § 270.41:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure), or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(b) The Regional Administrator may require, at partial and final closure, continuation of any of the security requirements of § 264.14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring system, unless the Regional Administrator finds that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in § 264.118.

§ 264.118 Post-closure plan; amendment of plan.

(a) The owner or operator of a hazardous waste disposal management unit must have a written post-closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by §§ 264.228(c)(1)(ii)and

264.258(c)(1)(ii) to have post-closure plans. The plan must be submitted with a permit application, in accordance with § 270.14(b)(13) of this chapter, and approved by the Regional Administrator as part of the permit issuance proceeding under Part 124 of this chapter. In accordance with § 270.32 of this chapter, the approved post-closure plan will become a condition of any permit issued.

(b) Owners or operators of storage surface impoundments and waste piles not otherwise required to prepare contingent post-closure plans under §§ 264.228(c)(1)(ii) and 264.258(c)(1)(ii) must submit a post-closure plan to the Regional Administrator within 90 days from the date that the owner or operator or Regional Administrator determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of §§ 264.117–.120. The post-closure plan must be submitted with a post-closure permit application in acordance with the requirements of § 270.14 of this chapter, and approved by the Regional Administrator as part of the permit issuance proceeding under Part 124 of this chapter. In accordance with § 270.32 of this chapter, the approved post-closure plan will become a permit condition.

(c) For each hazardous waste management unit subject to the requirements of this section, the post-closure plan must idenfity the activities that will be carried on after closure and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this part during the post-closure care period; and

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, and N of this Part; and

(ii) The function of the monitoring equipment in accordance with the requirements of Subparts, F, K, L, M, and N of this Part; and

(3) The name, address, and phone number of the person or office to contact about the hazardous waste management unit or facility during the post-closure care period.

(d) Until final closure of the facility, a copy of the approved post-closure plan must be furnished to the Regional Administrator upon request, including request by mail, and must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Agency who is duly designated by the Administrator. After final closure has been certified, the person of office specified in § 264.118(d)(3) must keep the approved post-closure plan during the reminder of the post-closure period.

(e) An owner or operator that seeks to change the approved post-closure plan must request a permit modification in accordance with the applicable requirements of Part 270.

(1) The owner or operator may submit a request to the Regional Administrator to modify the post-closure plan at any time during the active life of the facility or during the post-closure care period.

(2) The owner or operator must request a permit modification to authorize a change in the approved post-closure plan whenever:

(i) Changes in operating plans or facility design affect the approved post-closure plan, or

(ii) There is a change in the expected year of final closure, if applicable, or

(iii) Events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan.

(3) The owner or operator must submit a written request for a permit modification within 60 days prior to the proposed change in facility design or operation, or within 60 days after an unexpected event has occurred which has affected the post-closure plan.

§ 264.119 Post-closure notices.

(a) Within 60 days after closure of each hazardous waste disposal management unit is completed, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days after closure of each hazardous waste disposal management unit is completed, the owner or operator must:

(1) Record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under 40 CFR Subpart G regulations; and

(iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by § 264.116 and § 264.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Regional Administrator; and

(2) Submit a certification, including a copy of the document in which the notation has been placed, to the Regional Administrator that he has recorded the notation specified in paragraph (b)(i) of this section.

(c) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal management unit is located wishes to remove the hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated soils, he must request a modification to the post-closure permit in accordance with the applicable requirements in Part 270. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of § 264.117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this Chapter. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, he may request that the Regional Administrator approve either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search, or

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

§ 264.120 Certification of completion of post-closure care.

Within 30 days after completion of the established post-closure care period for each hazardous waste disposal management unit, the owner or operator must submit to the Regional Administrator a certification that the post-closure care for the disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator.

Subpart H—Financial Requirements

40 CFR Part 264, Subpart H, is amended as follows:

§ 264.141 [Amended]

1. In § 264.141, the following term is to be added to the end of the section:

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with §144.62 (a), (b), and (c) of this title.

2. In § 264.142, paragraphs (a), (b) introductory text and (c) are revised to read as follows:

§ 264.142 Cost estimate for closure.

(a) The owner or operator must have a written estimate, in the current dollars, of the cost of closing the facility in accordance with the requirements in §§ 264.111–264.115 and applicable closure requirements of §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 264.112(a)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the maximum extent of operation ever open over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 264.143. For owners or operators using the financial test, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 264.143(f)(3). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business*, as specified in paragraphs (b)(1) and (b)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) The owner or operator must revise the closure cost estimate within 30 days after the Regional Administrator has approved the request to modify the closure plan, if the change in the closure plan affects the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 264.142(b).

* * * * *

3. In § 264.143, paragraphs (a)(10), (b)(4)(ii), (c)(5), (d)(8), (e)(5), (f)(1)i)(B), (f)(1)(i)(D), (f)(1)(ii)(B), (f)(1)(ii)(D), (f)(2), and (i) are revised to read as follows:

§ 264.143 Financial assurance for closure.

* * * * *

(a) *Closure Trust fund.* * * *

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for partial or final closure expenditures by submitted itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if the partial closure reduces the maximum extent of operation of the facility. Within 60 days after receiving bills for partial or final closure activities, the Regional Administrator will instruct the trustee to make reimbursement in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the closure expenditures are in accordance with the closure plan, or otherwise justified. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement or reasons. If the Regional Administrator has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with § 264.143(i) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility.

* * * * *

(b) *Surety bond guaranteeing payment into a closure trust fund.* * * *

(4) * * *

(ii) Fund the standby trust fund in amount equal to the panel sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(c) *Surety bond guaranteeing performance of closure.* * * *

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

* * * * *

(d) *Closure letter of credit.* * * *

(8) Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Regional Administrator may draw on the letter of credit.

* * * * *

(e) *Closure insurance.* * * *

(5) After beginning partial or fianl closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if the partial closure reduces the maximum extent of operation of the facility. Within 60 days after receiving bills for closure activities, the Regional Administrator will determine whether the partial or final closure expenditures are in accordance with the closure plan or otherwise justified, and if so, he will instruct the insurer to make reimbursements in such amounts as the Regional Administrator specifies in writing. If the Regional Administrator has reason to believe that the cost of final closure will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with § 264.143(i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(f) *Financial test and corporate guarantee for closure.* (1) * * * (i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current

plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(l) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(l) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this title).

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

4. In § 264.144, paragraphs (a), (b) introductory text, and (c) are revised to read as follows:

§ 264.144 Cost estimate for post-closure care.

(a) The owner or operator of a disposal surface impoundment, land treatment, or landfill unit, or of a storage surface impoundment or waste pile required under §§ 264.228 and 264.258 to prepare a contingent closure and post-closure plan, must have a written estimate, in current dollars, of the annual cost of post-closure minitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 264.117–264.120, 264.228, 264.258, 264.280, and 264.310.

(1) The post-closure estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities.

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Subpart G of Part 264.

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 264.145. For owners or operators using the financial test, the post-closure care cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Regional Administrator as specified in § 264.145(f)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business* as specified in § 264.145(b)(1) and (b)(2). The inflation factor is the result of dividing the latest published Deflator by the Deflator for the previous year.

* * * * *

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate within 30 days after the Regional Administrator has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in § 264.144(b).

* * * * *

5. In § 264.145 the introductory text, paragraphs (a)(11), (b)(4)(ii), (c)(5), (d)(9), (e)(5), (f)(1)(i)(B), (f)(1)(i)(D), (f)(1)(ii)(B), (f)(1)(ii)(D), (f)(2), and (i) are revised to read as follows:

§ 264.145 Financial assurance for post-closure care.

The owner or operator of a hazardous waste management unit subject to the requirements of § 264.144 must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later.

(a) *Post-closure trust fund.* * * *

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure activities, the Regional Administrator will instruct the trustee to make reimbursement in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reason.

* * * * *

(b) *Surety bond guaranteeing payment into a post-closure trust fund.* * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(c) *Surety bond guaranteeing performance of post-closure care.* * * *

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

* * * * *

(d) *Post-closure letter of credit.* * * *

(9) Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, the Regional

Administrator may draw on the letter of credit.

* * * * *

(e) *Post-Closure Insurance.* * * *

(5) An owner or operator or any other person authorized to conduct post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure activities, the Regional Administrator will instruct the insurer to make reimbursement in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(f) *Financial test and corporate guarantee for post-closure care.* (1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§§ 144.70(f) of this title).

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* When an owner or operator has completed, to the satisfaction of the Regional Administrator, all post-closure care requirements for the period of post-closure specified in the permit for the facility, the Regional Administrator will, at the request of the owner or operator, notify him in writing that he is no longer required by this section to maintain financial assurance for post-closure care of the facility. If the Regional Administrator does not provide such notification, he will provide the owner or operator with a detailed written statement of his reasons.

6. In § 264.147, paragraph (e) is revised to read as follows:

§ 264.147 Liability Requirements.

* * * * *

(e) *Period of coverage.* An owner or operator must continuously provide liability coverage for a facility as required by this section until certifications of final closure of the facility, as specified in § 264.115, are received by the Regional Administrator.

* * * * *

7. In § 264.151 paragraph (b) is revised and paragraph (f)(5) is added to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(b) A surety bond guaranteeing payment into a trust fund, as specified in § 264.143(b) or § 264.145(b) or § 265.145(b) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

Date bond executed:
Effective date:
Principal: [legal name and business address of owner or operator] Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____
Total penal sum of bond: $_____ ____
Surety's bond number: _____ _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount ofthe penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA), to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by an EPA Regional Administrator or a U.S. district court or other court of competent jurisdiction,

* * * * *

(f) * * *

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:

PART 265—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 265 is amended as follows:

Authority: Sections 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended.

Subpart G—Closure and Post-Closure

1. In 40 CFR Part 265 Subpart G, §§ 265.110—265.119 are revised as follows:

§ 265.110 Applicability.

Except as § 265.1 provides otherwise:

(a) Sections 265.111–265.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 265.117–265.120 (which concern post-closure care apply to the owners and operators of:

(1) All hazardous waste disposal facilities; and

(2) Piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in §§ 265.228 or 265.258.

§ 265.111 Closure performance standard.

The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance, and

(b) Controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Complies with the closure requirements of this Subpart including, but not limited to, the requirements of §§ 265.178, 265.197, 265.228, 265.258, 265.280, 265.310 and 265.351.

§265.112 Closure plan; amendment of plan.

(a) *Written plan.* By May 19, 1981, the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with § 265.115, a copy of the most current closure plan must be furnished to the Regional Administrator upon request, including request by mail, and must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Agency who is duly designated by the Administrator.

(b) *Content of plan.* The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility will be closed in accordance with § 265.111; and

(2) A description of how final closure of the facility will be conducted in accordance with § 265.111. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a description of the methods to be used during partial and final closure, including, but not limited to methods for removing, transporting, treating, storing or disposal of all hazardous waste, and the type(s) of offsite hazardous waste management unit(s) to be used, if applicable; and

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard; and

(5) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat and dispose of all hazardous waste inventory and of the time required to place a final cover must be included.); and

(7) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under §§265.143 or 265.145 and whose remaining operating life is less than twenty years, and for facilities without approved closure plans.

(c) *Amendment of plan.* The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. The owner or operator must amend the closure plan whenever:

(1) Changes in operating plans or facility design affect the closure plan, or

(2) There is a change in the expected year of closure, if applicable, or

(3) In conducting partial or final closure activities, unexpected occurrences require a modification of the closure plan.

(4) The owner or operator must amend the closure plan within 60 days prior to the proposed change in facility design or operation, or within 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must amend the closure plan within 30 days of the unexpected event.

(5) An owner or operator with an approved closure plan must submit a request to modify the closure plan in accordance with the deadlines in §265.112(c)(4) to authorize such a change. The Regional Administrator may, at this discretion, provide public notice and comment and/or hold a public hearing.

(d) *Notification of closure.* (1) The owner or operator must submit the closure plan to the Regional Administrator at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment, o ndfill unit, or final closure if it involves such a unit, whichever is earlier. The owner or operator must submit the closure plan to the Regional Administrator at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units. Owners or operators with approved closure plans must notify the Regional Administrator in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit.

(2) The date when he "expects to begin closure" must be either within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a tank or container storage facility can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Regional Administrator may approve an extension to this one-year limit.

(3) The owner or operator must submit his closure plan to the Regional Administrator no later than 15 days after:

(i) Termination of interim status except when a permit is issued simultaneously with termination of interim status; or

(ii) Issuance of a judicial decree or final orders under Section 3008 of RCRA to cease receiving wastes or close.

(4) The Regional Administrator will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan within 30 days of the date of the notice. He will also in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the plan within 90 days of its receipt. If the Regional Administrator does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved closure plan. The Regional Administrator must assure that the approved plan is consistent with §§ 265.111, 265.113, 265.114, and 265.115 and the applicable requirements of §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(e) Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, the owner or operator must treat, remove from the site, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve an extension of up to one year (or, upon reapplication, approve an additional one-year period) using the procedures of § 265.112(d) if the owner or operator demonstrates that:

(1)(i) The activities required to comply with this paragraph will, of necessity, take longer than 90 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility, or 90 days after approval of the closure plan, if that is later. The Regional Administrator may approve an extension to the closure period of up to one year (or, upon reapplication, approve an additional one-year period) using the procedures under § 265.112(d) if the owner or operator demonstrates that:

(1)(i) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the enclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

(c) The demonstrations referred to above must be made (1) at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section or the 180-day period in paragraph (b) of this section, or (2) within 90 days after the effective date of this regulation, whichever is later.

§265.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of, or decontaminated unless specified otherwise in §§ 265.228, 265.258, 265.280, or 265.310. By removing all hazardous wastes and hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of Part 262 of this chapter.

§265.115 Certification of closure.

Within 45 days after completion of closure of each surface impoundment, waste pile, land treatment, and landfill hazardous waste management unit, and within 30 days after completion of final closure, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by a registered professional engineer. Documentation supporting the registered professional engineer's certification must be furnished to the Regional Administrator upon request.

§ 265.116 Survey plat.

No later than the submission of the certification of closure of each hazardous waste disposal management unit, an owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a survey plat indicating the location and dimensions of landfill cells or other hazardous wate disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal management unit in

accordance with the applicable Subpart G regulations.

§ 265.117 Post-closure care and use of property.

(a) (1) Post-closure care of each hazardous waste management unit subject to the requirements of §§ 265.117–265.120 must continue for 30 years after the date that the hazardous waste management unit was closed, and must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, and N of this part; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N of this part.

(2) During the 180-day period preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or during the post-closure period applicable to the hazardous waste management unit, the Regional Administrator may:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to proterct human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure), or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(b) The Regional Administrator may require, at partial and final closure, continuation of any of the security requirements of § 265.14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or domestic livestock may pose a hazard to huan health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Regional Administrator finds that the disturbance:

(1) Is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environement.

(d) All post-closure care activities must be in acordance with the provisions of the approved post-clousre plan as specified in § 265.118.

§ 265.118 Post-closure plan; amendment of plan.

(a) By May 19, 1981, the owner or operator of a hazardous waste disposal management unit must have a written post-closurue plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontainmenate the hazardous wastes at partial or final closure are required by §§ 264.228(c)(1)(ii) and 264.258(c)(1)(ii) to have post-closure plans. An owner or operator of a storage surface impoundment or waste pile not otherwise required to prepare a contingent post-closure plan under §§ 264.228(c)(1)(ii) and 265.58(c)(1)(ii) must submit a post-closure plan to the Regional Administrator within 90 days of the date that the owner or operator or Regional Administrator determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirments of §§ 265.117–265.120.

(b) Until final closure of the facility, a copy of the most current post-closure plan must be furnished to the Regional Administrator upon request, including request by mail, and must also be provided during site inspsections, on the day of inspection, to any officer, employee or representative of the agency who is duly designated by the Administrator. After final closure has been certified, the person or office spescified in § 265.118(d)(3) must keep the approved post-closure plan during the post-closure period.

(c) For each hazardous waste management unit subject to the requirements of this section, the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activites and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this part during the post-closure care period; and

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, and N of this part; and

(ii) The function of the monitoring equipment in accordance with the requirements of Subparts F, K, L, M, and N of this part; and

(3) The name, address, and phone number of the person of office to contact about the disposl facility during the post-closure care period.

(d) The owner or operator may amend the post-closure plan any time during the active life of the facility or during the post-closure care period. The owner or operator must amend the post-closure plan whenever:

(1) Changes in operating plans or facility design affect the approved post-closure plan, or

(2) Events which occur during the active life of the facility including partial and final closures, affect the approved post-closure plan.

(3) The owner or operator must amend the post-closure plan 60 days prior to the proposed change in facility design or operation, or within 60 days after an unexpected event has occurred which has affected the post-closure plan.

(e) The owner or operator of a facility with hazardous waste management units subject to these requirements must submit his post-closure plan to the Regional Administrator at least 180 days before the date he expects to begin partial or fianl closure of the first hazardous waste disposl management unit. The date he "expects to begin closure" of the first hazardous waste disposal management unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit the post-closure plan to the Regional Administrator no later than 15 days after:

(1) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) Issuance of a judicial decree or final orders under Section 3008 of RCRA to cease receiving wastes or close.

(f) The Regional Administrator will provide the owner or operator and the

public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined). The Regional Administrator will approve, modify, or disapprove the pan within 90 days of its receipt. If the Regional Administrator does not approve the plan, he shall provide the onwer or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved post-closure plan. The Regional Administrator must base his decision upon the criteria required of petitions in paragraph (g) of this section. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator. If the owner or operator plans to begin closure before November 19, 1981 he must submit the closure plan by May 19, 1981.

(g) An owner or operator with an approved post-closure plan must request a modification to the approved post-closure plan in accordance with the deadlines in § 265.118(d)(3) to authorize such a change. An owner or operator may make a request at any time prior to the beginning of the post-closure care period. The Regional Administrator may, at his discretion, provide public notice and comment and/or hold a public hearing. The post-closure plan and length of the post-closure care period may be modified during the post-closure care period or at the end of the post-closure care period in either of the following two ways:

(1) The owner or operator or any member of the public may petition the Regional Administrator to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

(i) The petition must include evidence demonstrating that:

(A) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the post-closure plan (e.g., leachate or ground-water monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

(B) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(ii) These petitions will be considered by the Regional Administrator only when they present new and relevant information not previously considered by the Regional Administrator. Whenever the Regional Administrator is considering a petition, he will provide the owner or operator and the public, through a newspaper notic, the opportunity to submit written comments within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Regional Administrator will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.) After considering the comments, he will issue a final determination, based upon the criteria set forth in subparagraph (1).

(iii) If the Regional Administrator denies the petition, he will send the petitioner a brief written response giving a reason for the denial.

(2) The Regional Administrator may tentatively decide to modify the post-closure plan if he deems it necessary to prevent threats to human health and the environment. He may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

(i) The Regional Administrator will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in subparagraph (g)(1)(ii) of this section. After considering the comments, he will issue a final determination.

(ii) The Regional Administrator will base his final determination upon the same criteria as required for petitions under paragraph (g)(1)(i) of this section. A modification of the post-closure plan may include, where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Regional Administrator would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.

§ 265.119 Post-closure notices.

(a) Within 60 days after closure of each hazardous waste disposal management unit is completed, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days after closure of each hazardous waste management disposal unit is completed, the owner or operator must:

(1) Record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under 40 CFR Subpart G regulations; and

(iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by § 265.116 and § 265.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Regional Administrator; and

(2) Submit a certification, including a copy of the document in which the notation has been placed, to the Regional Administrator that he has

recorded the notation specified in paragraph (b)(1)(i) of this section.

(c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal management unit was located wishes to remove the hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he must request a modification to the approved post-closure plan in accordance with the requirements of § 265.118(g). The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of § 265.117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this chapter. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the Regional Administrator approve either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search, or

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

§ 265.120 Certification of completion of post-closure care.

Within 30 days after completion of the established post-closure care period for each hazardous waste disposal management unit, the owner or operator must submit to the Regional Administrator a certification that the post-closure care for the disposal units was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator.

Subpart H—Financial Requirements

40 CFR Part 265 Subpart H is amended as follows:

§ 265.140 [Amended]

1. In § 265.140, paragraph (a) is revised as follows:

(a) The requirements of §§ 265.142, 265.143, and 265.147 through 265.150 apply to owners or operators of all hazardous waste facilities, except as provided otherwise in this section or in § 265.1.

* * * * *

§ 265.141 [Amended]

2. In § 265.141 the following term is to be added to the end of the section:

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with § 144.62(a), (b), and (c) of this title.

3. In § 265.142, paragraphs (a), (b) introductory text, and (c) are revised to read as follows:

§ 265.142 Cost estimate for closure.

(a) The owner or operator must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 265.111–265.115 and applicable closure requirements of §§ 265.178, 265.197, 265.228, 265.258, 265.280, 265.310, and 265.351.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 265.112(a)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the maximum extent of operation ever open over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized by the sale of hazardous wastes, facility structures or equipment, land or other facility assets at the time of partial or final closures.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 265.143. For owners and operators using the financial test, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 265.143(e)(3). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business*, as specified in paragraphs (b)(1) and (b)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) The owner or operator must revise the closure cost estimate within 30 days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised within 30 days after the Regional Administrator has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 265.142(b).

* * * * *

4. In § 265.143, paragraphs (a)(10), (b)(4)(ii), (c)(8), (d)(5), (e)(1)(i)(B), (e)(1)(i)(D), (e)(1)(ii)(B), (e)(1)(ii)(D), (e)(2), and (h) are revised as follows:

§ 265.143 Financial assurance for closure.

* * * * *

(a) *Closure trust fund.* * * *

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may only request reimbursements for partial closure if the partial closure reduces the maximum extent of operation of the facility. Within 60 days after receiving bills for partial or final closure activities, the Regional Administrator will instruct the trustee to make reimbursement in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons. If the Regional Adminstrator has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, he may withhold reimbusements of such amounts as he deems prudent until he determines, in accordance with § 265.143(h) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility.

* * * * *

(b) *Surety bond guaranteeing payment into a closure trust fund.* * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(c) *Closure letter of credit.* * * *

(8) Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so,

the Regional Administrator may draw on the letter of credit.

* * * * *

(d) *Closure insurance.* * * *

(5) After beginning partial or final closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if the partial closure reduces the maximum extent of operation of the facility. Within 60 days after receiving bills for closure activities, the Regional Administrator will determine whether the partial or final closure expenditures are in accordance with the closure plan or otherwise justified, and if so, he will instruct the insurer to make reimbursements in such amounts as the Regional Administrator specifies in writing. If the Regional Administrator has reason to believe that the cost of final closure will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with § 265.143(h), that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

* * * * *

(e) *Financial test and corporate guarantee for closure.*

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * * * *

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimate required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this Title).

* * * * *

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

5. In § 265.144, paragraphs (a), (b) introductory text and (c) are revised to read as follows:

§ 265.144 Cost estimate for post-closure care.

(a) The owner or operator of a hazardous waste disposal management unit must have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 265.117–265.120, 265.228, 265.258, 265.260, and 265.310.

(1) The post-closure estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities.

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Subpart G of Part 265.

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 265.145. For owners or operators using the financial test, the post-closure care cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most current Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business* as specified in § 265.145 (b)(1) and (b)(2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate within 30 days of a revision to the post-closure plan which increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised within 30 days after the Regional Administrator has approved the request to modify the plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in § 265.144(b).

* * * * *

6. In § 265.145, The introductory text, paragraphs (a)(11), (b)(4)(ii), (b)(5), (c)(9), (d)(5), (e)(1)(i)(B), (e)(1)(i)(D), (e)(1)(ii)(B), (e)(1)(ii)(D), (e)(2), and (h) are revised as follows:

§ 265.145 Financial assurance for post-closure care.

By the effective date of these regulations, an owner or operator of a facility with a hazardous waste disposal management unit must establish financial assurance for post-closure care of the disposal unit(s).

(a) *Post-closure trust fund.* * * *

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure activities, the Regional Administrator will instruct the trustee to make reimbursement in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified. If the Regional Administrator does not instruct the trustee to make such reimbursements, he

will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(b) *Surety bond guaranteeing payment into a post-closure trust fund.* * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, under the terms of the bond, the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

* * * * *

(c) *Post-closure letter of credit.* * * *

(9) Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, the Regional Administrator may draw on the letter of credit.

* * * * *

(d) *Post-Closure Insurance.* * * *

(5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure activities the Regional Administrator will instruct the insurer to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified. If the Regional Administrator does not instruct the insurer to make such reimbursement, he will provide a detailed written statement of reasons.

* * * * *

(e) *Financial test and corporate guarantee for post-closure care.*

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates, and

* * * * *

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * * * *

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§264.151(f))

The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraph 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this title).

* * * * *

(h) *Release of the owner or operator from the requirements of this section.* When an owner or operator has completed, to the satisfaction of the Regional Administrator, all post-closure care requirements in accordance with the approved post-closure plan, the Regional Administrator will, at the request of the owner or operator, notify him in writing that he is no longer required by this section to maintain financial assurance for post-closure care of the particular facility. If the Regional Administrator does not provide such notification, he will provide to the owner or operator a detailed written statement of his reasons.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

Authority: Sections 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939 and 6974).

Subpart B—Permit Application

40 CFR Part 270 Subpart B is amended as follows:

1. In § 270.14, paragraphs (b)(14), (15) and (16) are revised to read as follows:

§ 270.14 Contents of Part B Application: General Requirements.

* * * * *

(b) * * *

(14) For hazardous waste disposal management units that have been closed, documentation that notices required under § 264.119 have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with § 264.142 and a copy of the documentation required to demonstrate financial assurance under § 264.142. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with § 264.144 plus a copy of the documentation required to demonstrate financial assurance under § 264.145. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

* * * * *

2. In § 270.42, paragraph (d) is revised to read as follows:

§ 270.42 Minor Modificiation of Permits.

* * * * *

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees, and demonstration of compliance with the requirements of § 270.72(d) has been submitted to the Director.

* * * * *

3. In § 270.72, paragraph (d) is revised to read as follows:

§ 270.72 Changes during interim status.

* * * * *

(d) Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a

facility occurs, the old owner or operator shall comply with the requirements of 40 CFR 265, Subpart H (financial requirements), until the new owner or operator has demonstrated to the Director that he is complying with the requirements of that Subpart. The new owner or operator must demonstrate compliance with Subpart H requirements with three months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the older owner or operator in writing that he no longer needs to comply with Subpart H as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility.

* * * * *

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Tuesday
March 19, 1985

Part IV

Department of Health and Human Services

Office of Human Development Services

Runaway and Homeless Youth Program; Availability of Financial Assistance

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13623-851]

Runaway and Homeless Youth Program; Availability of Financial Assistance

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Announcement of availability of financial assistance—Centers for Runaway and Homeless Youth and Coordinated Networking Grants.

SUMMARY: The Administration for Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB) announces the availability of fiscal year 1985 funds for the Runaway and Homeless Youth Basic Center Grants and the Coordinated Networking Grant Programs. These grants are authorized by the Runaway and Homeless Youth Act, 42 U.S.C. 5701 *et seq.* This Act was enacted as Title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415), as amended by the Juvenile Justice Amendments of 1977 (Pub. L. 95-115), the Juvenile Justice Amendments of 1980 (Pub. L. 96-509), and the Juvenile Justice Amendments of 1984 (Pub. L. 98-473). See 42 U.S.C. 5701 et seq.

This program announcement consists of three parts. Part I covers the scope of this announcement and generally describes the following: the purpose, goals and objectives of the Runaway and Homeless Youth Program; the two types of grants to be supported during FY 1985—Basic Center and Coordinated Networking Grants; and the application and review process attendant to the award of grants under Parts II and III of this announcement. Part II describes the Basic Center Grants component and provides detailed guidance on how to prepare and submit an application. Part III describes the Coordinated Networking Grants component and gives detailed guidance on how to prepare and submit an application for that separate part.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela A. Johnson, ACYF/Family and Youth Services Bureau, Division of Program Operations, P.O. Box 1182, Washington, D.C. 20013, Telephone: (202) 755-2987.

DATE: The closing date for receipt of all applications under Part II of this announcement is: May 3, 1985. The closing date for receipt of all applications under Part III of this announcement is: May 10, 1985.

SUPPLEMENTARY INFORMATION:

Part I: General Considerations

A. Scope of This Program Announcement

This program announcement solicits applications and describes the application process for the Basic Center Grants and the Coordinated Networking Grants Programs to be competitively awarded during the third and fourth quarters of fical year 1985. Applicants should note that coordinated networking grants will not be awarded until the fourth quarter of FY 1985. Some coordinated networking grants may be deferred until the first and second quarters of FY 1986. This will enable ACYF to make funding decisions and process award documents for the Basic Center grant awards in a timely manner, in order to avoid potential breaks in service provided by currently operating Title III grantees which are successful in the FY 1985 competition.

B. Program Purpose

The purpose of the National Runaway and Homeless Youth Program is to provide financial assistance to establish or strengthen community-based centers designed to address the needs (e.g., outreach, temporary shelter, counseling, family counseling and aftercare services) of runaway and homeless youth and their families.

Additionally, Section 311(a) of the Act (42 U.S.C. 5711(a)) authorizes the Secretary "to make grants * * * to * * * coordinated networks * * *." These grants are to provide financial assistance to the coordinated service networks of runaway and homeless youth serving agencies to develop and strengthen the coordination of resources and services to runaway and homeless youth and their families between and among the public and private sectors.

Programs receiving Runaway and Homeless Youth Act funding under Parts II and III of this announcement are required to be knowledgeable of and to adhere to the requirements of 45 CFR Part 1351, Runaway Youth Program, and other applicable Federal regulations. Applicants must develop their applications in accordance with those regulations and the supplementary instructions which are included in this announcement.

C. Program Goals and Objectives

The program goals and objectives of the Runaway and Homeless Youth Act are to assist runaway and homeless youth centers to: (a) alleviate the problems of runaway and homeless youth; (b) reunite youth with their families and to encourage the resolution of intrafamily problems through counseling and other services; (c) strengthen family relationships and to encourage stable living conditioins for youth; and (d) help youth decide upon a future course of action.

The centers to be funded under Part II of this program announcement are required to provide outreach, temporary shelter, individual and group counseling, family counseling and aftercare services. These services must address the immediate needs of youth while they are away from home, and provide individual and family counseling and other assistance needed to resolve intrafamily problems, and to strengthen family relationships. Additionally, both directly and through linkages with other social service agencies, the centers are required to furnish other assistance such as health, education, legal, and employment services geared to the needs of the individual clients and families served.

For FY 1985, a special emphasis is again being placed on strengthening the coordination of resources and services, through capacity-building and technical assistance activities, for runaway and homeless youth and their families by supporting, through one-time grants, coordinated networks of private entities at the State and regional levels. Part III of this announcement provide detailed guidance on the requirements and application procedures for this activity.

D. Application Process

Eligible organizations wishing to compete for a Basic Center grant must submit a completed application by May 3, 1985. Eligible organizations wishing to compete for a Coordinated Networking grant must submit a completed application by May 10, 1985. All applicants must clearly identify on the application form (SF 424, Box 7) whether they are applying for a Runaway and Homeless Youth *Basic Center* Grant or *Coordinated Networking* Grant. Applications received in response to this announcement will be reviewed by ACYF and other Federal staff and non-Federal experts.

Agencies and organizations interested in applying for funds may receive application information from ACYF/Family and Youth Services Bureau, Division of Program Operations, P.O. Box 1182, Washington, D.C. 20013—Attention: ACYF-FYSB-851. Telephone: (202) 755-2987.

1. Assistance to Prospective Grantees

Section 315 of the Runaway and Homeless Youth Act states that potential grantees can receive assistance in developing an application to establish a runaway and homeless youth center from several sources.

Informational assistance is available from the ten ACYF regional offices listed at the end of this announcement and may also be received from the Family and Youth Services Bureau (see above for address).

2. Application Requirements

In order to be considered for a Runaway and Homeless Youth Basic Center or Coordinated Networking Grant, an application must be submitted on the forms and in the manner required by the Administration for Children, Youth and Families. The application must be executed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement. All the information needed and the forms required to submit a complete application under this program are contained in this announcement under Appendices A and B.

3. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." State Processes or directly affected State, area-wide, regional, and local officials and entities have 60 days to comment on the application, starting from the deadline date for application submission to ACYF. A Single Point of Contact (SPOC) to fulfill the requirements of E.O. 12372 has been established in all States and territories except Alaska, Idaho, American Samoa and Guam (applicants from these four areas need take no action regarding E.O. 12372). Applicants must submit required material to their SPOCs so ACYF can obtain comments from the SPOCs as part of the award process. (Applications for programs to be administered directly by Federally recognized Indian tribes are exempt from the requirements of E.O. 12372.) Applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive specific instructions regarding the process (see addresses at the end of the announcement). Required material should be sent to the SPOC as early as possible. SPOCs will submit their comments directly to Dr. Dominic J. Mastrapasqua, Acting Associate Commissioner, Family and Youth Services Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013. HDS will notify the State of any application received which has no indication that the State Process has had an opportunity for review.

4. Priority for Funding

Sections 311 and 313 of the Runaway and Homeless Youth Act (the Act), (42 U.S.C. 5711 and 5713), require that priority for funding, as expressed in Criterion 6, Section E, Part II, be given to organizations with demonstrated past experience in providing services to runaway and homeless youth, and their families, and to organizations requesting grants of less than $150,000. As specified in 45 CFR 1351.12, "Past experience means that a major activity of the agency has been the provision of temporary shelter, counseling, and referral services to runaway and otherwise homeless youth and their families, either directly or through linkages established with other community agencies."

5. Availability of Forms

For your convenience, a copy of each form required to submit an application for a grant under the Runaway and Homeless Youth Program and the instructions for completing the application are included as Appendix A and Appendix B to this announcement. The Program Performance Standards and a description of the National Runaway Switchboard are included as Appendix C. Title III of Pub. L. 98–473, the Runaway and Homeless Youth Act and the Code of Federal Regulations (CFR) Title 45, Part 1351, Runaway Youth Program may be available at the main branch of your local public library, university libraries, U.S. Government Printing Office bookstores, or from the ACYF regional offices listed at the end of this announcement. These materials may also be obtained by writing to: ACYF/Family and Youth Services Bureau, Division of Program Operations, P.O. Box 1182, Washington, D.C. 20013, Telephone: (202) 755–2987.

Additional copies of this announcement are also available from the above address or may be obtained from the regional offices listed at the end of this announcement.

6. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined in Sections II–E and III–F of this program announcement. This review will be conducted in Washington, D.C. Reviewers will include individuals knowledgeable in the areas of youth development and/or human service programs (from States other than the one from which applications are being reviewed), Federal staff and other experts. The results of the competitive review will be taken into consideration by the Associate Commissioner of the Family and Youth Services Bureau who, in consultation with the ACYF regional officials, will recommend projects to be funded. The ACYF Commissioner will make the final selection of applicants to be funded.

The Commissioner may elect not to fund any applicants that have known management, fiscal or other problems or situations which make it unlikely that they would be able to provide effective services to runaway and homeless youth. For example, this might apply to an applicant whih has failed to serve an adequate number of runaway and homeless youth in the past, failed to submit fiscal reports on a timely basis, and/or was unable to achieve the objectives for which past funding was provided.

In negotiating the final budget for successful applicants, consideration will be given to the need expressed in the application; the number of runaway or homeless youth in the community in which the center will be located; the existing availability of services designed to meet the immediate needs of runaway and homeless youth and their families; and the range and types of services to be provided under the proposed project within the requirements of the Act, as shown in criterion number 3, Section E of Part II of this announcement. Successful applicants will be notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is provided. Organizations whose applications have been disapproved will be notified in writing of that decision.

E. Lease of Surplus Federal Facilities for Use as Runaway and Homeless Youth Centers

Section 316(a) of the Act (42 U.S.C. 5716(a)) states that the Secretary may enter into cooperative lease arrangements with States, localities, and nonprofit, private agencies to provide for the use of appropriate surplus Federal facilities. For profit agencies are not eligible to lease surplus Federal facilities for use as centers under this section. These facilities, transferred by the General Services Administration to the Department of Health and Human Services, would be for use as runaway and homeless youth centers. For example, any Government surplus building or property that could be used as a community-based or satellite center to provide temporary housing or other relevant services for runaways or otherwise homeless youth, would be examined to see if it qualifies to be used as surplus Federal facilities. In other words, the primary purpose of the leased facility would be to provide temporary shelter or conduct other services to runaway and homeless youth at no cost.

The Department will be developing procedures to enable it to implement this provision. When these procedures have been developed and appropriate property is available a notice will be published so that interested parties may contact the Administration for Children, Youth and Families to obtain more specific information.

Part II: Basic Center Grants

A. Eligible Applicants

States, localities, private profit and non-profit agencies and coordinated networks of such agencies are eligible to apply for a Runaway and Homeless Youth Basic Center Grant as long as they are not a part of the law enforcement structure or the juvenile justice system. States are defined to include any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territories of the Pacific Islands, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. (See 42 U.S.C. 5603(7) as amended by Sec. 5(c) of Pub. L. 96–509.) Federally recognized Indian tribes are eligible to apply for grants as local units of government. Non-Federally recognized Indian tribes and Indian organizations are eligible to apply for grants as private nonprofit agencies.

B. Available Funds

The Administration for Children, Youth and Families expects to award a total amount of approximately $18,142,766 in Basic Center Grants. Of that amount, eighteen million dollars will be divided among the States according to their respective populations under the age 18. In addition, $142,766 will be split up among those States which lost money due to shifts in population (according to the latest available Census figures), in order to assure that the money is being allocated equitably. This additional money (which is less than 1% of the eighteen million dollars which is divided up among all the States), will be used to ease the transition for those States which would otherwise experience a loss of money. ACYF may not allocate available dollars in this manner in subsequent fiscal years. The grant awards will be made to an estimated 270 grantees for runaway and homeless youth centers in fiscal year 1985. These grantees may include current grantees; grantees located in currently unserved communities that did not receive funding under the Runaway and Homeless Youth Act (Title III, Pub. L. 98–473) during the previous center grants competition held in fiscal year 1984; and new grantees applying to provide services in areas currently served by existing grantees. It is also anticipated that the project and budget periods of grants will be for a period of 12 months.

The number of Basic Center Grants awarded within each State will depend upon the State's allocation and the number of acceptable applications. Also, all applicants under this announcement will compete with other applicants in the State in which their services will be provided. In the event that an insufficient number of applications meeting the minimum criteria for funding are submitted from within any State jurisdiction, the Assistant Secretary for Human Development Services may reallocate any such unused funds.

The following table indicates the total fiscal year 1985 allocations for each State.

RUNAWAY AND HOMELESS YOUTH CENTERS ALLOCATIONS BY STATE

[Total 57 States—fiscal year 1985]

Alabama	$324,809
Alaska	43,332
Arizona	234,669
Arkansas	182,895
California	1,843,023
Colorado	238,045
Connecticut	216,562
Delaware	45,110
District of Columbia	37,896
Florida	690,782
Georgia	456,707
Hawaii	79,911
Idaho	89,478
Illinois	880,595
Indiana	433,107
Iowa	223,770
Kansas	182,051
Kentucky	292,351
Louisiana	381,267
Maine	86,621
Maryland	312,020
Massachusetts	397,014
Michigan	723,848
Minnesota	319,417
Mississippi	224,821
Missouri	369,947
Montana	65,842
Nebraska	124,369
Nevada	64,717
New Hampshire	70,826
New Jersey	533,102
New Mexico	121,274
New York	1,266,801
North Carolina	452,958
North Dakota	55,150
Ohio	835,531
Oklahoma	258,305
Oregon	199,215
Pennsylvania	809,143
Rhode Island	84,967
South Carolina	260,837
South Dakota	57,401
Tennessee	353,704
Texas	1,305,992
Utah	171,359
Vermont	39,399
Virginia	404,231
Washington	322,740
West Virginia	151,944
Wisconsin	368,142
Wyoming	45,020
Puerto Rico	350,093
Virgin Islands	12,631
American Samoa	4,502
Guam	12,632
Pacific Trust Territories	18,046
Northern Mariana Islands	2,251
Total	18,142,766

C. Grantee Share of the Project

According to section 318(a) of the Act (42 U.S.C. 5716(a)), a ten percent match of the total project cost (line 13f of SF Form 424) is required of all grants funded under this announcement. For example, a total project cost of $100,000 must include at least a $10,000 non-Federal share. The non-Federal portion may be cash, in-kind contributions or grantee incurred costs (including the facility, equipment or services) and must be project-related and allowable under the cost principles as provided in 45 CFR Part 74, the Department's regulation on the Administration of Grants. For-profit applicants are reminded of the prohibition against profits in the use of grant funds (45 CFR 74.705).

D. Populations To Be Served

Programs funded under this announcement shall serve runaway and homeless youth under 18 and their families. All services, including temporary shelter, must be provided in accordance with 45 CFR Parts 80, 81 and

84 pertaining to non-discrimination under programs receiving Federal assistance.

E. Review Criteria

All competitive applications for financial assistance to support the operation of basic centers for runaway and homeless youth will be reviewed and evaluated against the following criteria:

1. The reasonableness of the proposed budget, including a justification for costs. The cost of the proposed project is reasonable in relation to the proposed activities and projected results. (10 points)

2. The extent to which the applicant has demonstrated the ability to access other resources which can strengthen support for the existing or proposed center's activities and to remain a viable organization at the expiration of the Federal funding period. (10 points)

3. The extent to which the application documents the need for services to runaway and homeless youth in the proposed service area(s) (e.g., specific communities, districts, neighborhoods) on the basis of a comprehensive community needs assessment, including the extent to which the selection of these areas is based on the incidence of runaway and homeless youth.

a. Documentation of the need and availability of services for runaway and homeless youth within the locality to be served by the Runaway and Homeless Youth Program, and citation of the year and sources of these data. (5 points)

b. Documentation of the number of runaway and homeless youth, and citation of the year and source of these data. (5 points)

c. Evidence of a connection between the needs identified and the program of services planned or offered by the applicant agency as described in criterion 4, a. (5 points)

d. Description of the relationship between the location of the proposed or existing center to other available services within the community and a discussion of the results or benefits anticipated in terms of both the clients served and the community at large and the State (for example: the reunification of youth with their families, or their placement in positive alternative living arrangements). (5 points) Total (20 points)

4. The ability of the applicant to design, establish or continue a center which can achieve the goals and requirements of this grant program as set forth in the Runaway and Homeless Youth Act, the implementing regulations (45 CFR Part 1351), and the Program Performance Standards.

a. Discussion of how the applicant currently plans, organizes and provides services to runaway and homeless youth and their families, or would do so. This discussion should include, but not be limited to, the methods for providing:

- Outreach/community relations.
- Individual intake.
- Case planning with each youth.
- Temporary shelter.
- Individual, family and group counseling.
- Aftercare.
- Service linkages.
- Alternative placements for youth who cannot return home.
- Leisure time activities. (20 points)

b. The applicant adequately provides a description of the procedures which are or will be employed in the following areas:

- Documentation which shows that the facility where the youth will be housed is in compliance with applicable State and local licensing requirements or a description of the steps that would be taken to comply with these requirements; and certification that no more than 20 youth will be sheltered in a single facility.
- Procedures that are or will be employed in providing shelter on a 24-hour basis to runaway and homeless youth directly or indirectly.
- Procedures that are or will be used in verifying the safe arrival of youth either at home or in an alternative living arrangement.
- Procedures that are or will be employed in contacting the parents or legal guardians if the youth is provided temnporary shelter, including a summary of applicable State and local laws regarding parental permission requirements.
- Provisions for linking the center's activities with the National Runaway Switchboard.
- Description of how the center has or will develop working relationships with law enforcement, juvenile court, school system, and local public and private agency personnel, including procedures for returning youth who have run away from correctional institutions in accordance with applicable Federal, State and local laws.
- Description of how the center has or will actively participate in local and State networks or coalitions of youth serving agencies or other human service organizations. (10 points)

c. The applicant provides a discussion of plans for collecting and maintaining adequate statistical records profiling the youth and families served and the procedures to be employed to ensure the confidentiality of this information. (5 points)

d. The applicant provides an organizational chart; describes how the project is or will be staffed, how staff are or will be selected, trained and supervised; and how the organization ensures or will ensure 24 hour accessibility as well as an adult/youth ratio at all times to assure adequate supervision and treatment; and provides position descriptions and resumes for key staff and a listing of board members. This criterion includes a description of the recruitment, training and utilization efforts for volunteers in the organization, including their roles; and the extent to which the program has defined or proposes specific roles for youth in planning, policy, decision making and service delivery. (5 points) Total (40 points)

5. A description of how the applicant provides or plans to provide outreach and other activities designed to prevent runaway behavior, and to reunite youth with their families. (15 points)

6. The extent to which the applicant organization has demonstrated experience in planning, organization has and/or providing information, temporary shelter, counseling and referral services to runaway and homeless youth and their families. (5 points) Total 100 points

F. Instructions for Completing the Application

1. *Application Requirements.* In order to be considered for a Basic Center Grant, an applicant must submit one signed original and two copies of the grant application, including all attachments. ACYF encourages the submission of an additional five copies for a total of one original and seven copies in order to expedite the processing and to facilitate the panel review process. There is no penalty for not submitting these additional copies. The original copy of the application must have original signatures. Each copy should be stapled (back and front) in the upper left corner. One copy of the complete application should be sent to the appropriate Regional Office listed at the end of this announcement. The remaining complete applications, including the original and all other copies, must be sent to: HDS/Division of Grants and Contracts Management, 330 Independence Avenue, S.W., Room 1740, Washington, D.C. 20201—Attention ACYF–FYSB–851. The program announcement number (13623–851) must be clearly identified on the application (SF 424, box 6b). In order to facilitate handling, please do not use covers, binders or tabs. Three extra copies of the SF–424 and three copies of the cover

sheet/abstract, stapled together apart from the copies of the application, are requested.

2. *Content of Application.* Each copy of the application must contain the following items in the order listed:

a. A Standard Form 424, page 1.

b. A Project Abstract Form.

c. Part II—Project Approval Information.

d. Part III—Budget Information.

e. Part IV—Project Narrative.

f. HHS–SF 441, Assurance of Compliance, Title VI, Civil Rights Act of 1964.

g. HHS–SF 641, Assurance of Compliance, Sec. 504, Rehabilitation Act of 1973, As Amended.

3. *Instructions for Preparing Application.* For your convenience, we have reprinted the forms and instructions for applying for Federal Assistance from HDS programs as Appendices A and B to this announcement. We suggest that you reproduce the forms and use them to prepare your application.

Prepare your application in accordance with the following instructions:

a. Standard Form 424, page 1 (follow instructions contained in Appendix B).

b. Project Abstract form.

Please complete the Project Abstract Form contained in Appendix A of this announcement. In order to facilitate handling, do not use covers, binders, or tabs.

c. Part II—Project Approval Information. This form is self-explanatory.

d. Part III—Budget Information.

Complete Part III in accordance with the instructions contained in Appendix B.

e. Table of Contents. Provide a table of contents for the Part IV narrative, including a listing of any appendices.

f. Part IV—Project Narrative—Basic Center Grants.

Describe the project you propose in response to this announcement. Your narrative should provide information on how the application responds to legislative requirements and review criteria set forth in this announcement (Part II, Section E). Please limit your narrative to 32 pages [single spaced] plus attachments.

1. *Objectives and Need For This Assistance.* (4 pages maximum, single spaced.)

Provide a concise description documenting the need for services for runaway and homeless youth in the area to be served. These data must be documented by source and year, and may be compiled from the most recent census, police, juvenile court, welfare, existing runaway services and other sources. (1) Information should include data on the incidence of runaway and homeless youth in the geographic area to be served including the demographics of males, females; ethnic origin; ages; State of origin; services needed by youth and families; an analysis of the adequacy of existing services for runaway and homeless youth in the community; and the outcomes anticipated from the services to be provided. Especially in area of low population density, a strong evidence should be presented which documents the number of runway and homeless youth and more importantly, the complexities of providing needed services to the target population in such areas.

(2) Demonstrate the connection between the needs identified and the program of services planned or offered by the applicant agency.

2. *Results or Benefits Expected.* (2 pages maximum, single spaced.)

This section should identify the results and benefits to be derived from the implementation of services to runaway and homeless youth and their families under this grant program. Specifically, the applicant should describe: the results or benefits anticipated in terms of clients served and the community-at-large (for example: youth reunification with the family, or their placement in appropriate living arrangements).

In addition, explain the criteria to be used to evaluate the results or success of the project and to determine if the results and benefits identified are being achieved.

3. *Approach.* (20 pages maximum, single spaced, excluding timetables, charts, supporting documentation or listings)

a. This section of the program narrative must describe the specific plan of action and program of services that would be provided under the proposed project as well as reflect a conceptualization of the issues to be addressed relative to runaway and homeless youth and their families. Specifically, the program narrative must address at a minimum the following areas:

(i) The services the center provides or would provide to runaway, homeless and other vulnerable youth and their families and how they are or would be provided, including at a minimum: outreach/community relation; individual intake; case planning with each youth; temporary shelter; individual and/or group counseling; family counseling; service linkages; and alternative placements for youth who cannot return home.

(ii) Documentation that the center is or will be located in an area which is frequented or easily reached by runaway and homeless youth and their families.

(iii) A description of how shelter services will be provided either directly or indirectly on a 24-hour basis; any applicable local and State licensing requirements and how they have been or will be achieved; and certification that no more than 20 youth will be housed in a single facility with a ratio of staff to youth of sufficient proportion to assure adequate supervision and treatment.

(iv) The procedures that are or will be employed for contacting youths' parents or legal guardians, preferably within 24 hours but not to exceed 72 hours of the time youth enter the program, and a summary of applicable local and State laws regarding parental permission requirements.

(v) The procedures that are or will be employed for verifying the safe, arrival of youth either at home or in an alternative living arrangement.

(vi) The procedures that are or will be employed for providing aftercare services (the range of services provided to youth having left the runaway/homeless youth shelter).

Discuss the extent to which the program has or will have the capacity to provide these services directly or indirectly through linkages with other programs of a similar nature, to those youth who are returned beyond the State in which the applicant center is located.

(vii) A description of how the center has or will link its activities with the National Runaway Switchboard which has been developed to facilitate communication between runaway and homeless youth and their families.

(viii) A description of how the center has or will develop working relationships with law enforcement, juvenile court, school system, and local public and private agency personnel including procedures for returning youth who have run away from correctional institutions in accordance with applicable Federal, State and local laws.

(ix) A description of how the center has demonstrated active participation or will partcipate in local and State networks or coalitions of youth serving agencies or other human services organizations.

b. Provide quantitative monthly or quarterly reports or projections of the accomplishments that have been or will be achieved, such as the number of

runaway and homeless youth and their families to be served.

c. Identify the kinds of data to be collected and discuss how the project will maintain adequate statistical records profiling the youth and families served; and the procedures that are or will be employed to ensure the confidentiality of this information.

4. *Geographic Location.* Describe the precise location of the project as well as the geographic area served or to be served by the proposed project. Maps or other graphic aids may be attached (1 page).

5. *Organizational Capability.* (5 pages maximum, single spaced, excluding position descriptions or resumes).

Provide an organizational chart and describe the following: how the program is or will be staffed; how staff are or will be selected, supervised and trained; how the organization ensures or will ensure 24-hour accessibility to its services and an adequate youth/adult staff ratio at all times; and how specific roles for youth have or will be defined in planning, policy decisionmaking and service delivery.

a. Provide position descriptions and resumes or qualifications required for key positions in the program (e.g., the Executive Director, Counseling Supervisor), and a listing of board members, as applicable. Describe how the organization involves or will involve other members of the community and State in its program. Demonstrate that the organization has legal and fiscal viability in accordance with the provisions of the CFR, Title 45, Part 74.

b. Describe the recruitment, training and utilization efforts for volunteers in the organization, including the roles volunteers have or will have in service delivery, outreach in the community, and as members of the Board of Directors or advisory group.

6. *Plans and Assurances.* Applicants should provide a statement evidencing that they will comply with the program requirements provided in the Code of Federal Regulations, Title 45, Part 1351.

Closing Date for Receipt of Applications

The closing date for receipt of applications under Part II of this announcement is May 3, 1985. Applications must be mailed or hand delivered to: HHS/Division of Grants and Contracts Management, 330 Independence Avenue, S.W., Washington, D.C. 20201, Room 1740. Attention: ACYF/FYSB 851.

Deadlines for Submission of Applications

A. *Deadlines.* Applications shall be considered as meeting an announced deadline if they are either:

1. Received on or before the deadline date at a place specified in the program announcement, or

2. Sent on or before the deadline date, and received by granting agency in time to be considered during the competitive review and evaluation process. (Applicants must be cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late applications.* Applications which do not meet the criteria in paragraph A. of this section are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

C. *Extension of deadline.* The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

Part III: Coordinated Networking Grants

A. Background Information

In FY 1985, a special emphasis is again being placed on strengthening the coordination of resources and services to runaway and homeless youth and their families. The specific objective of the FY 1985 grants will be the effective use of service networks as coordinated vehicles for the provision and exchange of programmatic and operational expertise between and among centers [1] which serve runaway and homeless youth and their families. This objective is based on the results of several programmatic activities within FYSB for strengthening the capabilities of runaway and homeless youth centers. These results include innovative program models and service approaches developed as a result of recent research and demonstration efforts and preliminary outcomes from the FY 1984 Coordinated Networking grants.

Approximately 10 to 15 grants will be awarded under the Coordinated Networking Grants activity. Applicants may be already established networks or networks to be established in response to the requirements of this program announcement.

All applications received in response to this section of the announcement will be competitively reviewed and evaluated on a national basis, without regard to State allocations. All grantees shall be required to document in quarterly reports, through descriptive summaries, the specific outcomes of the networking activities supported by this grant.

Described below are the requirements and instructions for submitting grant applications under this section (Part III—Coordinated Networking Grants) of the FY 1985 Runaway and Homeless Youth Program Announcement.

Approximately $650,000 will be available to support grants under this section of the announcement. It is expected that grant awards will range from $50,000 to $80,000.

The project periods for all networking grants funded under this announcement will be 12 months or less.

B. Eligible Applicants

Coordinated networks of agencies are eligible to apply for a Coordinated Networking Grant if they are not a part of the law enforcement structure or the juvenile justice system.

A coordinated network of agencies is defined as an association of two or more private organizations whose purpose is to develop or strengthen services to runaway or homeless youth and their families. For the purposes of this announcement, networks may be Statwide, multi-State, or regional in nature. Regional applicants are not restricted to the HHS organizational definition of States grouped as regions. Multi-State is considered two or more States and a regional network is defined as four or more States. Priority will be given to regionally composed networks.

C. Overview of Coordinated Networking Grants

Using recent evaluation studies and program monitoring data, ACYF/Family and Youth Service Bureau (FYSB) has identified two areas in which network strengthening and development activities are critically needed. A networking approach to building the centers' capacity and developing programmatic expertise in several areas would offer a unique opportunity to successfully meet the long-term needs of runaway and homeless youth beyond temporary shelter care. Most often, centers are dependent on the responsiveness and resources of the existing service delivery systems to meet long-term service needs. The

[1] Federally or Non-Federally Supported Centers.

coordination and development of new resources is a demanding effort. Runaway and homeless youth centers need assistance in these efforts since so much of their resources are directed toward the crisis and intervention services they are mandated to deliver.

Therefore, during FY 1985, ACYF is supporting a coordinated networking effort which is designed to: (1) Improve the awareness and use of new practices, program models and staff expertise between and among centers in areas such as youth employment, independent living and combatting juvenile prostitution; and (2) strengthen the operational and programmatic capabilities of centers in areas such as fiscal management, alternative funding, and program evaluation. Accordingly, the FY 1985 Networking grants encompass two broad categories—capacity building and center-based problem solving support. The topic areas of each category are described in C1 and C.2 below.

Each Networking grant awarded during this funding cycle will address both C.1 and C.2 categories. Each grant will provide expertise in no more than two of the capacity-building topic areas discussed in C.1 below. In addition, each grant will provide center-oriented problem-solving support in at least one of the areas in C.2 below. This will enable ACYF to assure that networking resources are available to all centers, and at the same time, reduce the likelihood of excessive duplication of expertise and effort nationwide. Networking grantees will be brought together for one or two coordinating meetings during FY 1986 to enhance interchange and cooperation among them.

1. Coordinated Networking for Capacity Building

In the last four years, ACYF has supported efforts which have resulted in the development of service delivery models, curricula, and new practices to effectively address the myriad needs of runaway and homeless youth and their families. This new knowledge and experience has yet to be transferred to runaway and homeless youth practitioners and appropriate policy-makers or to be fully utilized for the benefit of vulnerable youth and their families. Past programmatic experience indicates coordinated service networks can transfer new information and practices and reinforce standard practices and procedures to lessen the gap between knowledge and practice in runaway and homeless youth centers in a manner which is both effective and cost efficient. The effective and efficient transfer of new practices and program models will increase the capacity of runaway and homeless youth service providers.

ACYF is supporting the conduct of capacity building activities which will strengthen the long-term capabilities of runaway and homeless youth centers through the transfer of new knowledge and practices and the conduct of training at the local, State, and regional levels. In responding to this section, applicants should identify the topic and sub-topic areas which they will address and articulate the goals and objectives to be achieved through the grant.

The applicant should provide a discussion of the topic(s) chosen which exhibits a working knowledge of the topic and related issues. Grantees will be expected to work with ACYF to identify resource materials (curricula, how-to manuals, final reports) which could be used as reference and source documents for the capacity-building activities under the grant. Applicants will identify and describe the programmatic needs related to the topic(s) chosen in the area to be served by the grant; and the program and staff expertise available in the service area. Moreover, applicants shall identify and describe the activities which will be implemented to improve the capabilities of centers and groups of centers to meet the long-term needs of runaway and homeless youth and their families in the topic area(s) chosen. Some examples of the types of activities which would be supported under section C.1 include, but are not limited to:

—Staff exchanges
—Skill building training
—On line computer applications
—Self-instruction
—Bulletin boards
—Resource sharing
—Regional issue forums
—Outreach and public education seminars

Following is a list of issues on which FYSB has or will have, during the life of these networking grants, products (ranging from final reports through documented models to training curricula) available for use and dissemination through the grants.

a. *Independent Living.*

—Recruitment and screening
—Licensing requirements
—Need of homeless youth versus voluntary absence
—Clinical designs (documenting incremental stages of progress of clients)
—Program evaluation
—Effect of housing options on service effectiveness
—Dissemination to local governments and shelters of information on independent living as an alternative to foster care

b. *Reunification.*

—Peer support family therapy models
—Primary prevention services to the community at large
—Aftercare services
—Resource development

c. *Youth Employment.*

—Entrepreneurship
—Pre-employment training (job readiness)
—Training in high technologies through public private initiatives
—Shelter-based employment training and job placement
—Cottage industry development
—Job exposure for young adolescents

d. *Juvenile Prostitution.*

—Case management techniques
—Outreach
—Community education
Transitional services for former juvenile prostitutes
—Community-based service delivery models
—Dissemination of service approaches

e. *Youth Service Strategies.*

—Dissemination of information and models of the State-wide host home concept
—Dissemination of information on "safe place" strategies for extending youth services through volunteer sites and counselors
—Development of volunteer legal services using the ABA model to provide free legal services to center staff and clients

Applicants should address no more than two topic areas in this section. In order to exhibit a working knowledge of the issue(s), each application should identify and describe the major concepts, new practices and innovative service approaches for each issue(s) selected. The applicant should specify the proposed approach which would be implemented under this section, if awarded; describe the activities nd program support to be provided; justify the need for these activities; list the proposed participants and/or recipients; document the participants' and/or recipients' desire for such support; and describe how the impact of the project activities will be measured.

2. Networking for Center-Oriented Problem Solving Support—Long and Short-Term

Runaway and homeless youth centers are continually faced with the challenge of addressing complex service needs

with limited resources. Federally funded centers and non-federally funded service providers experience periodic need for problem solving kinds of support in order to maintain and/or increase their capabilities to serve runaway and homeless youth and their families.

These needs are not necessarily related to major trends or established significant issues but are more oriented to the fluctuations of individual center program growth and development. Specifically, this section addresses the planning, management and organizational development needs which will improve the centers' day-to-day operational capacity. Coordinated networks continue to be excellent sources of such support.

Some of the topics to be addressed by networking in this area shall include but are not limited to:

a. Development of alternative funding sources.

b. Aftercare systems.

c. Case management and planning.

d. Program evaluation.

e. Client and management information systems.

f. Computer applications for improving shelter operations (e.g., self-instruction, resource sharing).

g. Fiscal management.

Applications should address one or more functional areas under section C.2, and should describe the support to be provided, justify the need, indicate whether the support is long-term or short-term, list the recipients, document the recipients' desire for such support, and describe how the cost-efficiency of the support provided will be measured.

D. Available Funds

Approximately $650,000 will be available for Coordinated Networking Grants. ACYF expects to award between 10–15 such grants in FY 1985.

E. Grantee Share of the Project

According to section 318(a) of the Act [42 U.S.C. 5716(a)], a ten percent match of the total project cost (line 13f of SF Form 424) is required of all grants funded under this announcement. For example, a total project cost of $80,000 must include a $8,000 non-Federal share. The non-Federal portion may be for grantee incurred costs or in-kind contributions (including the facility, equipment or services and must be project-related and allowable under the cost principles as provided in 45 CFR Part 74, the Department's regulation on the Administration of Grants. For-profit applicants are reminded of the prohibition against profits in the use of grant funds (45 CFR 74.705)].

F. Review Criteria

All Coordinated Networking Grant applications must be complete and meet the deadline. They will be reviewed and evaluated against the following criteria:

Criterion 1: Responsiveness to Program Announcement. The applicant clearly identifies and addresses the issue area(s). The applicant clearly documents the need for the proposed activities to be undertaken. The geographic area to be served is as large (in terms of number of States included) as is reasonably possible. (20 points)

Criterion 2: Soundness of Approach. A clear discussion of the feasibility of the proposed effort is provided. The ability of the applicant network to achieve the proposed objectives is described. The level of effort required is discussed and is adequate to conduct the proposed activities. A clearly stated workplan, staff loading for task accomplishment, is provided. (30 points)

Criterion 3: Budget Appropriateness and Reasonableness. The proposed budget is commensurate with the level of effort needed to accomplish the proposed objectives. The cost of the proposed activity is reasonable in relation to the value of the anticipated results. The contribution of the collaborative agencies or organizations is assured in writing and included with the application when it is submitted. The participation of agencies other than the applicant, such as network member agencies, is evidenced by a letter indicating agreement to participate. (15 points)

Criterion 4: Staffing and Management. The proposed staff are well qualified to carry out the proposed activity. The division of responsibilities is appropriate to carry out workplan tasks. The applicant's facilities and/or staff available to achieve the proposed objectives are adequate. (15 points)

Criterion 5: Identified Outcomes. The identification of specific quantifiable outcomes (i.e., an increase in the number of centers and/or States included in and benefitting from the network; involvement in State-wide or region-wide outreach/prevention efforts; problem-solving support in case planning and management provided to "x" number of centers; and family support models developed serving "y" number of families). (20 points) Total: 100 points

G. Instructions for Completing Applications

1. *Application Requirements.* In order to be considered for a Coordinated Networking Grant, an applicant must submit one signed original and two copies of the grant application, including all attachments. ACYF encourages the submission of an additional five copies for a total of eight copies in order to expedite the processing and to facilitate the panel review process. There is no penalty for not submitting these additional copies. The original copy of the application must have original signatures. Each copy should be stapled (back and front) in the upper left corner. One copy of the complete application should be sent to the appropriate Regional Office listed at the end of this announcement. The remaining complete applications, including the original and all other copies, must be sent to: HDS/Division of Grants and Contracts Management, 330 Independence Avenue, S.W., Room 1740, Washington, D.C. 20201—Attention ACYF–FYSB–851. The program announcement number (13623–851) must be clearly identified on the application (SF 424, box 6b). Mark the symbol "NET" in large letters with a red marker pen in the upper right hand corner. In order to facilitate handling, please do not use covers, binders or tabs.

Three extra copies of SF 424 and three copies of the cover sheet/abstract stapled together apart from the copies of the application are requested. The special identifier, "NET", should be applied to the three extra copies of the SF 424 and abstract form as well.

2. *Content of Application.* Each copy of the application must contain each of the following items in the order listed:

a. A Standard Form (SF) 424, page 1.

b. A Project Abstract Form.

c. Part II—Project Approval Information.

d. Part III—Budget Information.

e. Part IV—Project Narrative which includes:

(i) A table of contents, including a listing of any Appendices.

(ii) Project narrative, no more than twenty-seven pages long, single spaced and typewritten on one side only, completed according to instructions listed below.

(iii) Organizational capability statement or materials, no more than two single-spaced typewritten pages. (See instructions below.)

f. HHS–SF 441, Assurance of Compliance, Title VI, Civil Rights Act of 1964

g. HHS–SF 641, Assurance of Compliance, Sec. 504, Rehabilitation Act of 1973, As Amended

3. *Instructions for Preparing Applications.* For your convenience, we have reprinted the forms and instructions for applying for Federal assistance from HDS programs as

Appendices A and B to this announcement. We suggest that you reproduce the forms and use them to prepare your application.

Prepare your application in accordance with the following instructions:

a. Standard Form (SF) 424, page 1:

Except for item 6b., the SF 424 should be completed in accordance with the instructions contained in Appendix B.

Item 6b. should be completed as follows: "Runaway and Homeless Youth FY 1985 Coordinated Networking Grant Program."

b. Project Abstract Form.

Please Complete the Project Abstract Form at Appendix A of the announcement. The completed form should be used as a cover sheet for your application. In order to facilitate handling, do not use covers, binders, or tabs.

c. Instructions for Part II (self-explanatory).

d. Instructions for Part III—Budget Information.

Complete Part III in accordance with the instructions contained in Appendix B.

e. Table of Contents. Provide a table of contents for the Part IV narrative, including a listing of any appendices.

f. Part IV—Project Narrative-Coordinated Networking Grants.

Describe the activity you propose in response to this announcement. Your narrative should provide information on how the application meets the review criteria (Part III, Section F). Please limit your narrative to 27 pages (single spaced) plus attachments.

1. *Objectives and Need for This Assistance* (4 pages maximum, single spaced).

Provide a brief description of the activity being proposed, documenting the need for such an effort. Data must be documented by source. (1) Information should include data on the incidence of runaway and homeless youth in the geographic area to be served, where applicable; (2) the gaps in services available; (3) how services will be developed or strengthened; (4) how the centers will benefit; (5) how the centers and any other agencies involved will participate in the activity; and (6) how the network will be strengthened and expanded.

2. *Results of Benefits Expected* (2 pages maximum, single space).

This section should identify the results and benefits to be derived from the implementation of services to runaway and homeless youth and their families under this grant program. Specifically, the applicant should describe: the results or benefits anticipated in terms of the community-at-large, the State (for example: an increase in the number of centers included in and benefiting from the network; involvement in State-wide of region-wide outreach/prevention efforts) and the benefits to centers within the geographic area the activity is to serve. In addition, explain the methods to be used to measure the results or success of the project and to determine if the results and benefits indentified are being achieved.

3. *Approach* (20 pages maximum, single spaced, exluding timetables, charts, supporting documentation, position descriptions, listings or resumes).

(i) Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for this grant program. This section of the program narrative must describe the plan of action (workplan). Specifically, the program narrative must address at a minimum the following: (1) the feasibility of the proposed effort; (2) the ability of the applicant to achieve the objectives proposed; (3) the level of effort required and person days by major task; and (4) the methods to be used to measure the results and successes of the project and to determine if the results and benefits identified in Section 2 (above) are being achieved.

(ii) Provide an organizational chart and describe the following: the members of the network; the network governance; qualifications of network staff or staff to be hired for the proposed effort. Discuss how youth are involved in the network and the principal partners of the network in the proposed effort. Provide position descriptions and resumes for key persons. Describe how the network involves other members of the community and State(s) in its program. Demonstrate that the network has legal and fiscal viability in accordance with the provisions of the Code of Federal Regulations, Title 45, Part 74.

4. *Geographic Location.* Give a precise location of the area to be served by the proposed project. Maps or other graphic aids may be attached (1 page).

5. Plans and Assurances.

Applicants should provide a statement of assurance that they will comply with the program requirements provided in the Code of Federal Regulations, Title 45, Part 1351.

6. *Supporting Documentation.*

Applicants may attach any additional materials, such as letters of support or agreement, news clippings, or descriptions of the program's participation in local, State or regional coalitions of youth service agencies, which would give further support to the application. Please limit the supporting documentation to 10 pages.

g. HHS–SF 441, Assurance of Compliance, Title VI, Civil Rights Act of 1964 (self-explanatory).

h. HHS–SF 641, Assurance of Compliance, Sec. 504, Rehabilitation Act of 1973, As Amended.

H. Closing Date for Receipt of Applications

The closing date for receipt of applications under Part III of this announcement is May 10, 1985. Applications must be mailed or hand delivered to: HHS/Division of Grants and Contracts Management, 330 Independence Avenue, S.W., Washington, D.C. 20201, Room 1740. Attention: ACYF/FYSB 851.

Deadlines for Submission of Applications

A. *Deadlines.* Applications shall be considered as meeting an announced deadline if they are either:

1. received on or before the deadline date at a place specified in the program announcement, or

2. sent on or before the deadline date, and received by granting agency in time to be considered during the competitive review and evaluation process. (Applicants must be cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late applications.* Applications which do not meet the criteria in paragraph A. of this section are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

C. *Extension of deadline.* The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

Regional Program Directors Administration for Children, Youth and Families

Region I, Mr. Richard Stirling, Regional Program Director, Office of Human Development Services, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203 (VT, CT, ME, NH, RI, MA), Attention: Ms. Susan Rosen (617–223–6450)

Region II, Mr. Dennis Coughlin, Acting Regional Program Director, Office of Human Development Services, 26 Federal Plaza, Room 4149, New York, New York 10278 (NY, NJ, PR, VI). Attention: Ms. Estelle Haferling (212–264–2974)

Region III, Mr. Alvin Pearis, Regional Program Director, Office of Human Development Services, 3535 Market Street, Post Office Box 13714, Philadelphia, Pennsylvania 19101 (DE, DC, MD, VA, WV, PA). Attention: Mr. Emery Tincani (215–596–0319)

Region IV, Mr. John Jordan, Regional Program Director, Office of Human Development Services, 101 Marietta Tower, Suite 903, Atlanta, Georgia 30323 (AL, FL, GA, KY, MS, NC, SC, TN). Attention: Mr. James Shelton, (404–221–2128)

Region V, Mr. German White, Regional Program Director, Office of Human Development Services, 300 South Wacker Drive, Chicago, Illinois 60606 (IL, IN, MN, OH, WI, MI). Attention: Mr. John M. Kelly (312–353–6514)

Region VI, Mr. Tommy Sullivan, Regional Program Director, Office of Human Development Services, 1200 Main Tower, 20th Floor, Dallas, Texas 75202 (LA, NM, OK, TX, AR). Attention: Mr. Jerry Mabe (214–767–6596)

Region VII, Mr. Hilton Baines, Regional Program Director, Office of Human Development Services, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, Missouri 64106 (IA, KS, MO, NE). Attention: Mr. Robert Mead (816–374–5401)

Region VIII, Mr. David Chapa, Regional Program Director, Office of Human Development Services, 1961 Stout Street, Federal Office Building, 9th Floor, Denver, Colorado 80294 (CO, MT, ND, SD, UT, WY). Attention: Mr. Juan Cordova (303–837–3106)

Region IX, Mr. Roy Fleischer, Regional Program Director, Office of Human Development Services, 50 United Nations Plaza, San Francisco, California 94102 (AZ, CA, HI, NV, GU, AS, TT, CNMI). Attention: Mr. Ray Myrick (415–556–6153)

Region X, Mr. William Hayden, Regional Program Director, Office of Human Development Services, 2901 Third Avenue, Mail Stop 503, Seattle, Washington 98121 (AK, ID, OR, WA). Attention: Mr. Lee Koenig (206–442–0838)

Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939

Alaska

None.

Arizona

Office of Economic Planning and Development, State of Arizona

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to:

Jo Stephens, Director, Local Government Assistance, ATTN: Arizona State Clearinghouse, 1700 West Washington, Rm. 205, Phoenix, Arizona 85007, Tel. (602) 255–5004

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–2311

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445–0282

Coloardo

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note. Correspondence & questions concerning this State's E.O. 12372 process should be directed to:

Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–4298

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Franchine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804. For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548–3085

Idaho

None.

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capital Annex, 523 East 12th Street, Des Moines, Iowa 50319, Tel. (515) 281–6483

Kansas

Kansas Department of Human Resources, Office of the Secretary, Attention: Judy Krueger, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296–5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Michael J. Jefferson, Dept. of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Captiol Station, Baton Rouge, Louisiana 70804, Tel. (504) 925–3722

Maine

State Planning Office, Attn: Intergovernmental Review Process, State House Station #38 Augusta, Maine 04333 Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 383–7875

Massachusetts

Executive Office of Communities and Development, 100 Cambridge Street, Rm. 1401, Boston, Massachusetts 02202, Tel. (617) 727–7078

Michigan

Carol Hoffman, Director, Office of Business and Community Development, Michigan Department of Commerce, P.O. Box 30004, Lansing, Michigan 48909, Tel. (517) 373–0933

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 1504 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202. For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3069

Minnesota

Thomas N. Harren, Minnesota State Planning Agency, Capitol Square Bldg., Rm. 101, St. Paul, Minnesota 55101, Tel. (612) 296–3698

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Capitol Bldg., Rm. 129, Jefferson City, Missouri 65102, Tel. (314) 751–4834 or 751–2345

Montana

Anges Fipperian, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

Policy Research Office, P.O. Box 94601, State Capitol, Rm. 1321, Lincoln, Nebraska 68509, Tel. (402) 471–2414

Nevada

Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420

New Hampshire

David G. Scott, Acting Director, New Hamsphire Ofice of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625, Tel. (609) 292–6613

Note.—Correspondence & questions concerning this State's E.O. process should be directed to: Nelson S. Silver, State Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Peter C. Pence, Director, Dept. of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence & questions concerning the State's E.O. 12372 process should be directed to: New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

For Information Contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0699

Oklahoma

Office of Federal Assistance Management, 4545 North Lincoln Blvd. Oklahoma City, Oklahoma 73105, Tel.(405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street, N.E., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 1288, Harrisburg, Pennsylvania 17108, ATTN: Charles Griffiths, Executive Director, Tel.(717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 758–2417

South Dakota

Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1676

Texas

Bob McPherson, State Planning Director, Office of the Governor, Austin, Texas 78711, Tel. (512) 475–6156

Utah

Michael B. Zuhl, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Robert H. Kirby, Intergovernmental Review Officer, Dept. of Planning and Budget, P.O. Box 1422, Richmond, Virginia 23211, Tel. (804) 786–1921

Washington

Ken Black, Washington Department of Community Development, Ninth and Columbia Building, Olympia, Washington 09504, Tel. (206) 753–2200

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Depart of Administration, 101 South Webster—GEF 2, Madison, Wisconsin 53702, Tel. (608) 266–1212

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

Virgin Islands

Toya Andrew, Federal Program Coordinator, Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, P.O. Box

580, Charlotte, Amalie, St. Thomas 00801, Tel. (809) 774–6511. Staff contact: Phyra Budson

District of Columbia

Pauline Schneider, Director, Office of Intergovernmental Relations, Rm. 416, District Building, Washington, D.C. 20004, Tel. (202) 727–6265

Puerto Rico

Nelson Soto, President, Puerto Rico Planning Board, P.O. Box 4119, Minilla Station, San Juan, Puerto Rico 00940, Tel. (809) 724–7900

North Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950

American Samoa

None

Guam

None

(Catalog of Federal Domestic Assistance Program Number 13.623, Runaway and Homeless Youth Program)

Dated: March 1, 1985.

Dodie T. Livingston,

Commissioner, Administration for Children, Youth and Families.

Approved: March 12, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

BILLING CODE 4130-01-M

Appendix A

Runaway and Homeless Youth Grant
Project Abstract Form

Using this format, please provide the following information,

not exceeding one page. Attach the original and two copies to the front of the application that contains the original signatures. Attach one copy to the front of the other sets of applications you submit.

a. Type of Grant: _____ Basic Center _____ Networking
b. Name of Applicant:
c. Address:
d. City/State/Zip Code:
e. Phone Number: ( )
f. Congressional District(s) Served:
g. Estimated No. of Clients to be Served:
   Youth _____
   Families _____
h. Principal Population Area Served:
   _____ Urban
   _____ Suburban
   _____ Rural
i. Requested Funding Level: Federal $_____
   Non-Federal $_____
   Total $_____
j. Proposal Summary: Provide a 200 word maximum synopsis of your (proposed) program, including objectives, special needs, approach, expected outcomes, or other pertinent information. In the Basic Center applications, this should highlight special program emphases beyond the services mandated by the Act (e.g., independent living, job training/placement, linkages with the schools, prevention and outreach). In the Networking applications, the summaries should highlight the activity proposed, the need for the proposed activity, the objectives and approach and outcomes to be achieved.

k. Application submitted to State Single Point of Contact
   yes _____ no ___
   n/a _____

APPENDIX A

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

SECTION I—APPLICANT/RECIPIENT DATA

1. TYPE OF SUBMISSION (Mark appropriate box)
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE Year month day 19

3. STATE APPLICATION IDENTIFIER NOTE: TO BE ASSIGNED BY STATE
- a. NUMBER
- b. DATE ASSIGNED Year month day 19

Leave Blank

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name
- b. Organization Unit
- c. Street/P.O. Box
- d. City
- e. County
- f. State
- g. ZIP Code
- h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
- a. NUMBER ☐☐.☐☐☐
- MULTIPLE ☐
- b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

15. PROJECT START DATE Year month day 19

16. PROJECT DURATION Months

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s) ☐☐☐

18. DATE DUE TO FEDERAL AGENCY ► Year month day 19

19. FEDERAL AGENCY TO RECEIVE REQUEST
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
- b. ADMINISTRATIVE CONTACT (IF KNOWN)
- c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ►
To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE ► Year month day 19

30. STARTING DATE Year month date 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE Year month date 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

APPENDIX A

OMB NO. 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4.
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one: State ☐ Local ☐ Regional ☐
Location of Plan _____

Item 5.
Will the assistance requested serve a Federal installation?
_____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7.
Will the assistance requested have an impact or effect on the environment
_____ Yes _____ No
See instructions for additional information to be provided.

Item 8.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated
_____ Yes _____ No
See instructions for additional information to be provided.

APPENDIX A

OMB NO. 0348-0006

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

APPENDIX A

OMB NO. 0348-0006

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

Appendix A

PART V

ASSURANCES

The Applicant hereby assures and certifies that he will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74, and OMB Circulars No. A-102 and A-110, as they relate to the application, acceptance and use of Federal funds for this federally-assisted project. Also the Applicant assures and certifies to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4 It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

Appendix A

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Appendix A

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")
(Name of Applicant)

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated_____ _____
(Applicant)

By _____
(President, Chairman of Board, or comparable authorized official)

_____

_____
(Applicant's mailing address)

HDS GRANTS MANAGEMENT

HHS-441 Return Original To: Office of Civil Rights, Room 5627/B North Building
330 Independence Ave. S.W.
Washington, D.C. 20201

Send Copy to Grants Management

Appendix A

DEPARTMENT OF HEALTH AND HUMAN SERVICES
ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to § 84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for federal financial assistance that were approved before such date. The recipient recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in § 84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) employs fewer than fifteen persons: A73

b. ( ) employs fifteen or more persons and, pursuant to § 84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulation: A74

Name of Designee(s) – Type or Print
C12 C42

Name of Recipient – Type or Print
A12 A41

Street Address or P.O. Box
A42 A71

(IRS) Employer Identification Number
A1 A11
B1 B11
C1 C11

City
B12 B41

State B42

Zip B71

I certify that the above information is complete and correct to the best of my knowledge.

Date
B72 B77

Signature and Title of Authorized Official
B78

If there has been a change in name or ownership within the last year, please PRINT the former name below:

NOTE: The 'A', 'B', and 'C' followed by numbers are for computer use. Please disregard.

PLEASE RETURN ORIGINAL TO: Office for Civil Rights, Room 5627/B North Building
330 Independence Ave. S.W.
Washington, D.C. 20201

Send Copy to Grants Management
HDS GRANTS MANAGEMENT

HHS-641 (10/80)

Appendix A

APPLICATION CERTIFICATIONS FOR PROFIT MAKING ORGANIZATIONS

Applicants who are For Profit Organizations shall complete the following certification review when applying for HDS Financial Assistance.

1. Small Business Certification

The applicant ( ) is, ( ) is not, a small business concern. A small business concern is defined as a business, including its affiliates, which is independently owned and operated, is not dominant in the field of operation and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed definitions and related procedures.

2. Minority Business Enterprise Certification

The applicant ( ) is, ( ) is not, a minority business enterprise. A minority business enterprise is defined as a business, at least 51 percent of which is owned, controlled, and managed by minority group members who are citizens of the U.S. In case of a corporation, 51 percent of all classes of voting stock of such corporations must be owned by an individual(s) determined to be minority. For the purpose of this definition, minority group members are Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians), Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Laos, Cambodia, or Taiwan) and members of other groups designated from time to time by the Small Business Administration according to the procedures set forth at 13 CFR Part 124.1.

3. Woman-Owned Business Certification

The applicant ( ) is, ( ) is not, a woman-owned business. A woman-owned business is a business which is, at least, 51 percent owned, controlled, and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management.

4. Small Business Innovation Research Act

This application ( ) is, ( ) is not, submitted under the Small Business Innovation Research Act.

For Profit Organizations must submit this form with the completed application.

Appendix B

OMB 0980–0016; Expires: 2/85 Clearance Pending: 2/88

Instructions for Applying for Federal Assistance from HDS Programs

Introduction

Use of Forms

The forms included in this "kit" shall be used to apply for all new discretionary grants and cooperative agreements awarded by the Office of Human Development Services. They shall also be used to request supplemental assistance, proposed changes or amendments, and request continuation or refunding for previously approved grants or cooperative agreements from the Office of Human Development Services. An original and two copies of the forms should be submitted to the responsible grants management office. If an item cannot be answered or does not appear to be related or relevant to the assistance required, write "NA" for not applicable.

Applications

Applicants for new awards and competing continuations are required to submit a complete application which consists of Parts I (SF–424) through Part V. Applicants for new projects must include completed Standard Forms 441, Civil Rights Assurance and HHS—641, Rehabilitation Act Assurance. Applicants for additional funding (such as a non-competing continuation or supplemental grant) or amendments to a previously submitted application should include only affected pages. Previously submitted pages whose information is still current need not be resubmitted. Additionally, applicants for certain HDS programs may be subject to Executive Order 12372, Intergovernmental Review of Federal Programs (see Attachments 1 and 2). These applicants must follow the instructions provided relative to Executive Order 12372 coverage where appropriate, as listed on page 11.

Submission of applicants

(1) Non-competing Continuation Grants—applicants for continuation grants must submit these forms not later than 90 days prior to the budget period end date.

(2) New Projects and Competing Continuations—Applicants for Assistance to support new projects or for competing continuations should refer to program announcements for information regarding deadline dates for submission of forms.

Instructions for Completion of Part I (SF–424)

Section I

Applicants shall complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk (*) and use Section IV. An explanation follows for each item.

Item

1. Mark appropriate box. preapplication and application are described in OMB Circular A–102 and HDS program instructions. Use of the SF–424 as a Notice of Intent is at State option. HDS does not require Notice of Intent.

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared.

3a. For a program covered by Executive Order 12372, enter the nmber assigned, if any, by the State Point of Contact Office. Applications submitted to OHDS must contain this identifier, if provided by the State Point of Contact. Note: Item 22 of this form must be completed for programs covered by E.O. 12372.

3b. Date identifier is assigned by State.

4a.–4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request.

If the payee will be other than the applicant, enter in the remarks section "payee". The payee's name, department or division. Complete address and employer identification number and DHHS entity number.

If an individual's name and/or title is desired on the payment instrument, the name/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by the Internal Revenue Service. If the applicant organization has been assigned a DHHS Entity Number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full Enity Number. If applicant has other grants with DHHS and has been assigned a Payee Identification Number, enter PIN in parenthesis () beside employer identification number.

6a Enter the Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint funding) enter "multiple" and explain in Section IV remarks. If unknown, cite Public Law or U.S. Code.

6b. Enter the program title from Catalog of Federal Domestic Assistance. Abbreviate if necessary.

7. Enter title and appropriate description of project. For Notification of Intent, continue in Section IV if necessary to convey proper description. If project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line e.g., Council of Government. *Note:* Nonprofit organizations which have not previously received HDS program support must submit proof of nonprofit status.

9. Enter Governmental unit where significant and meaningful impact could be observed. List only largest unit or units is affected, such as State, county, or city. If entire unit is affected, list it rather than subunits.

10. Identify estimated number of persons *directly* benefiting from project, as described in the program narrative.

11. All applicants for new, competing continuation and non-competing continuation grants should enter the letter "A". And applicants for supplemental grant funding should enter the letter "B".

12. Enter amount requested or to be contributed during the initial funding/budget period by each contributor. Where allowable the value of inkind contributions should be included. If the action is a change in dollar amount of existing grant (a revision or augumentation), indicate only the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding use totals and show program breakdowns in remarks. Item definitions: 12a, amount requested from Federal Government; 12b, amount applicant will contribute; 12c, amount from State, if applicant is not a State; 12d, amount from local government, if applicant is not a local government; 12e, amount from any other sources, explain in Section IV. Note: Applicants for research grants should complete 12a and 12f only.

13a. Self explanatory.

13b. Enter the district(s) where most of actual work will be accomplished. If city-wide or State-wide covering several districts, write "city-wide" or "State-wide".

14. Enter appropriate letter. Definitions are:

A. *New.* A submittal for the first time for a new project or project period (includes competing continuations).

B. *Renewal.* Not applicable to HDS grant programs.

C. *Revision.* A modification to project after the initial funding/budget period and within the approved project period.

D. *Continuation.* Support for a non-competing continuation project after the initial funding/budget period and within the approved project period.

E. *Augumentation.* (Referred to elsewhere in these instructions and in other HDS publications as a "supplemental".) An application for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Enter approximate date project is expected to begin. If initial budget period is other than 12 months, check item 21 and explain in Part IV.

16. Enter estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14c), or augumentations (Supplements) (Item 14e).

18. Date application/preapplication must be submitted to HDS in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Enter existing Federal grant identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA".

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

Section II

Applicants will always complete either item 22a or 22b *and* items 23a and 23b. An explanation follows for each item.

22a. Complete if application is subject to Executive Order 12372 (State review and comment). Note: All written comments submitted by or through the State Contact must be attached, if available. Applicants are advised of the delay of funding near the end of the fiscal year, if a timely notification to the State Contact is not made.

22b. Check if application is not subject to E.O. 12372.

23a. Name and title of authorized representative of legal applicant.

23b. Self explanatory. *Note:* Authorized representative signature cannot be signed by designee.

Note.—Applicant completes only sections I and II. Section III is completed by Federal agencies.

Instructions for Completion of Part II

Negative answers will not require an explanation unless the responsible HDS program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 4—Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 5—Show the population residing or working on the Federal installation who will benefit from this project. (Federally recognized Indian reservations are not "Federal Installations")

Item 6—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8—State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions, if additional data is needed.

Item 9—Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source.

Instructions for Completion of Part III

This form is designed so that application can be made for funds to support one or more functions or activites. Generally, HHS funded programs do not require a breakdown by function or activity. Therefore, only Line 1 need to completed. However, Head Start, funded by the Administration for Children, Youth and Families requires that activities commonly identified by program accounts be displayed separately on individual lines (Lines 1–4 under Section A and Columns 1–4 under Section B).

Since HDS programs award funds to support activities for budget periods which are generally 12 months in duration, Section A, B, C, and D must provide budget information for the requested budget period. Section E should reflect the need for Federal assistance in subsequent budget periods.

Applicants for research grants are not required to complete information items related to non-Federal share. Rather, research cost sharing shall be negotiated separately with the funding office.

Section A—Budget Summary

Lines 1–4

Col. (a): For applications pertaining to a single grant program and *not* requiring a functional, activity or program account breakout enter on Line 1 under Column (a) the Federal Domestic assistance Catalog program title (See attached listing). For "Head Start", enter the activities (program accounts) name and number for which funds are being requested on separate lines.

Col. (b): Enter appropriate Catalog of Federal Domestic Assistance number. For "Head Start", enter the activites (program accounts) name and number for which funds are being requested on separate lines.

Col. (c)-(g): For *new applications*, leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the first budget period. Applicants for research grants should make no entries in Column (f).

For *non-competing*, or *competing continuation applications*, enter in Columns (c) and (d) the estimated amounts for funds which will remain unobligated at the end of the current budget period. Enter in columns (e), (f), and (g) the appropriate amounts needed to support the project for the new budget period. (Applicants for research grants should make no entries in Columns (d) or (f). Column (g) should equal the total of Column (e) and Column (f).

For *augumentation* (supplements) *and changes to existing grants*, leave Columns (c) and (d) blank and center in Columns (e) and (f) the amount of increase of decrease of Federal and non-Federal funds, as appropriate. Enter in Column (g) the new total budgeted amount (Federal and non-Federal) which includes the previously authorized total budgeted amounts for the current budget period plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Columns (g) should not equal the sum of the amounts in Columns (e) and (f). Applicants for research grants should make no entries in columns (d) or (f).

Line 5

Enter the totals for all columns completed.

Section B—Budget Categories

Column 1–5

In the Column heading (1) through (4), enter the same titles of the grant programs and/or program accounts shown on Lines 1 through 4, Column (a), Section A. For each grant program or activity (program account) entered in Columns (1) through (4) enter the total requirements for *Federal funds* by object class categories and enter total in Column 5.

Allowability of costs are governed by applicable cost principles set forth in Subpart Q of 45 CFR Part 74 and HDS Grants Administration Manual.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff. Do not include costs of consultants or personnel costs of delegate agencies. (See Section F, Line 21, for additional requirements).

Fringe Benefits—Line 6b: Enter the total cost of fringe benefits unless treated as part of an approved indirect cost rate. Provide break-down of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of out-of-town travel for employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Section F, Line 21, for additional instructions).

Equipment—Line 6d: Enter the total costs of all equipment to be acquired by the project. "Equipment" means an article of tangible personal property having a useful life of more than two years and an acquisition cot of $500 or more per unit. An appliant may use its own definition of equipment, provided that such a definition would at least incude all tangible personal property ad defined in the proceeding sentence. (See Section F, Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lies such as equipment, supplies, etc.), and, (2) contracts agreements with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. Attach a list of contractors indicating the name of the organization; the purpose of the contract; statement (scope) of work; period of performance; and the estimated dollar amount of the award. If the Name of Contractor, Scope of Work and estimated total is not available or has not been negotiated, include in Line h, "Other". (Note: Whenever the applicant/grantee intends to

delegate part or all of the program to another agency, the applicant/grantee must submit sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total cost of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying Name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of alterations or renovation. Provide narrative justification and break-down or costs. New construction is unallowable.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs, (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the totals of Lines 6(a) through 6(h).

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs are requested enter "none". This line should be used only when the applicant (except local governments) has an indirect cost rate approved by the Department of Health and Human Services. If rate has recently been approved, please enclose a copy of current rate. Local governments shall enter the amount of indirect costs determined in accordance with HHS requirements. In the case of training grants to other than State or local governments, the reimbursement of indirect costs will be limited to the lesser of actual indirect costs of 8 percent of the amount allowed for direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alteration and renovations. It should be noted that when an indirect cost rate is requested, these costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter the total amounts of Lines 6(i) and 6(j). For all new competing and non-competing continuation applications, the total amount shown in Column (5), Line 6(k), should be the same as the amount shown in Section A, Column (e), Line 5.

For all supplements or changes, the total of the amount shown in Columns (1) through (4) should equal the amount shown in Section A, Line 5(e). The amount shown in Column (5) should include the cumulative total of the previously approved Federal share for the current budget period plus or minus, as appropriate, the increase or decrease of Federal funds.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show, in the program narrrative statement, the nature and source of income.

Section C—Non-Federal Resources

Lines 8–11: Enter amounts of non-Federal resources that will be used to support the project. (Applicants for research grants should not complete this Section but will negotiate appropriate cost sharing arrangements with the funding office). Provide a brief explanation, on a separate sheet, showing the type of contribution, and whether it is in cash or in-kind. If in-kind, is allowable and included, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space (use only) including number of square feet and value assigned per square foot; and

(3) Determination of depreciation and use allowance for grantee-owned space; [Include statement whether space was purchased or constructed, totally or in part with federal funds for items (2) and (3)].

(4) type and value of other in-kind contributions expected.

Column (a): Enter the program title or activities (program accounts) as in Column (a) Section A.

Column (b): Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the totals of Columns (b), (c), and (d).

Line 12—Enter total of each of Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period. (Applicants for research grants should not complete this line).

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Projects

Line 16–19—Enter in Column (a) the same program title or activities (program accounts) as in Column (a) Section A. For new or competing continuation or noncompeting continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding budget periods (usually in years). Do not enter current year budget amount; enter second, third, fourth, and fifth year budget estimate needs. This Section need not be completed for Headstart applicants with indefinite project periods or for revisions or supplements for the current budget period which do not increase the general level of support.

Line 20—Enter the totals of each of the Columns (b) through (e).

Section F—Other Budget Information

Line 21—Use this space to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the HDS program office. Budget items which require identification and justification shall include, but not be limited to, the following:

1. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative.

2. Any foreign travel;

3. A list of all equipment (See Part III, Section B, Line 6d) and estimated cost of each item to be purchased. Need for equipment must be supported in program narrative.

4. Contractual: Major items or groups of smaller items; and

5. Other: group and major categories, e.g., consultants, local transportation, space rental, training allowances, staff training, computer equipment, etc. Provide a complete break-down of all costs that make up this category.

Line 22—Enter the type of indirect rate (provisional, final fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date HDS aproved the rate, where applicable. Attach a copy of rate agreement if recently approved.

Line 23—Provide any other explanations required or deemed necessary.

Executive Order 12372 Coverage

1. General

Executive Order 12372, "Intergovernmental Review of Federal Programs," provides for the State and local government coordination and review of proposed Federal financial assistance. Certain applicants for HDS grants must comply with the provisions of E.O. 12372 and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." The following table provides a listing of all HDS assistance programs identified by Catalog of Federal Domestic Assistance Number (CFDA), and shows those programs and activities which are covered by E.O. 12372 and those which are exempt from coverage.

Federally recognized Indian Tribes are exempt from the provisions and requirements of E.O. 12372 (see 48 FR 29196 dated June 24, 1983).

States may design their own processes for reviewing and commenting or proposed Federal assistance under certain Federal programs. States adopting a review process under the E.O. will have designated a State official or organization to act as the State's "Single Point of Contact" (SPOC) for sending official State recommendations to HDS. Applicants with projects subject to E.O. 12372 review must adhere to the requirements of their State processes.

2. Procedures for New and Competing Continuation Applications

E.O. 12372 requires applicants for new and competing continuation grants and cooperative agreements to coordinate their plans at the State and local levels through the State SPOC. Names and addresses of the State SPOC are listed in the *Federal Register* announcement soliciting applications or in the application kit. A current listing can also be obtained from the regional or headquaters grants management office. Potential applicants should contact their State SPOC at the earliest feasible time and notify them of their intent to apply for Federal assistance. Many State offices have their own notification forms and instructions, and applicants should obtain this material directly from them.

Applications submitted to HDS must respond to the E.O. 12372 Certification, Item 22 on Standard Form 424. HDS will notify the State SPOC of any application covered by E.O. 12372 that does not indicate that the State contact has had an opportunity to review it. Therefore, failure to notify the State of the proposed application to HDS may result in a delay of funding as HDS will not make an award without assurance of compliance with this process.

State SPOC offices have sixty (60) days after the HDS deadline date for the receipt of applications in which to review and resolve problems with the applicant and submit comments to HDS.

Appendix C

Program Performance Standards—Runaway and Homeless Youth Act—Funded Centers

I. Overview of the Program Performance Standards

The program performance standards established by YDB for its funded centers relate to the methods and processes by which the needs of runaway or homeless youth and their families are being met as opposed to the outcome of the services provided on the clients served. The program performance standards, and the related criteria and indicators, as initially published in March 1977, were developed by YDB through a functional analysis of the service and administrative components of runaway youth projects, and were revised based upon the comments and feedback provided by the FY 1975 funded projects; they have subsequently been further revised, based upon the experience of YDB and its funded centers in their implementation. The standards relate to the basic program components enumerated in Section 315 of the Runaway and Homeless Youth Act and as further detailed in the Regulations and Program Guidance governing the implementation of the Act. Each project funded under the Runaway and Homeless Youth Act is required annually to conduct a self-assessment of its compliance with these standards, using a form provided by YDB for this purpose. These self-assessment data will be validated once each funding cycle by the YDB Special Assistant for Youth Affairs.

The terms "program performance standards," "criteria," and "indicators" are defined as follows:

Program Performance Standard: The general principle against which a judgement can be made to determine whether a service or an administrative component has achieved a particular level of attainment.

Criterion: A specific dimension or aspect of a program performance standard which helps to define that standard and which is amendable to direct observation or measurement.

Indicator: The specific documentation which demonstrates whether a criterion (or an aspect of a criterion) is being met and, thereby, the extent to which a specific aspect of a standard is being met.

Thirteen program performance standards, with related criteria and indicators, have been established by YDB for the centers funded under the Runaway and Homeless Youth Act. Eight of these standards relate to service components (outreach, individual intake process, temporary shelter, individual and group counseling, family counseling, service linkages, aftercare services, and case disposition), and five to administrative functions or activities (staffing and staff development, youth participation, individual client files, ongoing project planning, and board of directors/advisory body).

Although fiscal management is not included as a program performance standard, it is viewed by YDB as being an essential element in the operation of its funded projects. Therefore, as validation visits are made, the Special Assistants for Youth Affairs and/or staff from the Office of Fiscal Operations will also review the center's financial management activities.

YDB views these program performance standards as constituting the minimum standards to which its funded centers should conform. The primary assumption underlying the program performance standards is that the service and administrative components which are encompassed within these standards are integral (but not sufficient in themselves) to a program of services which effectively addresses the crisis and long-term needs of runaway or homeless youth and their families.

The program performance standards are designed to serve as a developmental tool, and are to be employed by both the center staff and the Special Assistants for Youth Affairs in identifying those service and administrative components and activities of individual centers which require strengthening and/or development either through internal action on the part of staff or through the provision of external technical assistance.

II. Program Performance Standards and Criteria

The following constitutes the program performance standards and criteria established by YDB for its funded centers. Each standard is numbered, and each criterion is listed after a lower-case letter.

1. Outreach. The center shall conduct outreach efforts directed towards community agencies, youth, and parents.

2. Individual Intake Process. The center shall conduct an individual intake process with each youth seeking services from the project. The individual intake process shall provide for:

a. Direct access to project services on a 24-hour basis.

b. The identification of the emergency service needs of each youth and the provision of the appropriate services either directly or through referrals to community agencies and individuals.

c. An explanation of the services which are available and the requirements for participation, and the securing of a voluntary commitment from each youth to participate in center services prior to admitting the youth into the center.

d. The recording of basic background information on each youth admitted into the center.

e. The assignment of primary responsibility to one staff member for coordinating the services provided to each youth.

f. The contact of the parent(s) or legal guardian of each youth provided temporary shelter within the timeframe established by State law or, in the absence of State requirements, preferably within 24 but within no more than 72 hours following the youth's admission into the center.

3. Temporary Shelter. The center shall provide temporary shelter and food to each youth admitted into the center and requesting such services.

a. Each facility in which temporary shelter is provided shall be in compliance with minimum State and local licensing requirements.

b. Each facility in which temporary shelter is provided shall accommodate no more than 20 youth at any given time.

c. Temporary shelter shall normally not be provided for a period exceeding two weeks during a given stay at the center.

d. Each facility in which temporary shelter is provided shall make at least two meals per day available to youth served on a temporary shelter basis.

e. At least one adult shall be on the premises whenever youth are using each temporary shelter facility.

4. Individual and Group Counseling. The center shall provide individual and/or group counseling to each youth admitted into the project.

a. Individual and/or group counseling shall be available daily to each youth admitted into the center on a temporary shelter basis and requesting such counseling.

b. Individual and/or group counseling shall be available to each youth admitted into the center on a non-residential basis and requesting such counseling

c. The individual and/or group counseling shall be provided by qualified staff.

5. Family Counseling. The center shall make family counseling available to each parent or legal guardian and youth admitted into the center.

a. Family counseling shall be provided to each parent or legal guardian and youth admitted into the center and requesting such services.

b. The family counseling shall be provided by qualified staff.

6. Service Linkages. The center shall establish and maintain linkages with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the center.

a. Arrangements shall be made with community agencies and individuals for the provision of alternative living arrangements, medical services, psychological and/or psychiatric services, and the other assistance required by youth admitted into the project and/or by their families which are not provided directly by the center.

b. Specific efforts shall be conducted by the center directed toward establishing working relationships with law enforcement and other juvenile justice system personnel.

7. Aftercare Services. The center shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and through referrals to other agencies and individuals.

8. Case Disposition. The center shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

a. To the extent feasible, the center shall provide for the active involvement of the youth, the parent(s) or legal guardian, and the staff in determining what living arrangement constitutes the best interest of each youth.

b. The center shall assure the safe arrival of each youth home or to an alternative living arrangment following the terminiation of the crisis services provided by the center, by arranging for the transportation of the youth if he/she will be residing within the area served by the center; or by arranging for the meeting and local transportation of the youth at his/her destination if he/she will be residing beyond the area served by the center.

c. The center shall verify the arrival of each youth who is not accompanied home or to an alternative living arrangement by the parent(s) or legal guardian, center staff or other agency staff within 12 hours after his/her scheduled arrival at his/her destination.

9. Staffing and Staff Development. The center shall maintain a staffing and staff development plan.

a. The center shall operate under an affirmative action plan.

b. The center shall maintain a written staffing plan which indicates the number of paid and volunteer staff in each job category.

c. The center shall maintain a written job description for each paid and volunteer staff function which describes both the major tasks to be performed and the qualifications required.

d. The center shall provide training to all paid and volunteer staff (including youth) in both the procedures employed by the center and in specific skill areas as determined by the center.

e. The center shall evaluate the performance of each paid and volunteer staff member on a regular basis.

f. Case supervision sessions, involving relevant center staff, shall be conducted at least weekly to review current cases and the types of counseling and other services which are being provided.

10. Youth Participation. The center shall actively involve youth in the design and delivery of the services provided by the center.

a. Youth shall be involved inn the ongoing planning efforts conducted by the center.

b. Youth shall be involved in the delivery of the services provided by the center.

11. Individual Client Files. The project shall maintain an individual file on each youth admitted into the center.

a. The client file maintained on each youth shall, at a minimum, inlcude an intake form which minimally contains the basic background information required by YDB on the Information Collection Research and Evaluation (ICARE) Form; counseling notations; information on the services provided both directly and through referrals to community agencies and individuals; disposition data; and, as applicable, any follow-up and evaluative data which are compiled by the center.

b. The file on each client shall be maintained by the center in a secure place and shall not be disclosed without the written permission of the client and his/her parent(s) or legal guardian except to center staff, to the funding agency(ies) and its (their) contractor(s), and to a court involved in the disposition of criminal charges against the youth.

12. Ongoing Center Planning. The center shall develop a written plan at least annually.

a. At least annually, the center shall review both the crisis counseling, temporary shelter, and aftercare needs of the youth in the area served by the center and the existing services which are available to meet these needs.

b. The center shall conduct an ongoing evaluation of the impact of its services on the youth and families it serves.

c. At least annually, the center shall review and revise, as appropriate, its goals, objectives, and activities based upon the data generated through both the review of youth needs and existing services (12a) and the follow-up evaluations (12b).

d. The center's planning process shall be open to all paid and volunteer staff, youth, and members of the Board of Directors and/or Advisory Body.

13. Board of Directors/Advisory Body (Optional). It is strongly recommended that the center have a Board of Directors or Advisory Body which conforms to the following criteria.

a. The membership of the Center's Board of Directors or Advisory Body shall be composed of a representative cross-section of the community, including youth, parents, and agency representatives.

b. Training shall be provided to the Board of Directors or Advisory Body designed to orient the members to the goals, objectives, and activities of the center.

c. The Board of Director or Advisory body shall review and approve the overall goals, objectives, and activities of the center, including the written plan developed under 12.

National Runaway Switchboard Project Description

The National Runaway Switchboard was initiated through an HEW Office of Youth Development research and demonstration grant in 1974. The project was initially funded as an eight month demonstration grant for the purpose of providing toll-free WATS service to runaway youth in the contiguous United States. Since then, it has been supported by the Runaway and Homeless Youth Act and administered by the Youth Development Bureau within the Administration for Children, Youth and Families. Among the reasons for developing the National hotline were (a) the interstate nature of the runaway problem and (b) the evident unavailability in most areas of the nation of specialized resources and services for dealing with the problem.

The National Runaway Switchboard provides a confidential toll-free information, referral and crisis intervention telephone service operating 24 hours a day, seven days a week. It is designed to held young people who have run away from, been thrown out of, or are considering leaving home and their families. Operating with a paid staff and trained volunteers, the National Communications System links its callers with the help they need in three basic ways:

(a) Intervention—providing a neutral channel of communications through which runaway youth may re-establish contract with his or her parent or guardian;

(b) Referral—identifying agency resources to runaways in the area where the runaway youth is located; and

(c) Prevention—identifying home-community resources for those young people who are contemplating running away but contact the Switchboard before they run.

The National Runawy Switchboard, funded at a level of $350,00 annually serves the need of runaway and homeless youth, and their families. States, localities and nonprofit private agencies and coordinated networks of such agencies also frequently utilize the services offered by the National Runaway Switchboard.

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Part V

Federal Deposit Insurance Corporation

12 CFR Part 325
Capital Maintenance; Final Rule

12 CFR Part 325
Statement of Policy on Capital

12 CFR Part 346
Foreign Banks; Final Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") has adopted a final regulation concerning capital maintenance. The FDIC is required to analyze capital adequacy in taking action on various types of applications, such as mergers and branches, and in the conduct of its various supervisory activities related to the safety and soundness of individual banks and the banking system. Additionally, as a condition of federal deposit insurance all insured banks must remain in a safe and sound condition, including maintaining adequate capital. This regulation: (a) Defines capital; (b) establishes minimum standards for adequate capital; (c) establishes standards to determine when an insured bank is operating in an unsafe and unsound condition by reason of the amount of its capital; and (d) establishes procedures for issuing a directive to require an insured state nonmember bank to achieve and maintain a minimum capital ratio.

EFFECTIVE DATE: April 18, 1985.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, (202) 389–4761, or Peter M. Kravitz, Senior Attorney, Legal Division, (202) 389–4171, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1984 the FDIC issued a proposed regulation concerning capital maintenance. 49 FR 29399 (1984). Comment had to be received by the FDIC by September 18, 1984.

Capital performs several very important functions in banking institutions. It absorbs fluctuations in income so that banking institutions can continue to operate in periods when losses are being sustained. It also provides a measure of assurance to the public that an institution will continue to provide financial services thereby helping to maintain confidence in individual entities and the banking system as a whole. It serves to support growth yet restrains unjustified or imprudent expansion of assets. Capital also provides protection to depositors in the event of a threatened insolvency.

The Federal Deposit Insurance Corporation, as a regulator and insurer, has always had a critical interest in the maintenance of adequate capital in individual banking institutions and in the banking system. The protection of depositors and maintenance of stability in the financial system are critical to the mission of the FDIC and capital adequacy plays a key role in the policies and programs used in performing its supervisory functions. A determination of capital adequacy is one of the major objectives of an examination and is one of the five components which form the basis of the Uniform Financial Institution Rating System used by the FDIC in determining the condition of individual banking institutions. Additionally, through passage of the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*) ("ILSA") and by requiring the FDIC to consider the adequacy of capital in connection with various applications, the Congress has given explicit statutory recognition to the importance this factor assumes in the safe and sound operation of the Nation's banking system.

Capital of any given bank should be sufficient to maintain public confidence in the institution, support the volume, type and character of the business conducted, provide for the possibilities of loss inherent therein, and permit the bank to continue to meet the reasonable credit requirements of the area served.

The following chart depicts the ratio of equity capital to total assets in the total U.S. commercial banking system since 1960.

Year	Equity capital/ total assets
1960	8.1
1970	6.6
1980	5.6
1981	5.8
1982	5.8
1983	6.0

While the vast majority of individual banks have equity capital ratios above six percent, the systemwide ratio has varied over time but, until recently has clearly demonstrated a declining trend. The Federal bank regulators adopted capital guidelines in 1981 which, together with the efforts of banks to achieve them, have been at least partially responsible for arresting the declining trend.

Several factors have, however, emerged over the past few years which are accentuating the potential demands on bank capital. The deregulation of interest rates on bank liabilities together with a weakening of loan portfolios brought about by shocks in the domestic and world economy have caused a decline in bank profitability and increased levels of risk within the system. The competition for financial services has intensified on both an intra-industry and inter-industry basis, placing additional pressures on bank profitability. Further, because of the growing interdependency within the system, problems in one institution can have repercussions on other institutions arguing for stronger capital levels in both individual banks and the system as a whole. Increasing levels of off-balance sheet risks are also a factor in the need for higher capital.

Section 908 of ILSA (12 U.S.C. 3907) prescribes that the Federal banking agencies" . . . shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by such other methods as the appropriate Federal banking agency deems appropriate." Pursuant to this authority and the authorities contained in the Federal Deposit Insurance Act, the FDIC is adopting a capital regulation. This regulation will implement the provisions of the ILSA, will foster further improvement in bank capital ratios, and, when combined with similar efforts expected to be taken by the other Federal bank regulators, will eliminate the disparities in treatment of the banks supervised by the agencies with respect to capital adequacy. The regulations also sets the procedures, pursuant to the authority contained in ILSA and consistent with due process considerations, for implementing a directive to require banks to maintain adequate capital.

The FDIC has also decided to concurrently adopt a statement of policy on capital which will provide additional guidance on how the Agency intends to implement and enforce the rule.

The regulation applied to insured nonmember commercial and savings banks. State member banks, national banks, and FDIC insured federal savings banks will also be affected by the provisions dealing with termination of deposit insurance and with respect to any application which requires the approval of the FDIC such as a merger with an uninsured institution. The regulations do not apply directly to bank holding companies; however, the statement of policy does provide guidance as to how the FDIC will evaluate holding companies and other bank affiliates in its analysis of capital in individual banks.

On December 17, 1981, the FDIC Board of Directors adopted a policy statement to inform banks and the

public of its views concerning capital and capital adequacy [FDIC Statement of Policy on Capital Adequacy, 46 FR 62694 (1981)]. Because of the adoption of this final rule on capital maintenance and the related statement of policy on capital, the Board has revoked the 1981 statement of policy.

Comments

The FDIC's proposed regulation was published for a sixty-day comment period which ended on September 18, 1984. The Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System also published proposed regulations or guidelines shortly thereafter which were very similar to the FDIC's proposal. The comment period for the last of these proposals expired on November 5, 1984. In view of the similarity of the proposals of the FDIC and the other two federal bank regulators and the fact that several commenters were writing to all of the agencies, the FDIC gave consideration to all comments received through November 5, 1984. The FDIC received 136 written comments. Of these comments, 37 were from mutual savings banks, 43 were from smaller commercial banks (under $1 billion in total assets), 30 were from larger commerical banks, and 26 were from other than banks (principally state banking departments, bankers associations, law firms, members of Congress and others).

Of the 136 comments received, 42 were supportive of the regulation largely as proposed and 60 could be characterized as generally opposed to its issuance. The remainder of the comments tended to deal with specific issues rather than an expression of support or opposition for the general thrust of the regulation. Many of these were supportive of the need to increase or halt the decline in bank capital ratios and largely offered alternative suggestions as to how this might be best accomplished or commented on the proposed treatment of certain captial components.

Those expressing support for the proposal were mostly small commercial banks. They tended to favor it largely because capital requirements would be uniform for all banks. Five commenters felt the minimum requirements should be established at a higher level or raised again in the future and several others felt that capital requirements for savings and loan associations, credit unions, and other institutions competing with banks should be comparable to those for banks.

Those expressing opposition to the proposal were mostly mutual savings banks and savings bank associations. Their primary reasons for opposing the regulation were as follows: (1) The proposal will hinder a restructuring of assets or will hinder the growth necessary to develop a sound earnings base; (2) the proposal will require mutual savings banks to raise too much capital too soon or is simply unachievable for mutual savings banks; (3) the proposal will result in inequitable treatment for mutual savings banks in relation to some of their competition, such as savings and loan associations and credit unions; (4) the proposed regulation exceeds the statutory mandate of the ILSA which dealt largely with the international lending problem and is not applicable to mutual savings banks; (5) the proposal will force mutual savings banks to convert to stock form; and (6) the proposal will discourage voluntary mergers of mutual savings banks.

Comments in opposition to the proposal from commercial banks and others echoed the concerns of mutual savings banks about inequities relative to other types of competitors (including foreign banks). The other reasons were different, however, with the major ones being: (1) Higher capital requirements will result in banks taking on greater risks to earn the income necessary to pay for the increased cost of capital; (2) banks will reduce liquidity by reducing high quality-low spread assets; (3) capital standards based on total assets fail to recognize different risk profiles in individual banks; and (4) the proposal will place great stress on the money markets. Other objections were: (1) The establishment of minimum capital requirements will have the effect of lowering capital in the industry as the minimum will tend to become the maximum; (2) the proposal does not cite a role for state regulators who are in a better position to determine capital requirements based on community needs and other factors; and (3) higher capital requirements will tend to curtail lending by banks and will result in higher borrowing costs for consumers.

After due consideration to the comments received, the FDIC has decided to proceed with implementation of the regulation. As was noted at the time the proposal was issued for public comment, the regulation is designed to strengthen the capital base in the banking system, eliminate disparities in capital minimums required of banks of different sizes, and provide direction to banks for capital and strategic planning purposes. The majority of the comments receive were generally supportive of these objectives although many of these were concerned with specific aspects of the proposal. The FDIC has duly considered these comments and suggestions and has made some modifications to the original proposal to address them as will be set forth below. The FDIC has, however, decided that the stated objectives can be best accomplished through the issuance of a regulation setting forth the minimum capital requirements for insured banks accompanied by a statement of policy on capital addressing how the regulation will be implemented and enforced by the FDIC. In reaching this decision the FDIC considered and resolved those comments expressing opposition to the proposal as follows.

The FDIC has addressed many of the concerns of mutual savings banks in the statement of policy which sets forth guidelines the FDIC will use in evaluating capital plans for meeting minimum capital requirements submitted by such banks. The comments noted that existing conditions in this industry and the existing capital levels in many mutual savings banks pose a special problem for such banks in complying with the regulation. The idea of establishing lower minimum capital requirements for mutual savings banks was considered and rejected as the FDIC is convinced that the minimum capital requirements set forth in the regulation are just as appropriate for mutual savings banks as they are for commercial banks. The events of the past few years have certainly proven that mutual savings banks are not riskless and many continue to be subject to risks which, although different, are just as devastating as those which exist in some commercial banks. In addition, the minimum capital ratios would apply only to banks with moderate levels of risk whether they be commercial or mutual savings banks. In view of this the FDIC has decided to establish the same minimum capital requirements but permit more time for mutual savings banks to achieve them.

The statement of policy specifies that mutual savings banks with primary capital ratios of 3 percent or above as of the effective date of the regulation will be allowed one year to achieve their minimum capital requirement for each 0.5 percent that their primary capital ratio is below 5.5 percent, up to a maximum of five years. To qualify, however, a mutual savings bank must be able to submit a plan which shows a reasonable ability to achieve its minimum capital requirement within this period from earnings or it must pursue other alternatives such as conversion to stock form or merger. In addition, mutual savings banks which have their

capital ratios fall below the minimum as a result of balance sheet restructuring to reduce risk will be accorded largely comparable treatment. The FDIC believes this is an equitable way of dealing with this issue in that it will permit those mutual savings banks capable of restoring themselves to health in a mutual form of ownership an ample opportunity to do so while requiring those which cannot do so to immediately seek other alternatives.

The FDIC is sympathetic to the comments of mutual savings banks and others concerning the unfairness of requiring insured banks to compete with other types of organizations which have lower capital requirements. Notwithstanding, it would be both inappropriate and dangerous for the FDIC to permit capital ratios in insured banks to fall to the lowest common denominator. Rather, FDIC is and will be an advocate for increased levels of capital in those institutions competing with insured banks, both in Congress and when the opportunity arises in the course of its normal regulatory and supervisory responsibilities.

Insofar as the comments regarding the intent of the ILSA are concerned, the FDIC notes that the legislative history shows that the provision for establishing minimum capital levels in banks was not solely related to the international debt problem. It was a specific legislative response to a court decision (*First National Bank of Bellaire* v. *Comptroller of the Currency*, 697 F.2d 674 (5th Cir. 1983)) which challenged the authority of a federal bank regulator to establish a minimum capital requirement for a bank. Moreover, the FDIC has the authority to issue this regulation in accordance with its stated mandate of promoting safety and soundness in insured banks irrespective of the ILSA.

Several comments opposed the regulation on the basis of its potential alteration of risk profiles in banks or its failure to appropriately consider risk characteristics in individual banks. The FDIC does not believe these comments fully consider the overall thrust of the regulation. The regulation specifies minimum capital ratios which are applicable *only* to banks whose overall financial condition is fundamentally sound, which are well-managed and have no material or significant financial weaknesses. The minimum capital requirements of banks which assume inordinate risks, either on or off their balance sheets, will be established at a higher level consistent with the level of risk in each institution. Banks which assume inordinate levels of risk as a means of increasing internal capital generation through earnings will find that the minimum capital requirements set forth in the regulation no longer apply and they will be required to generate additional capital to support the increased risk. Assuming an inordinate level of risk would therefore be counterproductive and it is not something that the FDIC expects well-managed banks to do. There may well be some movement of risk off of bank balance sheets; however, as the level of such risk increases, a commensurate increase in capital to support this higher risk will be necessary.

The FDIC does not view this regulation as a substitute for effective risk management and will not relax its traditional insistence on soundness in all financial and managerial aspects of a bank's operations, of which adequate capital is but one. The regulation does nothing more than establish minimum capital requirements and impose certain sanctions on banks which fail to meet the minimums. It does not inhibit the FDIC from making an independent evaluation of capital adequacy in any bank nor from taking appropriate supervisory action in connection with any deficiency in bank's operations. Moreover, the statement of policy specifies that the FDIC will encourage even fundamentally sound, well-managed banks to maintain capital above the minimums and will carefully evaluate (and criticize where appropriate) earnings and growth trends, dividend policies, capital planning procedures and other factors important to the continuous maintenance of adequate capital.

Some commenters also felt that the regulation will place great stress on the money markets and will have adverse effects on consumers through curtailed lending and higher borrowing costs. The FDIC does not believe that the facts fully justify these concerns; however, certain provisions have been incorporated into the statement of policy which address them to a limited extent. As of September 30, 1984, less than four percent of the Nation's commercial and mutual savings banks had capital ratios less than the minimums set forth in this regulation. It is estimated that these banks would have needed approximately $6.3 billion to achieve the minimum requirements at that time. Of this total, about $4 billion would be required in commercial banks and the balance in mutual savings banks. It is estimated that, in 1983, the commercial banking industry raised about $4 billion in total capital from external sources, about 33% of which was equity capital.

In the statement of policy the FDIC has provided that sound, well managed commercial banks which are below the minimums as of the effective date of the regulation will be given up to 12 months from the date FDIC approves the bank's plan to raise the required capital. This, together with the 60 days provided in the regulation for the submission of plans, will provide up to 14 months from the effective date of the regulation for banks to achieve compliance. As was noted earlier, mutual savings banks will be given more time because of the special problems which exist for these banks. The FDIC believes this is a sufficient time for both commercial and mutual savings banks to generate the required capital through earnings or acquisition of external funding, as the case may be. It should be noted, however, that banks with excessive risks or banks whose capital ratios fall below the required minimums will be required to immediately take the necessary steps to achieve their minimum capital requirements. With respect to banks having excessive risks, both their level of required capital and the time frame for achieving it will generally have already been addressed in a formal or informal administrative action.

With almost 96% of the banks in the nation not being impacted by this regulation and with the time permitted for other institutions to achieve compliance, it is not expected that there would be any meaningful adverse impact on bank consumers in terms of either the availability or the cost of credit. It is recognized that increased capital does impose some additional costs on banks and can serve to impede growth; however, the need for those banks which are impacted to remain competitive with those which are not mitigates any serious concerns about adverse effects on consumers.

With respect to the one comment about the failure of the proposal to cite a role for state regulators, the FDIC would point out that it has traditionally consulted with state regulators in establishing bank capital requirements and will continue to do so. The statement of policy does, however, specify that banks will be expected to meet any capital requirements established by its primary state or federal regulator which exceed the minimums set forth in the regulation. It additionally specifies that the FDIC will consult with such primary regulators when establishing capital requirements which are higher than the minimums.

The provisions of the final regulation and a summary of the comments

received on specific issues associated with these provisions are detailed below.

Minimum Capital Requirements

The final regulation requires that all FDIC-insured state nonmember banks will be required to maintain a ratio of total capital to total assets of not less than 6 percent and a ratio of primary capital to total assets of not less than 5.5 percent. Other insured banks submitting applications to the FDIC will be subject to the same requirements. The regulation further specifies that this is the minimum capital requirement for fundamentally sound, well-managed banks which have no material or significant financial weakness. Where the FDIC determines that a bank does not meet this definition it may determine that a higher minimum primary and/or total capital ratio is required.

There were very few comments concerning the level of the minimum requirements. This segment of the regulation is unchanged from the original proposal except for the specific addition of "off balance sheet risk" as one of the factors which may cause FDIC to find that a bank is not fundamentally sound and well managed. This was clearly defined as one of the criteria in the discussion of the proposal which was published for public comment and is simply being added to the language in § 325.3(a).

In the statement of policy on capital the FDIC provides a general definition of a fundamentally sound, well-managed bank as one which evidences a level of risk which is no greater than that normally associated with a Composite rating of 1 or 2 under the Uniform Financial Institution Rating System. The statement of policy makes it clear, however, that this is a determination which will be made by the FDIC in each individual bank based upon the condition and circumstances in that bank. This definition was included to assist banks in determining what the FDIC's capital expectations for them will likely be on a continuous basis between examinations. The FDIC currently advises banks of their Composite rating and, from this reference point, banks will have some ability to continually assess what FDIC's future capital expectations will be based on changing circumstances within the institution.

Definition of Primary Capital

Section 325.2(h) of the regulation defines primary capital as the sum of common stock, perpetual preferred stock, capital surplus, undivided profits, capital reserves, mandatory convertible debt (to the extent of 20 percent of primary capital exclusive of such debt), minority interests in consolidated subsidiaries, net worth certificates issued pursuant to 12 U.S.C. 1823(i) and the allowance for loan and lease losses and minus intangible assets other than mortgage servicing rights and assets classified loss. This definition differs from the one that appeared in the proposal which was published for comment with respect to the treatment of the mortgage servicing rights component of intangible assets. A definition of perpetual preferred stock has also been added to the regulation.

There were numerous comments on several issues associated with the definition of primary capital. The most extensive comments related to the exclusion of intangible assets from primary capital. Twenty-nine comments were received on this issue. One suggested that intangible assets should not be counted as either primary or secondary capital. Another suggested allowing intangible assets as primary capital in bank holding companies but not in banks. The remaining comments recommended the inclusion of intangible assets in primary capital in some form. Eleven recommended the inclusion of either core deposit intangibles, mortgage servicing rights, or only those intangible assets with identifiable values. Sixteen comments recommended that all intangible assets be counted as primary capital although seven of these recommended some limit on the amount which could be included. Many of these comments contained lengthy discussions as to why certain classes of intangible assets were appropriate as primary capital.

The FDIC has long been opposed to the inclusion of intangible values in its determination of a bank's equity capital as a matter of general policy. The FDIC Statement of Policy on Capital Adequacy which was adopted by the Board of Directors on December 17, 1981 continued a long-standing practice of excluding intangible assets as a component of equity capital. Prior to the adoption of this statement of policy, and for a short time thereafter, the FDIC generally even required that intangible assets held by banks be charged off and not be reflected on the bank's books. The FDIC later permitted banks to record intangible assets on their books; however, it has continued to deduct such assets from equity capital when assessing capital adequacy. At the same time, it is fully recognized that substantial differences exist among the various classes of intangible assets in terms of the quality and marketability of the rights or values which they represent and the FDIC has in specific circumstances permitted some banks to count certain intangible assets as equity capital.

Therefore, the FDIC has carefully considered the intangible asset issue and the comments thereon and has concluded that it would be more appropriate to evaluate each class of intangible assets that might appear on a bank's balance sheet on the basis of its own nature and characteristics rather than to approach intangibles as a single homogeneous asset category. If an individual class of intangible assets were found to be of sufficient quality, it would be treated in the same manner as all other asset categories on the balance sheet for purposes of capital adequacy. Otherwise, that particular class of intangible assets would continue to be deducted from the components of primary capital as was originally proposed.

Intangible assets may be characterized according to the manner in which they are acquired, their separability from an entire banking organization, their marketability, and the certainty of the future cash flows or income stream they represent. The intangibles encountered in banks are typically acquired in a purchase of all or part of another business enterprise although mortgage servicing rights can also be acquired by themselves as a single asset. Along a similar vein, intangibles such as goodwill and core deposit intangibles cannot be separated from the remainder of a bank's assets and sold or otherwise disposed of apart from the bank as a whole or a substantial part of it whereas such a separation is possible with mortgage servicing rights. Due in part to this separability, there is a fairly active market for these servicing rights which in turn adds a degree of liquidity to this class of intangibles.

The estimated future cash flows or income streams associated with the rights or values underlying intangible assets vary considerably with respect to their certainty and predictability. Interest rate deregulation has been undermining the concept of the low cost core deposit base and assumptions about the average remaining lives of such deposits when acquired and the interest rate spreads projected over these lives have made the valuation of purchased core deposit intangibles increasingly subjective. As for goodwill, the future income stream it purports to represent is even less quantifiable and the value assigned to this intangible may be associated more with what a bank is willing to pay to expand into

new markets or to increase market penetration. On the other hand, mortgage servicing rights are derived from known servicing fee rates on a specified group of mortgages with contractual repayment terms and reasonably predictable prepayment characteristics.

When judged in terms of the framework described above, mortgage servicing rights are the only class of intangible assets whose attributes can be favorably resolved for capital adequacy purposes from the FDIC's perspective. Accordingly, the FDIC concurs with those commenters who recommended that purchased mortgage servicing rights as a class of asset should be counted in full in the measurement of a bank's primary capital. A definition of mortgage servicing rights has been added in § 325.2(f). Nonetheless, FDIC examiners will assess the quality of such intangibles on a bank-by-bank basis during examinations in the same manner that they evaluate tangible assets. Where the carrying value of mortgage servicing rights at an individual bank cannot be properly supported, an adverse classification would be accorded. Should a loss classification be assigned, the amount classified would be deducted from capital as prescribed in the regulation.

One further reason why the FDIC has rejected the use of intangible assets other than mortgage servicing rights as primary capital arises from systemic concerns. When banks purchase other business enterprises in a manner which gives rise to the creation of intangible assets, the equity capital which supported the risk in the purchased bank or business is extinguished. This reduces capital in the banking industry unless the former stockholders reinvest in new equity issues in other banks or the purchasing bank issues equity to the former stockholders or replaces the equity from new sources. While the FDIC cannot control the investment choices of the stockholders of the acquired bank or business, it can, through the nonrecognition of intangible assets other than purchased mortgage servicing rights as primary capital, encourage the replacement of that portion of the lost equity which is required to support the risk assumed in the purchasing bank. The FDIC feels strongly that this issue is a significant safety and soundness concern in terms of capital adequacy in both individual banks and the banking system. It is recognized that the exclusion of intangible assets other than mortgage servicing rights from primary capital will place some restraints on banks purchasing other banks and businesses including those failed banks which the FDIC seeks to handle through purchase and assumption transactions; however, it is believed to be the best solution in terms of the future soundness of the banking system.

As a final note on the issue of intangibles, §325.5(b) has been added to grant specific authority for banks which have had intangible assets specifically approved as equity capital prior to the effective date of this regulation to continue to count such assets as primary capital subject to the amortization of such assets over their estimated useful lives or a period not in excess of 15 years, whichever is shorter.

Another issue extensively commented upon was the use of equity commitment notes as primary capital. These are subordinated debt obligations which are expected to be repaid in cash but relative to which the issuing bank commits to their replacement with equity capital prior to the maturity of the debt. The proposal which was issued for comment stated that the definition of mandatory convertible debt specifically excluded such notes. Twelve comments were received on this issue. Two felt equity commitment notes should not be permitted as primary capital and ten felt they should be included.

After carefully considering the comments and the nature of these instruments, the FDIC decided to retain the definition of mandatary convertible debt (§ 325.2(e)) as originally proposed. Under the FDIC Statement of Policy on Capital Adequacy adopted in 1981, mandatory convertible debt has included only those subordinated debt instruments that are required to be converted into the issuing bank's common or perpetual preferred stock. While the issuer of equity commitment notes agrees in advance to sell stock in sufficient amounts to replace the debt obligation, there is no assurance that the bank in spite of its best efforts will in fact be able to do so. Once such a situation becomes evident, the amount of the equity commitment notes would no longer be eligible to be treated as primary capital components. However, between the issue date of the notes and the date when their replacement failed to occur, the bank's primary capital ratio would have in effect been overstated. As a consequence, the FDIC's supervisory response to conditions and practices within the institution during this period may have been less than what would otherwise have been appropriate.

The FDIC also left unchanged the proposed requirement that mandatory convertible debt have a maturity of not more than 12 years and the provision that mandatory convertible debt may comprise no more than 20 percent of a bank's primary capital exclusive of such debt. There were very few comments concerning these issues.

Prior to the adoption of this regulation the FDIC permitted 100 percent of a mandatory convertible debt issue to be counted as equity capital where the bank's primary regulatory authority includes such debt in a determination of the solvency of the bank. The FDIC has added § 325.5(a) to the regulation to permit banks which have had such instruments approved by the FDIC as equity capital prior to the effective date of this regulation to continue to include such instruments in equity capital. This action was suggested by several of the commenters.

The FDIC has also added two other sections to the regulation which relate to the definition of primary capital. The first is a definition of perpetual preferred stock in section 325.2(g). This provision incorporates the definition of perpetual preferred stock which is contained in the instructions for the preparation of Consolidated Reports of Condition and Income but specifically excludes any issue which contains an escalation of the dividend rate to such a high level as to effectively require the issurer to redeem the issue. During the comment period it came to the FDIC's attention that banks could issue perpetual preferred stock which complies with the Report of Condition instructions but which incorporates a substantial increase in the dividend rate at some point during the life of the instrument. Where such increases are particularly excessive they effectively force the bank to redeem the issue much as if it were a limited life preferred stock issue. The FDIC has not established specific requirements as to how much of a rate escalation would be permitted; however, in the statement of policy banks are cautioned that such instruments may be disallowed as primary capital and are encouraged to submit them for FDIC review before issuing perpetual preferred stock with such rate increases.

The second change is the addition of § 325.5(c) which specifies that any transaction or balance sheet entry which would increase an insured bank's primary capital but which does not provide support to the insured bank by providing a cushion to absorb losses shall be deducted from primary capital. The statement of policy provides an

example of such a transaction involving minority interests in consolidated subsidiaries which creates merely an illusion of capital support. The FDIC is vitally interested in maintaining the integrity of primary capital as a permanent capital base for a bank and feels the inclusion of this provision will help assure that result.

Definition of Secondary Capital

In the proposal issued for public comment the FDIC specifically asked for comment on two issues associated with secondary capital.

1. Should limits be placed on the amount of subordinated notes and debentures and limited life preferred stock that is included in secondary capital?

2. Should limits be placed on the amount of secondary capital that can be included in total capital?

Twelve comments were received on the first issue with all but one feeling that it was appropriate to place some maturity limitation on subordinated debt that could be counted as secondary capital. Most of these recommended the discounting of such debt for secondary capital proposes by 20% annually over the last five years of the life of such instruments.

Despite these comments the FDIC has decided to place no maturity requirements on subordinated debt over and above those which were already imposed in § 329.10 of the FDIC's rules and regulations. It was reasoned that, with the severe sanctions for noncompliance with primary and secondary capital requirements now being imposed through regulation, there was little need to place additional discounting restrictions on subordinated debt. Discounting restrictions effectively impose higher capital requirements by forcing replacement debt to be issued prior to the actual maturity of the issues they replace. The FDIC felt that, with the incentive of regulatory compliance which is now being imposed, it was unnecessary to impose requirements which would discount subordinated debt for capital adequacy purposes prior to its maturity.

As a matter of clarification the FDIC has incorported relevant portions of the definition of subordinated notes and debentures from § 329.10 of the FDIC's rules and regulations into the regulation in § 325.2(j).

Nineteen comments were received on the second issue. Two suggested that secondary capital should not be recognized at all, eight recommended that no limits be placed on secondary capital, and nine recommended that secondary capital be limited to some specified percentage of primary capital.

The FDIC has decided to impose a provision in the regulation whereby secondary capital components can comprise no more than 50 percent of a bank's primary capital for the purpose of calculating the total capital ratio. This was the limit suggested by most of the commenters who felt that some limit should be imposed. This action was also believed justified to prohibit banks from reporting to the public total capital ratios which are comprised of inordinate amounts of secondary capital components.

The FDIC took one further action which impacts the definition of secondary capital. The original proposal permitted intangible assets as well as limited life preferred stock, subordinated notes and debentures, and the portion of mandatory convertible debt which is not counted as primary capital to be used as secondary capital. That proposal did not place a limit on the amount of intangible assets eligible for inclusion in secondary capital after excluding all intangibles from primary capital. However, because of the decision that the purchased mortgage servicing rights class of intangibles should not be deducted from the sum of the primary capital components, the FDIC also reconsidered its proposed treatment of intangible assets in secondary capital. Hence, the FDIC has concluded that the definition of secondary capital in the final regulation § 325.2(i)) should not include any intangibles. As was noted earlier, the FDIC has historically not permitted the use of intangible assets in its analysis of capital adequacy and it was therefore felt that the Agency should not proceed beyond its acceptance of purchase mortgage servicing rights in primary capital.

Effect on Banks Which Are Not in Compliance

The regulation imposes several sanctions on banks which are not in compliance with the minimum capital requirements:

1. Banks in noncompliance will not have applications approved § 325.3(c)) with two exceptions: (a) The FDIC retains the authority to approve applications involving failed or failing banks; and (b) the FDIC may approve applications for banks which have committed to and are in compliance with an acceptable plan. These requirements are unchanged from the original proposal submitted for public comment.

2. Section 325.4(b) specifies that a bank having less than its minimum capital requirement will be deemed to be engaging in an unsafe and unsound banking practice unless it has entered into and is in compliance with a written agreement or an acceptable plan to increase its capital to such levels as FDIC deems appropriate. Such banks will be subject to the issuance of directives or cease and desist actions under sections 8(b)(1) and/or 8(c) of the FDI Act. This provision is largely unchanged from the original proposal except to make it clear that a bank which has complied with the requirement for a written agreement or a plan will not be deemed to be engaging in an unsafe and unsound banking practice solely on account of its capital ratios.

3. Section 325.4(c) specifies that any insured bank with a primary capital ratio of less than 3 percent will be deemed to be operating in an unsafe and unsound condition unless it has entered into a written agreement with the FDIC (or its other primary federal regulator with FDIC a party to the agreement) to increase its capital to such level as the FDIC deems appropriate. A written agreement is defined in § 325.2(m) as an agreement which is enforceable under section 8(a) and/or section 8(b) of the FDI Act. These provisions are essentially unchanged from the original proposal submitted for public comment.

Comments on these provisions of the regulation were directed for the most part at the form in which it should be issued (regulation or guidelines) and the section dealing with the sanctions on banks which had primary capital ratios under 3 percent. Twenty comments were received on the form in which the proposal should be issued with two favoring a regulation and 18 favoring guidelines. Those preferring guidelines generally mentioned the need to maintain flexibility in the enforcement of the requirement with respect to individual banks and felt that guidelines better served this purpose. Notwithstanding these comments, the FDIC has decided to impose the requirements in the form of a regulation because of substantive advantages that a regulation provides in enforcing the requirements. By adopting a regulation employing the statutory language incorporated into the FDIC's enforcement authorities, the Agency will be able to more quickly and effectively use its enforcement tools to insure compliance in those situations where this is necessary. The FDIC believes that sufficient flexibility has been built into the regulation and it has also decided to issue an accompanying statement of policy on capital which sets forth how

the FDIC will interpret and enforce the regulation.

The comments concerning the requirements placed on banks which have primary capital ratios under 3 percent were received primarily from mutual savings banks. Eleven comments were received including nine which felt this language was dangerous, could cause runs, would make it difficult to raise capital, or was not consistent with either the Net Worth Certificate Program or the capital requirements imposed on savings and loan associations. Two commercial banks felt that the language should be changed to require the FDIC to institute a termination of insurance action when a bank's primary capital was below 3 percent. As was noted in the previous paragraph the FDIC has purposely structured a regulation which will permit the Agency to use its various enforcement tools quickly and effectively when the need arises. The Agency's experience has shown that banks whose capital ratios decline to a very low level are usually beset with problems which have caused this decline and they frequently have substantial difficulty in attracting new capital. Banks of this nature pose a substantial risk to the deposit insurance fund and are normally deserving of the Agency's most aggressive supervisory attention. The FDIC fully recognizes the severe implications of an action to remove deposit insurance and has never taken its responsibilities lightly in the use of this authority; however, the initiation of an action to terminate deposit insurance has proven to be an effective means of encouraging banks to new heights of effort in resolving their problems or, if all fails, of hastening the inevitable failure of the institution at a sometimes significant cost savings to the FDIC. Although the FDIC fully intends to use its insurance termination authority in cases of this nature, it is not required to do so under the regulation and will continue to review the merits of each individual case. Further, the definition of a written agreement as being enforceable as an action under section 8(a) (and/or section 8(b) for a state nonmember bank) will enable the Agency to move more quickly in those cases where such agreements are violated.

In response to the comment concerning the consistency with the Net Worth Certificate Program, the FDIC has made it clear in the statement of policy that banks which are participating in the Net Worth Certificate Program and are in compliance with the requirements of that program will not be determined to be in an unsafe and unsound condition solely on the basis of their capital ratios. However, the boards of such banks and the FDIC Board of Directors must also agree that the net worth certificate agreements they enter into are enforceable under sections 8(a) and 8(b) of the FDI Act.

There were no comments relating to the application of the exception to § 325.3(c)(2) contained in § 325.3(d)(2). However, the FDIC believes that it is appropriate to explain the application of that exception to an application for a merger or other type of business combination. In this type of application, the plan or merger, acquisition or etc. will be considered a reasonable plan where the resulting entity, whether or not it is insured by the FDIC, will have adequate capital pursuant to this regulation. Thus, the FDIC may, in its discretion, approve such a transaction pursuant to § 325.3(d)(2) where the applicant does not meet the minimum capital requirement.

Other Comments and Changes

Nine comments were received specifically suggesting that average total assets should be used as the denominator in calculating capital ratios rather than total assets on a specific date. The FDIC agrees with these suggestions and has appropriately amended the definition of total assets in § 325.2(k).

Eight comments were received suggesting that the FDIC adopt specific zones of capital adequacy similar to what the Board of Governors of the Federal Reserve System included in its proposed guidelines which were issued for public comment on July 26, 1984. The thrust of this proposal was to establish three zones of total capital (below 6 percent—between 6 and 7 percent—and above 7 percent) and specify what the Board of Governors' supervisory response would be for banks falling within those zones. The supervisory response indicated in the Federal Reserve proposal for banks with total capital ratios below 6 percent is largely comparable to that set forth in the FDIC's regulation. The supervisory response indicated for banks with total capital ratios between 6 and 7 percent would be largely comprised of an intense of analysis of related financial factors. If these are not found to be satisfactory, appropriate action would be taken. The FDIC has indicated in its statement of policy on capital an intent to do this same type of analysis (and to take comparable action) in all banks, including those which have capital ratios above the minimums. The FDIC does not believe that there are significant differences between the two proposals in terms of the supervisory response of the two agencies and has chosen not to specifically identify zones of capital adequacy.

The final regulation and the statement of policy indicate that the FDIC will be calculating primary and total capital ratios based on consolidated statements prepared in accordance with the instructions for the preparation of Consolidated Reports of Condition and Income with two exceptions. Certain other exceptions may also be necessary at a later date.

On November 23, 1984 the FDIC adopted a final regulation (12 CFR Part 337) setting forth standards governing the securities activities of state nonmember banks. That reguaition required that certain securities activities be conducted in separate bona-fide subsidiaries of the bank and specified that a bank's investment in such subsidiaries would not be counted toward the bank's capital. In those instances where such a securities subsidiary is consolidated in a bank's Consolidated Report of Condition, it will be necessary, for the purpose of calculating the bank's primary and total capital ratios, to adjust the Consolidated Report of Condition in such a manner as to reflect the bank's investment therein on an unconsolidated basis in accordance with the equity method. In this case, and in those cases where the subsidiary has not been consolidated, the investment in the subsidiary will then be deducted from the bank's capital and assets prior to calculation of its primary and total capital ratios (§ 325.5(d)).

In addition, on December 13, 1984, the FDIC published for comment a proposed revision to 12 CFR Part 332. 49 FR 48552 (1984). This proposal would relate to the conduct of certain real estate and insurance activities of insured banks that are otherwise authorized by law. Among other things, the proposal would require these activities to be conducted in a bona-fide subsidiary as defined in the regulation. If this proposal is adopted in its current form or with a provision of similar effect, Part 325 will be amended at the same time to conform to its provisions. Specifically, for capital adequacy purposes, the accounting treatment of such subsidiaries will be made the same as the treatment of securities subsidiaries pursuant to § 325.5(d) (see also 12 CFR Part 337).

The second exception to the use of consolidated statements prepared in accordance with the instructions for the preparation of Consolidated Reports of Condition and Income relates to the treatment of bank subsidiaries that are

domestic depository institutions such as commercial banks, savings banks, or savings and loan associations. These subsidiaries are not consolidated on a line-by-line basis with the bank parent in the bank parent's Consolidated Reports of Condition and Income. Rather, the instructions for these reports provide that bank investments in such subsidiaries are to be reported on an unconsolidated basis in accordance with the equity method so that aggregate data for depository institutions and the deposit insurance assessment base for individual banks are not overstated. Were it not for these concerns, depository institution subsidiaries would be consolidated in the Reports of Condition and Income consistent with generally accepted accounting principles. Moreover, the FDIC believes that the minimum capital requirements prescribed in this regulation should apply to a bank's depository institution activities in their entirety, regardless of the form that the organization's corporate structure takes. The FDIC currently follows this approach for assessing capital adequacy in cases where depository institution subsidiaries are present in banks. Accordingly, § 325.5(e) has been added to specify that domestic depository institution subsidiaries of banks that are not consolidated for purposes of the Consolidated Reports of Condition and Income are to be consolidated for purposes of capital adequacy calculations.

In the statement of policy the FDIC has also specified how it will analyze capital adequacy in banks which are members of bank holding companies or chain banking groups. Where bank holding companies are deemed to be sound and are in compliance with the minimum capital ratios specified by the Board of Governors of the Federal Reserve System, the FDIC will not generally require additional capital in subsidiary banks under its supervision over and above that which would be required by the subsidiary bank on its own merit. The FDIC will, however, consider the potential impact of excessive leverage or risk in bank holding companies or chain banking groups in its analysis of capital in specific banks which are members of such systems.

A new § 325.3(c)(4) has been added to clarify the situation where there is a merger, acquisition or other type of business combination requiring FDIC approval. It follows the requirement in 12 U.S.C. 1828(c)(5) that the FDIC shall take into consideration the financial resources of the existing and proposed institutions.

Directives

Section 908 of ILSA authorizes the FDIC to issue a directive to an insured nonmember bank that fails to maintain the minimum capital requirement. A directive may require a bank to submit and adhere to a plan for achieving such requirement. A directive, including a capital adequacy plan submitted thereunder, is a final order enforceable in the appropriate United States district court in the same manner and to the same extent as a final cease-and-desist order issued under 12 U.S.C. 1818(b). The issuance of a directive is discretionary, and a directive may be issued in lieu of, in conjunction with, or in addition to existing enforcement tools available to the FDIC. Procedures leading to the issuance of a directive have been established which are designed to provide banks with due process.

No comments were received concerning the issuance of directives (§ 325.6). However, various changes have been made. A sentence was added at the end of § 325.6(c)(1). This allows the FDIC to include specific requirements for meeting the minimum capital requirement in the notice of intent to issue a directive.

Sections 25.6(c)(3) deletes the 14-day period in which the FDIC must respond to the bank's response to the proposed issuance of a directive. This change is necessary to allow time for the processing of the bank's response and reaching a determination on it. In addition, a sentence has been added which clarifies the fact that, after consideration of the bank's response, the original proposed directive or a modified version, if warranted by evidence presented to the Board of Directors of the FDIC, may be issued.

A new § 325.6(c)(4) has been added which permits a bank to ask for reconsideration of or changes in its capital plan upon a showing of changed circumstances. This additional language clarifies the intent of the original regulation. Former § 325.6(c) (4) and (5) have been renumbered § 325.6(c) (5) and (6).

Regulatory Flexibility Analysis—Paperwork Reduction Act

In accordance with the FDIC's policy statement entitled "Development and Review of FDIC Rules and Regulations" and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FDIC conducted an analysis of the impact of the proposed regulation prior to publication of the proposed rule. The result of that analysis follows:

The regulation is not expected to have any significant economic impact on banks, including small banks. The FDIC is currently required by statute to consider bank capital in a number of situations. These include applications for deposit insurance, branching, mergers and relocations of offices. In addition, under sections 8 (a) and (b) of the Federal Deposit Insurance Act (12 U.S.C. 8 (a) and (b)) the FDIC is charged with the responsibility of requiring a bank to take corrective action or revoking federal deposit insurance when the bank is in an unsafe or unsound condition or is operating in an unsafe or unsound manner. In addition, 12 U.S.C. 3907(a)(1) requires the FDIC to "cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate federal banking agency deems appropriate."

In carrying out its responsibilities the FDIC has always considered the capital adequacy of banks. It was only recently that the FDIC promulgated a written policy to inform banks and the public of its beliefs concerning capital and capital adequacy [FDIC Statement of Policy on Capital Adequacy, 46 FR 62694, December 28, 1981, effective December 17, 1981]. The FDIC now believes that because of the importance of capital and the requirements contained in 12 U.S.C. 3907(a)(1) it would better serve insured banks' and the public's interest if capital were defined in a regulation, thereby insuring that there will be no confusion regarding the components and level of adequate capital. Furthermore, the FDIC wants to make it clear to the banking industry and the public exactly what standards are used in assessing capital adequacy and how the FDIC exercises its statutory duties with regard to the safety and soundness of banks in its consideration of capital adequacy.

Historically there have been higher capital ratios in smaller banks. To the extent that this regulation equalizes those requirements it will lessen the burden on small banks.

The information collection requirements contained in this rule pertaining to the preparation of a written plan by a bank to raise its capital ratio have been approved by the Office of Management and Budget pursuant to section 504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and assigned control number 3064–0075.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Federal Deposit Insurance

Corporation, Capital adequacy, State nonmember banks.

In consideration of the foregoing, the FDIC hereby adopts a new Part 325 of Title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

Sec.
325.1 Scope.
325.2 Definitions.
325.3 Minimum capital requirements.
325.4 Inadequate capital as an unsafe or unsound practice or condition.
325.5 Miscellaneous.
325.6 Issuance of Directives.

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 3907, 3909.

§ 325.1 Scope.

The provisions of this part apply to those circumstances for which the Federal Deposit Insurance Act or this chapter requires an evaluation of the adequacy of a bank's capital structure. The FDIC is required to evaluate capital before approving various applications by banks. The FDIC also must evaluate capital, as an essential component, in determining the safety and soundness of banks it insures and supervises. This part establishes the criteria and standards FDIC will use in determining capital adequacy for banks.

§ 325.2 Definitions.

In this part:

(a) *Assets classified loss.* The term "assets classified loss" means assets that have not been charged-off from the bank's books or collected and that have been determined by an evaluation made by a state or federal bank examiner at the immediately preceding examination of the bank to be a loss.

(b) *Bank.* The term "bank" means an FDIC insured, state-chartered commercial or savings bank that is not a member of the Federal Reserve System.

(c) *Insured bank.* The term "insured bank" means any bank (except for a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(d) *Intangible assets.* The term "intangible assets" means those assets that are required to be reported in the item for intangible assets in a banking institution's "Reports of Condition and Income" (Call Report).

(e) *Mandatory convertible debt.* The term "mandatory convertible debt" means a subordinated debt instrument which requires the issuer to convert such instrument into common or perpetual preferred stock by a date at or before the maturity of the debt instrument. The maturity of these instruments must be 12 years or less.

(f) *Mortgage servicing rights.* The term "mortgage servicing rights" means the purchased rights to perform the servicing function for a specific group of mortgage loans that are owned by others. Mortgage servicing rights must be amortized over a period not to exceed 15 years or their estimated useful life, whichever is shorter.

(g) *Perpetual preferred stock.* The term "perpetual preferred stock" means a preferred stock that does not have a stated maturity date or that cannot be redeemed at the option of the holder. It includes those issues of preferred stock that automatically convert into common stock at a stated date. It excludes those issues, the rate on which increases, or can increase, in such a manner that would effectively require the issuer to redeem the issue.

(h) *Primary capital.* The term "primary capital" means the sum of common stock, perpetual preferred stock, capital surplus, undivided profits, capital reserves, mandatory convertible debt (to the extent of 20 percent of primary capital exclusive of such debt), minority interests in consolidated subsidiaries, net worth certificates issued pursuant to 12 U.S.C 1823(i) and the allowance for loan and lease losses and minus intangible assets other than morgage servicing rights and assets classified loss.

(i) *Secondary capital.* The term "secondary capital" means the sum of mandatory convertible debt that is not included in primary capital, limited life preferred stock and subordinated notes and debentures, in an amount up to 50 percent of primary capital.

(j) *Subordinated note and debenture.* The term "subordinated note and debenture" means an obligation other than a deposit obligation that:

(1) Bears on its face, in boldface type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation;

(2) Has a maturity of (i) at least seven years, or (ii) in the case of an obligation or issue that provides for scheduled repayments of principal, has an average maturity of at least seven years; provided that the FDIC may permit the issuance of an obligation or issue with a shorter maturity or average maturity if the FDIC has determined that exigent circumstances require the issuance of such obligation or issue; provided further that the provisions of this paragraph (2) shall not apply to mandatory convertible debt obligations or issues;

(3) States expressly that it is subordinated to the claims of depositors and is ineligible as collateral for a loan by the issuing bank; and

(4) Is unsecured.

(k) *Total assets.* The term "total assets" means the average of total assets required to be included in a banking institution's "Reports of Condition and Income" (Call Reports), as these reports may from time to time be changed, as of the most recent report date plus the allowance for loan and lease losses and minus assets classified loss and intangible assets other than mortgage servicing rights. In the case of commercial banks, the average of total assets is found in the schedule of quarterly averages. In the case of savings banks, the average of total assets is found in the memoranda to the balance sheet.

(l) *Total capital.* The term "total capital" means the sum of primary capital and secondary capital.

(m) *Written agreement.* The term "written agreement" means an agreement in writing executed by authorized representatives entered into with the FDIC by an insured bank which is enforceable by an action under section 8(a) (and/or section 8(b) for a state nonmember bank) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (a), (b)).

§ 325.3 Minimum capital requirement.

(a) *General.* Banks must maintain at least the minimum capital requirement set forth in this section. The capital standards in this part are the minimum acceptable for banks whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses. Where the FDIC determines that the financial history or condition, including off-balance sheet risk, managerial resources and/or the future earnings prospects of a bank are not adequate and/or a bank has a significant volume of assets classified substandard, doubtful or loss or otherwise criticized, the FDIC may determine that the minimum adequate amount of total capital and/or primary capital for that bank is greater than the minimum standards stated in this section. These same criteria will apply to any insured bank making an application to the FDIC for purposes of the FDIC's consideration of that application.

(b) *Calculation of minimum capital requirement.* The minimum capital requirement for a bank (or an insured bank making an application to the FDIC) shall consist of a ratio of total capital to

total assets of not less than 6 percent and a ratio of primary capital to total assets of not less than 5.5 percent.

(c) *Insured banks with less than minimum capital requirement.* (1) A bank (or an insured bank making an application to the FDIC) operating with less than the minimum capital requirement does not have adequate capital and therefore has inadequate financial resources.

(2) Any insured bank operating with an inadequate capital structure, and therefore inadequate financial resources, will not receive approval for an application requiring the FDIC to consider the adequacy of its capital structure or its financial resources.

(3) A bank having less than the minimum capital requirements shall, within 60 days of the effective date of this regulation, submit to its FDIC regional director for review and approval a reasonable plan describing the means and timing by which the bank shall achieve its minimum capital requirement.

(4) In any merger, acquisition or other type of business combination where the FDIC must give its approval and where it is required to consider the adequacy of the financial resources of the existing and proposed institutions, approval will not be granted when the resulting entity, whether or not insured by the FDIC, does not meet the minimum capital requirement.

(d) *Exceptions.* Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section:

(1) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital if it finds that such approval must be taken to prevent the closing of a financial institution or to facilitate the acquisition of a closed financial institution, or, when severe financial conditions exist which threaten the stability of an insured financial insitution or of a significant number of financial institutions insured by the FDIC or the Federal Savings and Loan Insurance Corporation (FSLIC) or of insured institutions possessing significant financial resources, such action is taken to lessen the risk to the FDIC or the FSLIC posed by an insured institution under such threat of instability.

(2) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital or the financial resources of the insured bank where it finds that the applicant has committed to and is in compliance with a reasonable plan to meet its minimum capital requirement within a reasonable period of time.

(Approved by the Office of Management and Budget under control number 3064-0075.)

§ 325.4 Inadequate capital as an unsafe or unsound practice or condition.

(a) *General.* As a condition of federal deposit insurance, all insured banks must remain in a safe and sound condition.

(b) *Unsafe or unsound practice.* Any bank which has less than its minimum capital requirement is deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1) and/or 1818(c)). Except that such a bank which has entered into and is in compliance with a written agreement with the FDIC or has submitted to the FDIC and is in compliance with a plan approved by the FDIC to increase its primary and total capital ratios to such levels as the FDIC deems appropriate and to take such other action as may be necessary for the bank to be operated so as not to be engaged in such an unsafe or unsound practice will not be deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1) and/or 1818(c)) on account of its capital ratios.

(c) *Unsafe or unsound condition.* Any insured bank with a ratio of primary capital to adjusted total assets that is less than three percent is deemed to be operating in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)).

(1) A bank with a ratio of primary capital to adjusted total assets of less than three percent which has entered into and is in compliance with a written agreement with the FDIC (or any other insured bank with a ratio of primary capital to adjusted total assets of less than three percent which has entered into and is in compliance with a written agreement with its primary federal regulator and to which agreement the FDIC is a party) to increase its primary capital ratio to such level as the FDIC deems appropriate and to take such other action as may be necessary for the insured bank to be operated in a safe and sound manner, will not be subject to a proceeding by the FDIC pursuant to 12 U.S.C. 1818(a) on account of its primary capital ratio.

(2) An insured bank with a ratio of primary capital to adjusted total assets that is equal to or greater than three percent may be operating in an unsafe or unsound condition. The FDIC is not precluded from bringing an action pursuant to 12 U.S.C. 1818(a) where an insured bank has a ratio of primary capital to adjusted total assets that is equal to or greater than three percent.

§ 325.5 Miscellaneous.

(a) *Pre-existing instruments.* Any instrument not counted as primary capital pursuant to this part which was approved by the FDIC for use as equity capital under pre-existing guidelines shall be added as a component of primary capital.

(b) *Intangible assets approved prior to effective date.* Any intangible asset which was booked in accordance with generally accepted accounting principles when acquired and which was approved by the FDIC for inclusion in equity capital prior to effective date of this regulation shall be counted in full as a component of primary capital and shall not be deducted from total assets if it is being amortized over a period not to exceed 15 years or its estimated useful life, whichever is shorter.

(c) *Transactions not providing capital support.* Any capital instrument, transaction or balance sheet entry which would increase an insured bank's primary capital but which does not provide support to the insured bank by providing a cushion to absorb losses shall be deducted from primary capital.

(d) *Securities subsidiary.* For purposes of this part, any securities subsidiary subject to 12 CFR 337.4 shall not be consolidated with its bank parent and any investment therein shall be deducted from the bank parent's primary capital and total assets.

(e) *Depository institution subsidiary.* Any domestic depository institution subsidiary that is not consolidated in the "Report of Condition and Income" (Call Reports) of its insured bank parent shall be consolidated with the insured bank parent for purposes of this part. The financial statements of the subsidiary that are to be used for this consolidation must be prepared in the same manner as the "Reports of Condition and Income" (Call Reports).

§ 325.6 Issuance of directives.

(a) *General.* A directive is a final order issued to a bank that fails to maintain capital at or above the minimum capital requirement as set forth in §§ 325.3 and 325.4. A directive issued pursuant to this section, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as a final cease-and-desist order issued under 12 U.S.C. 1818(b).

(b) *Issuance of directives.* If a bank is operating with less than the minimum

capital requirement established by this regulation, the Board of Directors, or its designee(s), may issue and serve upon any insured state nonmember bank a directive requiring the bank to restore its capital to the minimum capital requirement within a specified time period. The directive may require the bank to submit to the appropriate FDIC regional director, or other specified official, for review and approval, a plan describing the means and timing by which the bank shall achieve the minimum capital requirement. After the FDIC has approved the plan, the bank may be required under the terms of the directive to adhere to the plan. The directive may be issued during the course of an examination of the bank, if the bank is found to be operating with less than the minimum capital requirement.

(c) *Notice and opportunity to respond to issuance of a directive.* (1) If the FDIC makes an initial determination that a directive should be issued to a bank pursuant to paragraph (b), the FDIC through the appropriate designated official(s) shall serve written notification upon the bank of its intent to issue a directive. The notice shall include the current total capital ratio, the basis upon which said ratio was calculated, the proposed capital injection, the proposed date for achieving the minimum capital requirement and any other relevant information concerning the decision to issue a directive. When deemed appropriate, specific requirements of a proposed plan for meeting the minimum capital requirement may be included in the notice.

(2) Within 14 days of receipt of notification, the bank may file with the appropriate designated FDIC official(s) a written response, explaining why the directive should not be issued, seeking modification of its terms, or other appropriate relief. The bank's response shall include any information, mitigating circumstances, documentation or other relevant evidence which supports its position, and may include a plan for attaining the minimum capital requirement.

(3) After considering the bank's response, the appropriate designated FDIC official(s) shall serve upon the bank a written determination addressing the bank's response and setting forth the FDIC's findings and conclusions in support of any decision to issue or not to issue a directive. The directive may be issued as orginally proposed or in modifed form. The directive may order the bank to (i) achieve the minimum capital requirement established by this regulation by a certain date; (ii) submit for approval and adhere to a plan for achieving the minimum capital requirement; (iii) take other action as is necessary to achieve the minimum capital requirement; or (iv) a combination of the above actions. If a directive is to be issued, it may be served upon the bank along with the final determination.

(4) Any bank, upon a change in circumstances, may request the FDIC to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the minimum capital requirement. The directive and plan continue in effect while such request is pending before the FDIC.

(5) All papers filed with the FDIC must be postmarked or received by the appropriate designated FDIC official(s) within the prescribed time limit for filing.

(6) Failure by the bank to file a written response to notification of intent to issue a directive within the specified time period shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of such directive.

(d) *Enforcement of a directive.* (1) Whenever a bank fails to follow the directive or to submit or adhere to its capital adequacy plan, the FDIC may seek enforcement of the directive in the appropriate United States district court, pursuant to 12 U.S.C. 3907(b)(2)(B)(ii), in the same manner and to the same extent as if the directive were a final cease-and-desist order. In addition to enforcement of the directive, the FDIC may seek assessment of civil money penalties for violation of the directive against any bank, any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, pursuant to 12 U.S.C. 3909(d).

(2) The directive may be issued separately, in conjunction with, or in addition to, any other enforcement mechanisms available to the FDIC, including cease-and-desist orders, orders of correction, the approval or denial of applications, or any other actions authorized by law.

By order of the Board of Directors, this 11th day of February, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-6429 Filed 3-18-85; 8:45 am]

BILLING CODE 6714-01-M

12 CFR Part 325

Statement of Policy on Capital

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Statement of Policy on Capital.

SUMMARY: On February 11, 1985 the Board of Directors of the Federal Deposit Insurance Corporation ("Board") adopted a final rule concerning Capital Maintenance. That final rule, Part 325 of the FDIC's rules and regulations (12 CFR Part 325) is published elsewhere in this issue. This statement of policy was adopted by the Board concurrent with that final rule. It is intended that this statement of policy explain various portions of that final rule and give some guidance on the manner in which the FDIC intends to apply the rule.

EFFECTIVE DATE: April 18, 1985.

FOR FURTHER INFORMATION: Contact Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550—17th Street, NW., Washington, D.C. 20429, (202) 389-4761.

SUPPLEMENTARY INFORMATION:

Background

A proposed regulation on capital maintenance was published for comment in the **Federal Register** on July 20, 1984. 49 FR 29399 (1984). On February 11, 1985, the Board of Directors of the FDIC ("Board") adopted a final rule on Capital Maintenance. This rule, Part 325 of the FDIC's Rules and Regulations (12 CFR Part 325) becomes effective on April 18, 1985.

The FDIC is required to analyze capital adequacy in taking action on various types of applications such as mergers and the establishment or relocation of branches and in the conduct of its supervisory activities related to the safety and soundness of individual banks and the banking system. Additionally, as a condition of federal deposit insurance all insured banks must remain in a safe and sound condition, which includes maintaining adequate capital. The final rule: (a) Defines capital; (b) establishes minimum standards for adequate capital; (c) establishes standards to determine when an insured bank is operating in an unsafe and unsound condition by reason of the amount of its capital; and (d) establishes procedures for issuing a directive to require an insured state nonmember bank to achieve and maintain a minimum capital ratio. This

statement of policy was adopted by the Board concurrent with the adoption of the final rule in order to explain certain aspects of that rule and to give banks guidance as to the manner in which the FDIC will apply the rule.

On December 17, 1981, the FDIC Board of Directors adopted a policy statement to inform banks and the public of its views concerning capital and capital adequacy [FDIC Statement of Policy on Capital Adequacy, 46 FR 62694 (1981)]. Because of the adoption of the final rule on capital maintenance and this statement of policy on capital, the Board has revoked the 1981 statement of policy.

Statement of Policy

In considering the comments received in response to the proposed regulation on capital maintenance, the Board of Directors decided that the adoption of a statement of policy would be an effective way of addressing some of those comments as well as providing guidance to the public and the industry as to how the FDIC would implement and enforce the regulation. Accordingly, a statement of policy on capital containing such explanatory information has been adopted by the Board concurrent with the adoption of the final rule. A full discussion of the content of the statement of policy is contained in the **Federal Register** notice announcing adoption of the final rule.

In consideration of the foregoing the FDIC hereby adopts a Statement of Policy as follows:

Statement of Policy on Capital

Part 325 (12 CFR Part 325) of the Federal Deposit Insurance Corporation rules and regulations sets forth minimum capital requirements for fundamentally sound, well-managed banks having no material or significant financial weaknesses. It also defines capital and sets forth sanctions which will be used against banks which are in violation of the regulation. This statement of policy on capital provides some interpretational and definitional guidance as to how this regulation will be administered and enforced by the FDIC.

Enforcement of Minimum Capital Requirements

Section 325.3(b) specifies that all FDIC-insured, state-chartered nonmember commercial and savings banks (or other insured banks making applications to the FDIC) must maintain a minimum ratio of primary capital to adjusted total assets of 5.5 percent and a minimum ratio of total capital to total assets of 6.0 percent. Banks operating with ratios under the minimums will be deemed to have inadequate capital and, subject to certain exceptions specified in the regulation, will be in violation of the regulation. Furthermore, such banks will have any application submitted to the FDIC denied and will be subject to the use of capital directives or other formal enforcement action by the FDIC to increase capital.

Capital adequacy in banks which have capital ratios at or above the minimums will be assessed and enforced based on the following factors:

Banks Which are Fundamentally Sound and Well Managed

Section 325.3(a) of the regulation specifies that the capital standards set forth therein are the minimum acceptable for banks whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses. While the FDIC will make this determination in each bank based on its own condition and specific circumstances, this definition will generally apply to those banks evidencing a level of risk which is no greater than that normally associated with a Composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Banks meeting this definition which are in compliance with the minimum capital requirements will not generally be required by the FDIC to raise new capital from external sources. The FDIC does, however, encourage such banks to maintain capital above the minimums and will carefully evaluate their earnings and growth trends, dividend policies, capital planning procedures and other factors important to the continuous maintenance of adequate capital. Adverse trends or deficiencies in these areas will be subject to criticism at regular examinations and may be an important factor in the FDIC's action on applications submitted by such banks. In additon, the FDIC's consideration of capital adequacy in banks making applications to the FDIC will also fully examine the expected impact of those applications on the banks' ability to maintain its capital adequacy.

Other Banks

Banks not meeting the definition set forth above, that is, banks evidencing a level of risk which is at least as great as that normally associated with a Composite rating of 3, 4 or 5 under the Uniform Financial Institution Rating System, will be required to maintain capital higher than the minimum regulatory requirement and at a level deemed appropriate in relation to the degree of risk within the institution. These higher capital levels will normally be addressed through Memorandums of Understanding between the FDIC and the bank or, in cases of more pronounced risk, through the use of formal enforcement actions under section 8 of the Federal Deposit Insurance Act.

Capital Requirements of Primary Regulator

Notwithstanding the above, all banks will be expected to meet any capital requirements established by its primary state or federal regulator which exceed the minimum capital requirement set forth in the regulation. In addition, the FDIC will, when establishing capital requirements higher than the minimum set forth in the regulation, consult with the bank's primary state or federal regulator.

Capital plans

Section 325.4(b) specifies that any bank which has less than its minimum capital requirement is deemed to be engaging in an unsafe and unsound banking practice unless it has submitted to, and is in compliance with, a plan approved by the FDIC to increase its primary and total ratios to such levels as the FDIC deems appropriate. (This section specifies that written agreements may also be used for this purpose but these will be subject to different requirements which are discussed in the next section.) The general criteria which will be used by the FDIC in its review and approval of such plans will depend upon several factors which are set forth below:

Stock Institutions Which are Fundamentally Sound and Well Managed

Banks which have less than the minimum capital requirements are required to submit a reasonable plan to the FDIC within 60 days of the effective date of the regulation § 325.3(c)(3)). As a matter of general policy, the FDIC will require plans submitted by stock owned banks which are fundamentally sound and well managed to provide for attainment to the minimum capital ratios within 12 months after approval of the plan by the FDIC. Exceptions will be permitted only when there is a showing of good cause why, for reasons outside the control of the bank, this is unattainable and there is a reasonable prospect that the minimum will be reached in a reasonable amount of time.

Fundamentally sound banks which have their capital ratios fall below the minimum requirements subsequent to the effective date of the regulation will be expected to take steps to correct the situation immediately or be subject to a

capital directive or other enforcement proceeding.

Other Banks With a Stock Form of Ownership

As noted above, banks evidencing more than normal levels of risk will normally have their minimum capital requirements established in a formal or informal enforcement proceeding. The time frames for meeting these requirements will be set forth in such actions and will generally require some immediate action on the bank's part to meet its minimum capital requirement.

Saving Banks With a Mutual Form of Ownership

Based upon recent adverse conditions in the thrift industry and the special problems in raising capital for institutions with a mutual form of ownership, mutual savings banks will, subject to the exceptions specified below, be permitted to achieve their minimum capital requirements in accordance with the following schedule:

Primary capital ratio as of effective date of regulation	Time to achieve minimum capital requirement[1]
5.0% or more	One Year.
4.5% to 4.99%	Two Years.
4.0% to 4.49%	Three Years.
3.5% to 3.99%	Four Years.
3.0% to 3.49%	Five Years.

[1] From date of approval of initial plan.

The extended times for achieving the minimum capital requirement shall apply to only those mutual savings banks which exhibit no more than normal risk characteristics and which can continuously demonstrate a realistic ability to achieve their minimum capital requirement within the time period specified through retained earnings. Plans must be submitted and approved on an annual basis as a means of demonstrating this continuous ability. Mutual savings banks evidencing more than normal risk or mutual savings banks which cannot demonstrate an ability to achieve their minimum capital requirement through earnings will be expected to incorporate in their plans alternative means of achieving their minimum capital requirements (conversion to stock form of ownership, elimination of excessive risk, merger, or other appropriate means) and begin to pursue those alternatives immediately.

Mutual savings banks whose capital ratios drop below the minimum requirements subsequent to the effective date of the regulation will be expected to take steps to correct the situation immediately except in those instances where the capital reduction arises as a part of a balance sheet restructuring plan, approved by the FDIC and designed to improve the bank's exposure to fluctuations in interest rates. In approving such plans the FDIC will require that the bank achieve its minimum capital requirement in a reasonable time, not to exceed that set forth in the above schedule for those banks which are below their minimum capital requirement as of the effective date of the regulation.

Plans Submitted in Connection with Applications

The above provisions do not apply to capital plans submitted in connection with applications as provided for in § 325.3(d)(2) of the regulation. The reasonableness of such plans will be determined in conjunction with the FDIC's consideration of the application.

Written Agreements

Section 325.4(c)(1) requires that any insured bank with a primary capital ratio of less than 3 percent must enter into and be in compliance with a written agreement with the FDIC (or with its other primary federal regulator with FDIC as a party to the agreement) to increase its primary capital ratio to such level as the FDIC deems appropriate or be subject to a termination of insurance action by the FDIC. Except in the very rarest of circumstances, the FDIC will require that such agreements contemplate immediate efforts by the bank to acquire the required capital.

A bank which has received net worth certificates from the FDIC will be considered to be in compliance with this requirement for so long as it is in compliance with the FDIC requirements set forth in the net worth certificate program, provided that both its board and the FDIC Board of Directors agree that the net worth certificate agreements they enter into or have entered into are written agreements as defined in the regulation.

Capital Components

Section 325.2 sets forth the definitions of primary and secondary capital as well as some of the various instruments and accounts which are included therein. The following provides some additional guidance with respect to some of these items.

Intangible Assets

With the adoption of Part 325, the FDIC is now permitting state nonmember banks to record intangible assets on their books and to report the value of such assets in Consolidated Reports of Condition. As noted in the instructions for preparation of Consolidated Reports of Condition and Income (published by the Federal Financial Institutions Examination Council), intangible assets may arise from business combinations accounted for under the purchase method in accordance with Accounting Principles Board Opinion No. 16, as amended, and acquisitions of portions or segments of another institution's business, such as branch offices, mortgage servicing portfolios, and credit card portfolios.

Intangible assets created from such transactions may be booked in accordance with generally accepted accounting principles with one exception. For the purpose of reporting such assets on Call Reports, banks reporting to the FDIC shall amortize such assets over their estimated useful lives or a period not in excess of 15 years, whichever is shorter.

Notwithstanding the authority to report all intangible assets in Consolidated Reports of Condition, § 325.2(h) of the regulation specifies that mortgage servicing rights are the only intangible assets which will be allowed as primary capital. The portion of equity capital represented by other types of intangible assets will be excluded from the computation of a bank's primary and total capital ratios. Certain pre-existing intangible assets will, however, be grandfathered in accordance with conditions which are set forth below under "Grandfathered Instruments or Transactions."

In certain instances banks may have investments in unconsolidated subsidiaries or joint ventures that have large volumes of intangible assets. In such instances the bank's consolidated statements will reflect an investment in a tangible asset even though such investment will, in fact, be represented by a large volume of intangible assets. In any such situation where this is material and, consistent with the treatment of mortgage servicing rights set forth above, the bank's investment in the unconsolidated subsidiary will be divided into a tangible and an intangible portion based on the percentage of intangible assets to total assets in the subsidiary. The intangible portion of the investment will be treated as if it were an intangible asset on the bank's books in the calculation of primary and secondary capital.

Perpetual Preferred Stock

Perpetual preferred stock is defined as preferred stock that does not have a stated maturity date or that cannot be redeemed at the option of the holder. It is possible for banks to issue preferred stock with a dividend rate which escalates to such a high rate that the terms become so onerous as to

effectively force the bank to call the issue (for example, an issue with an initial rate of 12 percent which escalates to 18 percent in the tenth year). Preferred stock issues with such onerous terms have much the same characteristics as limited life preferred stock in that the bank would be effectively forced to redeem the issue to avoid performance of the onerous terms. Such instruments may be disallowed as primary capital and banks which are contemplating issues bearing terms which may be so characterized are encouraged to submit them for FDIC review prior to issuance. Nothing herein shall prohibit banks from issuing floating rate preferred stock issues where the rate is constant in relation to some base rate.

The FDIC will also require that issues of perpetual preferred stock be consistent with safe and sound banking practices. Issues which would unduly enrich insiders or which contain dividend rates or other terms which are inconsistent with safe and sound banking practices will likely be the subject of an appropriate supervisory response from the FDIC. Banks contemplating preferred stock issues which may pose safety and soundness concerns are encouraged to submit such issues to the FDIC for review prior to sale.

Other Instruments or Transactions Which Fail To Provide Capital Support

Section 325.5(c) specifies that any capital instrument, transaction, or balance sheet entry which would increase an insured bank's primary capital but which does not provide support to the bank by providing a cushion to absorb losses shall be deducted from capital. An example involves certain types of minority interests in consolidated subsidiaries. Minority interests in consolidated subsidiaries have been included in primary capital based on the fact that they provide capital support to the risk in the consolidated subsidiaries. Certain transactions have been structured where a bank forms a subsidiary by transferring essentially risk free assets to the subsidiary in exchange for common stock of the subsidiary. The subsidiary then sells preferred stock to third parties. The preferred stock becomes a minority interest in a consolidated subsidiary but, in effect, fails to provide any meaningful capital support to the consolidated entity inasmuch as it has a preferred claim on the essentially risk free assets. Capital instruments or transactions of this nature which fail to absorb losses or provide meaningful capital support will be deducted from primary capital.

Mandatory Convertible Debt

Section 325.2(e) of the regulation defines mandatory convertible debt as a subordinated debt instrument which requires the issuer to convert such instrument into either common or perpetual preferred stock by a date at or before the maturity of the debt instrument. The maturity of these instruments must be 12 years or less. So-called "equity commitment notes," which merely require a bank to sell common or perpetual preferred stock during the life of the subordinated debt obligation, are specifically excluded from this definition.

Grandfathered Instruments or Transactions

The FDIC has previously approved for specific banks certain mandatory convertible debt instruments or subordinated notes and debentures as equity capital and has allowed certain banks to make investments in intangible assets that would also count as equity capital as that term was defined in previous guidelines. Any such instruments or transactions which have previously been explicitly approved by FDIC as equity capital will be counted as primary capital subject to the original terms or, in the case of intangible assets, subject to the requirement that they be amortized over a period not to exceed 15 years or their estimated useful lives, whichever is shorter.

Analysis of Consolidated Companies

In determining a bank's compliance with its minimum capital requirements the FDIC will, with two exceptions, utilize the bank's consolidated statements as defined in the instructions for the preparation of Consolidated Reports of Condition and Income.

The first exception relates to securities subsidiaries of state nonmember banks which are subject to § 337.4 of the FDIC's rules and regulations. Any subsidiary established pursuant to this section must be a bona fide subsidiary which is adequately capitalized. In addition, § 337.4(b)(3) requires that any insured nonmember bank's investment in such a subsidiary shall not be counted toward the bank's capital. In those instances where the securities subsidiary is consolidated in the bank's Consolidated Report of Condition it will be necessary, for the purpose of calculating the bank's primary and total capital ratios, to adjust the Consolidated Report of Condition on such a manner as to reflect the bank's investment in the securities subsidiary on the equity method. In this case, and in those cases where the securities subsidiary has not been consolidated, the investment in the subsidiary will then be deducted from the bank's capital and assets prior to calculation of the bank's primary and total capital ratios.

The second exception relates to the treatment of subsidiaries of insured banks that are domestic depository institutions such as commercial banks, savings banks, or savings and loan associations. These subsidiaries are not consolidated on a line-by-line basis with the insured bank parent in the bank parent's Consolidated Reports of Conditions and Income. Rather, the instructions for these reports provide that bank investments in such subsidiaries are to be reported on an unconsolidated basis in accordance with the equity method. Since the FDIC believes that the minimum capital requirements should apply to a bank's depository institution activities in their entirety, regardless of the form that the organization's corporate structure takes, it will be necessary, for the purpose of calculating the bank's primary and total capital ratios, to adjust a bank parent's Consolidated Report of Condition to consolidate its domestic depository institution subsidiaries on a line-by-line basis. The financial statements of the subsidiary that are used for this consolidation must be prepared in the same manner as the Consolidated Report of Condition.

The FDIC will, in determining the capital adequacy of a bank which is a member of a bank holding company or chain banking group, consider the degree of leverage and risks under taken by the parent company of other affiliates. Where the level of risk in a holding company system is no more than normal and the consolidated company meets the minimum capital ratios specified by the Board of Governors of the Federal Reserve System, the FDIC will not generally require additional capital in subsidiary banks under its supervision over and above that which would be required for the subsidiary bank on its own merit. In cases where a holding company or other affiliated banks (or other companies) evidence more than a normal degree of risk (either by virtue of the quality of their assets, the nature of the activities conducted, or other factors) or have capital ratios below the Federal Reserve guidelines (as would frequently be the case in small, highly leveraged one-bank holding companies), the FDIC will consider the potential impact of the additional risk or excess leverage upon

an individual bank to determine if such factors will likely result in excessive requirements for dividends, management fees, or other support to the holding company or affiliated organizations which would be deterimental to the bank. Where the excessive risk or leverage in such organizations is determined to be potentially detrimental to the bank's condition or its ability to maintain adequate capital, the FDIC may initiate appropriate supervisory action to limit the bank's ability to support its weaker affiliates and/or require higher than minimum capital ratios in the bank.

By order of the Board of Directors this 11th day of February, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-6427 Filed 3-18-85; 8:45 am]

BILLING CODE 6714-01-M

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12 CFR Part 346

Foreign Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is making amendments to the capital equivalency ledger account provision in its International Banking Act ("IBA") regulations. The changes are being made in line with the provisions of the FDIC's capital regulation being published in final form today elsewhere in this issue. Several changes are being made. The minimum required sum to be maintained in the capital equivalency ledger account will be raised to six percent, rather than five percent, of the branch's liabilities; and no deduction will be required for assets classifed as "Doubtful." In addition, the total liability figure upon which the account is based is now a quarterly average amount.

EFFECTIVE DATE: The regulation will become effective on April 18, 1985.

FOR FURTHER INFORMATION CONTACT: Hugh W. Conway, Review Examiner, or Joseph Duffy, Senior Financial Analyst, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, at (202) 389-4345 or (202) 389-4291, respectively.

SUPPLEMENTARY INFORMATION: On December 21, 1984, the FDIC published a final rule amending its International Banking Act ("IBA") regulations (49 FR 49614, December 21, 1984). In that final rule, the FDIC noted that it planned to amend its IBA regulations in certain regards to conform them to provisions in the final version of an FDIC regulation on capital (the capital regulation then existed only in proposed form). The final regulation on capital is being published today, and corresponding changes are being made to the IBA regulations. The amendments should serve to put insured branches and other insured entities on a more nearly equal competitive basis.

Three changes are being made. At § 346.20(a), the amount required to be in the capital equivalency ledger account is being raised from a minimum of five percent to six percent of the branch's liabilities, exclusive of liabilities due to the parent bank or any other branch, agency, office or wholly owned subsidiary of the parent bank. This change corresponds to the capital adequacy requirement of six percent of total assets being required of well-managed domestic banks. The second change corresponds to the provision in the final capital regulation that no deduction from capital will be required for assets classified "Doubtful." Section 346.20(b)(2) will no longer require a deduction from the capital equivalency ledger account for assets classified "Doubtful."

Finally, in line with the manner of computation in the capital regulation, a change is being made in the method of computation for the capital equivalency ledger account. In the final capital regulation, the amount of total assets is based on a quarterly call report figure. Thus, in order to correspond to the final capital regulation, the capital equivalency ledger account will continue to be maintained on a daily basis, but the amount of total liabilities against which the capital equivalency ledger account must be maintained is being changed to a quarterly average. In determining the quarterly (quarters end on March 31, June 30, September 30, and December 31, respectively) average of liabilities, branches will have the option of computing either (1) an average of daily figures for the quarter or (2) an average of the balances as of the close of business on each Wednesday during the calendar quarter. For days that the branch is closed, the amount outstanding from the previous business day is to be used. Some insured branches have stated to the FDIC that the present daily computation is burdensome; the change to a quarterly average computation basis for liabilities should reduce this burden, in addition to providing similarity in the method of computation for insured branches and other domestic institutions, respectively. However, the FDIC reserves the right to impose a daily computation of liabilities in those instances where it believes it to be necessary for supervisory purposes.

Since the only changes being made are those to conform this regulation to the capital regulation and/or to ease an existing burden, the regulation is being issued as a final regulation. There will be no comment period.

In accordance with the Regulatory Flexibility Act, the Board of Directors certifies that the rule will not have a significant economic impact on a substantial number of small entities. Presently, there are 22 foreign banks which have insured branches, and they are worldwide institutions with assets ranging from approximately $1 to $50 billion. The requirements of 5 U.S.C. 603 and 604 that initial and final regulatory flexibility analyses be made thus do not apply to this proposal since the rule would not impose an added economic burden on small entities.

Pursuant to FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

There are no paperwork requirements in this rule, and, consequently, the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 12 CFR Part 346

Bank deposit insurance, Federal Deposit Insurance Corporation, Foreign banks, Banking, Reporting and record keeping requirements.

For reasons set out in the preamble, the Board of Directors hereby amends Part 346 of chapter III of title 12 of the *Code of Federal Regulations* as set forth below.

PART 346—FOREIGN BANKS

1. The authority citation for Part 346 continues to read as follows:

Authority: Secs. 5, 6, 13, Pub. L. 95-369, 92 Stat. 613, 614, 624 (12 U.S.C. 3103, 3104, 3108); Secs. 5, 7, 9, 10, Pub. L. 797, 64 Stat. 876, 877, 881, 882 (12 U.S.C. 1815, 1817, 1819, 1820).

2. In 12 CFR 346.20, paragraph (a) and (b)(2) are revised, the introductory text of paragraph (b)(2) is set forth without change for the convenience of the reader, and paragraph (d) is added to read as follows:

§ 346.20 Capital equivalency ledger account.

(a) The branch shall maintain on a daily basis a capital equivalency ledger account, a liability account, which is equivalent at a minimum to six percent of the preceding quarter's average book value of the liabilities of the branch, exclusive of liabilities due to the parent

bank or any other branch, agency, office, or wholly owned subsidiary of the parent bank, *Provided*, the FDIC may, by order, impose a computation of total liabilities on a daily basis in those instances where it is found to be necessary for supervisory purposes.

* * * * *

(b) For purposes of determining compliance with paragraph (a), the capital equivalency ledger account shall not include amounts represented by the following items.

(1) * * *

(2) 100 percent of any asset classified "Loss" in the most recent examination report prepared by the appropriate state or Federal authority.

* * * * *

(d) The average book value of the branch's liabilities for a quarter shall be, at the branch's option, either an average of the balances as of the close of business for each day for the quarter of an average of the balances as of the close of business on each Wednesday during the quarter. Quarters end on March 31, June 30, September 30, and December 31 of any given year. For days on which the branch is closed, the amount outstanding from the previous business day is to be used. The branch may rely on this average value for the purpose of determining compliance with paragraph (a) of this section. Calculations as to the average book value of the branch's liabilities for a quarter shall be retained by the branch until the next examination.

By order of the Board of Directors, February 11, 1985.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-6312 Filed 3-18-85; 8:45 am]

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